November 20, 2026

Via Electronic Mail: Rikki@Interwest.org

Rikki Seguin, Chair
Members of the Public Regulation Commission Nominating Committee
New Mexico Public Regulation Commission
Santa Fe, New Mexico

Re: Governor's Request for Additional PRC Nominees — The Committee's Independent Constitutional and Statutory Authority

Dear Chair Seguin and Members of the Committee:

We write regarding Governor Michelle Lujan Grisham's November 16, 2026 request that the Public Regulation Commission ("PRC") Nominating Committee submit additional nominees for appointment to the Commission.

The following organizations urge the Committee to decline the Governor's request to reopen its completed nomination process merely to provide her with additional choices.

The Governor's request to the Committee for additional names is not authorized under law. The absence of such grant of authority in the PRC appointment process was not unintentional and the allowance of such a demand would defeat the Committee's independence and effectively permit the Governor to control the nomination process.

The New Mexico Constitution and Legislature established a specific process for nominating and appointing PRC commissioners. The Committee exercised its independent statutory judgment, evaluated applicants, conducted interviews, and submitted two nominees for consideration, as the law requires.

The Legislature entrusted the selection of nominees to the Committee, not the Governor. Permitting the Governor to reject the Committee's completed work and request additional names until she is satisfied with the choices would effectively transfer the nomination function from the Committee to the Governor, defeating the very structure the Legislature established.

The Committee has exercised its judgment. The Governor must now exercise hers.

The Constitution, statutory text, legislative history, and controlling New Mexico Supreme Court decisions establish why the Governor's request is inconsistent with the legislature's intent to vest you, a statutorily selected committee of experts, with the exclusive power to select potential candidates for the Governor's consideration.

The Constitution establishes distinct responsibilities for the Committee and the Governor.

Article XI, Section 1(B) of the New Mexico Constitution requires the Governor to nominate commissioners from a list of qualified nominees submitted by the PRC Nominating Committee and, with the Senate's consent, appoint commissioners. Article XI, Section 1(D) expressly assigns to the Legislature responsibility for establishing the Committee's procedures.

The Legislature exercised that authority through NMSA 1978, § 62-19-4.

Section 62-19-4(G) requires the Committee to submit at least two qualified nominees from diverse geographical areas of the state. Subsection (J) directs the Committee to solicit and evaluate applications. Subsection (K) requires the Committee to select those applicants who, **"in the committee's judgment,"** are best qualified to serve.

Subsection (L) additionally provides:

> A majority vote of all members of the committee in favor of a person is required for that person to be included on the list of qualified nominees submitted to the governor.

The Legislature thus established two distinct exercises of discretion. The Committee determines which applicants are best qualified and should be nominated. The Governor selects a commissioner from the list produced by that independent evaluation. The composition of the Committee reinforces this deliberate allocation of authority. Under § 62-19-4(A), four of its seven members are appointed by legislative leaders, two by executive department secretaries, and one by the Governor. The statute does not establish a committee that serves at the Governor's direction. It establishes a distinct decision-making body whose members must independently exercise the statutory judgment entrusted to them. **The Governor's appointment authority does not include authority to control whom the Committee nominates.**

The Legislature rejected giving the Governor the right to request additional nominees. In 2018, House Joint Resolution 8 proposed converting the PRC from an elected to an appointed commission and establishing a nominating committee. The proposed amendment, had it been adopted, would have expressly authorized the Governor to make one request for additional names after receiving the committee's nominations. That resolution was rejected! The final version of the laws subsequently adopted do not include an authorization to request additional names.

The Legislature knew how to prescribe such a procedure. In the judicial appointment process, Article VI, Section 35 expressly permits **one request for <u>one</u> additional**

nominee. The PRC reconstituting law likewise could have permitted one such request. No comparable authority or limiting procedure appears in the law governing PRC appointments.

Whether the Committee submits one additional name or ten, the same structural problem arises: if the Committee changes its completed nominations merely to satisfy the Governor's desire for more choices, the Governor has begun directing a function the Legislature assigned to the Committee.

If the Governor can seek new names because she is dissatisfied with those submitted, the practical effect is to give her influence over both stages. She would not merely choose among the nominees; she could effectively shape the list until it included a candidate she preferred. That would dissolve the distinction between nomination and appointment that the Legislature deliberately established.

The Committee must independently determine which applicants satisfy the statutory standard. The Governor must independently choose among those nominated. Neither responsibility is subordinate to the other's preferences. Permitting the Governor to require repeated reconsideration of the Committee's completed nominations would alter that statutory process and undermine the independent judgment the Legislature expressly entrusted to the Committee.

The intrusion is not cured by the Committee's willingness to comply with the request. The statutory allocation of responsibilities cannot be changed merely by agreement between the officials exercising those responsibilities.

The Committee's majority-vote requirement must be respected.

Section 62-19-4(K) requires the Committee to determine which applicants it judges best qualified. Subsection (L) requires an affirmative majority vote of all Committee members to place an applicant on the nomination list. Those requirements are substantive protections.

An applicant may meet the minimum statutory qualifications for office without being selected by the Committee as one of the best-qualified candidates. The law requires both the Committee's favorable judgment and majority approval before an applicant may be nominated. A gubernatorial request cannot supply those votes. Nor does the law require the Committee to continue voting until additional candidates secure the required majority.

The Committee's majority vote must be an expression of its independent judgment, not a response to pressure from the official who will make the ultimate appointment.

The Committee fulfilled its statutory responsibility. The Governor must now fulfill hers.

On November 2, 2026, the PRC announced that the Committee had completed its applicant review and forwarded Gabriel Aguilera and Laura Sanchez to the Governor. The announcement confirms that the Committee received 28 applications, conducted additional screening, interviewed eight finalists, and voted to advance the two nominees. The Committee's published schedule designated October 30 as its final meeting to submit names to the Governor. The Governor is not being deprived of a meaningful choice. She has been provided two candidates whom the Committee determined were the best qualified. **The purpose of this process was not to maximize the Governor's options. It was to provide her with the Committee's independent, considered recommendations.**

The Governor's November 16 letter does not identify an alleged procedural defect, insufficient nomination votes, or a statutory disqualification of either candidate. Instead, the Governor requests a broader pool of candidates to facilitate her own appointment decision including her desire to potentially reject the two candidates forwarded to her from the independent Commission.

The Committee's responsibility is to determine whom to nominate. It has performed that responsibility and provided the Governor with the number of nominees required by law. If the Governor's request were granted, the Committee's independent selection process would cease to serve the purpose assigned to it by the Legislature. The Governor would effectively control both the composition of the nomination list and the ultimate appointment. The Legislature established a different process, and that process must be respected.

We request that the Committee preserve its independent nomination decision.

For these reasons, we respectfully request that the Committee decline to reopen its completed selection process solely to accommodate the Governor's desire for additional nominees. The Committee's independence is essential. If the Governor may obtain additional nominees merely by expressing dissatisfaction with those already selected, or for no reason as she has done here, then there is no principled distinction between requesting one more candidate and requesting ten, or between making one request and continuing to request additional names until a preferred candidate appears.

Respectfully submitted,

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