

To: Members of the Courts, Corrections and Justice Interim
Legislative Committee



new energy economy

Addressing the Climate Challenge
With Bold Solutions

From: Mariel Nanasi, Attorney and Executive Director
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RE: NMPRC Resolution Requesting the Legislative Council Service to Assign an Appropriate Interim Committee the Task to Review and Formulate a Statutory Remedy on Commission Recusal Issue

Date: September 13, 2016

At the outset New Energy Economy appreciates the work of this legislative committee to remedy the situation in the event where two or more Commissioners at the NMPRC are recused and a quorum is needed to render a determination for a final decision.

What constitutes a Quorum:

It is the position of New Energy Economy that the Legislature should revise the definition of a quorum, NMPRC statute 8-8-4 (D) NMSA 19878, to allow three Commissioners to vote on a final decision, with a majority of two to decide. (The Colorado Public Utility Commission, for instance, has three Commissioners.¹)

The Rule of Necessity:

The PRC's recommendation is to legislate the "rule of necessity". In essence the PRC argues that a recused Commissioner should remain in her/his capacity to vote even in the case of recusal for bias, ex parte, prejudice, etc. This amounts to a "crisis of legitimacy" because it institutionalizes a lack of public confidence and is antithetical to the idea of good government. Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a Commissioner, like a Judge, undermines public confidence in the judicial system. When public confidence is eroded by improper conduct this impedes the administration of justice in New Mexico and brings the judiciary into disrepute.

In the Event of Insufficient Quorum:

It is the position of New Energy Economy that in the event that there are not three Commissioners available to render a vote for final decision, we suggest that the Governor appoints all temporary vacancies from a pool of people vetted by the Senate and House majority and minority leaders or their representatives. For each Commission position the team of 4 persons shall choose at least two persons, but not more than three persons, who are qualified to fulfill said vacancy. The Governor shall select the replacement from the qualified pool. The replacement would be "at large" Commissioners and would only serve on the Commission in the event of a temporary vacancy due to recusal or in the event of permanent vacancy. In the event that one Commissioner is recused and the resulting vote is 2-2, thus no quorum, the same procedure as outlined herein would apply to fulfill the vacancy.

New Energy Economy suggests that this Committee consider a revision to the NMPRC Code of Conduct and update its rules on ex parte communications and disallow public statements by Commissioners on pending quasi-judicial administrative matters.

¹ <https://www.colorado.gov/pacific/dora/commissioners>