

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF NEW MEXICO GAS COMPANY,)
INC.'S REQUEST FOR APPROVAL OF ADVICE) Docket No. 25-00002-UT
NOTICE NO. 105)**

**NEW MEXICO GAS COMPANY, INC.'S EXPEDITED RESPONSE
TO JOINT PROTEST AND MOTION TO SUSPEND**

New Mexico Gas Company, Inc. (“NMGC” or the “Company”) respectfully submits its expedited response to the Joint Protest and Motion to Suspend New Mexico Gas Company’s Advice Notice No. 105 and Motion for Order Expediting Responses (“Joint Motion”) filed on January 14, 2025. While NMGC does not object to transparency and does not oppose a hearing, it respectfully requests that the New Mexico Public Regulation Commission (“NMPRC” or the “Commission”) consider whether it is appropriate to delay the proposed benefits to new customers on the basis raised in the Joint Motion. Additionally, the Company requests that if the Commission determines a hearing is necessary, that the Commission set a hearing schedule appropriate for the subject matter involved and not try to bind this proceeding with any other matters before the Commission. In support of NMGC’s position, NMGC states as follows:

As a preliminary matter, while NMGC believes that there are substantive reasons to deny the Joint Motion, NMGC will limit its response to the procedural issues (except where it is necessary to include substantive issues in order to fully address procedural issues) as directed by the Commission in its Order Temporarily Suspending New Mexico Gas Company, Inc.’s Advice Notice No. 105 and Expediting Responses to the Joint Protest and Motion to Suspend, issued on January 16, 2025.

A. Whether a Hearing Is Appropriate

The question ultimately triggered by the Joint Motion is whether it is in the public interest to delay the implementation of new revenue and lot credits that ultimately provide benefits to new customers. NMGC has no objection to transparency in relation to its tariffs. If the Commission believes a hearing is warranted, NMGC will, of course, participate. NMGC, however, respectfully requests that the Commission consider the following when determining whether a hearing on Advice Notice 105 is truly called for in this case.

Advice Notice 105 proposes to amend and update NMGC's existing Rule 16 – Line Extension Policy (“Rule 16”). Rule 16 does not change customer rates. It is a tariff that governs how much a potential new customer should pay upfront to receive natural gas utility service. Delaying the updated lot and revenue credits means that there will be less assistance to residential developers at a time when new affordable residences are sorely needed in New Mexico. Delay also means that some customers who may wish to switch from costly propane will be delayed in realizing their choice to move to more affordable natural gas.

NMGC believes delay in providing benefits to new customers may not be warranted given the nature of the changes proposed in Advice Notice 105. Rule 16 has existed since NMGC's inception, and the changes NMGC is proposing are not radical departures from prior iterations of this tariff. Moreover, line extension credits for new customers are commonly provided by investor-owned utilities in New Mexico.¹ While the Advice Notice 105 includes updates to Rule 16,

¹ The Joint Motion speculates that the lot credits and revenue credits may cause existing customers to subsidize new customers. Further, the Joint Motion expresses concern that authorizing credits for NMGC will possibly “give the Company an unfair advantage vis-à-vis competition with electric utilities.” See Joint Motion at 9, n.21. The Joint Motion omits, however, that each of the investor-owned electric utilities in New Mexico have Commission-authorized tariffs that provide similar credits to customers. For example, PNM in its Rule 15 provides Lot Credits and Revenue Credits to new customers. EPE Rule 8, Section B, states that EPE will provide service at its cost if the estimated four-year revenue from the customer meets or exceeds the cost. SPS provides that it will pay the full amount of a line extension as long as the extension cost is not more than three times estimated customer revenue. It is incongruent to

nothing in the proposed changes is a substantial departure from the existing iteration of Rule 16 or other tariffs of utilities operating in New Mexico.

Moreover, the record reflects a lack of evidence supporting a delay in this case. *See Int'l Minerals and Chemical Corp. v. N.M. Pub. Serv. Comm'n*, 81 N.M. 280, 283, 466 P.2d 557, 560 (1970) (“Although the statute does not specifically place any burden of proof on [the complainant], the courts have uniformly imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof.”). First, it is undisputed that NMGC complied with all obligations in its commitments in Case No. 23-00255-UT. Second, the changes to the lot and revenue credits are tied to average customer usage and average revenue, which will be updated after every rate case NMGC files going forward. Thus, changing usage patterns, and any corresponding change in average revenue, will be reflected in the Rule 16 lot and revenue credits with the conclusion of every NMGC general rate case. Third, the State of New Mexico has no prohibition on natural gas, and there are no laws in New Mexico requiring decreased consumption of natural gas by residential and small businesses – which make up approximately 99% of NMGC’s customers.

NMGC respectfully believes that the record does not support a delay in this case.

B. If the Commission Determines a Hearing is Appropriate, the Schedule Should be Set in Relation to the Issues in This Proceeding.

The Commission should reject the Joint Motion’s request that the Commission set a procedural schedule for the consideration of Advice Notice 105 that “could reasonably track slightly behind the schedule in [NMPRC Case No.] 24-00266-UT” in order to allow “interested parties to develop issues related to the sale of NMGC.” In support of this request, the Joint Motion

claim that there is a customer subsidization issue and unfair competition issue when all electric utilities have similar tariff credits.

speculates that the revisions to Rule 16 proposed in Advice Notice 105 may have been driven by the prospective sale, and notes that in Case No. 24-00266-UT, entities related to Bernhard Capital Partners disclosed that they retained and paid the consulting firm ScottMadden, Inc. (“ScottMadden”) for services related to the proposed acquisition of NMGC. The speculation that anything related to Case No. 24-00266-UT drove decisions related to Advice Notice 105 is completely unfounded and should be rejected.

First and foremost, no entity directed NMGC to take any specific action related to Advice Notice 105. NMGC’s executive group made all of the ultimate decisions in regard to what revisions to propose in Advice Notice 105. While it is true that NMGC’s expert witness, Mr. Timothy Lyons is employed with ScottMadden, it is also true that NMGC was solely responsible for the payment of all invoices from Mr. Lyons in relation to Advice Notice 105. NMGC has a pre-existing relationship with ScottMadden and Mr. Lyons, and Mr. Lyons has provided expert analysis for NMGC on other matters that pre-date the activities in Case No. 24-00266-UT, including NMGC’s last general rate case, Case No. 23-00255-UT. Bernhard Capital Partners and the funds it manages did not provide any input into Advice Notice 105, nor did they make any payments to ScottMadden in relation to Advice Notice 105.

If the Commission determines a hearing is appropriate, NMGC respectfully requests that the Commission reject any attempt to tie Advice Notice 105 to NMPRC Case No. 24-00266-UT. The issues in the two cases are separate and distinct from each other and have no bearing on one another. Moreover, as demonstrated above, the Joint Motion fails to provide a legitimate justification for tying Advice Notice 105 in any way to NMPRC Case No. 24-00266-UT.

The proposed tariff change is straightforward and is based on methodologies the Commission is familiar with, and which have been acceptable to the Commission in past

proceedings. Any hearing on this matter should move forward at the pace the Commission believes is appropriate for the facts and issues in this case.

NEW MEXICO GAS COMPANY, INC.

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

Docket No. 25-00002-UT

CERTIFICATE OF SERVICE

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

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New Mexico Gas Company, Inc.'s Request for Approval
of Advice Notice 105

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DATED January 24, 2025.

Respectfully submitted,

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