

A Chance for a Better PRC

In November, we will all have the chance to vote for or against a state constitutional amendment that would change the New Mexico Public Regulation Commission back to a 3-person appointed commission from its current status as 5-person commission elected by districts. In this piece, I would like to make the case in support of the amendment to turn the PRC back to a 3-person appointed commission.

First, though, note that I have stated “turn the PRC **back** to a 3-person appointed commission”. Indeed, the New Mexico Public Utility Commission was a 3-person appointed commission until January 1, 1999 when a state constitutional amendment combined the 3-appointed person Public Utility Commission with the 5-person elected Corporation Commission to form the 5-person elected PRC. The commonly accepted narrative has it that this was done because the Corporation Commission had become so rife with scandal and corruption that a frustrated governor and legislature reckoned that the only way to correct a broken Corporation Commission would be to dissolve it and to combine the remains with the well-functioning Public Utility Commission, call it the Public Regulatory Commission and have it be led by 5 elected commissioners.

That effort has proven the aphorism that the road to hell is paved with good intentions. Twenty years later, it’s *deja vu* all over again, except that this time we do not have a well-functioning public utility commission on which we can rely for good regulation of utilities.

The former Public Utility Commission was characterized by the professionalism and competence of its members, one of whom was subsequently appointed by Presidents Bush and Obama to the Federal Energy Regulatory Commission. In contrast, one can point to a number of headlines that illustrate the PRC’s troubled history over the last 20 years: Shirley Baca, Carole Sloan, Jerome Block Jr., the Energy Transition Act to name a few. Often, especially lately, decisions by commissioners have broken across lines defined by personality clashes rather than a sober and informed consideration of the merits of the issue.

There is also a bigger and, apparently, unfixable problem with elections in U.S., namely, that it is virtually impossible to keep big money out of election campaigns. Unfortunately, elections for PRC commissioners have also become a target for special interest money and we are kidding ourselves if we think that state and federal laws will always let us know exactly who is contributing to whom. Do we really think Arizona is a good model, where utility commissioners have been elected with substantial, undisclosed financial donations from utilities?

This is not to say that an appointed commission is immune to political influence. Of course, a commissioner looking for re-appointment might be swayed by a governor’s influence. However, the New Mexico constitutional amendment largely mitigates that possibility by confining the governor to appoint from a short list of nominees determined by a non-partisan nominating committee, an approach that was adapted from the way in which district judges are appointed. Under the constitutional amendment, a governor’s appointment would have to be confirmed by the state Senate and the commission could not have more than 2 of the 3 members from the governor’s own party, limiting the governor’s ability to “pack the court”.

No commission structure is going to be perfect, so the question for you is really this: given the history of the former Public Utility Commission and the history of the last 20 years of the PRC, which structure, elected or appointed, is most likely to deliver better results for New Mexico? Personally, the answer seems clear.



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