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AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; AMENDING
THE PUBLIC REGULATION COMMISSION ACT PROVISIONS FOR COMMUNICATIONS
AMONG PARTIES, STAFF AND THE COMMISSION IN CONNECTION WITH
RULEMAKING AND ADJUDICATORY HEARINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 8-8-12 NMSA 1978 (being Laws 1998, Chapter 108,
Section 12) is amended to read:

"8-8-12. UTILITY DIVISION.--

A. The utility division shall serve as staff to the commission in the
regulation of electric, natural gas, renewable energy sources, telecommunications and
water and wastewater systems as provided by law.

B. The commission shall set minimum educational and experience
requirements for the director of the utility division.

C. The utility division shall represent the public interest in utility
matters before the commission and may present testimony and evidence and cross-
examine witnesses. In order to represent the public interest, the utility division shall
present to the commission its beliefs on how the commission should fulfill its
responsibility to balance the public interest, consumer interest and investor interest.

D. The utility division shall perform the functions of the
telecommunications department of the former state corporation commission and staff
functions, not including advisory functions, of the former New Mexico public utility
commission.

E. Utility division staff shall not have ex parte communications with
commissioners or a hearing examiner assigned to a utility case, except as expressly
permitted pursuant to Section 8-8-17 NMSA 1978."

Section 2. Section 8-8-14 NMSA 1978 (being Laws 1998, Chapter 108,
Section 14) is amended to read:

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1 "8-8-14. HEARING EXAMINERS.--

2 A. The commission may appoint a commissioner or a hearing examiner
3 to preside over any matter before the commission, including rulemakings, adjudicatory
4 hearings and administrative matters.

5 B. Except as provided in the New Mexico Insurance Code, a hearing
6 examiner shall provide the commission with a recommended decision on the matter
7 assigned to him, including findings of fact and conclusions of law. The recommended
8 decision shall be provided to the parties, and they may file exceptions to the decision
9 prior to the final decision of the commission.

10 C. When the commission has appointed a hearing examiner to preside
11 over a matter, at least one member of the commission shall, at the request of a party
12 to the proceedings, attend oral argument."

13 Section 3. Section 8-8-17 NMSA 1978 (being Laws 1998, Chapter 108,
14 Section 17) is amended to read:

15 "8-8-17. EX PARTE COMMUNICATIONS.--

16 A. A commissioner shall not initiate, permit or consider a
17 communication directly or indirectly with a party or his representative outside the
18 presence of the other parties concerning a pending rulemaking after the record has
19 been closed or a pending adjudication.

20 B. A hearing examiner shall not initiate, permit or consider a
21 communication directly or indirectly with a party or his representative outside the
22 presence of the other parties concerning a pending rulemaking or adjudication.

23 C. Notwithstanding the provisions of Subsections A and B of this
24 section, the following ex parte communications are permitted:

25 (1) where circumstances require, ex parte communications for
procedural or administrative purposes or emergencies that do not deal with
substantive matters or issues on the merits are allowed if the commissioner or hearing
examiner reasonably believes that no party will gain an advantage as a result of the ex
parte communication and the commissioner or hearing examiner makes provision to

1 promptly notify all other parties of the substance of the ex parte communication;

2 (2) a commissioner may consult with another commissioner or
3 with advisory staff whose function is to advise the commission in carrying out the
4 commissioner's rulemaking or adjudicative responsibilities;

5 (3) a hearing examiner may consult with the commission's
6 advisory staff;

7 (4) a commissioner or hearing examiner may obtain the advice
8 of a nonparty expert on an issue raised in the rulemaking or adjudication if the
9 commissioner or hearing examiner gives notice to the parties of the person consulted
10 and the substance of the advice and affords the parties reasonable opportunity to
11 respond; and

12 (5) pursuant to the public regulation commission's rulemaking
13 authority, a party to a proceeding may consult with the commission's advisory staff.

14 D. A commissioner or hearing examiner who receives or who makes or
15 knowingly causes to be made a communication prohibited by this section shall disclose
16 it to all parties and give other parties an opportunity to respond.

17 E. Upon receipt of a communication knowingly made or caused to be
18 made by a party to a commissioner or hearing examiner in violation of this section, the
19 commissioner or hearing examiner may, to the extent consistent with the interests of
20 justice and the policy of the underlying statutes, require the party to show cause why
21 his claim or interest in the proceeding should not be dismissed, denied, disregarded or
22 otherwise adversely affected on account of the violation of this section."
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