

# **NEW MEXICO PUBLIC REGULATION COMMISSION**

## **A RESOLUTION**

**1-6-21-A**

### *A RESOLUTION ADOPTING ANNUAL OPEN MEETINGS POLICY FOR 2021*

**WHEREAS**, the New Mexico Public Regulation Commission hereby adopts the following Amended Open Meetings Policy for the year of 2021:

#### **OPEN MEETINGS POLICY OF THE NEW MEXICO PUBLIC REGULATION COMMISSION**

Pursuant to NMSA 1978, Sections 10-15-1(A) and (B), all meetings of a quorum of Commissioners of the New Mexico Public Regulation Commission (“Commission”) held for the purpose of formulating public policy, discussing public business, or for the purpose of taking any action within the authority delegated to the Commission, shall be open to the public, except as otherwise provided by law. The location of such open meetings shall be noticed on the meeting agenda when published and posted on the Commission website. In the event an open meeting is to be located elsewhere, such location will be specified in the notice of that meeting. Any member of the public may attend any open meeting and listen to the discussions, deliberations and proceedings of the Commission. In accordance with NMSA 1978, Section 8-8-4(D), a majority of the Commissioners constitutes a quorum for the transaction of business.

If during the course of a Commission open meeting, the Commission determines that the meeting should be recessed and reconvened to a date subsequent to that stated in the meeting notice, the Commission will specify the date, time and place for the continuation of the meeting prior to recessing and will conspicuously post notice of the date, time and place for the reconvened meeting on or near the door of Room 406 of the PERA Building or the location where the meeting was originally held.

Any person who wishes to attend any open meeting of the Commission which has not been closed pursuant to NMSA 1978, Sections 10-15-1(H) and 10-15-1(I) and this Open Meetings Policy, shall be allowed to attend and listen to the discussions, proceedings and deliberations when the meeting is held in person. If a meeting is held remotely via virtual communications platform, a webcast of the meeting will be available to the general public. Information on obtaining access to the webcast will be published on the Commission’s website. Any party to a proceeding that is identified on the agenda for a Commission meeting can also attend the meeting telephonically or via virtual communications platform by emailing a request to the Commission’s Office of General Counsel by no later than 3:00 p.m. on the day before the meeting. All such requests shall be

emailed to [isaac.sullivan-leshin@state.nm.us](mailto:isaac.sullivan-leshin@state.nm.us), unless and until a different email address is specified on the Commission's website.

#### **A. Open Meetings**

With the exception of Special or Emergency Open Meetings as provided herein, the Commission conducts regularly scheduled Open Meeting: "Regular Weekly Meetings". Unless the business before the Commission dictates otherwise, the Commission shall conduct a Regular Weekly Meeting every Wednesday of each week for the purpose of considering and taking action on proceedings before the Commission as well as its practice of informational and informal discussions of items of public issues and Commission business. It is the intent of the Commission to continue to provide itself with flexibility and efficiency in taking action on time-sensitive matters and any matter may appear on the agenda of each form of meeting in the event administrative and time considerations may dictate.

Regular Weekly Meetings shall begin at 9:30 a.m. except on days when the State of New Mexico has announced a delay in, or the cancellation of, the opening of State offices located in Santa Fe on or before 8:00 a.m. on the day of such delay or closing, or as may be otherwise scheduled. On any day when the State has announced a delay in the opening of State offices located in Santa Fe on or before 8:00 a.m., any Open Meeting scheduled for that day shall commence at 9:30 a.m., or at the delayed opening time, whichever is later. In other words, if the State has announced a two-hour delay, the scheduled Open Meeting would begin at 10:00 a.m. If the State announces the closure of State offices located in Santa Fe before 8:00 a.m., the Open Meeting scheduled for that day shall automatically be cancelled. When the scheduled meeting day is a state holiday, the Commission may either cancel or reschedule the meeting. Except in instances where the commencement of an Open Meeting has been delayed or cancelled as the result of the State announcing a delay in, or the cancellation of, the opening of State offices before 8:00 a.m., the Commission shall provide sufficient notice of all other postponements or cancellations of an Open Meeting by posting notice in the same manner, and as nearly as practicable within the same time frame, as it gives notice of its Open Meetings as set forth in this Policy.

The Commission will post notice of the specific date, time and place of each Open Meeting at least 72 hours prior to the meeting. Notice shall be posted outside Room 406 of the PERA Building or the location where the meeting will be held (when possible) and on the Commission's web site, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us). Any broadcast stations licensed by the Federal Communications Commission and any newspapers of general circulation in this State that have provided a written request for notices of regularly scheduled or other open meetings shall be furnished such notice by mail or as otherwise provided in this Open Meetings Policy. Written requests for notices of open meetings should be directed to the Director of Administrative Services, New Mexico Public Regulation Commission, P.O. Box 1269, Santa Fe, New Mexico, 87504-1269.

Except in the case of an emergency as defined in NMSA 1978, Section *10-15-1(F)*, the Commission will conspicuously post an agenda of the meeting at least 72 hours prior to the meeting outside Room 406 of the PERA Building or the location where the meeting will be held (when possible) and on the Commission's web site, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us).

#### **B. Regular Weekly Meetings**

Regular Weekly Meetings shall follow the following agenda: 1) Pledge of

Allegiance/State Pledge; 2) Introduction of Special Guests; 3) Consideration and Approval of Agenda; 4) Consideration and Approval of Previous Meeting Minutes; 5) Public Comment; 6) Division Director Reports; 7) Presentations; 8) Policy Matters; 9) Consent Action Items; 10) Hearings; 11) Regular Action Items; 12) Discussion/Discussion and Potential Action Items; 13) Discussion and Approval of Legislative Issues; 14) Advice Notices; 15) Second Public Comment (optional); 16) Communications with General Counsel; 17) Communications with Chief of Staff ; 18) Communications with Commissioners; 19) Executive-Closed Session; 20) Adjournment. Any of the foregoing sections that are not required at a specific Open Meeting may be omitted from that meeting's agenda. The order of these sections may be changed or additional sections may be added to the agenda for a specific Open Meeting if necessary for the proper function of the Commission.

Items may be placed on the agenda for an Open Meeting only at the request of any individual Commissioner, the PRC General Counsel, or the Chief of Staff. Individual Commissioners shall not place personnel or administrative items that would otherwise be under the authority of the Chief of Staff on an Open Meeting agenda without the Commissioner first consulting with the Chief of Staff and making an exhaustive effort to resolve the issue in that manner.

A Commissioner, the General Counsel, or the Chief of Staff may request one or more cases or other matters be included in on the "discussion," "regular action" or "consent action" portion of the agenda, so long as all legal requirements for notice of Commission action on that matter have been met. Items placed on the "consent action" portion of the agenda shall be matters that are considered to be non-controversial in the sole judgment and discretion of a Commissioner, General Counsel or Chief of Staff, provided that any Commissioner may request that a matter be moved from the consent action portion of the agenda to the regular action portion of the agenda. When a matter has been scheduled for action without having been discussed at a prior Open Meeting, action may be put off to the next Open Meeting at the request of any individual Commissioner (who need not be present), provided that doing so would not cause the Commission to violate a statutory or other deadline.

Except for emergency matters as defined by NMSA 1978, Section 10-15-1(F), the Commission shall take action only on items appearing on the agenda as regular or consent action items. Discussion items on any Open Meeting agenda may include, but are not necessarily limited to, discussions related to the formulation of public policy prior to the formal discussion or adoption of any resolution, rule, regulation, statement of policy or any order in any case pending before the Commission, or prior to the taking of any other formal action authorized by law and informational discussions between Commission staff and the Commission in preparation for formal discussion or action.

The Commission may request that any party answer clarifying questions or provide oral argument with respect to any matter on the agenda. If the Commission makes such a request, any party present at the meeting, either in person or by telephone, shall have an equal opportunity to respond to such questions or argument. In the event a party whose case is on the agenda chooses not to appear, the absence of that party shall not cause such questions or argument to become ex-parte communications.

### **C. Special and Emergency Open Meetings**

If, in the Commission's view, the public interest requires either discussion or action by the

Commission at times other than those set for Open Meetings, the Commission may conduct special open meetings for those purposes and may conduct Emergency Open meetings in the event of an emergency as defined in NMSA 1978, Section 10-15-1(F). Except in the case of an emergency as defined in NMSA 1978, Section 10-15-1(F), the Commission will provide notice of each special open meeting by conspicuously posting a notice of the date, time, and location of such special open meeting outside of Room 406 of the PERA Building or the location where the meeting will be held (when possible) and on the Commission's web site, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us), at least 72 hours prior to the special open meeting.

Except in the case of an emergency as defined in NMSA 1978, Section 10-15-1(F), the Commission will conspicuously post an agenda of the meeting at least 72 hours in advance outside of Room 406 of the PERA Building or the location where the meeting will be held (when possible) and on the Commission's web site, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us).

The agenda for any special or emergency open meeting shall indicate the date, time and place of the meeting, the case name and number of any cases that the Commission intends discuss or on which it intends to take formal action, a list of any other specific items of business to be transacted, and the nature of any action contemplated at the special or emergency open meeting. Except for emergency matters as defined by NMSA 1978, Section 10-15-1(F), the Commission shall take action only on items listed on the agenda.

In the case of an emergency meeting, notice and an agenda will be posted and distributed as provided in this Policy at the earliest feasible time. An "emergency" refers to unforeseen circumstances that, if not addressed immediately by the Commission, will likely result in injury or damage to persons or property or substantial financial loss to the Commission. Within 10 days of taking action on an emergency matter, the Commission shall report to the attorney general's office the action taken and the circumstances creating the emergency; provided that the requirement to report to the attorney general is waived upon the declaration of a state or national emergency.

If the State of New Mexico announces the delay in the opening of State offices located in Santa Fe on or before 8:00 a.m. on the day of such delay, any Special Open Meeting scheduled for that day shall commence at the time specified in the notice or agenda for that Special Open Meeting or the time for the delayed opening of State offices located in Santa Fe, whichever is later. In other words, if the State has announced a two-hour delay, the open meeting would begin at 10:00 a.m. If the State announces the cancellation of the opening of State offices located in Santa Fe before 8:00 a.m. on the day of such cancellation, any Special Open Meeting scheduled for that day shall automatically be cancelled or postponed until further notice of the Commission.

Any broadcast stations licensed by the Federal Communications Commission and any newspapers of general circulation in this State that have provided a written request for notices of Commission meetings shall be furnished such notice by telephone or as otherwise provided in this Open Meetings Policy. Written requests for notices of open meetings should be directed to the Director of Administrative Services, New Mexico Public Regulation Commission, P.O. Box 1269, Santa Fe, New Mexico, 87504-1269.

#### **D. Formal Hearings Before the Commission**

The Commission will provide notice of any formal hearing at which the Commission presides or may preside as an open meeting. Within a reasonable time, but in no case less than 72 hours prior to the hearing, the Commission will also provide actual notice to all parties in that case

or their counsel and to any other person who has requested such notice of the date, time, location and purpose of the hearing. The Commission will also provide notice as required by any other applicable provision of law or Commission rule or order.

If the State of New Mexico announces the delay in the opening of State offices located in Santa Fe on or before 8:00 a.m. on the day of such delay, any hearing to be presided over by one or more Commissioners scheduled for that day shall commence at the time specified in the notice or agenda for that hearing or the time for the delayed opening of State offices located in Santa Fe, whichever is later. In other words, if the State has announced a two-hour delay, the open meeting would begin at 10:00 a.m. If the State announces the cancellation of the opening of State offices located in Santa Fe before 8:00 a.m. on the day of such cancellation, any hearing to be presided over by one or more Commissioners scheduled for that day shall automatically be cancelled or postponed until further notice of the Commission.

If during the course of such a public hearing the Commission determines that the hearing should be recessed and reconvened to a date subsequent to that stated in the meeting notice, the Commission will specify the date, time and place for the continuation of the hearing prior to recessing and will conspicuously post notice of the date, time and place for the reconvened hearing on or near the door of the place where the original hearing was held (when possible)..

#### **E. Closed Meetings**

Pursuant to NMSA 1978, Sections 10-15-1(H) and (I), the Commission upon its own motion may close a meeting or part of a meeting to the public if the subject matter of such discussion or action is included in Subsection H of the Open Meetings Act, NMSA 1978, Section 10-15-1 or the Constitution of New Mexico permits closure. If any meeting or part of a meeting is closed pursuant to the exclusions contained in Subsection H of NMSA 1978, Section 10-15-1, such closure: (1) if made in an open meeting, shall be approved by a majority vote of the quorum of the Commissioners and the specific statutory or other authority for such closure, and the subject to be discussed, shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting, and such vote shall be taken in an open meeting and the vote of each Commissioner shall be recorded in the minutes; (2) if called for when the Commission is not in an open meeting, such closed meeting or closed part of a meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting, and stating with reasonable specificity the subject to be discussed, is given to members of the general public. Only those subjects announced or voted upon prior to closure by the Commission shall be discussed in a closed meeting.

If a closed meeting is called for when the Commission is not in an open meeting, the Commission will provide notice of closed meetings by conspicuously posting a notice and agenda of the date, time, location and items of business of each such meeting outside Room 406 of the PERA Building or the location where the meeting will be held (when possible) and on the Commission's web site, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us). At any time during an open meeting of the Commission, the Commission may close the meeting to the public as permitted under NMSA 1978, Sections 10-15-1(H) and (I).

#### **F. Minutes**

Pursuant to NMSA 1978, Sections 10-15-1(G) and (J), the Commission shall keep written minutes of all its open meetings. The minutes shall include at a minimum the date, time and place

of the meeting, the names of Commissioners in attendance and those absent, the proposals or other matters considered, if any, and a record, where appropriate, of any decisions and votes taken which show how each member voted. All minutes shall be open to public inspection.

Draft minutes shall be prepared within 10 working days after the meeting and shall be approved, amended or disapproved at the next open meeting where a quorum is present. Recordings of open meetings available to the public are deemed draft minutes. Minutes shall not become official until approved by the Commission; provided that for purposes of any open meeting held during a hearing as described in Section I.C of this Policy, the Commissioners may, by vote duly recorded, approve of the transcript of such hearing as the minutes of such open meeting.

Pursuant to NMSA 1978, Section 10-15-1(J), the minutes of an open meeting that was closed, or the minutes of the next open meeting if a closed meeting was separately scheduled, shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the Commission under NMSA 1978, Section 10-15-1(G), as part of the minutes.

#### **G. Notice to the Public of the Open Meetings Policy**

The Commission shall conspicuously post in the Commission's offices a copy of its Open Meetings Policy. The Open Meetings Policy shall also be posted on the Commission's web site, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us). In addition, each utility subject to the jurisdiction of the Commission shall provide its customers on an annual basis with a notice of the Commission's Open Meetings Policy.

#### **H. Use of Conference Telephones**

Pursuant to NMSA 1978, Section 10-15-1(C), a Commissioner may participate in any open meeting by means of a conference telephone, virtual communication platform, or other similar communications equipment when it is difficult or impossible for the Commissioner to attend the meeting in person; provided that each Commissioner attending and participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any Commissioner who speaks during the meeting.

#### **I. Remote Meetings**

If due to a public health emergency or any other reason the Commission is unable to hold an Open Meeting in person, the Open Meeting may be held remotely via virtual communication platform. Remote meetings will be made available to the public through an online webcast. All policies contained within this Open Meeting Policy document shall apply to remote Open Meetings but may be modified at Commission discretion when necessary to allow for proper meeting function. When at a remotely held Open Meeting, or when an individual Commissioner remotely attends an otherwise in-person Open Meeting, by voting "yes" on the adoption of any Order, Resolution or other item requiring their signature, the Commissioner authorizes the Office of General Counsel to add their electronic signature to the item on their behalf. If the item is an Order that authorizes approval of a transportation Certificate or Permit, by voting "yes" to approve the Order, the Commissioner also authorizes the Transportation Division to add their electronic signature to the Certificate or Permit on their behalf.

#### **J. Public Comment**

The Commission values and encourages public input on pertinent issues subject to the jurisdiction of the Commission. In order to ensure Commission meetings are efficient and productive, individuals providing public comment shall do so subject to the following provisions.

Public comment will be scheduled for each meeting. All members of the public wishing to provide public comment must sign a sign-up sheet prior to the start of the meeting and identify their name and the name of the organization they represent (if any), and the topic or issue on which they desire to comment.

The portion of the agenda allocated for public comment at any one open meeting shall be limited to a maximum of 30 minutes for all persons wishing to provide comment. The order of speakers will be based on the order in which speakers sign up, but public officials may be taken out of order. If a speaker is not present at the time he or she is called to provide comment, that speaker shall forfeit their opportunity to speak. Public comment by an individual or entity shall be limited to no more than three (3) minutes unless the Commission acts to extend the period. If the number of individuals on the sign-up sheet desiring to provide comment would exceed the allotted 30-minute period, the Chairperson may limit individual remarks to a shorter time period. Individuals represented by or representing a common organization or association may be asked to select one individual to act as spokesperson to speak for the group. Individuals who sign up to comment, but either fail to do so or choose to speak for less than their allotted time, may not cede or yield their time to another speaker. Written comments of individuals who cannot be physically present may not be read aloud at the meeting but may be submitted to the Commission.

The subject matter of public comments shall be relevant to matters within the Commission's jurisdiction. Public comment will not be permitted on matters that should be addressed appropriately as the subject of an informal or formal complaint before the Commission or on pending rulemaking proceedings before the Commission once the opportunity for public comment in those proceedings has closed. Public comment by parties to a proceeding or adjudication pending before the Commission will not be permitted where the comment concerns matters at issue in such proceeding. The Chairperson shall retain the right to stop any speaker who raises an issue that is not under the Commission's jurisdiction or is subject to the restrictions above.

Speakers providing comment shall at all times conduct themselves in accordance with proper decorum. Profane or vulgar language or gestures will not be tolerated. Audience members shall not disrupt an open meeting by speaking without being recognized by the Commission and shall not incite others to do so. The Commission retains the right to remove disruptive attendees and individuals who fail to conduct themselves in accordance with these provisions from the Commission meeting.

Public comment will be received without Commission comment or response. However, individual Commissioners may at their option seek clarification or additional information from speakers through the Chairperson. No speakers will be accommodated after the public comment portion of the agenda has closed. The Chairperson retains the right to exercise discretion in the implementation of this policy and may override the above rules in case of emergency or other unforeseen circumstances.

**K. Notice to Individuals With a Disability**

Individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in any open meeting

or adjudicatory hearing may contact the Director of Administrative Services at (505) 467-9116 or such alternate contact person as may be designated in any individual notice of a specific open meeting or adjudicatory hearing. Public documents associated with the meetings can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms also should be addressed to the Director of Administrative Services or the alternate contact person.

**L. Supersedes Previous Resolutions Adopting a Protocol for Commission Operations**

Policies and procedures that relate to scheduling meetings and formulating agendas are superseded by the policies and procedures herein.

**M. Annual Redetermination of Open Meetings Policy**

In accordance with NMSA 1978, Section 10-15-1(D), the Commission shall redetermine not less than annually, in an Open Meeting, what Open Meetings Policy and Notice is reasonable and should be adopted by the Commission.



**ISSUED** under the Seal of the Commission at Santa Fe, New Mexico, this 6<sup>th</sup> day of  
**January, 2021.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

*/s/ Cynthia B. Hall, electronically signed*

**CYNTHIA B. HALL, COMMISSIONER DISTRICT 1**

*/s/ Jefferson Byrd, electronically signed*

**JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2**

*/s/ Joseph M. Maestas, electronically signed*

**JOSEPH M. MAESTAS, COMMISSIONER DISTRICT 3**

*/s/ Theresa Becenti-Aguilar, electronically signed*

**THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4**

*/s/ Stephen Fischmann, electronically signed*

**STEPHEN FISCHMANN, COMMISSIONER DISTRICT 5**

