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EXAMINATION REPORT
STATE VEHICLE USE AND TRAVEL REIMBURSEMENTS
CONTRACT #12-430-0000-14251
DECEMBER 31, 2011

atkinson

PRECISE. PERSONAL. PROACTIVE.

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INDEPENDENT ACCOUNTANTS' REPORT

To the Office of the State Auditor
State of New Mexico

We have examined the records of the State of New Mexico Public Regulation Commission (PRC) with respect to state vehicle use and travel reimbursements for the period of January 1, 2009 through August 31, 2011. We have also examined the adequacy of the relevant controls in relation to state vehicle use and travel reimbursements of the PRC. The PRC's management is responsible for the specified accounting records, control processes, and compliance with relevant regulations concerning vehicle use and travel reimbursements. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the state vehicle use, travel reimbursements, corresponding controls, and compliance with state statutes, and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on PRC's compliance.

We performed requested procedures to evaluate the relevant controls and transactions in relation to state vehicle and gas card use and travel reimbursements of the PRC for the specified time periods. These procedures and the related results include those identified in the Procedures section of this report. Our detailed results are provided in this report.

In our opinion, based on the purposes and objectives of the examination described in the report, the summary results of our examination are described as follows:

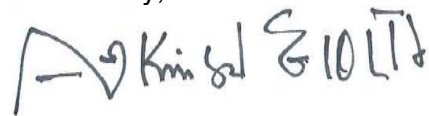
1. Controls and policies over travel and reimbursement appeared adequate in design. Based on testing results, compliance departures were observed and controls appeared to be not adequate to prevent human error or non-compliance. In periods tested before fiscal year 2011, there was no effective advance approval of Commissioners' travel. However, we did not observe unreasonable travel transactions by Commissioners, with one exception. The PRC has requested and has not received support or reimbursement for certain 2011 travel by Jerome Block in the amount of \$1003.96.
2. We observed a lack of documented waivers for out of state vehicle travel in 3 instances out of 5 tested. The 3 instances involved Commissioners' travel (2 instances) and Top Management (1 instance) during fiscal year 2011.

3. There was not a working knowledge by PRC that the use of super-unleaded and unleaded plus is prohibited by statute. As a result, we observed the use of super-unleaded and unleaded plus fuel consistently over all time periods for a portion of transactions. Total purchases of super unleaded or unleaded plus was \$28,623 for all time periods tested.
4. Travel logs are in all PRC vehicles. Travel log documentation was not a formalized PRC policy, was inconsistently utilized, and was not considered applicable to vehicles assigned to Commissioners. The lack of such records did not permit an in depth testing of the appropriateness of PRC vehicle usage including reporting taxable benefits of providing organization vehicles to individuals for commuting purposes.
5. Controls over automobile and gas card usage were inadequate to comply with New Mexico Administrative Code (NMAC) 1.5.3 and 1.5.4. Existing controls were decentralized and were not effectively monitored over tested time periods. Full details are provided in the report.
6. Documentation of non-fuel purchases with gas cards was not a requirement under PRC policy during all periods tested. Transactions that appear in compliance with NMAC 1.5.3 include car washes, oil changes, and some emergency repairs. However, we were not able to test higher dollar transactions due to lack of documentation and have no opinion on the reasonableness of higher dollar transactions totaling approximately \$4,707 for the period from January 1, 2009 through August 30, 2011.
7. For purposes of our report, all Jerome Block transactions for all time periods have been compiled and reported on by the Office of the State Auditor (OSA) and the associated dollar amounts and number of instances of non-compliance are included in the Table for FY 2011. The reporting of results for the periods of January 1, 2009 through June 30, 2010 and the updated period from July 1, 2011 through August 30, 2011 do not contain any Jerome Block transactions amounts or instances of non-compliance.
8. A Commissioner drove a Ford F-250 pickup purchased with federal funds for an approximate period of 35 days for time periods after June 30, 2011 in addition to approximately 30 days for the fiscal year 2011 audit period. Such vehicle usage is inconsistent with the purposes of the federal program. The total amount of questioned costs in relation to this transaction is \$1,175.
9. As documented in tabular results, we observed one multiple fill up for one employee in a short time period totaling \$39.00. One other employee had \$500 in non-fuel purchases in a six month period which appears excessive.
10. Compliance departures were observed in 17 out of 51 transactions tested for documented approval of the travel reimbursements. 15 of the 17 instances of non-compliance involved the lack of advance approval of Commissioners travel for earlier time periods. The travel transactions tested did not appear unreasonable in relation to destination traveled to, agendas and purposes of the trip, based on documented support for such travel.

11. Compliance departures were observed in 15 transactions included out of 51 trips tested (which in most cases trips included multiple transactions) for out of town meal reimbursement documentation. Of the non-compliant items, 10 had an overall receipt but not the detail receipt specifying items purchased. In 5 cases, both the support and detail receipts were lacking. Total purchases where both support and detail receipts were lacking totaled \$615.06.

This report is intended solely for the information and use of the New Mexico State Auditor's Office, DFA, the New Mexico Legislature, other state government oversight agencies, and the PRC and is not intended to be and should not be used by anyone other than those specified parties.

Sincerely,

A handwritten signature in black ink, appearing to read "Atkinson & Co., Ltd.", written in a cursive style.

Atkinson & Co., Ltd.

Albuquerque, New Mexico
January 5, 2012

STATE OF NEW MEXICO
PUBLIC REGULATION COMMISSION
EXAMINATION REPORT

PURPOSE AND OBJECTIVES

In a Risk Assessment Report of the State of New Mexico Public Regulation Commission (PRC or Commission), compiled by the State of New Mexico Office of the State Auditor (OSA), dated October 12, 2011, the OSA identified that certain risks exist within the PRC that need to be addressed through a special examination by an Independent Public Accountant under OSA direction. This report required that an agency wide analysis of state vehicle use and travel reimbursements be completed. The special examination is required to address risks existing within the PRC with respect to gas card usage, as well as mileage and per diem payments and to test additional periods before fiscal year 2011. In response, the PRC entered into a contract with Atkinson & Co., Ltd., contract number 12-430-0000-14251, to perform an examination of PRC's transactions and controls related to travel, per diem, vehicle use, and gas card charges that have occurred from January 1, 2009 through August 30, 2011.

The examination sought to address these objectives for which the findings and recommendations are based:

- 1) To determine if the Commission complied with provisions of the New Mexico Administrative Code (NMAC), Sections 1.5.3 through 1.5.4, and other applicable state purchasing regulations during the processing of per diem and mileage payments;
- 2) To determine if the Commission has proper internal controls established and in place over travel transactions and whether those controls are being followed;
- 3) To determine if the Commission properly followed and monitored compliance with gas card regulations;
- 4) To determine if the Commission has adequate, complete documentation on file to substantiate and support all per diem and mileage payments and gas charges; and,
- 5) To determine if the Commission is complying with the commuting policy and relative state and federal requirements related to commuting and fringe benefit allocation and notification.

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PROCEDURES

As part of the fiscal year 2011 audit of the PRC, we tested transactions and controls related to travel, per diem, vehicle use, and gas card charges that occurred during the period of July 1, 2010 through June 30, 2011. These tests were conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States. These audit tests were deemed sufficient for the purposes of this examination and therefore were not significantly changed, altered, or re-worked. The OSA had the opportunity to review specific workpapers and in response made comments, requested clarifications, and additions to scope which were included in the final fiscal year 2011 audit. Findings as a result of the audit testing for the fiscal year 2011 audit have been included in this report.

Extensive testing of gas card usage and travel reimbursements for former Commissioner Jerome Block was completed in a special assessment performed by the OSA for the period of January 1, 2009 through August 2, 2011. Results of this assessment have been reported in a separate report compiled by the OSA. As such, Mr. Block was excluded from the population used for sampling under both vehicle use and travel reimbursement testing for the period of January 1, 2009 through June 30, 2010 and July 1, 2011 through August 30, 2011.

Additional procedures performed under this engagement included an examination of the transactions and controls related to travel, per diem, vehicle use, and gas card charges that occurred during the period of January 1, 2009 through June 30, 2010 and July 1, 2011 through August 30, 2011. Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

As part of our testing procedures, we interviewed a number of individuals involved in the processes regarding the use of state vehicles and travel reimbursements, including Matthew Lovato, CFO; Donald Martinez, Accounting Supervisor; Larry Lujan, Transportation Director; John Standefer, Fire Marshal; and Johnny Montoya, Chief of Staff.

The engagement included a review primarily of the following documents for relevant time periods, as well as other documentation where additional support was deemed necessary:

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PROCEDURES – CONTINUED

State Vehicle Use and Corresponding Gas Cards:

- Wright Express gas card usage reports
- Employee travel logs
- Receipts for gas card purchases
- PRC vehicle operating policies
- 1.5.3 and 1.5.4 NMAC

Travel Reimbursements:

- Travel reimbursement requests
- Out of state travel requests
- Purchase orders
- Invoices and receipts
- Paid checks

DETAILED SUMMARY OF TESTING AND RESULTS

As part of the fiscal year 2011 audit we conducted interviews of several management and staff level accounting personnel to gain an understanding of the controls surrounding the cash receipts, cash disbursements, employee travel reimbursement, and capital asset (including purchasing and disposal of vehicles) processes. As part of the examination engagement we confirmed that the control processes tested during fiscal year 2011 were the same for the period of January 1, 2009 through June 30, 2010 and July 1, 2011 through August 30, 2011. Additionally, we performed other inquiries of accounting personnel and division directors to gain an understanding of controls surrounding the use of state vehicles and corresponding gas card usage.

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AUTOMOBILE AND GAS CARDS CONTROLS

Key controls identified at the start of our engagement with respect to the employee automobile reimbursement process include:

- Centralized list of the PRC fleet of vehicles is maintained by the CFO.
- Access to create, delete, or change card use information per the Wright Express site is restricted to 2 individuals, the Accounting Supervisor and the Vehicle Coordinator.
- When an employee leaves the PRC their PIN is immediately suspended.
- HR department tracks the defensive driving certification of each employee to ensure each eligible driver maintains a current certification and receives the required training when necessary.
- Employees possessing invalid drivers' licenses are notified immediately that their driving privileges are suspended upon review of GSD records occurring at least annually.
- Written approval from the Chief of Staff must be obtained prior to allowing an employee to drive a PRC issued vehicle to their personal home.

We performed an analysis and a walkthrough of the controls identified and noted that each control activity appeared to be properly designed and implemented. However there were multiple weaknesses identified with respect to this process. These weaknesses include:

- There is currently no procedure in place to review the Agency Vehicle List and ensure the vehicle driven at any given point in time by certain divisions, Commissioners, or employees correspond to the Agency Vehicle List.
- The PRC currently does not have a policy which states that shared use of a PIN is prohibited.
- There is no process to review the driver's license of all eligible employees on an annual, or more frequent, basis.
- There is no central process for monitoring vehicles checked out by employees; therefore it is possible for more than one vehicle to be checked out by one employee (e.g. a vehicle from Transportation and a vehicle from ASD).
- There is no standard policy that requires supporting documentation for non-fuel purchases.
- There is no current process to analyze the Wright Express reports and corresponding vehicle use to ensure gas card purchases (e.g. vehicle, amounts, and locations) are consistent with the actual use of the vehicles.
- The PRC lacks issued policies for commuting with government vehicles. Additionally, the PRC does not maintain any records in relation to business and personal use needed for tax reporting.
- There is no current oversight that holds the Division Directors responsible for ensuring required maintenance is completed in accordance with NMAC 1.5.3.

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AUTOMOBILE AND GAS CARDS CONTROLS - CONTINUED

- There is no current oversight at the PRC that holds the Division Directors responsible for ensuring that only allowable employees drive the state issued vehicles.
- The PRC did not have a standard policy (during the period covered by the examination) requiring use of travel logs in vehicles and there is no requirement for Commissioners to maintain a travel log. Section 1.5.3.20 NMAC requires the proper reporting and documentation of commuting for state employees.

Due to the control weaknesses identified in the vehicle use process, it does not appear that the PRC has adequate controls in place to prevent the possible abuse of state vehicles and corresponding gas cards.

TRAVEL AND PER DIEM CONTROLS

Key controls identified with respect to the employee travel reimbursement process include:

- Requests for reimbursement of employee travel are approved by the immediate supervisor.
- Out of state travel requires advance approval documents to be completed for travel advances.
- Reimbursement requests are compared against regulations to ensure compliance.
- Reimbursement requests are reviewed and approved by accounting staff.
- Processing and signing of checks is completed by an outside department of State government, therefore PRC does not have the ability to create or modify checks.
- Employees are required to document the receipt of their check.

We performed an analysis and walkthrough of the controls identified and noted that each control activity appeared to be properly designed and implemented. Testing scope of these controls is as follows:

SCOPE-FISCAL YEAR 2011 - Through controls testing of cash disbursements for the fiscal year 2011 audit, we selected 18 travel reimbursement transactions for the period of July 1, 2010 through June 30, 2011 and tested for compliance with state purchasing requirements, adequate supporting documentation, corresponding purchase order on file, and appropriate approval of travel. Based on testing completed, controls identified were placed in operation. Travel reimbursements for Commissioners during the most recent fiscal year required advance approval documentation which was completed in all six test transactions. Out of state travel waivers required by state regulations to drive vehicles out of state were not obtained in 4 instances out of 6 tested.

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TRAVEL AND PER DIEM CONTROLS - CONTINUED

SCOPE-ADDITIONAL PERIODS - As part of the examination engagement we selected 40 travel reimbursement transactions, as well as the remaining transactions for Commissioner Patrick Lyons, for a total sample of 51 for the period of January 1, 2009 through June 30, 2010 and July 1, 2011 through August 30, 2011. The test sample also included transactions for former Commissioners including David King and Carol Sloan. We tested each selection for adequate supporting documentation, out of state travel request signed by the Chief of Staff prior to travel, corresponding purchase order on file, and appropriate approval of travel.

RESULTS - Based on testing completed, we identified 17 instances where proper approval of the employee travel reimbursement was not obtained. We identified 5 out of 51 instances, totaling \$615.06 where the travel reimbursement request included a lack of adequate support for meals and tips purchased and requested for reimbursement. We identified 1 out of 51 instances where a complete and signed out of state travel request, prior to departure, was not maintained on file. All travel reimbursements are reviewed and approved by an accounting staff individual, so all travel reimbursement requests are reviewed for validity and accuracy but there is no additional oversight by management to ensure amounts reimbursed are appropriate and adequately supported.

An error analysis of the 17 instances of lack of approval was mostly due to Commissioners not obtaining advance approval of trips (15 occurrences). This could occur if a Commissioner asks for reimbursement (uses his own credit card) rather than advance funds. Other associated tests of these same Commissioner transactions were without exception. The remaining 2 instances related to employee travel which were also documented and supported, but not approved.

The 5 instances of lack of documented support or partial support for meals and tips appeared to indicate a lack of emphasis in the staff review process, especially after travel expense has already been incurred. We noted no consequences for the non-compliant documented transactions.

Due to the compliance departures identified in the travel reimbursement process testing, it does not appear that the agency has adequate controls in place to prevent human error or possible abuse with respect to travel reimbursements. Additionally, Commissioners are held accountable for fewer requirements such as advance travel approvals.

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AUTOMOBILE AND GAS CARDS TESTING

SCOPE-FISCAL YEAR 2011 - As part of the fiscal year 2011 audit, we performed testing of 5 Commissioners' and 88 employees' gas card usage for all transaction activity during fiscal year 2011 to identify unusual or unauthorized transactions and compliance with related requirements. This testing including reviewing all such transactions for the employee or Commissioner that appeared on the Wright Express gas card reports by period.

SCOPE-ADDITIONAL PERIODS - Under the examination engagement, we performed testing of 8 Commissioners' and 37 employees' gas card usage for all transaction activity during the period of January 1, 2009 through June 30, 2010 and July 1, 2011 through August 30, 2011 to identify unusual or unauthorized transactions and compliance with related requirements. A summary of test descriptions and results is indicated in the table below.

RESULTS

Tabular test of transaction results for the period of 7/1/10-6/30/11

Ref.	Description of Test	Number of instances	Number of persons identified	Associated Dollar Amount
1	Multiple gas fill-ups within an hour indicating a second non-authorized vehicle may have been filled up using the gas credit card	43	1	\$1,976
2	Purchases of super-unleaded or unleaded plus fuel	229	20	\$9,750
3	Non-fuel transactions not supported by a receipt	95	24	\$2,143
4	Purchase of fuel that exceeded the fuel tank capacity	3	1	\$413
5	Lack of documentation in the vehicle travel log supporting a vehicle was driven on the day a fuel purchase was completed per review of the gas card activity	1,056	26	\$45,814
6	Purchases of fuel exceeding number of days within a given month	3	1	37 in April \$266 60 in May \$1,579 45 in June \$698

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AUTOMOBILE AND GAS CARDS TESTING - CONTINUED

Note that the transactions identified in the table above for tests 1, 4, and 6a all correspond to one individual, former Commissioner Jerome Block.

With respect to test 2 above, the price differential between regular fuel and super-unleaded or unleaded plus fuel is less than the associated total amount reported in the table. With respect to test 3 above, approximately \$200 of the total presented appears to be related to purchases of car washes. The remaining balance relates to other unknown purchases.

Tabular test of transaction results for the period of 1/1/09-6/30/10

Ref.	Description of Test	Number of instances	Number of persons identified	Associated Dollar Amount
1	Multiple gas fill-ups within an hour using the same employee PIN	1	1	\$39
2	Purchases of super-unleaded or unleaded plus fuel	417	31	\$16,587
3	Non-fuel transactions not supported by a receipt	200	27	\$3,219
4	Purchase of fuel that exceeded the fuel tank capacity	0	0	\$0
5	Lack of documentation in the vehicle travel log supporting a vehicle was driven on the day a fuel purchase was completed per review of the gas card activity	676	32	\$27,028
6b	Lack of a current defensive driving certification on file	0	0	\$0

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AUTOMOBILE AND GAS CARDS TESTING - CONTINUED

Tubular test of transaction results for the period of 7/1/11-8/31/11

Ref.	Description of Test	Number of instances	Number of persons identified	Associated Dollar Amount
1	Multiple gas fill-ups within an hour using the same employee PIN	0	0	\$0
2	Purchases of super-unleaded or unleaded plus fuel	36	11	\$2,286
3	Non-fuel transactions not supported by a receipt	16	14	\$395
4	Purchase of fuel that exceeded the fuel tank capacity	0	0	\$0
5	Lack of documentation in the vehicle travel log supporting a vehicle was driven on the day a fuel purchase was completed per review of the gas card activity	292	28	\$16,043
6b	Lack of a current defensive driving certification on file	0	0	\$0

It is important to note that electronic reports were not provided by Wright Express until November 30, 2009; all reports prior to this date are manual (eleven months for the first part of 2009). Due to manual reports and the lack of adequate travel logs across the PRC, the travel log test did not cover the period of January 1, 2009 through November 29, 2009. Additionally, travel logs were not required in vehicles assigned to Commissioners; as such this test was not performed for all Commissioners tested. There was no documented PRC policy requiring travel log maintenance.

With respect to test 2 above, the price differential between regular fuel and super-unleaded or unleaded plus fuel is less than the gross amount reported in the table. With respect to test 3 above, approximately \$850 of the total presented appears to be related to purchases of car washes. The remaining balance relates to other unknown purchases. Per discussion with management, it was represented that gas cards were used to charge oil changes for certain periods and certain divisions in earlier time periods tested which appears to account for some non fuel purchases. The exact amount is undetermined. Payees reported on Wright Express records appeared to be appropriate based on our review.

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AUTOMOBILE AND GAS CARDS TESTING - CONTINUED

Items for which extended inquiries were made:

With respect to test 1, multiple fill ups, there was a fill up in Santa Fe, New Mexico by an employee and within a few minutes later a second gas purchase was made in Rio Rancho, New Mexico using the same PIN number. The employee lives in Rio Rancho. Without a second gas card, the two transactions appear to be questionable. The explanation of the client is that the division supervisor (insurance) kept division employees' PIN numbers on file. He then would provide PIN numbers to administrative staff to fill up vehicles for next day duty at the Santa Fe office. This practice negates the control ability of assigning individual PIN numbers.

With respect to test 3, although no receipts were required for non-fuel purchases, one employee had in excess of \$500 of non-fuel purchases in a six and one-half month period. The response of the employee is that these expenses were for a car battery, tail light repair, and oil changes. These expenditures still appear excessive for one vehicle.

With respect to test 5, the former administrative assistant for Commissioner Carol Sloan had the most gas card usage of any employee. It was noted by PRC that the administrative assistant traveled extensively to assist Commissioner Sloan in her job, would fill up her vehicle, and would drive her to meetings. Commissioner Sloan had very few instances of gas card usage. The transactions tested did not reveal any compliance deficiencies for attributes tested. The administrative assistant was terminated when Commissioner Sloan left office.

With respect to tests 2 and 3, NMAC 1.5.4.12 *Purchase of Petroleum Products with State of New Mexico Credit Cards* states that only the following purchases are permitted with a New Mexico State credit card a) regular gasoline, b) unleaded gasoline, c) diesel fuel, d) lubrication, e) motor oil, f) car wash, and g) emergency purchases not exceeding \$100 in total.

With respect to test 2, NMAC 1.5.4.9 states the vehicle operator is responsible for insuring that purchases of fuel are made at the best obtainable price and that fuel purchases are fully documented.

With respect to test 3, NMAC 1.5.3.19 states that all state agencies and authorized drivers are required to use the GSD/TSD contracted fuel credit card for authorized purchases.

With respect to test 5, NMAC 1.5.3.1-14 (GSD 90-202) and .1-14 Internal Revenue Code Regulations 1.61-21 and publication 15-B provides requirements and procedures to report transportation fringe benefits.

With respect to test 6b, NMAC 1.5.3.13 states that all authorized drivers of state vehicles must have a current TSD approved defensive driving certificate in their possession while driving a state vehicle.

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AUTOMOBILE AND GAS CARDS TESTING - CONTINUED

The criterion for tests 1, 4, 5, 6a referenced in the table above was developed to identify unreasonable fuel purchases as follows:

- 1) Purchases of gasoline by one individual for one vehicle generally do not occur within an hour of each other.
- 4) Purchases of gallons of fuel by one individual for one vehicle generally does not exceed the fuel capacity of that vehicle.
- 5) Documentation in the vehicle log should correlate with real-time gas reports provided by the credit card company.
- 6a) Purchases of fuel within a given month for one individual for one vehicle should not generally exceed the number of days in the month.

OBSERVATION - During our work under the fiscal year 2011 audit and the examination engagement, we observed an excessive number of vehicles used by a Commissioner and certain other non-compliant usage of PRC vehicles. PRC policies and procedures in relation to the assignment of vehicles are decentralized; such responsibilities are assigned to the individual divisions. As a result, inconsistent controls and practices and a lack of effective monitoring allowed non-compliant usage of vehicles to occur.

OBSERVATION - The trend observed in the original fiscal year 2011 audit of purchasing super-unleaded or unleaded plus fuel continued for the earlier time periods tested here. The PRC has stated that there was no working knowledge that such fuel grade purchases were prohibited.

OBSERVATION - We also observed inconsistent policy and practice for the placement and usage of vehicle travel logs in PRC vehicles. Mr. Block incurred gas card usage associated with 13 different vehicles in addition to his assigned vehicles over a period of two and a half years. There were no vehicle logs or incomplete documentation in logs for a majority of vehicles. Such logs are necessary to permit further analysis of the propriety of vehicle usage and to properly report taxable auto usage. In connection with out of town travel or other vehicle usage, the following items were noted:

- No approved waivers were obtained for out of state vehicle travel tested (4 trips). Approved waivers are required to take a government vehicle out of state.
- A Ford F-250 truck, purchased with federal funds was driven by a Commissioner for a period approximating 35 days after June 30, 2011; this usage was inconsistent with the purposes of the federal program.

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COMMUTING

During the fiscal year 2011 audit, as part of procedures performed in connection with gas card usage and reimbursements transactions, we considered PRC's compliance with tax documentation requirements for vehicles used for commuting purposes. The Internal Revenue Service Regulations 1.61-21 for fringe benefit reporting, including commuting, require the documentation of business and personal use to support reporting of fringe benefit income. Through inquiry, the IRS confirmed the applicability of these rules to government usage of vehicles. Tax law provides an exclusion to Commissioners who live in their district and must travel to PRC offices in Santa Fe for meetings. Such travel is not commuting. It is probable that some commuting from home is occurring with PRC vehicles. However due to the lack of adequate documentation of travel it is not possible to determine that such travel is business or personal use. As such, there are no records available in relation to business and personal use that are needed for tax reporting. We also noted that the PRC lacks issued policies for commuting with government vehicles. There are no records in relation to business and personal use needed for tax reporting. The PRC is under reporting fringe benefit income to employees and Commissioners who may be commuting in a state vehicle by an undetermined amount. Documentation supporting the usage of state vehicles for tax purposes is not adequate to support fringe benefit income reporting. Due to a lack of records, the PRC is not able to monitor the usage of government vehicles in relation to commuting.

TRAVEL AND PER DIEM TESTING

SCOPE-FISCAL YEAR 2011 - We tested travel reimbursements for PRC's compliance with the Per Diem and Mileage Act, NMAC 2.42.2, as amended by Emergency Amendment Section 11 mileage dated June 19, 2009. As part of the fiscal year 2011 audit we reviewed 31 travel disbursements for adequate supporting documentation and tested the accuracy and allowability of amounts reimbursed. No exceptions regarding overpayments were identified as a result of this testing.

SCOPE-ADDITIONAL PERIODS - As part of the examination engagement we selected 40 travel reimbursement transactions including Commissioners, as well as the remaining transactions for Commissioner Patrick Lyons, for a total sample of 51, for the period of January 1, 2009 through June 30, 2010 and July 1, 2011 through August 30, 2011. We obtained and reviewed the travel reimbursement request and related supporting documentation to identify the purpose of the trip, test the accuracy and allow ability of amounts reimbursed, and ensure the trip occurred or travel advance was refunded by the employee. Additionally, for all in-state trips where no mileage reimbursement was requested (therefore a PRC vehicle was driven) we tested that the travel was consistent with purchases by that employee per the respective Wright Express gas card report.

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TRAVEL AND PER DIEM TESTING - CONTINUED

RESULTS - We identified 5 out of 51 instances where the travel reimbursement request lacked support for meals and/or tips purchased and requested for reimbursement for a total known amount of \$106.91. We also identified 10 out of 51 instances where a receipt existed but lacked itemized detail of the meal purchased that were included in the reimbursement request for a total known amount of \$508.15.

RECOMMENDATIONS

State Vehicle Use and Commuting

The PRC is in the process of drafting a new gas card policy that complies with the required state guidelines established by the New Mexico Administrative Code and is standardized for all employees of PRC. This policy includes the filing and maintaining of supporting documents for vehicle and gas card usage. This policy also defines the appropriate use of government vehicles for commuting and the required documentation of the business and personal usage of government vehicles. **We concur with this policy, but also recommend that it is standardized for all employees and Commissioners of PRC.**

The PRC is also in the process of designing and implementing a new state vehicle use process. The new process provides for centralization of all fleet management activities, including assignment and check-out of vehicles and tracking required maintenance for each vehicle. The new process also requires that a more frequent and formalized review of gas card activities be completed. A process is being established in the IT department to periodically check the validity of driver's licenses for all employees with a valid PIN. **This new vehicle use process appears to address the weaknesses in the current structure and we recommend management implement the new process and associated control activities.**

Travel Reimbursement

We suggest that management communicate to employees and Commissioners that itemized detail of all meal charges is required for reimbursement. Additionally, we recommend that management implement a secondary periodic check of travel reimbursements that are being approved by accounting staff to ensure amounts reimbursed are accurate and adequately supported.

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RECOMMENDATIONS - CONTINUED

Compliance Monitoring

We further recommend that the CFO and Chief of Staff emphasize compliance with the new policies upon adoption and establish an ongoing timetable for review of compliance. Conditions that may indicate effective compliance reviews include non reimbursement for non compliant items submitted.

SUBSEQUENT EVENTS

On January 5, 2012, the PRC Commissioners approved new and tighter policies for gas card usage and travel and per diem that were drafted and recommended for passage by PRC staff. The policies were intended to directly address the results of this examination. The new policies are available to the public upon request.

MANAGEMENT RESPONSES TO FINDINGS AND RECOMMENDATIONS

Please refer to the attached letter of response to the results of the examination dated January 11, 2012.

EXIT CONFERENCE

An exit conference was held on Thursday, January 5, 2012 at the PRC office in the PERA building in Santa Fe, New Mexico.

Attending for PRC were:

Commissioner Jason Marks
Commissioner Ben Hall
Johnny Montoya, Chief of Staff
Matthew Lovato, CFO and ASD Director

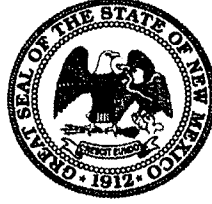
Attending for Atkinson & Co., Ltd.

Marty Mathisen, CPA, CGFM, Audit Director
Melissa Taylor, CPA, Senior Accountant

NEW MEXICO PUBLIC REGULATION COMMISSION

COMMISSIONERS

DISTRICT 1 JASON MARKS
DISTRICT 2 PATRICK H. LYONS, Chairman
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Chief of Staff – Johnny Montoya

January 11, 2012

Management Response Letter

The attention of the New Mexico Public Regulation Commission has been focused for much of the past year on issues related to vehicle and gas card use. As a result, the Commission has developed and implemented a comprehensive set of new policies to clearly define the appropriate use of PRC vehicles and gas cards, and to monitor and track that use. The deficiencies in procedures related to vehicle and gas card use that we identified ourselves, and that were identified by our external auditors, are likely not unique to the PRC, since no state statutes or rules require vehicle logs or other mechanisms to track compliance. Thus, we believe that our new policies represent best practices that should be looked at by other New Mexico governmental agencies.

The process of internal examination and external audits related to vehicle use, gas cards, and travel reimbursements have been extremely valuable to the Commissioners and PRC management. While these examinations have resulted in our new vehicle policy, which we believe will provide important benefits to the agency and to taxpayers, we think it is important to point out that the examinations did not establish significant financial errors or misconduct at the PRC, aside from the fraud by a former Commissioner. Specifically, we wish to highlight:

- The NMPRC has approved and implemented a new vehicle use policy (see attached) which goes far above state statutes and GSD rules. Under this new policy all NMPRC employee vehicles will maintain a vehicle log which monitors all mileage and indicates when the vehicle is fueled. All fuel and non fuel receipts will be required to be submitted along with the vehicle log to the centralized vehicle coordinator on a monthly basis including the employee signature and division directors approval of all transactions on the vehicle log. The new policy puts in place email alerts through the Wright Express system that will alert the centralized vehicle coordinator on any vehicle that was fueled more than twice in a 24 hr period and fuel being purchased that is premium or super unleaded. The new policy sets in place a centralized vehicle coordinator within the ASD Division who will checkout all vehicles to employees and verifies that the employees have a valid defensive driving certificate and valid driver's license. The vehicle coordinator will also ensure that all maintenance of all vehicles are done timely.
- The Commission has been proactive throughout this entire affair in self-reporting matters to the Office of the State Auditor. The finding in our Financial Audit dated November 29, 2011 that the agency failed to timely report suspect fraudulent activities of former Commissioner Jerome Block, Jr. to the State Auditor is contrary to the actual facts. Commissioner Jason Marks met personally with State Auditor Hector Balderas in January 2011 to report questionable gas card use by Block that

management had discovered. Marks provided the auditor with a print-out of the former Commissioner's 2010 gas card use detail, showing one instance of two purchases within a few minutes of each other and other suspicious factors, such as a pattern of using multiple vehicles, that suggested an OSA investigation should be initiated to determine whether fraud had occurred. Block's gas card abuse grew in the spring of 2011 and became clearly fraudulent, and at that point, the Agency made a referral to the Attorney General to initiate criminal investigation, with a subsequent formal notification to the OSA. The Commission has a history of timely self-reporting possible financial misconduct it discovers to the OSA. For example, on June 23, 2010, the Commission reported issues with travel reimbursements for another former Commissioner to the OSA.

- No evidence of non-business use of PRC vehicles was found in either the Special Audit or the agency's 2010 financial audit which focused on vehicle and gas card use. The audit findings in this area were that the agency did not have adequate controls in place to verify each and every vehicle use was appropriate through consistent use of vehicle logs. We agree, and have implemented best-practices procedures in this area. However, it is important to note that neither state statutes nor rules required the use of vehicle logs. It is also important to note that the Commission had other procedures in place during the periods audited, such as general oversight of employee and vehicle whereabouts by supervisors, that would have identified significant abuse, if it was occurring. Members of the public are also quick to report suspect use of G-plate vehicles to the Commission and/or GSD, and because of this we know about a very small number of episodes of minor misuse (for which employees have been disciplined). In sum, there is no basis to assume that much, if any, of the \$45,000 flagged in the audits as possible unauthorized vehicle use based on the lack of log entries, actually is misuse.
- The finding in the present examination related to the purchase of premium grades of gasoline overstates the amount of unauthorized spending because it is based on the entire charge of the fill up, instead of just the difference in cost between the grades of gasoline. Typical pricing by gasoline retailers is a 20 to 25 cent difference between unleaded and super-unleaded gasoline, which is less than 10% of the total price of a gallon of premium gasoline. Thus, the amount of unauthorized spending related to this item is less than \$975.00. The PRC agrees that this amount of spending was in excess of state rules and has taken steps to prevent the purchase of premium grades of gasoline in the future.
- With regard to the finding of some travel not having all the required documentation, the NMPRC believes that the travel in question audited by the Commission ASD staff and follows all DFA rules for travel. All travel reimbursements are forwarded to the Department of Finance and Administration who perform an audit on all travel as well. Under DFA rule 2.42.2.9 B (3) receipts requested it indicates only the submission of the actual receipt for meals and lodging but does not indicate detailed receipts.
- In regard to the F-250 driven by Chairman Lyons, the NMPRC acknowledges that the F-250 was indeed driven by Chairman Lyons for a period of 65 days. However, the issue with cost allocation was caught internally before anything was ever billed to the federal government, and the cost allocation was fixed to be compliant with all laws.



Patrick H. Lyons
New Mexico Public Regulation Chairman

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