



**Submitted via NM Office of the Attorney General ECS System**

July 14, 2022

Office of the Attorney General  
Open Meetings Act

**RE: New Mexico PRC violation of the Open Meetings Act**

Our office, SaucedoChavez, P.C., represents the New Mexico Business Coalition in connection with its watchdog efforts of the New Mexico Public Regulatory Commission (the “PRC”). Our office previously filed two formal notices of the PRC’s violations of the Open Meetings Act in regard to violations that occurred previously this year. Please allow this letter to serve as a formal notice of the PRC’s third violation of the New Mexico Open Meetings Act pursuant to NMSA 1978 §10-15-3. As more fully explained below, at the June 28, 2022 meeting, the PRC went into a “closed session” near the onset of the meeting. This “closed session” violated the Open Meeting Act as the issue discussed during said session is not one that is otherwise excluded.

**Substantive Violation**

As per NMSA 1978 § 10-15-1(B) “all meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency or any agency or authority of any county, municipality, district or political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act.” The exceptions as to when a meeting must otherwise be open to the public at all times are enumerated under §10-15-1(H).

When moving the June 28, 2022 meeting into a closed session, the PRC noted that it was doing so pursuant to the exception under 10-15-1(H)(3).<sup>1</sup> That exception to the Open Meetings Act states the provisions requiring open meetings do not apply to “deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, ‘administrative adjudicatory proceeding’ means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing.” In the Open Meetings

<sup>1</sup> It should be noted that at the time of the filing of this notice, the PRC has not yet released the official minutes for the June 28, 2022 meeting. Information regarding the June 28, 2022 meeting is being gathered through a review of the PRC Special Open meeting via the following YouTube link: <https://www.youtube.com/watch?v=4a9-yZ4xVyQ>.



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Act Compliance Guide, the AG's Office has helped to explain what an "administrative adjudicatory proceeding" is by noting "like a trial or other court hearing, these proceedings involve the presentation of facts and evidence in a public hearing and an impartial decision maker that must weigh the evidence presented and apply the applicable law, regulation or rule to the particular situation before being heard."

During the closed session of the June 28, 2022 meeting the PRC moved to a closed session to discuss "19-00018-UT; In the matter of Public Service Company of New Mexico's abandonment of the San Juan Generating Station units 1 and 4." Though the PRC described the conversations as "deliberations" they were not deliberations in connection with an administrative adjudicatory proceeding. 19-00018-UT is not a matter that requires a hearing "like a trial" in which the presentation of facts and evidence was presented to an impartial decision maker that must weigh evidence and apply applicable law. The AG's Compliance Guide further cautions that "public bodies may not misuse the [administrative adjudicatory proceeding] exception as a means of avoiding the open meeting requirements. In other words, unless the Act mandates that a matter be determined after an administrative adjudicatory proceeding, a public body cannot hold a 'hearing' on an issue and then close its meeting to 'deliberate' if the issue is one that otherwise would have to be discussed in public and is not one for which the Act mandates a trial-type process." This is exactly what the PRC has done in claiming a 10-15-1(H)(3) exemption with regards to PNM's abandonment of the San Juan Generating Stations unit's 1 and 4. As such, the roughly ten minute discussion that occurred in the closed session was not the type of discussion that is other exempt from being required to occur in an open session. Thus, the PRC violated the Open Meetings Act by discussing a non-exempt subject outside a meeting open to the public.

We are therefore respectfully submitting this request to have your office investigate the PRC's procedural and substantive violations of the Open Meeting Act that occurred during the June 28, 2022 meeting.

Respectfully,

**SaucedoChavez, P.C.**

/s/ Christopher T. Saucedo  
Christopher T. Saucedo

Cc: Wayne Propst  
Michael Smith  
Ashley Schannauer