

1 HOUSE BILL 497

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Rod Montoya and Rebecca Dow

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10 AN ACT

11 RELATING TO UTILITIES; AMENDING A SECTION OF THE PUBLIC
12 REGULATION COMMISSION ACT TO PROVIDE FOR PARTIES OF INTEREST
13 COMMUNICATIONS WITH PUBLIC REGULATION COMMISSIONERS.

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

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

18 "8-8-17. EX PARTE COMMUNICATIONS.--

19 A. A commissioner shall not initiate, permit or
20 consider a communication directly or indirectly with a party or
21 [his] the party's representative outside the presence of the
22 other parties concerning a pending rulemaking after the record
23 has been closed or [a pending adjudication] within thirty days
24 prior to a hearing in a pending adjudication when a final
25 decision is expected or will be considered.

.207189.2

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 B. A hearing examiner shall not initiate, permit or
2 consider a communication directly or indirectly with a party or
3 [~~his~~] the party's representative outside the presence of the
4 other parties concerning a pending rulemaking or adjudication
5 or within thirty days prior to a hearing in a pending
6 adjudication when a final decision is expected or will be
7 considered.

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

11 (1) where circumstances require, ex parte
12 communications for procedural or administrative purposes or
13 emergencies that do not deal with substantive matters or issues
14 on the merits are allowed if the commissioner or hearing
15 examiner reasonably believes that no party will gain an
16 advantage as a result of the ex parte communication and the
17 commissioner or hearing examiner makes provision to promptly
18 notify all other parties of the substance of the
19 ex parte communication;

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

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

.207189.2

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[bracketed material] = delete

1 (4) a commissioner or hearing examiner may
2 obtain the advice of a nonparty expert on an issue raised in
3 the rulemaking or adjudication if the commissioner or hearing
4 examiner gives notice to the parties of the person consulted
5 and the substance of the advice and affords the parties
6 reasonable opportunity to respond; and

7 (5) pursuant to the public regulation
8 commission's rulemaking authority a party to a proceeding may
9 consult with the commission's advisory staff. By July 1, 2004,
10 the commission shall establish such rules.

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

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