

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF NEW MEXICO)
GAS COMPANY, INC.’S REQUEST FOR)
APPROVAL OF ADVICE NOTICE NO. 105)
)
NEW MEXICO GAS CO., INC.)
)
Applicant)**

**JOINT PROTEST AND MOTION TO SUSPEND
NEW MEXICO GAS COMPANY’S ADVICE NOTICE NO. 105
AND MOTION FOR ORDER EXPEDITING RESPONSES**

Western Resource Advocates (“WRA”), Coalition for Clean Affordable Energy (“CCAЕ”), Prosperity Works, and Southwest Energy Efficiency Project (“SWEEP”) (“Joint Parties”) hereby protest and move the New Mexico Public Regulation Commission (“Commission” or “NMPRC”) to suspend New Mexico Gas Company’s (“NMGC” or “Company”) Second Revised Rule No. 16Line Extension Policy set forth in Advice Notice No. 105 filed on December 31, 2024 and to set this matter for hearing. Joint Parties assert that the revised Rule No. 16Line Extension Policy is contrary to state policy under Executive Order 2019-003 and to Commission rule no. 17.10.650.10(G) NMAC. Moreover, according to NMSA 1978, §§ 62-8-1 and 62-8-6, NMGC has an obligation to provide just, reasonable and nondiscriminatory rates. Adding costs to customer rates to subsidize speculative growth is neither just nor reasonable. In support of this Joint Protest and Motion, Joint Parties state:

1. NMGC filed its proposed Second Revised Rule No. 16Line Extension Policy pursuant to the Uncontested Stipulation in NMGC’s last general rate case, NMPRC Case No. 23-00255-UT. Paragraph 24 of that Stipulation specifically stated that:

NMGC agrees to file a revised Rule No. 16Line Extension Policy, before December 31, 2024, after a process that reevaluates the credits (revenue credits, lot credits (both vacant & other) and system improvement credits) and the Advantage Program Advance. The Company agrees to consult with WRA, PRC Staff, and any other interested party in its evaluation process. Once the revised policy is filed, parties and Staff retain the right to object to the new line extension policy and seek Commission review and hearing.¹

2. During the hearing in Case 23-00255-UT, the Hearing Examiner issued a Sixth Bench Request on April 1, 2024 to ensure sufficient specificity for the review process and a response was filed on April 4, 2024 by WRA, CCAE, the New Mexico Department of Justice, New Mexico Affordable Reliable Energy Alliance and Staff proposing, *inter alia*, timelines by which NMGC would present its evaluation, would present its proposed revisions, and would accept stakeholder revisions for consideration. In her Certification of Stipulation, the Hearing Examiner recommended approval of this collaborative process for review and update of NMGC’s line extension policy because existing tariffs should be examined to ensure that all aspects are still reasonable and appropriate and because the process “further requires stakeholder input into the revision.”² Quoting Staff, the Hearing Examiner noted that “ultimately, at the end of the process, it will be for the Commission to decide to suspend or not suspend final rule revisions.”³

¹ WRA supported review of the Company’s line extension policy in recognition of policy changes and new opportunities, providing expert testimony that the lot credits may contain subsidies of new customers and the costs of unnecessary expansion by existing customers. Case 23-00255, Certification of Stipulation (6/6/2024), p. 94; WRA Exh. 1 (Farnsworth Direct), pp. 7, 11.

² Case 23-00255-UT, Certification of Stipulation, p. 95.

³ *Id.* at 94.

3. On July 25, 2024, the Commission issued a Final Order approving the Certification of Stipulation and Uncontested Stipulation in Case 23-00255-UT, including the requirement discussed above to review and file a revised line extension policy.

4. Subsequent to the Commission's Final Order in Case 23-00255-UT, NMGC held two meetings with interested parties, the first on October 11, 2024 and the second on November 15, 2024, to present the findings of their evaluation of the current line extension policy and to permit stakeholders to ask questions. NMGC also accepted written comments on their draft revisions to Rule 16 prior to filing this Advice Notice.

5. WRA participated in all discussions prior to the filing of Advice Notice No. 105. In addition, WRA expressed its concerns in writing to NMGC, attached to this Joint Protest and Motion as Exhibit A, regarding the changes being proposed to Rule 16 Line Extension Policy, as well as reiterating issues that had been raised by WRA in testimony supporting the stipulation in Case No. 23-00255-UT.⁴

6. Upon review of the filed Advice Notice, NMGC did not resolve any of the issues raised by Joint Parties. Joint Parties believe the Second Revised Rule No. 16 Line Extension Policy is contrary to state policy under Executive Order 2019-003 and to Commission rule no. 17.10.650.10(G) NMAC. Implementation of these revisions to NMGC's line extension policy will result in unjust, unreasonable and discriminatory rates for customers, which is counter to the requirements of NMSA 1978, §§ 62-8-1⁵ and 62-8-6⁶.

⁴ Case 23-00255, WRA Exh. 1 (Testimony of Gwendolyn Farnsworth in Support of Stipulation (3/13/2024)).

⁵ "Every rate made, demanded or received by any public utility shall be just and reasonable."

⁶ "No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage."

7. The Commission has the power to suspend proposed rates for hearing and decision to determine their reasonableness under the Public Utility Act (“PUA”),⁷ and NMGC’s line extension policy, including its formulae for charges to customers, falls squarely within the PUA’s definition of “rate.”⁸

8. Joint Parties assert that it would be in the public interest to suspend NMGC’s Second Revised Rule 16 for hearing and decision. The public interest in “reasonable and proper services” at “fair, just and reasonable rates” includes the “construction, development and extension, without unnecessary duplication and economic waste, of proper plants and facilities.”⁹ Whether NMGC’s proposed revisions to the line extension policy would result in unnecessary duplication and economic waste, result in reasonable and proper services, and create fair, just and reasonable rates – i.e., whether the proposed revisions are in the public interest – are important matters that the Commission should hear.

9. In support of this Joint Protest and Motion to Suspend, Joint Parties specifically point to highly speculative assumptions that NMGC has made in their proposed revisions regarding both customer connections to the gas system and the estimated revenues these hypothetical customers will generate.¹⁰ NMGC assumes that in the case of residential customers, each

⁷ NMSA 1978, §§ 62-1-1 to -6-28 and 62-8-1 to -13-16 (1884, as amended through 2021). See § 62-13-1 (identifying the statutes within the Public Utility Act), *see* specifically § 62-8-7(C).

⁸ NMSA 1978, § 62-3-3(H): “‘rate’ means every rate, tariff, charge or other compensation for utility service rendered or to be rendered by a utility and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, tariff, charge or other compensation and any schedule or tariff or part of a schedule or tariff thereof.”

⁹ NMSA 1978, § 62-3-1(B).

¹⁰ Second Revised Rule No. 16. New Mexico Gas Company. Direct Testimony of Timothy S. Lyons, pp. 8, 11.

customer will use on average 52 therms per month – in perpetuity.¹¹ This assumed level of usage is then used to determine the revenue each new customer will provide. Joint Parties assert these assumptions are not in compliance with 17.10.650.10(G) NMAC which requires that an extension plan “must be related to the investment that can be made prudently for the *probable* revenue and expenses to be incurred (emphasis added).” Contrary to the assumptions made by NMGC, the increasingly competitive economics of efficient electric space- and water-heating, state and federal energy codes, and state policy to reduce greenhouse gas emissions indicate that customer use of natural gas, on average, will decline. Moreover, the assumptions NMGC has relied upon are inconsistent with state policy goals.¹²

10. Joint Parties assert that NMGC’s assumptions about average usage are not an accurate and reliable projection of the future gas use of customers. Homes built since 2000 have been built under increasingly energy efficient building codes. For example, homes built under the most recent 2021 IECC building energy standards, which were adopted by the New Mexico Regulation and Licensing Department in January 2024, reduce first year energy costs by over 10% compared to New Mexico’s previously active energy codes (2018 IECC).¹³ Therefore, new homes

¹¹ Second Revised Rule No. 16. New Mexico Gas Company. Direct Testimony of Timonthy S. Lyons, pp. 8, 11.

¹² See Governor Lujan Grisham’s Executive Order 2019-003 finding that “As newer, safer, and more durable building materials, technologies, and techniques become more commonplace, they are voted on and incorporated into the model energy code”; that “energy codes create safe, resilient, and habitable structures based on building science and physics principals for heat, air, and moisture transfer—all of which have real and significant impacts on human lives and health; they also can cut utility bills in buildings”; and that “efforts to reduce emissions throughout New Mexico will have a significant climate benefit” and improve air quality; and ordering that “New Mexico’s objective is to achieve a statewide reduction in greenhouse gas emissions of at least 45% by 2030 as compared to 2005 levels.” https://www.governor.state.nm.us/wp-content/uploads/2019/01/EO_2019-003.pdf

¹³ Cost-Effectiveness of the 2021 IECC for Residential Buildings in New Mexico (prepared for the US Department of Energy by Pacific Northwest National Laboratory. July 2021), p. 13. https://www.energycodes.gov/sites/default/files/2021-7/NewMexicoResidentialCostEffectiveness_2021_0.pdf

built in New Mexico – which are more likely to connect to the gas system than existing homes – will be more energy efficient than the average New Mexico home, and thus require less gas for space and water heating.¹⁴ In addition, new federal minimum energy efficiency requirements for residential furnaces will go into effect in 2028 that will further reduce gas use both in new homes and when furnaces in existing homes are replaced.¹⁵ Moreover, currently active federal, state, and electric utility programs all provide thousands of dollars in incentives and tax credits to install energy-efficient electric space heating and cooling systems and energy-efficient electric water heating.¹⁶ By assuming that future customers use the same volume of gas as existing customers, NMGC overestimates the future revenue received from those customers and the ability to recover the costs of the line extension credits and related new capital investments.

11. Joint Parties offer the following background for reference. NMGC currently provides about \$4.3 million per year in line extension credits,¹⁷ the majority of which have been lot credits. Historically, NMGC has offered two types of line extension lot credits: developed and undeveloped lot credits. Developed lots are those where a residence or business already exists but requests connecting to the gas system, whereas undeveloped lots are platted but do not have a structure. When a home developer sets out plots and installs energy infrastructure, they can receive undeveloped lot credits for each lot to run mains and service lines to the future home site. The undeveloped lot credits under the current rule are \$950 per lot. A customer requesting new gas

¹⁴ See also <https://www.regulations.gov/document/EERE-2017-BT-STD-0019-1426>

¹⁵ U.S. Department of Energy, EERE-2014-BT-STD-0031, 88 FR 87502.

<https://www.federalregister.gov/d/2023-25514>

¹⁶ See, for example, New Mexico Energy Conservation and Management. *Heat Pump Incentives and Rebates*.

<https://clean.energy.nm.gov/landing/heat-pumps/>

¹⁷ Case 23-00255-UT, WRA Exh. 1 (Farnsworth Direct), p. 10.

service can receive developed lot credits for each existing home or business passed by the new main line which could also connect in the future. The developed lot credits under the current rule are \$475 per lot. In each case, a significant amount of the capital cost of installing the new gas infrastructure is covered by ratepayers.

12. NMGC is moving in this revised rule from the two types of lot credits to a single ‘general lot credit’ valued at \$1814 per lot. The change, plus increasing expected revenues from four (4) to five (5), has the effect of nearly doubling the credit for undeveloped lots (from \$950 to \$1814) and nearly quadrupling the credit for developed lots (from \$475 to \$1814). Combining the lot credits was not raised during the stakeholder discussions; in those discussions, NMGC indicated that it would continue both developed and undeveloped lots although with increased credit amounts. The new general lot credit will go to the customer or developer connecting to the gas system regardless of whether the homes or businesses at the developed or undeveloped lots connect in the future. Given the increasingly affordable options to heat with efficient electric appliances and the overall increased efficiency of gas consumption in buildings, there is uncertainty whether customers at those lots will make a decision to connect or use gas at a level consistent with an average NMGC customer.

13. Joint Parties also assert that the costs of line extension credits are borne by existing NMGC customers long before they can be recouped by new customer revenue. The cost of those credits is recovered through customer rates. While NMGC claims that the increased rate a customer pays to provide the credits is offset by the revenue from the new customers and by spreading fixed cost recovery across a larger number of customers,¹⁸ NMGC has historically

¹⁸ Second Revised Rule No. 16. New Mexico Gas Company. Direct Testimony of Tom C. Bullard, pp.9, 11, 15.

returned to the Commission every two years to increase rates.¹⁹ Therefore, the capital investments made to connect new customers and the line extension credits those customers received are brought into rates in each new rate case. This means that customer rates are increasing to cover the costs of line extensions likely before the revenues generated by new customers could offset any increases, especially since most of the credits NMGC provides are lot credits – credits which have no guarantee of an eventual customer connecting to the system and generating revenue. Unconstrained line extension credits may therefore result in unreasonable rate increases for existing NMGC customers. Without new customers paying the full costs of the line extension, it is unclear whether and when existing customers would benefit from new revenue. Therefore, the Commission should consider whether NMGC’s proposed line extension revisions are unreasonably discriminatory.

14. Reducing or eliminating the line extension credits would not impact NMGC’s obligation to serve new customers, should they request service. Instead, the market distortions²⁰ supported by the current and proposed revision to the line extension policy would end. Customers and developers would have a clearer picture of the cost to pursue connection to the gas system versus using efficient electric appliances. Furthermore, NMGC’s existing customers would feel immediate rate relief and bear less risk of subsidizing new capital investments that NMGC may not recover in a timely manner. This latter point is especially important to low-income households with limited ability to afford increased gas rates should anticipated revenues fail to materialize.

¹⁹ Case 23-00255-UT, Certification of Stipulation, Attachment B.

²⁰ Referring to Figure 1 in the Direct Testimony of Timothy S. Lyons attached to Advice Notice, p 8, it appears that NMGC’s proposed \$1,814.00 per lot would completely cover the line extension project costs of all 23 listed developments--- ranging from \$10,877.00 to \$520,566.00 -- meaning that the developers would not bear any of these costs.

15. Joint Parties are concerned that the Advice Notice is contrary to Commission rules and the policy goals of New Mexico, will impose an undue hardship on existing customers and will not result in just, reasonable and nondiscriminatory rates.²¹ The Commission should not allow Second Revised Rule 16 to go into effect but set this matter for hearing giving the Company, Staff and all interested parties, including Joint Parties, an opportunity to fully develop the issues and propose alternative line extension policy terms and conditions.²²

16. Moreover, the Case 23-00255-UT stipulation obligating NMGC to evaluate and file a revised line extension policy was negotiated before intervenors, Staff and the Commission were aware that NMGC's parent corporation, Emera, Inc., was working on a sale of NMGC. In fact, that rate case stipulation was approved by Final Order of the Commission on July 25, 2024 – just days before the sale to Bernhard Capital Partners was announced on August 5, 2024. This sale of NMGC is the subject of Case 24-00266-UT. The Commission should not allow significant revisions to NMGC's line extension policy that reflect a pro-growth strategy to become effective without knowing more about the business plans, financial capacity and strategies of NMGC's potential new owner. Nor should the Commission allow the revisions to go into effect without inquiring into the extent to which the revisions are being driven by the prospective sale.²³ A hearing and procedural schedule for the review of NMGC's Second Revised Rule 16 could

²¹ The Commission may also want to consider whether NMGC's proposed lot credit increases give the Company an unfair advantage vis-à-vis competition with electric utilities, including rural electric cooperatives who may be rolling out Tri-State Electrify and Save® programs. <https://tristate.coop/beneficial-electrification-home>

²² For example, the Commission may want to preserve different methodologies for the calculation of lot credits towards the cost of connecting existing structures on propane vs. credits towards the cost of extending service to new construction.

²³ Upon information and belief, the Joint Applicants in 24-00266-UT have identified a significant payment to ScottMadden, Inc., the firm conducting the analysis of Rule 16, as a cost of the purchase and sale transaction to be borne by buyer Bernhard Capital Partners.

reasonably track slightly behind the schedule in 24-00266-UT, allowing interested parties to develop issues related to the sale of NMGC.

Motion for Order Expediting Responses

16. Joint Parties are filing their Joint Protest and Motion to Suspend as soon as practicable in recognition that the Commission must act by January 30, 2025 in order to prevent Second Revised Rule 16 going into effect by operation of law but are mindful that the Commission’s last regularly scheduled Open Meeting of the month is January 23, 2025. To that end, Joint Parties request that the Commission issue an order expediting responses to this Joint Protest and Motion to Suspend in order to provide the Company and other interested parties an opportunity to respond before the Commission must decide whether and how to act.

17. Pursuant to Commission rule no. 1.2.2.12(E) NMAC, WRA contacted the parties served by NMGC with Advice Notice No. 105 for their positions on this Joint Protest and Motion. The positions of the parties from whom responses were received prior to filing are as follows:

NMGC	Opposes
New Mexico Department of Justice	Supports
New Energy Economy	Supports

WHEREFORE, for the foregoing reasons, Joint Parties request a Commission order suspending NMGC’s Second Revised Rule No. 16 Line Extension Policy set forth in Advice Notice No. 105, setting this matter for hearing, and for an order expediting responses to this Joint Protest and Motion, and for such other and further relief as the Commission deems just and proper.

Respectfully submitted this 14th day of January, 2024.

WESTERN RESOURCE ADVOCATES

/s/ Cydney Beadles

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December 10, 2024

To: **New Mexico Gas Company****Comments from Western Resource Advocates to New Mexico Gas Company on the Proposed Revisions to Rule 16 – Line Extension Policy**

Western Resource Advocates (“WRA”) appreciates this opportunity to provide feedback to New Mexico Gas Company (“NMGC”) on NMGC’s proposed revisions to Rule 16 – Line Extension Policy. The present revision of this policy comes as a result of the uncontested stipulation signed by NMGC and parties to NMGC’s last rate case, NMPRC Case No. 23-00255-UT. At a high level, Rule 16 delineates the cost responsibility for construction of main and service line extensions to serve new load, for costs either borne by ratepayers or the new customer. Rule 16 describes the system by which NMGC provides ratepayer-funded credits to the new customer that lower the upfront cost of connecting to the gas system.

NMGC’s proposed revisions to Rule 16 range from minor clarifications to credit value methodology changes. The proposed changes to the revenue credit and lot credits are the focus of WRA’s recommendations. NMGC proposes to increase the revenue credit multiplier from 4x to 5x and to remove the limitation of only crediting distribution gas revenue (i.e. allowing transmission revenue to be part of the credit).¹ The revisions also update NMGC’s expected revenue from each customer to reflect changes in gas usage and pricing since the last revision of Rule 16. Together, these changes result in a proposed revenue credit of \$1814, about 61% more than the current revenue credit of \$1124. The same dollar value (\$1814) is then used for the undeveloped lot credit, and half of that (\$907) for the developed lot credit.² The proposed lot credit changes are about a 91% increase over the current credits (\$950 and \$475, respectively). The revised rule did not make any substantive changes to the Advantage Program Advance.³

In testimony supporting the uncontested stipulation, WRA supported a stakeholder process to review NMGC’s line extension policy on the grounds that the existing Rule 16 incurred unnecessary costs for customers, increased customer bills, and potentially might be subsidizing utility investment in gas system expansion which may not be needed to serve future customers.⁴ WRA contended that removing the credits would reduce rates and prevent unnecessary expansion of the gas distribution system.⁵ In addition to the economic benefit customers would receive by eliminating the ratepayer-funded credits, there are environmental benefits that come with ending the line extension subsidies. New Mexico has set out statewide greenhouse gas emissions reduction goals, in addition to encouraging new and existing buildings to move to efficient space heating and water heating. Thus, a ratepayer funded effort to subsidize the growth of the gas system and relying on historical use by customers as a metric for future use is incompatible with New Mexico’s trajectory.

¹ NMGC Draft Revised Rule 16 at 6

² *Id* at 7

³ *Id* at 7-9

⁴ Case No. 23-00255-UT, Testimony of Gwendolyn Farnsworth at 6-8

⁵ *Id* at 10-11

NMGC's proposed revisions to Rule 16 do not accomplish any of the goals WRA hoped to see emerge from the process required by the stipulation. Instead, they exacerbate the issues with the present version of Rule 16.

Therefore, WRA recommends the following revisions to the proposed Rule 16 – Line Extension Policy:

1. Elimination of both the revenue credits and the lot credits; or
2. Elimination of the use of ratepayer funds for revenue credits and lot credits, thus protecting customers.

WRA still contends that the line extension credits will hurt customers and should be eliminated. However, NMGC can at least reduce customer bills and lower the risk of unnecessary gas system investments by funding the credits using shareholder rather than ratepayer dollars. NMGC does not use ratepayer funding for the Advantage Program Advance, so there is already precedent for using non-ratepayer funds to support new customers connecting to the gas system.

WRA sincerely appreciates the time and engagement that NMGC provided during the stakeholder meetings regarding Rule 16, and looks forward to further discussions.

Sincerely,

WESTERN RESOURCE ADVOCATES



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/s/ Michael Kenney

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF NEW MEXICO)
GAS COMPANY, INC.'S REQUEST FOR)
APPROVAL OF ADVICE NOTICE NO. 105)
NEW MEXICO GAS CO., INC.)
Applicant)

SELF AFFIRMATION

MICHAEL KENNEY, Building Decarbonization Manager, Western Resource Advocates, upon being first duly sworn to law, under oath, deposes and states: That he has read the following: **Joint Protest and Motion to Suspend New Mexico Gas Company's Advice Notice No. 105 and Motion for Order Expediting Responses** and knows the contents thereof, and that the statements of fact contained therein are true and correct to the best of his knowledge and belief.

DATED this 14th day of January, 2025.

/s/ Michael Kenney
MICHAEL KENNEY

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF NEW MEXICO)
GAS COMPANY, INC.'S REQUEST FOR)
APPROVAL OF ADVICE NOTICE NO. 105)
)
NEW MEXICO GAS CO., INC.)
)
)
Applicant)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Joint Protest and Motion to Suspend New Mexico Gas Company's Advice Notice No. 105 and Motion for Order Expediting Responses** was emailed on this date to the parties listed below.

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DATED January 14, 2025

/s/ Caitlin Evans

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Legal Assistant

Western Resource Advocates