

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF FURTHER AMENDING THE)
ENERGY EFFICIENCY RULE 17.7.2 NMAC)
_____) Case No. 17-00136-UT**

**ORDER ESTABLISHING RULEMAKING DOCKET AND
ISSUING NOTICE OF PROPOSED RULEMAKING**

THIS MATTER having come before the New Mexico Public Regulation Commission (the "Commission") on the Commission's own motion, notice is given that the Commission is initiating a Rulemaking Docket for the purpose of promulgating revisions to Part 2 of Title 17 of Chapter 7 of the New Mexico Administrative Code (17.7.2 NMAC, the "EE Rule"), specifically to Sections 8, 12, & 14 (17.7.2.8, 17.7.2.12 & 17.7.2.14 NMAC) of the EE Rule and possibly also to other sections or portions of the EE Rule, if any, that may be revised as a logical outgrowth of the noticed revisions or that may be revised for clarity or for other insubstantial reasons, with an effective date of September 26, 2017 or thereafter.

Whereupon, being duly informed,

THE COMMISSION FINDS AND CONCLUDES:

1. On June 21, 2017 on its own motion, the Commission ordered that a rulemaking Docket be opened to revise Sections 8, 12, & 14 of the EE Rule, 17.7.2 NMAC *et seq.*
2. The New Mexico Energy Efficiency Act (the "EEA"), found at NMSA 1978, § 62-17-1¹ *et seq.*, when read in conjunction with the Commission's Rulemaking Statute, found at NMSA 1978, § 8-8-15, *et seq.*, empowers the Commission to promulgate rules to put into effect the requirements under the EEA.

¹ See § 62-17-8 (A): "A public utility shall submit to the commission an annual report that provides information relating to the actions taken by the public utility to comply with the standards of the Efficient Use of Energy Act. The report shall include documentation. . . and any other information the commission may require pursuant to its rulemaking authority."

3. The Commission finds that various entities have indicated to the Commission that changes to the EE Rule should be considered that might allow a public utility, during its current and approved energy efficiency plan cycle, the ability and flexibility to modify, on an annual or other basis, its energy efficiency programs between Applications, if the modifications do not exceed a certain monetary amount percentage of a public utility's approved projected level of energy efficiency plan revenue amounts.

4. The Commission finds that a Notice of Proposed Rulemaking ("NOPR") should be issued in this matter, and that a copy of the NOPR for this Docket is attached hereto as Exhibit B. The NOPR is intended to constitute due and lawful notice to all potentially interested parties.

5. According to Section 8, Paragraph A of the Commission's Public Utilities Rulemaking Procedures Rule, 17.1.120 *et seq.* NMAC (17.1.120.8(A) NMAC), which applies to all rulemaking proceedings arising under the Public Utility Act, prior to the adoption, amendment, or repeal of any public utility rule, the Commission must, at least forty-five (45) days prior to taking its proposed action, publish notice of its proposed action in the New Mexico Register and in newspapers of general and statewide circulation in the State of New Mexico, and must provide notice, including a copy of the proposed rulemaking, to public utilities under its jurisdiction by mail and any person or group filing a written request for such notification to the Commission, notification being by mail to the last address specified by the person or group.

6. According to 17.1.120.8(B) NMAC of the Commission's Public Utilities Rulemaking Procedures Rule, the published notice must give the date, time, and place of any public hearing and state the manner in which comments may be submitted to the Commission by interested persons; must describe the substance of the proposed action; must state a location

where the proposed rule may be obtained or a written address from which the proposed rule may be procured by mail; and must include reference to the statutory authority under which the rule is proposed.

7. Pursuant to the Commission's Rulemaking statute, NMSA 1978, § 8-8-15 (B), notice of the subject matter of the rule, the action proposed to be taken, the manner in which interested persons may present their views and the method by which copies of the proposed rule, amendment or repealing provisions may be obtained shall be published at least once at least thirty (30) days prior to the hearing date in the New Mexico register and two newspapers of general circulation in the state and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice.

8. This rulemaking is conducted, and any rule amendments are adopted, under the authority granted to the Commission by the New Mexico Constitution, Article 11, § 2 (1996), and by state statute pursuant to NMSA 1978, § 8-8-4 (B) (10) (1998) and § 8-8-15.

9. Commission Procedural Rule, Rule 1.2.3.7 (B) NMAC regarding Ex Parte Communications draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter -- communication occurring after the record has been closed -- as ex parte communications. In order to assure compliance with 1.2.3.7(B) (1), the Commission should set a date on which it will consider the rulemaking record to be closed. The setting of that record closing date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file

comments or response comments, or as allowing the filing of other types of documents in this case.

Whereupon, being duly informed,

IT IS ORDERED:

A. The Commission hereby issues this Order Establishing Rulemaking Docket and Issuing Notice of Proposed Rulemaking and a copy of the proposed changes to the EE Rule, attached hereto as Exhibit A.

B. The Commission hereby issues a Notice of Proposed Rulemaking in the form and substance provided in the attached Exhibit B.

C. The Notice of Proposed Rulemaking, without the proposed rule contained in Exhibit A, shall be published in at least two (2) newspapers of general circulation in the State of New Mexico and in the New Mexico Register as soon as practicable, on or before Tuesday, **July 11, 2017**.

D. Any person or entity wishing to comment on the proposed rule revisions may do so by submitting written initial comments no later than Friday, **August 11, 2017**, and any person wishing to respond to the written initial comments may do so by submitting written response comments no later than Monday, **August 21, 2017**. Any written comment suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule amendments shall be provided in a format consistent with that of the existing rule. Written comments on the proposed rule shall refer to Case No. 17-00136-UT and shall be filed with the Commission's Records Management Bureau by mail at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery

to the Commission's Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501.

E. The Commission will review all timely submitted written comments and will hold a rulemaking public comment hearing to take oral comment regarding the proposed rules. The schedule and location for the public comment hearings is as follows:

Wednesday, August 30, 2017
10:30 a.m.
Public Regulation Commission
4th Floor Hearing Room of the old P.E.R.A. Building
1120 Paseo de Peralta
Santa Fe, New Mexico 87501

The hearing will be held for the purpose of receiving oral comments. Because commenters are afforded the opportunity to submit to the Commission written initial comments and written response comments, all individuals who provide oral comments may be limited by the Presiding Officer to a consistent, set number of minutes per commenter to express those comments, subject to the discretion of the Presiding Officer or the Commission. The Presiding Officer or the Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that share the same message or seek the same goals, in order to maximize the efficiency of the rulemaking public comment hearing. No sworn testimony or other legally admissible evidence shall be taken at the hearing because this docket is a rulemaking proceeding.

F. The record in this matter shall be closed on Tuesday, **September 5, 2017**.

G. Pursuant to its authority under NMSA 1978, §8-8-14, the Commission shall appoint a Presiding Officer to preside over the rulemaking public comment hearing in this matter through a proper procedural order issued by the Chair of the Commission, or by any other

Commissioner, pursuant to the procedural authority of a single commissioner authorized by rule 1.2.2.30(B) NMAC. The Presiding Officer shall take all action necessary and convenient within the limits of the Presiding Officer's authority, to conduct and to set any necessary hearings, to submit the Commission a Recommended Decision, if any, containing proposed findings of fact and conclusions of law regarding the proposed rules, and may take any other action in this case that is consistent with the Commission's rules of procedure.

H. Interested persons should contact the Commission to confirm the date, time, and place of any rulemaking public comment hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the rulemaking public comment hearing should contact Ms. Kathleen Segura at (505) 827-4501 at least 48 hours prior to the commencement of the rulemaking public comment hearing.

I. Copies of the proposed rule revisions and of the Notice of Proposed Rulemaking (Exhibits A and B, respectively) shall be provided by email to any person or group having filed a written request for such notification with the Commission as of the date of this Order, and if the email address is not known, sent by U.S. mail to such entities, persons, or any other person having requested such service.

J. The proposed rules and the Notice of Proposed Rulemaking (Exhibits A and B, respectively) shall be posted on the Commission's official website.

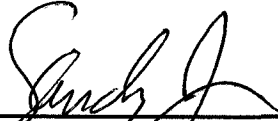
K. Copies of any forthcoming final order adopting rule revisions shall be mailed, along with copies of the amended rule, to all persons and entities appearing on the Certificate of Service as it exists at the time of issuance of the final order in this Docket, to all commenters in this case, and to all individuals previously having requested such copies.

L. This order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 21st day of

June, 2017.

NEW MEXICO PUBLIC REGULATION COMMISSION



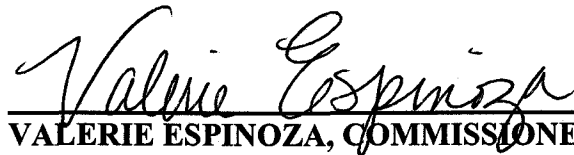
SANDY JONES, CHAIR



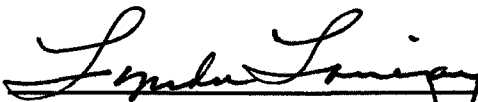
CYNTHIA B. HALL, VICE CHAIR



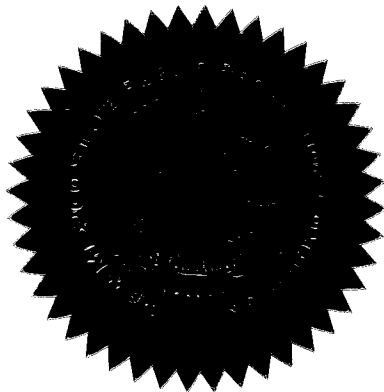
PATRICK H. LYONS, COMMISSIONER



VALERIE ESPINOZA, COMMISSIONER



LYNDA LOVEJOY, COMMISSIONER



This is an amendment to 17.7.2 NMAC, Sections 8, 12, & 14, effective September 26, 2017.

* * *

17.7.2.8 PUBLIC UTILITY FILING REQUIREMENTS FOR APPLICATIONS AND ANNUAL REPORTS:

* * *

E. In each plan year, a public utility shall make its best efforts to expend its [~~plan~~] commission authorized funding as calculated in 17.7.2.8.C NMAC above subtracting any applicable prior plan year overage or adding any applicable prior plan year underage; provided, however, that a public utility may periodically adjust its plan year expenditures by an amount not greater than ten percent (10%) of the commission authorized funding if the adjustment will result in aligning plan year expenditures more closely with projected plan year collections under the utility's energy efficiency rider; and also provided, however, that a public utility must file with the commission in the same docket as the relevant application a notice of modification at such time as a public utility exercises any such adjustment to its plan year expenditures. By motion in the docket of its most recent energy efficiency case a utility may seek approval to adjust its plan year expenditures by more than ten percent (10%) of the commission authorized funding.

* * *

17.7.2.12 MODIFICATION OR TERMINATION OF PROGRAMS: Within each plan year, [F]the utility, commission staff, attorney general, energy, minerals and natural resources department, or any other interested party, may petition the commission to modify or terminate a measure or program, or to approve a new program, for good cause by filing a motion in the same docket in which the public utility filed its most recent application. Program modification or termination shall not nullify any preexisting obligations of the utility, alternative energy efficiency provider, or contractor, for performance or failure to perform. Termination of a program or programs shall be accomplished in a manner that allows the utility to fully recover its prudent and reasonable program costs.

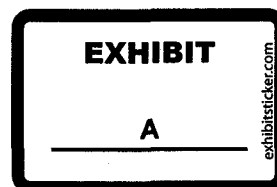
* * *

17.7.2.14 ANNUAL REPORT:

* * *

C. Annual reports shall include the following for each measure and program:
(1) documentation of program expenditures and estimates of the program expenditures expected in the next year;

* * *



NOTICE OF PROPOSED RULEMAKING

The Public Regulation Commission (the "PRC") gives notice that in case number 17-00136-UT it has initiated a proposed rulemaking promulgating revisions to Part 2 of Title 17 of Chapter 7 of the New Mexico Administrative Code (17.7.2 NMAC, the "EE Rule"), specifically to Sections 8, 12, & 14 (17.7.2.8, 17.7.2.12 & 17.7.2.14 NMAC) of the EE Rule, and possibly also to other sections or portions of the EE Rule, if any, that may be revised as a logical outgrowth of the noticed revisions or that may be revised for clarity or for other insubstantial reasons, with an effective date of September 26, 2017 or thereafter.

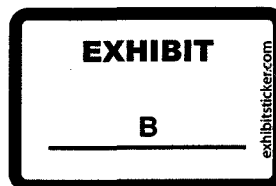
Copies of the Order Establishing Rulemaking Docket and Issuing Notice of Proposed Rulemaking containing additional information, a copy of the proposed rule changes, and filing instructions for written comments may be downloaded from the Proposed Rulemaking section of the PRC's website at <http://www.nmprc.state.nm.us> under Case No. 17-00136-UT or by calling the PRC's Records Management Bureau at (505) 827-6968 (Melanie Sandoval).

Written initial comments and written response comments shall be filed by the deadlines below with the PRC's Record's Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the PRC Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 as follows: written initial comments shall be filed not later than **August 11, 2017** and written response comments shall be filed not later than **August 21, 2017**. All written comments shall refer to Case No. 17-00136-UT.

A rulemaking public comment hearing will be held in this matter. The rulemaking public comment hearing will be held on Wednesday, **August 30, 2017, beginning at 10:30 a.m. in Santa Fe** at the offices of the PRC located in the 4th Floor Hearing Room of the old PERA Building, at 1120 Paseo de Peralta, in Santa Fe, NM 87501. The purpose of the rulemaking public comment hearing is to give interested individuals an opportunity to provide oral comments about the proposed rules. The PRC may limit the time for each comment to a consistent limited number of minutes per commenter. Only oral comments, but no sworn testimony or other legally admissible evidence, shall be taken at the hearing because this docket is a rulemaking proceeding. The record of this case will close on **September 5, 2017**.

Interested persons should contact the PRC to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the hearing should contact Ms. Kathleen Segura at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

Statutory Authority: New Mexico Constitution, Article 11, Section 2; NMSA 1978, Paragraph 10 of Subsection B of Section 8-8-4 (1998), Section 8-8-15, and Section 62-17-8.



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER FURTHER AMENDING THE)
ENERGY EFFICIENCY RULE 17.7.2 NMAC) Case No. 17-00136-UT
)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the **Order Establishing Rulemaking Docket and Issuing Notice of Proposed Rulemaking** issued on June 21, 2017, was sent on June 22, 2017, as indicated below, to the following:

Via email to:

Benjamin Phillips
Lucy E. Bettis
Steve Michel
Stacey Goodwin
Bruce C. Throne
Thomas Wander
Ona Porter
Jerry Shackelford
Michael Pearce
Keven Groenewold
Matthew Collins
Glenda Murphy
Sanders Moore
Wayne Sowell
Thomas Domme
Patrick Ortiz
David Spradlin
Howard Geller
Gary Rinker
Nann M. Winter
David Van Winkle
Don Hancock
Arina Caster
Nick Maniatis
William Templeman
Gary Alsup
Melissa P. Martin
Jeffrey Albright
Nancy Burns
Steven Cordova
Steve Casey
Mark Fenton
Lisa Tormoen Hickey
Mercedes Fernandez
Julie Park
Richard Matzke

Ben.phillips@pnmresources.com;
Lucy.Bettis@pnmresources.com;
Stevensmichel@comcast.net;
stacey@childresslaw.com;
bthroneatty@newmexico.com;
Tom.Wander@pnmresources.com;
Ona@prosperityworks.net;
Jerry.f.shackelford@xcelenergy.com;
mikepearce@dvec.org;
kgroenewold@nmelectric.coop;
matthew.collins@cnmec.coop;
gmurphy@westernresources.org;
sanders@environmentnewmexico.org;
wsowell@jemezcoop.org;
Thomas.domme@nmgo.com;
portiz@cuddymccarthy.com;
Spradlin@springercoop.com;
hgeller@swenergy.org;
swecgm@plateautel.net;
nwinter@stelznerlaw.com;
david@yw77.com;
sricdon@earthlink.net;
arina@luzenergy.com;
npmaniatis@gmail.com;
wtempleman@cmtisantafe.com;
alsuplaw@plateautel.net;
mpf@stateside.com;
JAlbright@lrrlaw.com;
Nancy.burns@epelectric.com;
Steven.cordova@nmgo.com;
Steve.casey@nmgo.com;
Mark.Fenton@pnmresources.com;
lisahickey@coloradolawyers.net;
mfernandez@zngc.com;
Julie.Park@state.nm.us;
rmatzke@gallup.nm.gov

JD Bullington
David Griscom
Michael Donnelly
Lance Adkins
R. Mitchell
Daniel A. Najjar
Peter Gould
Tom Olson
Luis A. Reyes
Michael Newell
Rick Chamberlain
Carroll Waggoner
Rebecca Carter
Ken Anderson
Michael Fletcher
Jimmy Capps
Sunny J. Nixon
Chuck Pinson
Laura Sanchez
David Link
Robert Clark
Benjamin Leyba
Clyde F. Worthen
General Counsel
Robert Sutphin, Jr.
Gary Hurse
Lewis O. Campbell
David Black
Sarah Cottrell Propst
Joanne Reuter
Heather Lawrie
Carey Salaz
Maia Falconi-Sachs
Jeff Fornaciari
John Reynolds

jd@jdbullington.com;
davidgriscom@gmail.com;
md@aarp.org;
lance@fecnm.org;
rmitchell@tristategt.org;
vnajjar@aol.com;
pgouldlaw@gmail.com;
tolson@montand.com;
lreyes@kitcarson.com;
hscmtn@leaco.net;
RDC_law@swbell.net;
carrollw@ote-coop.com;
Rebecca.carter@nmgo.com;
kanderson@tristategt.org;
fletch@col-coop.com;
jcapps@secpower.com;
SNixon@rodey.com;
cpinson@cvcoop.org;
lsanchez@nrdc.org;
dlink@ratongas.com;
rclark@mstlaw.com;
nora@noraelectric.com;
cfw@keleher-law.com;
gencounsel@nmsu.edu;
rsutphin@hollandhart.com;
ghurse@lcecnec.com;
lcampbell@abqenergy.net;
David.black@state.nm.us;
propst@interwest.org;
joannecreuter@comcast.net;
Heather.Lawrie@pnmresources.com;
Carey.Salaz@pnmresources.com;
mfs@stateside.com;
Jfornaciari@hinklelawfirm.com;
John.Reynolds@state.nm.us;

Via U.S. mail to:

Steve W. Chriss
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, AR 72716-0050

Sarah Cottrell Propst
Interwest Energy Alliance
PO Box 8526
Santa Fe, NM 87504-8526

Harry Relkin/Bill Brancard
NM State Land Office
PO Box 1148
Santa Fe, NM 87504

Charles Moore
Navopache Electric Coop
1878 W. White Mountain Blvd.
Lakeside, AZ 85929

Paul Wilkins
2303 Cedros Circle
Santa Fe, NM 87505

David S. Cohen
Cohen & Cohen, P.A.
3500 W Lake Shore Dr. Apt 55
Chicago, IL 60657-1928

Maude Grantham-Richards
Farmington Electric Util Syst.
101 N. Browning
Farming, NM 87401-7995

Abran H. Romero
Mora-San Miguel Electric Coop
Post Office Box 240
Mora, NM 87732

Tom Singer
NRDC
464 Camino Don Miguel
Santa Fe, NM 87505

Bill Athouse
903 W. Alameda, Suite 129
Santa Fe, NM 87501

Jerry W. Parting
Roosevelt County Electric Coop
P.O. Box 389
Portales, NM 88130

Gerald Leigh, PhD
528 Live Oak Place, NE
Albuquerque, NM 87122

Roy A. Cunniff
Lightning Dock Geothermal
224 W. Greening Ave.
Las Cruces, NM 88005

Craig O-Hare
NMEMNRD
1220 South St. Francis Drive
Santa Fe, NM 87505

Richard Shirley
Continental Divide Electric Coop
PO Box 1087
Grants, NM 87020

Frank R. Kunston
Tri-State Generation & Trans
1100 W. 116th Ave.
Westminster, CO 80234

Rio Grande Electric Coop.
Post Office Box 1509
Brackenville, TX 78832

Jerry Payne
Rural Community Assistance
USDA Forest Service
333 Broadway SE Room 329
Albuquerque, NM 87102

TC "Coby" Knox
Cobisa Corporation
820 Gessner Rd., Suite 810
Houston, TX 77024-4533

Leslie Lawner
The Modrall Firm
P.O. Box 2168
Albuquerque, NM 87103-2168

Robert A. Ganton
US Army Legal Services Agency
9275 Gunston Road
ATTN: JALS-RL/IP
Fort Belvoir, VA 220605546

Mike White
P.O. Box 580
Dexter, NM 88230

Bradford C. Berge
P.O. Box 2208
Santa Fe, NM 87504-2208

John & Doris Duhigg
810 Solar Rd. NW
Albuquerque, NM 87102

AARP NM State Office
535 Cerrillos Road, Suite A.
Santa Fe, NM 87505

Mark Sardella
NMSEA
1009 Bradbury Dr. SE # 35
Albuquerque, NM 87106

C. Robert Schaefer
The Raton Public Service Co.
P.O. Box 40
Raton, NM 87740

Duncan Valley Electric
P.O. Box 440
Duncan, AZ 85534

Karen D. Taylor
13112 Sandstone Place, NE
Albuquerque, NM 87111

Patrick Griebel
P.O. Box 1966
Albuquerque, NM 87103-1966

Don Orozco
Energia Total
P.O. Box 530
Animas, NM 88020-0530

Robert E. Bienstock
UNM c/o Lobo Energy Inc.
801 University SE, Suite 207
Albuquerque, NM 87106-4345

Anastasia S. Stevens, Esq.
Raton Natural Gas Com.
Keleher & McLeod, P.A.
P.O. Box AA
Albuquerque, NM 87103

Lawrence Oliver
Federation of Labor AFL-CIO
P.O. Box 1001
Window Rock, AZ 86515

Dr. John C. Tysseling
11521 Sky Valley Way, NE
Albuquerque, NM 87111-6504

Donna Griffin
3112 Carlota Rd. NW
Albuquerque, NM 87104

Todd Thorner
Foresight Energy
3380 21st St., Suite 5
San Francisco, CA 94110

Jeff David
Cummins Natural Gas Engines
409 South Norris
Clovis, NM 8810

Randy Medicine Bear
Electric Superintendent
City of Aztec
201 W. Chaco
Aztec, NM 87410

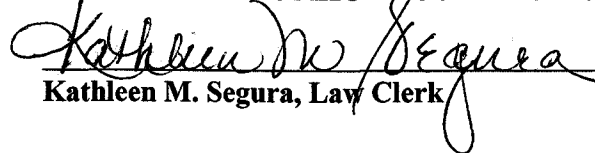
City Of Albuquerque
Legal Dept.
P.O. Box 1293
Albuquerque, NM 87103

Sherry Kunka
Pricing & Regulatory Admin.
P.O. Box, 1261
Amarillo, TX 79105

Margot J. Steadman
10604 Andrea Circle, NW
Corrales, NM 87048

DATED this 22nd day of June, 2017.

NEW MEXICO PUBLIC REGULATION COMMISSION


Kathleen M. Segura, Law Clerk