

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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September 3, 2021

**VIA ELECTRONIC MAIL ONLY**

Ms. Ariel Dougherty  
1580 Caballo Road  
Truth or Consequences, NM 87901  
Email: [ArielCamera@gmail.com](mailto:ArielCamera@gmail.com)

**Re: Open Meetings Act Complaint – Truth or Consequences City Commission**

Dear Ms. Dougherty:

This letter addresses the complaint you submitted to the Office of the Attorney General alleging that the Truth or Consequences City Commission (hereinafter the “Commission”) violated the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013). Specifically, your complaint alleged that the Commission violated OMA at its July 14, 2021 meeting by taking action on an item of business not listed on the agenda with reasonable specificity. Having carefully reviewed both your complaint and the Commission’s response to our inquiry, we conclude that you have not identified a violation of OMA.

**Background**

Your complaint to our Office is the latest in a series of complaints we have received recently regarding the decision by the City of Truth or Consequences to purchase and install electric “smart meters” at the homes of local electric customers. In response to other complaints, our Office previously found that the Commission violated OMA at several meetings where it acted on these smart meters. *See* N.M. Att’y Gen. Letter to Sandra Whitehead and Jaime Rubin, City of Truth or Consequences (May 28, 2021). Most relevant to your present complaint to our Office, we found that the Commission violated OMA at its January 27, 2021 meeting by acting to impose a \$50 per month fee for electric customers who chose not to accept a smart meter, since this item of business did not appear on the

agenda.<sup>1</sup> *See id.* at 5 (concluding that the Commission had violated OMA because “the agenda for the meeting indicated that it would discuss and act on only three specific appeals”).

In response to our Office’s letter, the Commission again considered the matter of its desired \$50 fee at its July 14, 2021 meeting. The agenda for that item contained one item of business on this subject that read in its entirety: “Discussion/Action: Resolution No. 05 21/22 the imposition of a \$50 monthly fee to retain a digital meter.” The minutes reflect that, when this item of business arose on the agenda, City staff and at least one Commissioner noted that “at this time nobody has an analog meter” and that “the option would be a digital meter or an AMI meter.” By a vote of three to one in favor, the Commission voted to approve the proposed resolution and impose the \$50 fee on those who did not choose to accept a smart meter.

Your complaint to our Office argues solely that the Commission violated OMA by taking action on an item of business not listed on the agenda with reasonable specificity. We understand you to argue that smart meters (referred to occasionally by the Commission as “AMI meters”) are themselves a type of digital meter. By failing to clearly distinguish between AMI meters and other types of digital meters, you argue that the Commission’s agenda item was misleading and lacking in reasonable specificity.<sup>2</sup> For its part, the Commission responded to our inquiry into your complaint by apparently agreeing that AMI meters are a type of digital meter but arguing that it had not violated OMA because the item of business on its agenda was nevertheless clear and specific.

### Analysis

The Open Meetings Act provides that all meetings of a quorum of “any board, commission, committee or other policymaking body” are open to the public except as otherwise provided by the statute itself. Section 10-15-1(A). Any individual has the right to attend and listen to these meetings in accordance with OMA’s stated public policy of facilitating public access to “the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.” *Id.* In accordance with this public policy, OMA is broadly construed in favor of transparency. *See* Attorney General’s Open Meetings Act Compliance Guide, p. 7 (8th ed. 2015) (“OMA Guide”)

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<sup>1</sup> It is troubling that the Commission responded to our inquiry by expressing its continued disagreement with this conclusion, since OMA itself specifically states that, “[e]xcept for emergency matters, a public body shall take action only on items appearing on the agenda.” Section 10-15-1(F). The Commission’s position may suggest that it continues to misapprehend its obligations under OMA. However, we will not further discuss this issue since at this point the application of OMA to the Commission’s January 27, 2021 meeting should be perfectly clear.

<sup>2</sup> The minutes indicate that you made the same argument during the meeting itself, when you claimed that the Commission’s use of the phrase “digital meter ... implies that you want to charge the entire customer base ... a \$50 monthly fee for their digital meter.”

(noting that “doubt as to the proper course of action should be resolved in favor of openness whenever possible”).

As we explained in our previous letter to the Commission regarding its smart meter actions, OMA requires any public body in New Mexico to provide the public with an agenda containing “a list of specific items of business to be discussed or transacted” at least 72 hours prior to any meeting. Section 10-15-1(F). Each item of business on the agenda must be reasonably specific so as to ensure “that interested members of the public are given reasonable notice about the topics a public body plans on discussing or addressing at a meeting.” OMA Guide, p. 17. This requires the public body to avoid overly broad item descriptions. *Id.* With only limited and rare exceptions, OMA flatly prohibits public bodies from taking action on items of business that are not listed on the meeting’s agenda with reasonable specificity. See § 10-15-1(F) (“Except for emergency matters, a public body shall take action only on items appearing on the agenda.”).

Applying these principles to your complaint against the Commission, we find that the item of business for “Discussion/Action: Resolution No. 05 21/22 the imposition of a \$50 monthly fee to retain a digital meter” was reasonably specific. First and foremost, we would emphasize that OMA’s requirement of reasonable specificity should not be confused as requiring perfect specificity or specificity beyond all possible doubt. In requiring public bodies to provide a reasonably specific agenda, OMA does not require them to write exhaustive descriptors or identify with exact precision the contours of the discussion or action. Here, momentarily setting aside the issue of the phrase “digital meter,” the Commission’s item of business specified to the number the resolution on which the Commission would vote. By containing this information, the agenda item itself was not hugely broad or vague, but rather a clear indication that the Commission would act on one (and only one) specific resolution.

More importantly, we agree with the Commission that, in context, the phrase “retain a digital meter” was not misleading or unclear. As a whole, the agenda item clearly conveyed a “reasonably clear idea” as to the subject of public business: the Commission’s desire to charge a fee on all those who did not accept the new AMI meters. OMA Guide, p. 17. Importantly, in the agendas for its previous meetings, it does not appear that the Commission ever referred to AMI meters as “digital meters,” instead using the term “AMI meter” or “Electric Smart Meters.” Moreover, although you are almost certainly correct that AMI meters are also a type of digital meter, the phrase “digital meter” was preceded in the item description by the word “retain,” which we think effectively eliminated any arguable ambiguity. Especially given that this item description specified the number of the resolution in question, we simply cannot say that it lacked reasonable specificity. As a result, the vote of the Commission to approve the proposed resolution and impose the \$50 fee at its July 14, 2021 meeting did not constitute action on an item of business not listed on the agenda.

Conclusion

Our opinion is that the Commission almost certainly did not violate OMA as alleged. Because, in context, the item of business on its July 14, 2021 meeting agenda clearly conveyed that the Commission would consider and act on its general policy goal of charging a \$50 fee to all those who retained their old electric meter, we think the Commission's action to adopt its resolution did not represent action on an item of business not listed on the agenda. However, we appreciate you bringing possible violations to this office and will welcome any other complaints you may submit. If you have any concerns in the future, please do not hesitate to contact us. Additionally, the OMA Guide is available on the website of the Office of the Attorney General at [www.nmag.gov](http://www.nmag.gov).

Sincerely,



John Kreienkamp  
Assistant Attorney General

Enclosure

cc: Jaime F. Rubin, Esq.  
City of Truth or Consequences