

TITLE 4: ECONOMIC RESOURCES
DIVISION 8: UTILITIES

§ 8403. Public Utilities Commission: Establishment and Commissioners.

(a) There is established in the Commonwealth government the Public Utilities Commission, a regulatory agency, in accordance with Article III, Section 15 of the Commonwealth Constitution. The Commission shall be an independent agency within the Executive Branch of the Commonwealth government and not part of any principal department. The Commission shall be composed of five members to be called Commissioners. The Governor, with the confirmation of both the Senate and the House of Representatives of the Commonwealth Legislature, shall appoint all five members. The members shall be of good ethical standing in their field of expertise and demonstrate experience in business regulations, in a business regulated by the Commission, or in accounting, law, or engineering. The Governor shall seek to appoint members with managerial or engineering experience in one of the fields of power engineering, water-treatment, wastewater management, telecommunications, cable television services, and accounting. At least one Commissioner shall reside on Tinian, one Commissioner shall reside on Rota, and at least three Commissioners shall reside on Saipan.

(b) All commissioners shall serve terms of four years. Provided, at the first meeting of the commission, the first commissioners shall draw lots determining the terms of the first Commissioners; two shall serve terms of two years, and three shall serve terms of four years.

(c) Any vacancy occurring in the membership of the Commission during a term shall be filled by the Governor by appointing a person consistent with subsection (a) of this section to serve out the remaining portion of the vacated term. Such time in service shall not count towards the two-term limitation in subsection (d) of this section.

(d) No Commissioner may serve more than two terms.

(e) No Commissioner shall be an employee of any entity regulated by the Commission, nor may a Commissioner serve as a consultant to any entity regulated by the Commission, nor may a commissioner serve as a member of any other government board or commission. Acceptance by a Commissioner of any position in violation of this section automatically terminates that persons term of office.

(f) When there is a change of administration of the government of the Commonwealth after a gubernatorial election, no courtesy resignation shall be requested by the new administration of the government nor offered by any Commissioner.

(g) A Commissioner shall be qualified to vote in the Commonwealth, be at least twenty-five years of age, and a resident and domiciliary of the Commonwealth for at least five years immediately preceding the date on which the member takes office. All Commissioners shall have at least graduated from an accredited university or college with a two-year academic degree and at least two years of managerial experience.

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(h) The members of the Commission shall elect a chairperson.

(i) The Commission may suspend for cause any member of the Commission after due notice and public hearing.

(j) No person having a financial interest, as defined in 1 CMC § 8503(f), in, or having immediate family with a financial interest in any entity regulated by the Commission or deriving any remuneration from any entity regulated by the Commission shall be eligible to serve as a Commissioner or be employed by the Commission.

(k) No Commissioner shall during the two years immediately following termination of service on the Commission be employed by any entity that is regulated by the Commission.

Source: PL 12-39, § 1(b) (8303), modified; repealed and reenacted by PL 15-35, § 2 (8403), modified; (a) and (j) amended by PL 15-40, § 3(a) and (b), respectively; (e) amended by PL 17-34 § 4 (March 10, 2011); (e) and (g) amended by PL 17-81 § 2 (August 31, 2012).

Commission Comment: The Commission deleted figures that were mere repetitions of words in the above section pursuant to its authority by 1 CMC § 3806. The Commission capitalized “Commissioner” in subsection (e) and (g), and changed “members” to “member” pursuant to 1 CMC § 3806(e) and (g).

PL 15-40 was enacted on December 22, 2006, and included the following short title and findings and purpose sections in addition to other enactments and severability and savings provisions:

Section 1. Short Title. This Act may be cited as the “The PUC Amendments Act of 2006.”

Section 2. Findings and Purposes. The Legislature finds that a few limited amendments are needed to further improve the Public Utilities Commission Act (Public Law 15-35 (4 CMC §§ 8401-8461)) and Executive Order 2006-4 (4 CMC §§ 8111-8158). The Legislature further finds that regulation must be fair and flexible and advance the public interest. Regulators must be experts by reason of knowledge, experience or training and understand the needs of the CNMI and its people.

Amendments included in this act relate to the (1) qualifications of commissioners and (2) their ethical position. Other amendments (1) clarify the PUC’s authority to issue interim orders for partial and immediate relief and to set rates that reflect various classes and types of service, and (2) allow the CUC to continue to conduct its business while the PUC is being constituted. CUC may also issue an RFP for power privatization and make an award contingent upon the contractor obtaining from the PUC a certificate of public convenience and necessity and an approval of its rates and CUC’s divestiture. This Act is a necessary and proper use of the legislative authority granted by Article II of the Commonwealth Constitution.

Public Law 17-81, (August 21, 2012), provided in addition to a savings and severability clause:

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Section 1. Findings and Purpose. The Commonwealth Legislature finds that the Commonwealth Public Utilities Commission Act of 2006, in particular 4 CMC §8407 of the Commonwealth Code, was amended in 2008 by Public Law 16-2, Section 12, subsection (c), in order to establish the official commencement of the Public Utilities Commission's (PUC) duties and operations. This commencement of PUC's duties and operations was deemed activated once three Commissioners had been duly appointed and confirmed.

The Legislature further finds that Public Law 16-2 took one step further in amending 4 CMC §8407 by adding a subsection (d), which undermined the original legal mandate of the Commonwealth Public Utilities Commission Act of 2006 {4 CMC §8403(a) & § 8407(b)}, which stated that at least three of the five mandated commissioners shall be present to constitute a quorum for the Commission to act or issue a decision. The added subsection (d) to 4 CMC §8407, states: "Notwithstanding subsection (b), once three Commissioners have been appointed and confirmed, any event, be it resignation, removal, or otherwise, which reduces the number of Commissioners below three shall not divest the Commission of its authority, and the PUC shall continue its duties shorthanded until such a time as additional commissioners have been duly appointed and confirmed. If for any reason, the Commission consists of only two Commissioners, then a quorum for the conduct of the PUC's business shall be two and decisions shall be unanimous until such a time as an additional Commissioner or Commissioners shall be duly appointed and confirmed. If the Commission consists of a sole Commissioner, then a quorum for the conduct of the Commission's business shall be one, whose decisions, rules, or orders shall be valid and effective for not more than 60 days, unless extended for an additional 30 days upon a finding that the extension is in the best interest of the public." This additional subsection (d) creates a potential for a continuously diluted Commission, which could continue its duties with any number below three, e -g., two, one, or "zero".

The Legislature also finds that the intent of P .L. 16-2 to keep the PUC functioning in case of a "shorthanded" commission does not outweigh the importance of having a full five-member commission, or a bona fide three-member quorum, to conduct the PUCs business in a more fair, impartial, and professional manner. The monitoring and regulating of our public utilities is such a critical issue in the CNMI, with the skyrocketing and at times falling fuel costs, the rising but sometimes not falling electrical costs, and a convoluted LEAC system that supposedly adjusts the CUC customer costs to the prevailing price of oil. Therefore, in the best interests of the people of the Commonwealth and to possibly avoid costly legal arguments, an re-enactment of (c) and a repeal of subsection (d) of 4 CMC §8407 is justifiable and most prudent.

The Legislature further finds that other provisions of the Public Utilities Commission Act must also be amended in order to improve the Act First, it is necessary to amend 4 CMC § 8403(e)&(g) to eliminate the

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restriction of a government employee being appointed to the Commission and to change the education requirement of a commissioner to a two-year academic degree because it has been difficult to appoint qualified persons to the Commission who are not employed by the government or possess at least a four-year academic degree. Second, 4 CMC §§ 8454(d) and 8483 to require all regulated entities to pay the annual charge imposed by the Commission in order to level the playing field. However, television companies may be given a discount in exchange for providing at least 12 hours of public, educational, and governmental access channel for free for the public.