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AN ACT

RELATING TO UTILITIES; PROVIDING FOR RULES ON EX PARTE COMMUNICATIONS WITH ADVISORY STAFF FOR THE PUBLIC REGULATION COMMISSION.

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

Section 1. Section 8-8-17 NMSA 1978 (being Laws 1998, Chapter 108, Section 17, as amended) is amended to read:

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

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

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

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

(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

1 hearing examiner reasonably believes that no party will gain  
2 an advantage as a result of the ex parte communication and  
3 the commissioner or hearing examiner makes provision to  
4 promptly notify all other parties of the substance of the  
5 ex parte communication;

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

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

12 (4) a commissioner or hearing examiner may  
13 obtain the advice of a nonparty expert on an issue raised in  
14 the rulemaking or adjudication if the commissioner or hearing  
15 examiner gives notice to the parties of the person consulted  
16 and the substance of the advice and affords the parties  
17 reasonable opportunity to respond; and

18 (5) pursuant to the public regulation  
19 commission's rulemaking authority a party to a proceeding may  
20 consult with the commission's advisory staff. By July 1,  
21 2004, the commission shall establish such rules.

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

1           E. Upon receipt of a communication knowingly made  
2 or caused to be made by a party to a commissioner or hearing  
3 examiner in violation of this section, the commissioner or  
4 hearing examiner may, to the extent consistent with the  
5 interests of justice and the policy of the underlying  
6 statutes, require the party to show cause why his claim or  
7 interest in the proceeding should not be dismissed, denied,  
8 disregarded or otherwise adversely affected on account of the  
9 violation of this section."

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