

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF THE APPLICATION )  
OF NEW MEXICO GAS COMPANY, INC. )  
FOR APPROVAL OF REVISIONS TO ITS )  
RATES, RULES, AND CHARGES PURSUANT )  
TO ADVICE NOTICE NO 78 )  
NEW MEXICO GAS COMPANY, INC. )  
Applicant. )

Case No. 19-00317-UT

**DIRECT TESTIMONY AND EXHIBITS**

**OF**

**LESLEY J. NASH**

**December 23, 2019**

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS**

2 **A.** My name is Lesley J. Nash. My business address is 7120 Wyoming Blvd N.E.,  
3 Albuquerque, New Mexico 87109.

4

5 **Q. BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?**

6 **A.** I am Legal Counsel for New Mexico Gas Company, Inc. (“NMGC” or the  
7 “Company”).

8

9 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**  
10 **WORK EXPERIENCE.**

11 **A.** I received a Bachelor of Arts in philosophy and romance language and literature  
12 from the University of Chicago in 2010. I continued my studies at William & Mary  
13 Law School for one year before completing my Juris Doctorate at Notre Dame Law  
14 School in 2013.

15

16 In 2013, I began my professional career as an associate at Modrall, Sperling, Roehl,  
17 Harris & Sisk, P.A. in Albuquerque, New Mexico. At the Modrall firm, my practice  
18 was devoted mainly to commercial real estate and transactional business matters.

19 In January 2017, I joined NMGC as Legal Counsel. Currently, I represent the  
20 Company in a variety of areas, including litigation, claims, employee relations,  
21 contract negotiation and administration, and compliance. My administrative

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 responsibilities include assisting with supervision of in-house legal staff, and  
2 involvement in the oversight of the legal department budget, including reviewing  
3 and approving outside legal expenses.

4

5 I am currently licensed to practice law in New Mexico.

6

7 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NEW MEXICO**  
8 **PUBLIC REGULATION COMMISSION (“NMPRC” OR THE**  
9 **“COMMISSION”)?**

10 **A.** No.

11

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 **A.** The purpose of my testimony is as follows:

14       ▪ In Section I, I describe and quantify NMGC’s Base Period litigation-related  
15 expenses, demonstrate that they were reasonable and prudently incurred and  
16 therefore provide a reasonable basis for the Future Test Year level of  
17 litigation expense to be recovered in rates pursuant to Section 62-13-3 of  
18 the New Mexico Public Utility Act (the “PUA”) and 17.10.630.7(O)  
19 NMAC (“Rule 630.7(O”). As used in this testimony, “Base Period”  
20 expenses mean expenses incurred in the twelve-month period ending June  
21 30, 2019. “Future Test Year” expenses are the amounts, with or without

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 adjustments, for the period of the calendar year 2021, considered to be a  
2 reasonable basis for setting revised base rates in this proceeding.

3       ▪ In Section II, I describe and quantify NMGC’s expected Future Test Year  
4 litigation-related expenses and demonstrate that they are expected to be  
5 reasonable and prudently incurred based on the Base Period litigation-  
6 related expenses. These Future Test Year litigation-related expenses are  
7 also included in NMGC’s revenue requirement, which is sponsored by  
8 NMGC Witness Jimmie L. Blotter.

9       ▪ In Section III, I identify expenses, including legal and consultant expenses,  
10 incurred (or to be incurred) in preparing and presenting this rate case, and  
11 demonstrate that they are reasonable and prudently incurred.

12       ▪ In Section IV, I discuss NMGC’s compliance with the requirements of  
13 17.1.2.10(B)(2)(d) NMAC.

14

15 **Q. HAVE YOU PREPARED ANY EXHIBITS?**

16 **A.** Yes. The exhibits I prepared, or that have been prepared under my supervision,  
17 are:

18       NMGC Exhibit LJM-1     Summary of Litigation Expenses;

19       NMGC Exhibit LJM-2     Tort Claim Litigation Expenses;

20       NMGC Exhibit LJM-3     Commercial Litigation Expenses;

21       NMGC Exhibit LJM-4     Human Resources Litigation Expenses;

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1           NMGC Exhibit LJN-5    NMPRC Litigation Expenses;  
2           NMGC Exhibit LJN-6    FERC Litigation Expenses;  
3           NMGC Exhibit LJN-7    Rate Case Expenses; and  
4           NMGC Exhibit LJN-8    Final Order Report.

5

6                           **I.    BASE PERIOD LITIGATION EXPENSES**

7   **Q.    WHAT IS THE STANDARD FOR ALLOWING RECOVERY OF**  
8   **LITIGATION EXPENSES?**

9   **A.**    Rule 630.7(O) authorizes recovery of expenses incurred for litigation, which is  
10   defined as “all contested matters before regulatory commissions, administrative  
11   bodies, and state or federal courts. Litigation also includes arbitration proceedings  
12   and other similar dispute resolution proceedings.” Litigation expenses are  
13   recoverable by a utility if they are reasonable and prudently incurred.

14

15   **Q.    PLEASE EXPLAIN THE TERM “REASONABLE AND PRUDENTLY**  
16   **INCURRED.”**

17   **A.**    Based on NMPRC precedent and generally accepted regulatory standards,  
18   reasonable and prudently incurred in this context means that a reasonable, ordinary  
19   business person would make the expenditure, based on the facts and circumstances  
20   known by the utility’s management at the time.

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 **Q. BRIEFLY DESCRIBE WHAT COMPRISES THE COMPANY'S**  
2 **LITIGATION EXPENSES.**

3 **A.** Litigation expenses consist primarily of the legal fees associated with outside  
4 counsel and their staffs incurred specifically in connection with litigation as defined  
5 by Rule 630.7(O). Litigation-related costs also include matter-related costs, such  
6 as expert witness fees, court reporter expenses, court fees, reproduction costs, and  
7 miscellaneous litigation-related charges. NMGC's internal labor costs associated  
8 with litigation are not included in the litigation expenses.

9

10 **Q. HOW DOES NMGC TREAT INTERNAL LEGAL EXPENSES FOR**  
11 **LITIGATED MATTERS IN NMGC'S COST OF SERVICE?**

12 **A.** Internal costs associated with litigation work by attorneys and paralegals employed  
13 by the Company are included in the Company's administrative and general  
14 accounts, which are indirectly allocated to operations and maintenance accounts.  
15 Salaries and internal litigation-related costs are not considered part of the litigation  
16 expenses addressed in my testimony. Rather, this testimony relates only to outside  
17 legal fees and costs for litigated matters.

18

19 **Q. PLEASE DESCRIBE THE LITIGATION-RELATED OUTSIDE COUNSEL**  
20 **FEES AND COSTS INCURRED BY NMGC IN THE BASE PERIOD.**

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1    **A.**    Generally, the fees associated with outside counsel are based on hourly billing rates  
2           for outside counsel and paralegals.  As noted, the Company also reimburses  
3           litigation-related costs incurred or paid by outside counsel in connection with their  
4           representation of NMGC in litigated matters.  Outside counsel bill NMGC in  
5           statements showing what services were provided by attorneys and paralegals, the  
6           hourly rates for such services, and other costs incurred or paid by outside counsel.  
7           Litigation-related outside counsel fees and costs are directly charged to the  
8           appropriate internal NMGC account for that matter.

9

10   **Q.**    **BRIEFLY DESCRIBE THE TYPE OF LITIGATION IN WHICH NMGC**  
11           **HAS BEEN INVOLVED DURING THE BASE PERIOD.**

12   **A.**    NMGC is routinely involved in the following kinds of civil litigation: 1) personal  
13           injury and property damage cases (referred to as “Tort Claims”); 2) general civil  
14           litigation, including contract disputes and land disputes (referred to as “Commercial  
15           Litigation”); and 3) employment, labor and workers’ compensation cases (referred  
16           to as “Human Resources Claims”).  In addition, as a regulated public utility, NMGC  
17           is regularly involved in regulatory proceedings before the NMPRC and the Federal  
18           Energy Regulatory Commission (“FERC”) (referred to as “NMPRC Matters” and  
19           “FERC Matters”).

20

21

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 **Q. IS NMGC REGULATED BY FERC?**

2 **A.** No, NMGC is not directly regulated by FERC. FERC regulates the interstate  
3 transmission of electricity, natural gas, and oil. As NMGC transports natural gas  
4 within the state of New Mexico, it is not directly subject to FERC's regulation.

5

6 **Q. IF NMGC IS NOT REGULATED BY FERC, WHY DOES IT HAVE  
7 LITIGATION COSTS FOR REGULATORY PROCEEDINGS BEFORE  
8 FERC?**

9 **A.** Due to New Mexico's vast geographic landscape, NMGC must contract for  
10 capacity with third-party interstate and intrastate pipelines in order to transport its  
11 gas supplies state-wide. El Paso Natural Gas Company ("EPNG") and  
12 Transwestern Pipeline Company ("TW") are the two major interstate pipelines  
13 crossing New Mexico that have pipeline interconnections with NMGC near major  
14 demand areas. NMGC relies on EPNG, TW, and smaller gas pipelines such as West  
15 Texas Gas, to transport gas to communities located in its remote service areas of  
16 New Mexico where the Company owns local distribution systems, but no  
17 transmission pipelines.

18

19 NMGC participates in the FERC rate cases filed by these companies to protect the  
20 Company's capacity rights and, insofar as possible, help ensure that the costs of  
21 transportation service on these pipelines are reasonable. Because the rates charged

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 to NMGC by those pipelines are ultimately borne by NMGC customers, NMGC  
2 believes it is prudent to take an active role in settlement and, if necessary, litigation  
3 in each FERC rate case.

4

5 **Q. DOES NMGC EXPECT TO BE INVOLVED IN SIMILAR MATTERS,**  
6 **GENERALLY TO THE SAME EXTENT DURING THE PERIOD RATES**  
7 **WILL BE IN EFFECT?**

8 **A.** Yes, in general. In my experience, these types of matters are representative of the  
9 litigation in which NMGC will likely be involved on an ongoing basis.

10

11 **Q. WHAT IS THE AMOUNT OF LITIGATION EXPENSES INCURRED**  
12 **DURING THE BASE PERIOD?**

13 **A.** NMGC seeks to recover \$475,307.18 in litigation expenses, not including rate case  
14 expenses which are discussed later in my testimony, incurred in the Base Period as  
15 the appropriate level of Future Test Year litigation expense. Please see NMGC  
16 Exhibit LJN-1 for a summary of these expenses.

17

18 **Q. HAVE YOU DETERMINED WHETHER NMGC'S BASE PERIOD**  
19 **LITIGATION EXPENSES ARE REASONABLE FOR INCLUSION IN**  
20 **RATES IN THIS PROCEEDING?**

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1    **A.**    Yes. I have determined that the litigation expenses NMGC incurred during the  
2           Base Period are reasonable and were prudently incurred. I and members of  
3           NMGC’s Legal Department reviewed data retrieved from the NMGC accounting  
4           systems against billings for the Base Period to ensure accuracy and to determine  
5           the applicability of Rule 630.7(O) to such recoverable litigation expenses. I  
6           carefully reviewed the litigation expenses related to the categories of claims  
7           discussed earlier in my testimony. My evaluation of the prudence of these expenses  
8           and a brief description of these matters are summarized in this testimony and in  
9           NMGC Exhibits LJN-1 through 6. All of these expenses shown on these exhibits  
10          were incurred in the Base Period.

11

12    **Q.    WHAT STANDARD DID YOU USE TO DETERMINE THAT THE**  
13           **COMPANY’S BASE PERIOD LITIGATION EXPENSES ARE**  
14           **REASONABLE AND PRUDENT?**

15    **A.**    In my mind, reasonableness of the Base Period litigation expense must be  
16           determined by evaluating generally whether the Company has instituted reasonable  
17           procedures for controlling litigation costs and thus has a prudent litigation  
18           management system. Further, I considered whether the level of litigation expenses  
19           was reasonable in light of NMGC’s overall business operations and the business,  
20           legal, and regulatory environments in which the Company operates. In addition, the  
21           Base Period litigation expenses should be reasonable for use as a Test Period

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 estimate of rate-effective period costs. In other words, Base Period litigation  
2 expenses are a proxy for rate-effective period expenses and thus should not be  
3 evaluated solely by the nature of the claims or even the results of the litigation. Nor  
4 is it appropriate to trace every dollar spent, to second-guess whether it was  
5 reasonably incurred, again in view of the forward-looking nature of the rate-setting  
6 exercise.

7  
8 By New Mexico standards, NMGC is a relatively large, well-capitalized and well-  
9 insured company doing business in an environment in which litigation is a  
10 frequently-used method for resolving disputes. Company personnel interact  
11 routinely with customers and other members of the public in providing service and  
12 conducting business generally. NMGC operates in a heavily regulated industry.  
13 NMGC will be sued, and will bring suit, in the regular course of its business. In  
14 addition, NMGC, as a utility, will necessarily and routinely initiate, defend, or  
15 intervene in proceedings before state and federal regulatory bodies. In all these  
16 matters, NMGC must be represented by counsel.

17  
18 **Q. WHAT GENERAL MEASURES HAS NMGC TAKEN TO MANAGE AND,**  
19 **WHERE POSSIBLE, REDUCE LITIGATION EXPENSES?**

20 **A.** The mission of the NMGC Legal Department is to provide high quality, cost-  
21 effective and efficient legal services to assist NMGC in achieving its business goals.

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 Qualified and experienced in-house counsel have been employed by the Company  
2 to: 1) provide legal advice, including taking steps to avoid or mitigate the risks of  
3 litigation before lawsuits or other litigation is initiated and, where appropriate, to  
4 represent the Company in litigated matters; 2) select cost-effective, qualified  
5 outside counsel to represent NMGC in litigation; 3) oversee what outside counsel  
6 does in representing the Company, to help ensure that matters are handled  
7 efficiently; 4) make strategic and important tactical decisions in all litigation; 5)  
8 establish budgets for certain matters; and 6) control legal fees and costs in all legal  
9 matters, including routinely reviewing invoices for litigation-related legal services.

10

11 **Q. DID YOU CONSIDER ANYTHING ELSE IN EVALUATING THE**  
12 **COMPANY'S LITIGATION EXPENSES?**

13 **A.** Even though litigation expenses should be evaluated in the aggregate, I also  
14 considered several factors commonly used by New Mexico courts to determine if  
15 the attorneys' fees incurred by NMGC in the Base Period were reasonable. These  
16 factors include the level of skill required, the nature and character of the  
17 controversy, the amount of damages claimed, the importance of the litigation, and  
18 the benefits derived from the litigation. This listing is not exhaustive, and other  
19 considerations may come into play in any given case, such as the amount of time  
20 spent on the case and the importance of the litigation for precedential purposes.

21

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 In evaluating Base Period litigation expenses in individual cases for prudence and  
2 to ascertain whether Base Period litigation expenses are reasonably representative  
3 of Future Test Year conditions, I considered these factors and the circumstances of  
4 each matter in making my determination. No one factor is dispositive in my  
5 analysis, as litigation expenses reflect both events within NMGC's control as well  
6 as those outside the Company's control. I have not described the details of  
7 settlements in the matters identified in my exhibits because: 1) a settlement may  
8 be subject to court confidentiality orders or there may be confidentiality provisions  
9 in the settlement agreements themselves; and 2) public disclosure of the settlement  
10 amounts and the way in which the Company reached a particular settlement figure  
11 may make it more difficult for NMGC to negotiate settlements in future cases or  
12 may provide information that could be used to undermine the Company's  
13 settlement strategy in pending or future matters.

14  
15 **Q. ARE THE BASE PERIOD LITIGATION EXPENSES PERTAINING TO**  
16 **TORT CLAIMS REASONABLE AND PRUDENT?**

17 **A.** Yes. These expenses are summarized in NMGC Exhibit LJM-2. These claims  
18 involve property damage and personal injury claims filed by and against NMGC.  
19 For claims filed against NMGC, the Company hired qualified defense counsel  
20 experienced in personal injury and property damage litigation. On the other side of  
21 the equation, the Legal Department contracted with commercial practitioners to

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 collect money from third parties who damaged NMGC's property. NMGC also  
2 hired qualified counsel to seek temporary restraining orders to protect NMGC  
3 employees from customers who made threats of imminent harm or death while  
4 NMGC field employees were performing their duties. These litigation expenses  
5 are also necessary to achieving recoveries that reduce the overall costs of repairing  
6 NMGC's property and are, in my opinion, reasonable and prudent.

7  
8 **Q. ARE THE BASE PERIOD LITIGATION EXPENSES PERTAINING TO**  
9 **COMMERCIAL LITIGATION REASONABLE AND PRUDENT?**

10 **A.** Yes. These expenses are summarized in NMGC Exhibit LJN-3. The Legal  
11 Department retains qualified litigators with expertise in commercial disputes, land  
12 use disputes, and other specialized areas where necessary, and these expenses are,  
13 in my opinion reasonable and prudent.

14  
15 **Q. ARE THE BASE PERIOD LITIGATION EXPENSES PERTAINING TO**  
16 **HUMAN RESOURCES LITIGATION REASONABLE AND PRUDENT?**

17 **A.** Yes. These expenses are summarized in NMGC Exhibit LJN-4. The Legal  
18 Department retains qualified litigators with expertise in human resources and  
19 personnel disputes and other specialized areas where necessary, and these expenses  
20 are, in my opinion reasonable and prudent.

21

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 **Q. ARE THE BASE PERIOD LITIGATION EXPENSES PERTAINING TO**  
2 **NMPRC MATTERS REASONABLE AND PRUDENT?**

3 **A.** Yes. These expenses are summarized in NMGC Exhibit LJN-5. NMGC is required  
4 by law to file with the NMPRC to obtain approval to engage in various activities  
5 related to its business and to make filings with the NMPRC related to various rules  
6 or docketed matters. The Company must also respond to orders issued by the  
7 NMPRC. In some instances, it is necessary to intervene in proceedings that may  
8 set an important precedent applicable to NMGC in future cases. NMGC retains  
9 qualified counsel in state regulatory proceedings who have substantial experience  
10 with the PUA and regulatory law in general to represent NMGC in these matters.  
11 In my opinion, the litigation expenses pertaining to NMPRC matters are reasonable  
12 and prudent.

13

14 **Q. ARE THE BASE PERIOD LITIGATION EXPENSES PERTAINING TO**  
15 **FERC MATTERS REASONABLE AND PRUDENT?**

16 **A.** Yes. These expenses are summarized in NMGC Exhibit LJN-6. The Legal  
17 Department retains qualified counsel in FERC law and procedures to represent  
18 NMGC in these matters. In my opinion, the litigation expenses pertaining to FERC  
19 matters are reasonable and prudent.

20

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1                   **II.     FUTURE TEST YEAR LITIGATION EXPENSES**

2   **Q.     HOW DID NMGC ESTIMATE ITS FUTURE TEST YEAR LITIGATION**  
3       **EXPENSES?**

4   **A.**    To arrive at an estimate of its Future Test Year litigation expenses, NMGC applied  
5           an annual 2% escalation rate to Base Period litigation expenses to estimate its  
6           Future Test Year litigation expenses. In my opinion, the use of this escalator results  
7           in a reasonable representation of Future Test Year litigation expenses.

8

9   **Q.     WHAT IS THE TOTAL AMOUNT OF FUTURE TEST YEAR**  
10       **LITIGATION EXPENSES THAT NMGC HAS INCLUDED IN THE COST**  
11       **OF SERVICE?**

12   **A.**    NMGC's Future Test Year cost of service includes \$484,813.32 of litigation  
13           expenses.

14

15   **Q.     IS THE AMOUNT OF FUTURE TEST YEAR LITIGATION EXPENSE**  
16       **INCLUDED IN THE COST OF SERVICE REASONABLE AND**  
17       **PRUDENT?**

18   **A.**    Yes, it is. My opinion is based on the historic costs involved in litigation matters,  
19           the cost-saving measures described above that NMGC employs in engaging and  
20           supervising outside counsel, the level of ongoing and anticipated activity, and  
21           anticipated increases in external and internal expenses. This confirms my opinion

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1           that NMGC’s estimate of Future Test Year litigation expense is reasonable and  
2           representative of the level of expense that NMGC will incur when new rates  
3           become effective, and that the amount expected to be spent on litigation is prudent.

**III.   RATE CASE EXPENSES**

6   **Q.   DO THE COMMISSION AND COURTS TYPICALLY LOOK AT**  
7           **ANYTHING SPECIFIC TO DETERMINE WHETHER RATE CASE**  
8           **EXPENSES ARE RECOVERABLE?**

9   **A.**   Yes. In *In re PNM Gas Services*, 2000-NM-12, ¶¶ 68-75, 129 N.M. 1, 1 P.3d 383,  
10           the New Mexico Supreme Court recognized that reasonable and prudently incurred  
11           rate case expenses are recoverable as a part of a utility’s operating expenses.  
12           Typically, when considering such expenses, the Commission starts with estimated  
13           rate case expenses. Because rate case expenses are part of a utility’s operating  
14           costs, a utility ordinarily provides projected rate case expenses in a rate case in  
15           order to avoid constant adjustments in the proposed revenue requirement that  
16           relying on frequent updates of actual expenses would necessarily entail during the  
17           proceeding. The Commission then must base its decision on the evidence about the  
18           expenses. Historically, the Commission has considered evidence of actual  
19           expenditures provided at the end of the case, efforts to minimize legal expenses,  
20           and the Commission’s own expertise and experience with amounts of rate case  
21           expenses typically incurred by a utility in a comparable rate case proceeding.

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 Under standards described by the New Mexico Supreme Court in *In re PNM Gas*  
2 *Services*, the Commission is not bound to or limited to considering those factors  
3 and can consider other types of information such as those reviewed by courts in  
4 awarding attorneys' fees. *Id.*

5

6 **Q. WHAT AMOUNT OF RATE CASE EXPENSES IS NMGC SEEKING TO**  
7 **RECOVER IN THIS CASE?**

8 **A.** The total projected rate case expenses in this case are \$2,834,000 which includes  
9 incremental expenses incurred by the Company to provide notice to customers,  
10 copying the filing, and costs of outside consultants, accounting firms, and attorneys  
11 in preparing and litigating the case. These expenses are summarized in NMGC  
12 Exhibit LJM-7. This exhibit provides both actual and projected litigation-related  
13 rate case expenses. At the time I testify in this proceeding, I will provide an update  
14 to NMGC Exhibit LJM-7 that will reflect expenses incurred up through that date  
15 and a projection of the costs to be incurred through the remainder of the case. This  
16 information can also be found in Rule 630 Schedule H-16, Workpaper H-16-4,  
17 sponsored by NMGC Witness Blotter.

18

19 **Q. ARE THE CURRENT PROJECTIONS OF RATE CASE EXPENSES**  
20 **REASONABLE AND PRUDENT?**

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1    **A.**    Yes. Given that this is a future test year case, the expenses already incurred and  
2            expected to be incurred in litigating this proceeding are consistent with other such  
3            cases, and have been prudently incurred or, in the case of projected amounts, are a  
4            reasonable estimate of future costs. The costs included in these rate case expenses  
5            are reasonable due to the number of expected parties and witnesses, the anticipated  
6            level of document discovery and interrogatories, the anticipated length of the  
7            hearing, and the complexity of the issues.

8

9    **Q.    ON WHAT BASIS WERE THE PROJECTED EXPENSES ESTIMATED?**

10   **A.**    This rate case involves several complex issues. Based on observation of other  
11            utility rate case filings involving future test year periods, NMGC believes that many  
12            of these issues may be contested and require substantial litigation. NMGC also  
13            considered other costs associated with filing a rate case such as those for  
14            reproduction and providing notice. Further, as discussed earlier, NMGC has  
15            implemented processes and mechanisms to effectively control the expenses,  
16            including the assignment of qualified in-house counsel to oversee and participate  
17            in proceedings and the selection of qualified outside counsel from Keleher &  
18            McLeod, P.A., who have substantial experience with the PUA and regulatory law  
19            in general, to assist in this proceeding. In addition, it is reasonable to retain outside  
20            experts and consultants to advise and testify on specific issues in a general rate case  
21            proceeding. NMGC's engagement of these outside services for this case is a

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 necessary and cost-effective means to meet the requirements of a complex rate case  
2 filing.

3

4 **Q. PLEASE DESCRIBE THE “OTHER COSTS” REQUESTED IN THIS**  
5 **PROCEEDING.**

6 **A.** As detailed in NMGC Exhibit LJM-7, the other costs requested in this filing include  
7 reproduction costs for notice to customers, forms updates, and the voluminous rate  
8 case documents; travel, meals and lodging; and other miscellaneous costs necessary  
9 for the filing of the case.

10

11 **Q. WHAT OUTSIDE EXPERTS AND CONSULTANTS DID NMGC ENGAGE**  
12 **FOR THIS RATE CASE PROCEEDING?**

13 **A.** NMGC has retained the following consultants and experts in the current rate case  
14 proceeding:

- 15 1. Adrien M. McKenzie;
- 16 2. Dr. Deirdre M. Kann;
- 17 3. Daniel P. Yardley;
- 18 4. Expergy;
- 19 5. Ernst & Young;
- 20 6. GT Ortiz Energy Consulting, LLC;
- 21 7. Concentric Energy Advisors, Inc.;



**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 Analyst (CFA®) designation. Mr. McKenzie has extensive experience in economic  
2 and financial analysis for regulated industries, including sponsoring direct and  
3 rebuttal testimony in over eighty-five proceedings before regulatory agencies  
4 throughout the United States and Canada. This information can be found in further  
5 detail in the direct testimony of Adrien M. McKenzie, CFA and NMGC Exhibit  
6 AMM-1.

7

8 **Q. WHY WAS MR. MCKENZIE RETAINED, HOW MUCH IS IT EXPECTED**  
9 **TO COST TO RETAIN HIM, AND IS THIS COST REASONABLE AND**  
10 **PRUDENTLY INCURRED?**

11 **A.** Mr. McKenzie was retained to testify concerning the cost of equity capital for  
12 ratemaking purposes, which is a main component in a rate return determination.  
13 NMGC estimates that it will cost \$50,000 to retain Mr. McKenzie. The cost for  
14 retaining Mr. McKenzie was reasonable and prudently incurred in light of the  
15 importance of his testimony, the complexity of the issues in his testimony, and his  
16 experience with those issues. Mr. McKenzie also testified in NMGC's prior rate  
17 case. Further, the cost is consistent with the cost of similar witnesses in other rate  
18 cases.

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**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

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**B. Dr. Deirdre M. Kann**

**Q. PLEASE DESCRIBE THE CONSULTING SERVICES PROVIDED BY DR. DEIRDRE M. KANN?**

**A.** Dr. Deirdre M. Kann is a climatologist whom NMGC has engaged to provide expert testimony on the appropriate heating degree-day data to use to estimate the heating degree-days that should be used in setting billing determinants in this case.

**Q. WHAT IS DR. KANN’S BACKGROUND?**

**A.** Dr. Kann received a B.S. degree in mathematics with a minor in geography from Towson University (formerly Towson State University); an M.S. Degree in geography (meteorology concentrate) from Northern Illinois University; and a Ph.D. in atmospheric sciences from Purdue University. Dr. Kann was employed by the National Meteorological Center (now the National Center for Environmental Prediction) for eight years and for National Weather Service for 22 years as the Science Operations Officer for the Albuquerque National Weather Service Forecast Office. Dr. Kann has also authored manuscripts and articles for professional publications and taught classes at four universities. This information can be found in further detail in the direct testimony of Deirdre M. Kann, Ph.D. and NMGC Exhibit DMK-1.



**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1   **Q.    WHAT IS MR. YARDLEY’S BACKGROUND?**

2   **A.**    Mr. Yardley is the Principal of Yardley Associates, a consulting firm specializing  
3            in rate and regulatory matters in the natural gas utility industry. He received a  
4            Degree in electrical engineering from the Massachusetts Institute of Technology  
5            and has been a consultant in the natural gas industry for the last 25 years, including  
6            testifying on numerous occasions before state utility commissions in other states,  
7            the Federal Energy Regulatory Commission, and the National Energy Board of  
8            Canada on a variety of rate and regulatory topics. This information can be found in  
9            further detail in the direct testimony of Daniel P. Yardley and NMGC Exhibit DPY-  
10           1.

11  
12   **Q.    WHY WAS MR. YARDLEY RETAINED, HOW MUCH IS IT EXPECTED  
13            TO COST TO RETAIN HIM, AND IS THIS COST REASONABLE AND  
14            PRUDENTLY INCURRED?**

15   **A.**    Mr. Yardley was retained to advise NMGC on rate design in order to ensure  
16            proposals that will allow NMGC to fairly recover its costs and contribute to fairness  
17            in pricing across and within rate classes. NMGC estimates that it will cost \$400,000  
18            to retain Mr. Yardley. As this is a complex and essential aspect of the rate case,  
19            with which Mr. Yardley has substantial skill and experience, the cost for retaining  
20            Mr. Yardley was both reasonable and prudently incurred. Mr. Yardley also testified  
21            in NMGC’s prior rate case.

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

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**D. Expergy**

**Q. PLEASE DESCRIBE THE CONSULTING SERVICES PROVIDED BY  
EXPERGY?**

**A.** Expergy is a consulting firm whom NMGC has engaged to provide expert analysis regarding its lead-lag study.

**Q. WHAT IS EXPERGY’S BUSINESS?**

**A.** Expergy is a consulting firm that specializes in providing expert testimony on behalf of clients involved in utility rate disputes and regulatory proceedings. Expergy has extensive experience in testifying before numerous regulatory commissions nationwide on pricing, rate design matters, cost of service and revenue requirement issues, cash working capital studies, customer and weather normalization, and other utility-related matters.

**Q. WHY WAS EXPERGY RETAINED, HOW MUCH IS IT EXPECTED TO  
COST TO RETAIN THEM, AND IS THIS COST REASONABLE AND  
PRUDENTLY INCURRED?**

**A.** Expergy provided analysis regarding the lead-lag study and its effects on NMGC’s revenue requirements. NMGC estimates that it will cost \$50,000 to retain Expergy. The cost for retaining Expergy was both reasonable and prudently incurred in light

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1 of their experience and expertise regarding these matters, and is similar to prior  
2 expenses NMGC has incurred for lead lag studies.

3

4

**E. Ernst & Young**

5 **Q. PLEASE DESCRIBE THE CONSULTING SERVICES PROVIDED BY**  
6 **ERNST & YOUNG?**

7 **A.** Ernst & Young (“E&Y”) is an accounting firm whom NMGC has engaged to  
8 provide an independent public accountant opinion in compliance with  
9 17.10.630.13(R)(7).

10

11 **Q. WHAT IS E&Y’s BUSINESS?**

12 **A.** E&Y is an accounting firm who, among other things, specializes in advisory  
13 services to help clients fulfill regulatory requirements.

14

15 **Q. WHY WAS E&Y RETAINED, HOW MUCH IS IT EXPECTED TO COST**  
16 **TO RETAIN THEM, AND IS THIS COST REASONABLE AND**  
17 **PRUDENTLY INCURRED?**

18 **A.** E&Y was retained to provide financial expertise consistent with Paragraph 7 of  
19 Subsection R of Rule 630, which requires NMGC to submit a copy of the opinion  
20 of an independent certified public accountant stating that an independent  
21 examination of the book amounts and accounting adjustments thereto has been

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1           made for the Base Period, and that the results thereof are in all material respects in  
2           compliance with the Uniform System of Accounts prescribed by the Commission.  
3           NMGC estimates that it will cost \$100,000 to retain E&Y. Given the need for their  
4           service and their expertise, the cost for retaining E&Y was both prudent and  
5           reasonable.

**F.       GT Ortiz Energy Consulting, LLC**

8   **Q.    PLEASE DESCRIBE THE CONSULTING SERVICES PROVIDED BY GT  
9        ORTIZ ENERGY CONSULTING, LLC?**

10 **A.**   GT Ortiz Energy Consulting, LLC (“GTO Consulting”) is a utility consulting  
11       company that provides advice and guidance on the complex procedural intricacies  
12       of filing a future test year rate case in New Mexico. Gerard T. Ortiz, principal of  
13       GTO Consulting, has extensive regulatory experience, including overseeing future  
14       test year rate cases.

16 **Q.    WHY WAS GTO CONSULTING RETAINED, HOW MUCH IS IT  
17        EXPECTED TO COST TO RETAIN THEM, AND IS THIS COST  
18        REASONABLE AND PRUDENTLY INCURRED?**

19 **A.**   GTO Consulting has unique expertise regarding filing future test year cases in New  
20       Mexico. As the current rate case is NMGC’s first future test year rate case and  
21       contains very complex issues, GTO Consulting’s guidance assisted NMGC in

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1           complying with New Mexico regulations and in filing its rate case more efficiently.  
2           NMGC estimates that it will cost \$50,000 to retain GTO Consulting. The cost for  
3           retaining GTO Consulting was both reasonable and prudently incurred in light of  
4           GTO Consulting's skill and expertise and the complexity of the issues advised on.

5

6   **Q.    SHOULD RECOVERY OF THE RATE CASE EXPENSES THAT YOU**  
7   **HAVE DESCRIBED BE AUTHORIZED IN THIS PROCEEDING?**

8   **A.    Yes. In my opinion, the estimate reflects fair and proper expense amounts that are**  
9   **reasonable and will be prudently incurred in presenting this rate case.**

10

11 **IV.   COMPLIANCE WITH 17.1.2.10(B)(2)(d) NMAC – PRIOR FINAL ORDERS**

12 **Q.    WHAT DOES 17.1.2.10(B)(2)(d) NMAC REQUIRE OF UTILITIES?**

13 **A.    17.1.2.10(B)(2)(d) NMAC requires all utilities applying for new rates to provide a**  
14 **statement setting forth the utility's compliance or failure to comply with each part**  
15 **of the Commission's final orders in each of the utility's cases decided during the**  
16 **preceding five years.**

17

18 **Q.    IS NMGC IN COMPLIANCE WITH THE COMMISSION'S FINAL**  
19 **ORDERS IN EACH OF NMGC'S CASES DECIDED DURING THE**  
20 **PRECEEDING FIVE YEARS?**

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 19-00317-UT**

1    **A.**    Yes, NMGC is in compliance with all Commission Final Orders in each of  
2            NMGC’s cases decided during the preceding five years. Pursuant to the provisions  
3            of 17.1.2.10(B)(2)(d) NMAC, NMGC files with the Commission each year its  
4            “Annual Final Order Report Pursuant to the New Mexico Public Regulation  
5            Commission Rule 17.1.2.10(B)(2)(d) NMAC” (the “Final Order Report”). NMGC  
6            last filed its Final Order Report on April 30, 2019, for the period January 1, 2018  
7            through December 31, 2018. A copy of NMGC’s latest Final Order Report is  
8            attached as NMGC Exhibit LJM-8. The Final Order Report details all Final Order  
9            Requirements from the preceding five years applicable to NMGC and demonstrates  
10           that NMGC is in compliance with those requirements.

11

12    **Q.**    **DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

13    **A.**    Yes, it does.