

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) Case No. 23-00255-UT
RATES, RULES, AND CHARGES)
PURSUANT TO ADVICE NOTICE. 96)
)
NEW MEXICO GAS COMPANY, INC.)
)
Applicant.)

NEW ENERGY ECONOMY’S MOTION TO DISMISS
NEW MEXICO GAS COMPANY’S RATE CASE APPLICATION
FOR FAILURE TO PROVIDE ADEQUATE NOTICE TO RATEPAYERS
OR IN THE ALTERNATIVE TO REQUIRE NEW NOTICE THAT COMPORTS WITH
THE REQUIREMENTS OF LAW AND TO RESET THE SCHEDULE ACCORDINGLY

COMES NOW New Energy Economy (“NEE”), by and through its attorney, Mariel Nanasi, and requests that this Commission dismiss the rate case application of New Mexico Gas Company (“NMGC or Company”) for failure to provide adequate and meaningful notice to ratepayers of the Company’s rate increase as is required by NM Stat § 62-8-7 (2021), the New Mexico Administrative Code 1.2.2.24 C, the *Procedural Order* issued in this matter on 11/8/2023, and the regular practice and procedures of this Commission. The grounds are as follows:

1. Pursuant to NM Stat § 62-8-7 (2021) and 1.2.2.24 C NMAC, the Hearing Examiner required NMGC to provide Notice to customers, “in a newspaper of general circulation in every county where NMGC provides service in New Mexico. By no later than December 15, 2023, NMGC shall provide individual notice to each of its ratepayers.¹

2. The Public Utility Act, Section 62-8-7(B) provides that,

¹ Case No. 23-00255-UT, *Procedural Order*, at 5-6, ¶¶ C & D, 11/8/2023.

unless the commission otherwise orders, no public utility shall make any change in any rate that has been duly established except after thirty days' notice to the commission, *which notice shall plainly state the changes proposed to be made in the rates* then in force and the time when the changed rates will go into effect and other information as the commission by rule requires. *The utility shall also give notice of the proposed changes to other interested persons as the commission may direct.* All proposed changes shall be shown by filing new schedules that shall be kept open to public inspection. The commission for good cause shown may allow changes in rates without requiring the thirty days' notice, under conditions that it may prescribe.

(Emphasis added.) “The purpose of the statute is to provide both the PRC and the public with advance notice of any proposed rate changes before those changes go into effect.” *Albuquerque Bernalillo Cnty. Water Util. Auth. v. N.M. Pub. Regulation Comm'n and Pub. Serv. Co. of N.M.*, 2010-NMSC-013, ¶ 76, 148 N.M. 21, 229 P.3d 494.

3. On November 12, 2023, the NMGC published notice of the proceedings in the present case in the *Albuquerque Journal*.² NMGC included the Notice in all customers’ natural gas bills beginning on November 13, 2023, and continuing through December 13, 2023.³

“Pursuant to Decretal Paragraph D of the [Procedural] Order, on November 9, 2023, NMGC posted the Notice, the Application, and the supporting pre-filed direct testimony, exhibits, and related papers on its website, under the Our Company/Regulatory Filings tab; Cases before the NMPRC Case No. 23-00255-UT: 2023 Rate Case

https://www.nmgco.com/en/regulatory_filings.”⁴

4. The Notice, in relevant part, improperly informed the public of the increase in costs that would result from NMGC’s application if the PRC approves it:

² *New Mexico Gas Company, Inc.’s Electronically Submitted Affirmation of Public Notification to Customers, and Posting to Website*, 12/20/23.

³ *Id.*

⁴ *Id.*

1. To New Mexico Gas Company ('NMGC or Company') Customers: This document is required by the New Mexico Public Regulation Commission ('NMPRC or Commission'). The purpose of this document is to provide you with notice of the Application NMGC filed with the NMPRC requesting to amend its rate schedules and change its rates for delivering natural gas services to your home and business. NMGC is requesting a total base rate revenue increase of \$48.97 million. Under this proposal, the monthly bill for delivering natural gas service to **the average residential customer using 53 therms of gas per month would increase \$6.71.**
2. The information below describes proposed changes in rates for delivering natural gas to your home or business. The requested changes may affect all customer classes. NMGC customers are encouraged to review documents related to the filing and are welcome to attend the hearing regarding the Company's Application.

...

4. If NMGC's proposed new residential rates are approved, **the monthly bill for a residential customer using an average of 53 therms of gas a month would increase \$6.71, an 11.2% increase over current residential rates,** assuming the cost of gas portion of the bill does not change.⁵

(emphasis added.)

5. On February 16, 2023, NEE received answers to discovery propounded on January 31, 2024. NEE asked the following Interrogatories:

NEE INTERROGATORY 2-3:

For each of the months April, May, June, July, August, September, and October 2023, provide the number of NMGC residential customers whose usage in that month was 10, 25, 30, 45, 53, 75, 90, 105, 150, and 250 therms. Please provide the response in an editable worksheet form.

NEE INTERROGATORY 2-4:

For each of the months January, February, March, November, and December 2023, provide the number of NMGC residential customers whose usage in that month was 10, 25, 30, 45, 53, 75, 90, 105, 150, and 250 therms.

Please provide the response in an editable worksheet form.

NMGC responded as follows to both NEE 2-3 and NEE 2-4:

⁵ *Id.*

Please see NMGC Exhibit NEE 2-3.

NMGC provided NMGC Exhibit NEE 2-3 which is replicated exactly as:

Residential Monthly Billed Usage Frequency Table for Calendar Year 2023												
Usage (Therms)	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23
0-10	14,864	14,256	15,891	23,850	78,309	163,154	216,926	252,309	230,212	191,812	63,873	21,313
11-25	17,081	15,882	22,902	51,012	202,156	246,225	226,269	204,944	218,727	231,876	159,865	32,866
26-30	6,309	5,857	10,030	23,195	51,478	31,491	20,581	15,810	18,816	25,752	48,517	13,346
31-45	23,501	21,638	36,661	77,262	88,799	37,054	23,769	18,506	21,411	32,049	100,894	50,037
46-53	16,256	14,808	24,475	44,670	25,370	8,179	5,284	4,326	4,438	7,175	35,359	31,490
54-75	61,316	55,630	83,835	114,775	33,995	9,773	6,135	4,888	5,834	8,984	51,556	98,011
76-90	52,776	50,048	63,774	56,539	9,392	2,693	1,696	1,287	1,470	2,333	16,296	64,416
91-105	56,393	54,899	60,992	39,980	5,092	1,526	943	670	880	1,312	9,501	54,028
106-150	138,393	143,971	112,375	50,276	6,103	2,144	1,308	937	1,250	1,796	12,058	87,448
151-250	95,834	104,841	62,223	19,663	2,923	1,527	825	587	806	1,261	5,634	44,041
251 and above	21,399	22,673	11,725	3,611	1,104	834	454	286	489	753	1,473	9,515

6. While the notice indicated that “the monthly bill for a residential customer using an average of **53 therms of gas a month would increase \$6.71, an 11.2% increase** over current residential rates”⁶ it failed to disclose that there is no meaningful “average” customer usage of 53 therms per month through the year. Using NMGC’s own data, in no month of 2023 did the percentage of customers using 53 therms exceed 9% of all residential customers, and in 9 of the 12 months that range represented 5% or less of NMGC’s residential customers. Over the course of 2023, less than 4% of NMGC’s residential customers used 53 therms in a month. **NMGC’s “average” 53 therms usage in a month is not representative of what 96% of NMGC’s residential customers consume in a particular month, and is seriously misleading.** See, Exhibit A, the *Verified Statement in Support of Motion to Dismiss* of Christopher K. Sandberg, attached and incorporated herein, at 3.

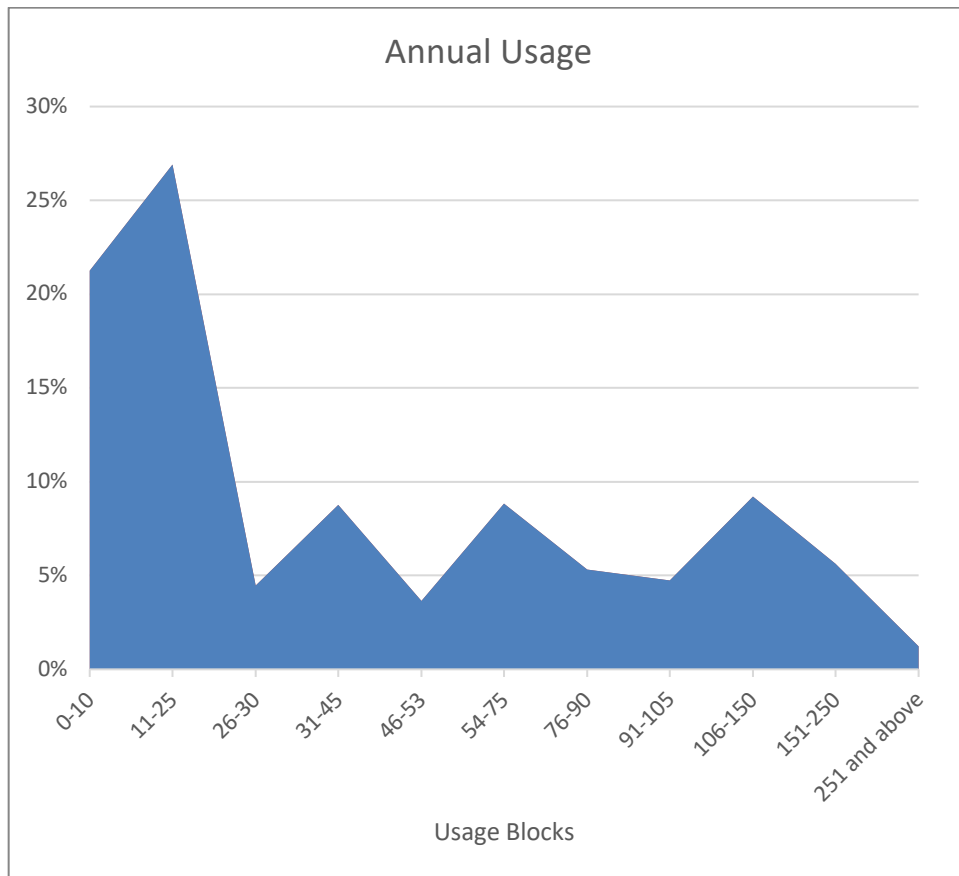
7. NMGC deliberately used the wrong measure of “average” in order to mislead about the actual percentage increase to be expected on residential bills. It used a computation of the mean average, which is just the arithmetic average of all residential customer bills. The

⁶ *Id.*

correct form of analysis is to use in order to truthfully show what typical residential bills will incur for an increase under NMGC's proposal is the mode average; that is, the most commonly occurring bill. From NMGC's data on 2023 residential usage, the most-often issued bills were in the range of 11-25 therms, followed closely by bills for 0-10 therms. *See*, Exhibit A, the *Verified Statement in Support of Motion to Dismiss* of Christopher K. Sandberg at 4.

8. **The percentage bill increase for usage in the 11-25 therms range is 14%. The percentage bill increase for usage in 0-10 therms range is 18%. The weighted average increase for those two usage categories which make up half of the 2023 bills is 16%.** That significant understatement of the impact of NMGC's proposal – is far more than the 11.2% bill increase asserted in NMGC's customer notice and sworn testimony – and it fails to comply with statute and Commission rules. *See*, Exhibit A, *Verified Statement in Support of Motion to Dismiss* of Christopher K. Sandberg at 4.

9. Further, the notice obstructs the real impact of NMGCs proposal **during the highest gas usage months of December through March, when the expected dollar bill increase is not the 53 therm “average” amount of \$6.71, but will be in the range of \$9.61 and \$21.96 increases on their monthly bill – 1.4 to 3.3 times more that NMGC represents in the notice.**



10. The above graph is an illustration of NEE 2-3 that Mr. Sandberg created that demonstrates what is deceptive about the Notice that NMGC has provided to customers and the Commission:

a) the highest percentage of range of bills is between 0-25 therms (which occurs in the summer months and means an increase in the monthly fixed fee disproportionately hits low therm users the most); and

b) the second highest percentage of range of bills is between 90-200 therms (which occurs in the high peak winter months and means that during these months virtually no customers will be paying an increase of \$6.71 per month, but 2-4 times that amount); and

c) only 4% of customers or fewer use 53 therms.

11. As Mr. Sandberg plainly states: “the Notice not only does not explain the impact of NMGC’s proposed rate increase it misinforms customers about the bill increases they will experience as a result of NMGC’s request.” *See*, Exhibit A, *Verified Statement in Support of Motion to Dismiss* of Christopher K. Sandberg, at 5-6.

12. The public notice presented by NMGC in the present case was inadequate and misleading, in violation of ratepayers’ right to procedural due process of law. Specifically, the notice was defective when it grossly under-reported both the percentage and dollar amount that the gas bills would increase under the rates sought by NMGC. NMGC’s “disclosure” of the impact of its proposed rate increase is transparently intended to lull its ratepayers into believing that they faced a much smaller rate increase than most of them will in fact face if the Company’s proposed increase is approved. This was significantly misleading and was included in all of NMGC’s communications to the public regarding its proposed rate increase. It was also stated in the Direct Testimony of Ryan A. Shell, President of New Mexico Gas Company, Inc., a certified public accountant,

Q. PLEASE IDENTIFY THE REVENUE INCREASE THAT NMGC IS REQUESTING IN THIS CASE.

A. NMGC is requesting a revenue increase of approximately \$48.97 million based on a proposed overall weighted average cost of capital of 7.38%, including a requested ROE of 10.5% and a 53% equity/47% debt capital structure. It is anticipated that new rates would go into effect with the first billing cycle in October 2024. This proposed increase represents a 22.7% increase over the Company’s forecasted 2024/25 cost of service revenues. The proposed bill impact, assuming steady gas costs, would be an increase of approximately \$6.71 per month, or 11.2%, for a customer with average residential usage of 53 therms per month throughout the year.⁷

13. These statements can only have been intentionally misleading, given that the Company is well aware that the majority of its customers will face significantly greater increases

⁷ Direct Testimony of Ryan A. Shell at 12.

if the Company's rate request is approved. Customers have been denied due process and unfairly prejudiced as a result. Notice (and testimony) "should be more than a mere gesture; it should be reasonably calculated, depending upon the practicalities and peculiarities of the case, to apprise interested parties of the pending action and afford them an opportunity to present their case." *US West Commc'ns, Inc.*, 1999-NMSC-016, ¶ 29, 127 N.M. 254, 980 P.2d 37.

14. In order to determine if rates, or a new rate, is just, fair and reasonable the Commission should be able to rely in good faith on the information provided by a utility's Notice, Executive Summary,⁸ and Testimony, and not get hoodwinked. But we now know that the information provided by NMGC with respect to the increase is largely contrary to the facts. **The NMGC Application for a rate increase is not 11.2% for virtually all residential bills but rather is up to a 25% increase. And the expected dollar increase is not a mere \$6.71 per month, but will be between \$9.61 and \$ 21.96 in the highest gas-consuming months.** NMGC has the burden of proof as the moving party and must demonstrate that its proposed new rate, is just, fair and reasonable,

At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.⁹

It is the declared policy of the state that the public interest, the interest of consumers and the interest of investors require the regulation and supervision of such public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates.
...¹⁰

⁸ In its Executive Summary, NMGC states: "For a residential customer using an average of 53 therms per month, the monthly increase would be \$6.71 a month. This would be 11.2% higher than an average residential total bill under current rates."

⁹ NMSA § 62-8-7(A).

¹⁰ NMSA § 62-3-1(B);

15. In its Application and Direct Testimony, NMGC states that its filing is pursuant to Rule 17.1.3 NMAC (Future Test Year Period Filing Requirements, also known as “FTY”).¹¹ The objective of 17.1.3 NMAC is to provide a “complete and comprehensive rate case filing”¹² and to “notify the commission” of rate changes that “materially affect” increases to rates and “provides reasonable notice to all parties”.¹³

16. As stated in the Verified Statement of Christopher K. Sandberg, as Exhibit A, NMGC’s Notice, Executive Summary and the Direct Testimony of its President do not comply with the spirit or letter of the law to demonstrate transparency, completeness and honesty in presentation of evidence to the Commission and public.¹⁴ And the customer notice is materially defective in how it represents rate increases to the public.

17. In Case No. 14-00332-UT, the Hearing Examiner in that PNM rate case rejected PNM’s application because it failed to provide supporting linkage data and stated that “estimates ‘shall be still be fully supported, explained and justified’ in the context of the FTY Rule.”¹⁵ Changes in rates “shall be *fully explained* in written testimony. (17.13.18(D) NMAC).” (emphasis in the original.)¹⁶ The Hearing Examiner stated that for an investor-owned utility a

¹¹ For instance, Direct Testimony of Ryan A. Shell at 17.

¹² 17.1.3 NMAC

¹³ 17.1.3.19 B & C NMAC (“Any approved modification that results in an increase to rates above the amount that was originally filed shall require the utility to issue a new notice to customers consistent with the law.”)

¹⁴ Case No. 20-00222-UT, *Order Addressing NEE Motion for Rule to Show Cause Why Joint Applicants should not be held in Contempt and for Sanctions*, 6/14/2021; NMSA § 62-8-7 (2021), 1.2.2.24 C NMAC, the *Procedural Order* issued in this matter on 11/8/2023.

¹⁵ Case No. 14-00332 *Initial Recommended Decision*, at 10 (4/17/2015). *Final Order Adopting Initial Recommended Decision Completeness of PNM’s Filed Application*, (NM PRC 5/13/2015).

¹⁶ *Id.*, at 11.

“material change” is a change that exceeds 6%.¹⁷ “Detailed explanations” for material changes are required.¹⁸

18. In Case No. 16-00276-UT, the Hearing Examiners in that PNM rate case rejected the initial stipulation in part because “PNM’s Application and supporting testimony provided no notice that the issues would be addressed in this case.”¹⁹ While NMGC did include an estimate monthly increase for an average residentially bill and an average percentage residential total bill increase in its *Notice to NMGC Customers of Proceeding and Hearing*, it was so misleading that the Notice must be considered defective and deficient. *See, e.g., TW Telecom of New Mexico v. New Mexico Pub. Regu. Comm’n*, 2011-NMSC-029, ¶¶ 10-11, 16-17, 256 P.3d 24. (Due process rights include “adequate notice.”) Is no notice better than notice that only affects 4% of customers?

19. Ratepayers have a procedural and substantive right to rely on the information provided by the Applicant seeking a change in rates via the Notice provided (whether to intervene, whether to object, whether to participate via public comment, etc.) “It is well settled that the fundamental requirements of due process in an administrative context are reasonable notice and opportunity to be heard and present any claim or defense.” *Albuquerque Bernalillo Cnty. Water Util. Auth. v. N.M. Pub. Regulation Comm’n and Pub. Serv. Co. of N.M.*, 2010-NMSC-013, ¶ 21, 148 N.M. 21, 229 P.3d 494 (emphasis added) (quoting *Jones v. N.M. State Racing Comm’n*, 100 N.M. 434, 436, 671 P.2d 1145, 1147 (1983)); *N.M. Indus. Energy Consumers v. N.M. Pub. Serv. Comm’n*, 104 N.M. 565, 568, 725 P.2d 244, 247 (1986); *see Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972) (holding

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Case No. 16-00276-UT, *Order Rejecting Stipulation in Current Form*, at 7, May 12, 2017.

that for procedural due process to be met, “the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner” (internal quotations marks and citation omitted).

20. The source the public is likely to pay more attention to than notices in their bills or in the fine print in a legal notice are newspaper articles that repeated, relying on in good faith, as did others, including the Commission, that the NMGC percentage rate increase was 11.2%. *See*, attached Exhibit B, the *Albuquerque Journal* and *Santa Fe New Mexican* articles regarding the NMGC rate filing and the percentage rate increase the Company was requesting. NEE understands that the Procedural Order in this case set a deadline for dispositive motions to be filed by January 3, 2024.²⁰ Until the receipt of discovery on February 16, 2024 NEE’s counsel and expert, like the newspapers, and the Commission were fooled. NEE is requesting a waiver from the deadline, because NEE filed the Motion herein “as soon as is practicable,” before supplemental testimony has been filed, because fairness and justice warrant an adjudication on the merits, and because ratepayers were not adequately and meaningfully notified their due process rights were violated. Lastly, no party will be prejudiced by the month delay.

21. It would have been a simple matter for the Company to inform its customers of what increase to monthly bills and percentage rate increases they would be experiencing depending on the ranges of their bills in the immediate past. Another workable, more realistic alternative, would have been for the Company to have provided seasonally weighted average rate impacts for low, medium, and high usage level, using statistically significant break points, with instructions in the disclosure notice for how a customer can determine which group they fall in.

²⁰ Case No. 23-00255-UT, *Procedural Order*, at 6, ¶ F, 11/8/2023.

What NEE is advocating is that, as the law requires, the Company should have provided sufficient information to allow all its customers to understand the magnitude of the increase *for them*. It is uncontested the Company failed to do so and, in light of this, its rate adjustment case should not be permitted to proceed until it has provided proper notice to its customers.

22. If the Commission is unwilling to dismiss the case, the Commission could suspend the case and toll all dates, including testimony, hearing, and any rate effectiveness, until NMGC, following consultation with the parties, has issued a meaningful disclosure that accurately depicts rate impact on a *representative* set of residential customer usage levels.

23. Given the rebuttal testimony due date and the upcoming hearing date, NEE is also requesting that any response to this Motion be made within 7 days.

24. NEE requested the parties' positions before filing this Motion and can report as follows: NMGC opposes the Motion. The NM Department of Justice, WRA and FEA take no position on the Motion. "CCAIE also takes no position, though we note the significance of the analysis used for purposes of impact on specific customers and notice provided."

PRC Staff opposes the Motion. The County cannot make a decision before Thursday. No other parties responded in time before the filing.

CONCLUSION

Rules enacted by the PRC, especially those concerning rate case filings, are in a sense an expression of public policy in order to provide ratepayer protection while balancing the needs of the utility. The linchpin of a rate request is the truthful assertion by the utility of the actual estimation of the rate increase – *what will my monthly gas bill be in the winter months?* If the avowal only applies to 4% of NMGC customers, the "notice" is misleading and largely false.

Because NMGC's public declaration in multiple venues (newspaper, website, PRC) is disingenuous the Company should be required to re-notice its rate case. This is no way to treat NMGC customers or the PRC; NMGC's Notice is unsupported by NMGC's discovery responses and evidence supplied in its application and direct case. NMGC's failure to comply with the Public Utility Act and Commission rules is prejudicial, particularly given the strict rate case time constraints.

NMGC's application and direct case should be dismissed because NMGC failed to properly apprise the Commission and ratepayers of the actual monthly bill impact rate and the percentage increase it is seeking and NMGC should be required to refile its case with an informative notice and testimony in conformity with the applicable rules.

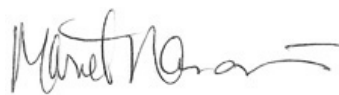
For the above stated reasons, New Energy Economy requests:

- a) a waiver from the dispositive motion deadline be granted;
- b) any response to this Motion be made within 7 days;
- c) the hearing examiner dismiss NMGC's rate application for failure to properly notify ratepayers of the likely estimated bill increase and percentage increase.

Or alternatively, and respecting the significant effort and expense that has already been expended by all involved, the Commission could suspend the case and toll all dates, including testimony, hearing, and any rate effectiveness, until NMGC, following consultation with the parties, has issued a meaningful disclosure that accurately illustrates rate impacts on a representative set of residential customer usage levels.

Respectfully Submitted,

Dated: February 20, 2024



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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)	Case No. 23-00255-UT
RATES, RULES, AND CHARGES)	
PURSUANT TO ADVICE NOTICE. 96)	
)	
NEW MEXICO GAS COMPANY, INC.)	
)	
Applicant.)	

VERIFIED STATEMENT IN SUPPORT OF MOTION TO DISMISS

1. My name is Christopher K. Sandberg. My business address is 2324 14th St. SE, Rio Rancho, NM 87124.
2. I have a Juris Doctor degree from the University of Minnesota School of Law. In 1980, I worked for the Minnesota Public Utility Commission. In 1983, I left the Commission to become a member of the Minnesota Attorney General's staff, first as an attorney in the Utility Division and subsequently as the manager of that Division. After leaving State service, I was an associate and partner in a top-25 Minnesota law firm, where I lead the firm's Utilities and Technology Law practice area, emphasizing regulatory issues, business development, administrative law, and civil litigation.
3. I have testified as an expert witness before the New Mexico Public Regulation Commission ("NMPRC") in the past year. I have appeared before the New Mexico Public Regulation Commission in the following cases:

I submitted testimony on behalf of NEE in Commission Case No. 20-00121-UT, PNM's Petition proposal for a decoupling rate mechanism.

I submitted direct testimony, rebuttal testimony, and testimony in opposition to the PNM/Avangrid/Iberdrola merger and stipulation in Commission Case No. 20-00222-UT.

I testified in Commission Case No. 21-00017-UT; in that PNM Four Corners Power Plant abandonment and securitization case I provided direct and rebuttal testimony.

I testified in Commission Case No. 22-00270-UT; in that PNM general rate case I provided direct, rebuttal, and surrebuttal testimony.

4. I have prepared this affirmation on behalf of New Energy Economy (“NEE.”)

5. I have read the NMPRC’s rules regarding filing requirements that apply to utilities filing a rate case.

6. I have reviewed New Mexico Gas Company’s (“NMGC’s”) rate application in Case No. 23-00255-UT and subsequent discovery by the various intervenors. Based on this review of the documents, I believe NMGC’s Notice to Customers, Executive Summary and original filing do not provide accurate information about the bill impacts of NMGC’s proposed rates that are fully supported, explained and justified. NMGC has failed to abide the requirement that customer notices must state the amount of the change requested, in both dollar amounts and percentage change.

7. There may be other specific sections of the New Mexico Administrative Code that this filing does not meet, but I will not comment on them, and my silence does not imply that NMGC’s filing is in compliance with any such requirements.

8. Both the materials provided in NMGC’s filing and the customer notice sent by NMGC are deficient, misleading, and deceptive.

9. In its Executive Summary accompanying its initial filing in this case, NMGC told the Commission, “For a residential customer using an average of 53 therms per month, the

monthly increase would be \$6.71 a month. This would be 11.2% higher than an average residential total bill under current rates.” Executive Summary at 2.

10. That same percentage increase appears in the sworn testimony of NMGC witness Ryan Shell, who averred, “The proposed bill impact, assuming steady gas costs, would be an increase of approximately \$6.71 per month, or 11.2%, for a customer with average residential usage of 53 therms per month throughout the year.” Shell Direct at 12.

11. NMGC witness Timothy Lyons repeated that same statement: “The proposed base rates increase monthly bills for a residential customer using 53 therms per month by \$6.71, or 11.3 percent. 53 therms represent an approximate average of monthly usage for residential customers during January through December.” Lyons Direct at 35.

12. That 11.2% figure is misleading, because there is no meaningful “average” customer usage of 53 therms per month through the year. Using range data substituted by NMGC in response to NEE’s discovery on February 16, 2023, in no month of 2023 did the percentage of customers using 53 therms exceed 9% of *all* residential customers, and in 9 of the 12 months that range represented 5% or less of NMGC’s residential customers. Over the course of 2023, less than 4% of NMGC’s residential customers used 53 therms in a month (note that I have had to use data for a range of usage between 46 and 53 therms, which obviously overstates the number of customers actually using 53 therms.) NMGC’s “average” 53 therms in a month is not representative of what 96% of NMGC’s residential customers consume in a particular month, and is seriously misleading.

13. NMGC deliberately used the wrong measure of “average” in order to mislead about the actual percentage increase to be expected on residential bills – a computation of the mean average, which is just the arithmetic average of all residential customer bills. The correct

form of analysis is to use the mode average - the most commonly occurring bill – in order to truthfully show what typical residential bills will incur for an increase under NMGC’s proposal. For NMGC’s data on 2023 residential usage, the most-often issued bills were in the range of 11-25 therms, followed closely by bills for 0-10 therms.

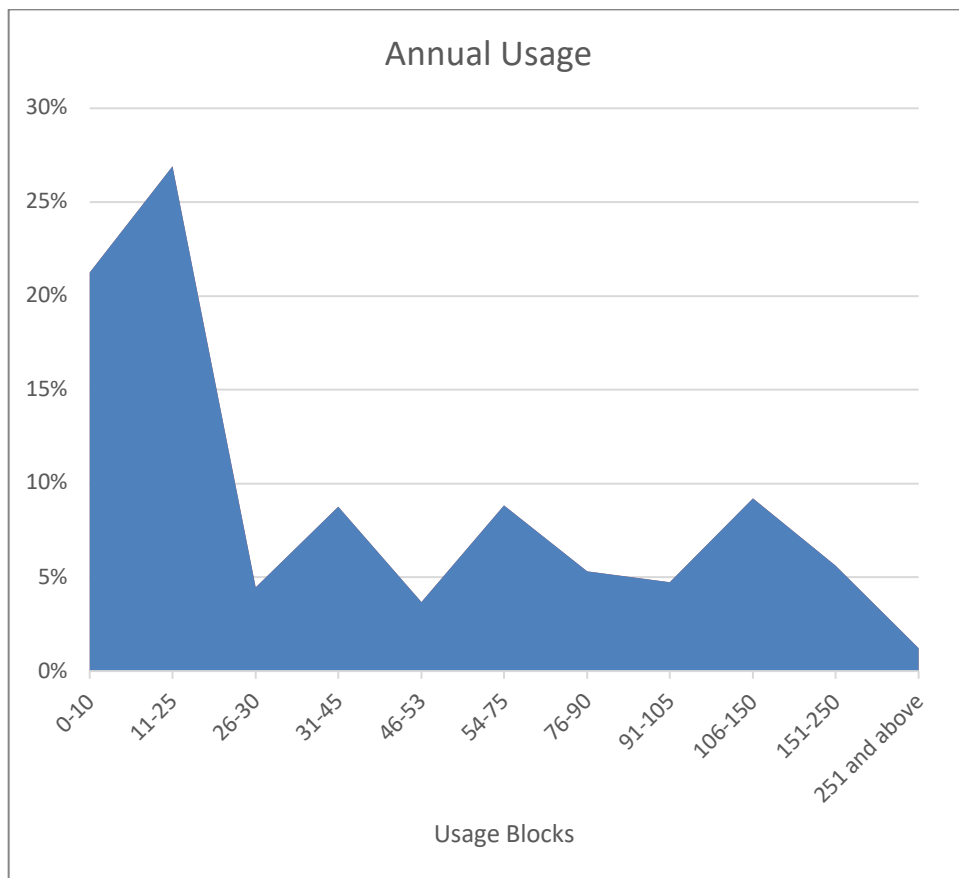
14. That matters because the percentage bill increase for residential ratepayer usage in the 11-25 therms range is 14% - a significantly greater impact than the 11.2% increase found throughout NMGC’s sworn testimony. And for the second most-common bills, usage in the 0-10 therms range, the residential ratepayer increase is 18%. The weighted average increase for those two usage categories - **which make up half of the 2023 bills** - is 16%.

15. Similarly, in its customer notice, NMGC repeated this false statement, asserting, “If NMGC’s proposed new residential rates are approved, the monthly bill for a residential customer using an average of 53 therms of gas a month would increase \$6.71, **an 11.2% increase** over current residential rates...” (emphasis added.)

16. As explained above, that asserted average bill of 53 therms is not justified by the facts, and is designed to mislead customers who read the notice into thinking that is the percentage increase they will get on their bills, when they will not; the real percentage increase will be as high as 25%.

17. In addition to being deceptive about the percentage increase on residential bills, the customer notice misleads readers about the dollar amount of bill increases. The notice uses the figure of a \$6.71 average bill increase, but the one table of data in the notice provides no dollar amounts or percentage changes for the specific usage levels required by Commission rule; it just shows current and proposed bills with no computation of either the dollar increase or the percentage increase.

18. In particular, because there are no subtractions made in the table for usage levels in the critical heating months, the notice misleadingly hides the dollar impacts on those bills. As shown in NMGC Exhibit response to NEE 2-3, during the peak heating months of December through March, the most common usage is in the 106 to 250 therms range. Taking the closest corresponding figures in the customer notice, bills in those months, residential ratepayer bills will increase in a range of \$9.61 and \$21.96. Providing only the \$6.71 “average” bill increase deceptively hides the significantly higher dollar increase that customers will actually see for a third of the year.



19. The above graph is an illustration of NEE 2-3 that I made. The graph demonstrates what is deceptive about the Notice that NMGC has provided to customers and the Commission:

a) the highest percentage of range of bills is between 0-25 therms (which occurs in the summer months and means an increase in the monthly fixed fee disproportionately hits low therm users the most); and

b) the second highest percentage of range of bills is between 90-200 therms (which occurs in the high peak winter months and means that during these months virtually no customers will be paying an increase of \$6.71 per month, but 2-4 times that amount); and

c) only 4% of customers or fewer use 53 therms.

The Notice not only does not explain the impact of NMGC's proposed rate increase it misinforms customers about the bill increases they will experience as a result of NMGC's request.

20. I believe that NMGC's use of misleading usage levels and percentages, and omission of any context and calculations as to the likely actual impact on bills, means that consumers reading the notice have been presented with a calculated attempt to disguise the real negative effects of the proposed fixed fee increase upon the majority of NMGC's residential customers.

21. It is my opinion that the customer notice is not compliant with the language or the intent of the Procedural Order issued in this case and the Commission's rules on rate case filings.

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) Case No. 23-00255-UT
RATES, RULES, AND CHARGES)
PURSUANT TO ADVICE NOTICE. 96)
)
NEW MEXICO GAS COMPANY, INC.)
)
Applicant.)

SELF AFFIRMATION

CHRISTOPHER K. SANDBERG, expert witness for New Energy Economy, upon penalty of perjury under the laws of the State of New Mexico, affirm and state: I have read the foregoing *Verified Statement in Support of Motion to Dismiss* of Christopher K. Sandberg and it is true and correct based on my own personal knowledge and belief.

Dated this 20th day of February, 2024.

/s/ Christopher K. Sandberg
CHRISTOPHER K. SANDBERG

https://www.abqjournal.com/business/nm-gas-co-seeks-11-rate-hike/article_a4435214-5986-11ee-aac1-4b923a655c57.html

FEATURED

NM Gas Co. seeks 11% rate hike

System investments, inflation, and labor shortages drive costs up

By Kevin Robinson-Avila / Journal Staff Writer

Sep 24, 2023

1 of 3



Crews work on the \$14 million Pecos Valley Mainline project near Carlsbad in February. From October 2022 to May 2023, NMGC inst the Pecos Valley Mainline east of Carlsbad to replace a 1948 pipeline.

Courtesy of NM Gas Co.

New Mexico Gas Co. is seeking \$49 million more per year to cover the utility's projected costs and investments going forward, potentially raising average residential consumer bills by 11% — or about \$6.70 more per month — if approved by state regulators.

The company filed for a rate increase on Sept. 14 with the state Public Regulation Commission, setting in motion a year-long regulatory process that could culminate in higher consumer rates starting in October 2024. The actual amount will depend on a detailed PRC review of the utility's real costs and proposed investments, with input from intervening parties in the case through public hearings that will likely take place next spring.

That could include robust opposition from some groups to parts of the utility proposal, such as a request to raise its return on equity, or potential profit margins, from 9.37% now to 10.5%.

Intervention by the Attorney General's Office, environmental groups and other parties in the company's last rate case in 2022 led to an agreement with the utility to slash its requested rate hike at that time from an initially proposed 9.1% hike to just 4.3%, or from the company's originally proposed \$5.63 increase on average residential bills to \$2.70 more per month.

That rate hike took effect in January. But to help lower the increase in that case, the company said at the time it would postpone some investments in its pipeline system and other infrastructure to reduce revenue needs, while also delaying some hiring and limiting some operational investments to keep expenses down.

Now, however, the utility says those postponed investments — combined with a cascading need for system upgrades to meet state and federal regulations, and to maintain pipeline safety and reliability — mean a significant increase in infrastructure expenses going forward. In addition, inflation has raised costs across the board, and

the utility needs to spend additional money to attract more qualified employees because labor shortages due to market competition have left the company with about 90 unfilled positions, said Gerald Weseen, vice president for regulatory strategy and external affairs.

“We strive to keep costs as low as we can, but we’re experiencing higher costs in many areas,” Weseen told the Journal. “...We understand any increase is hard for customers, and we’re always trying to be mindful of that when making requests like this. There will be a public hearing and commentary from interested parties at the PRC, and we’ll be in front of the commission to justify the requests we’ve made.”

For now at least, new rates won’t hit consumer bills until late next year, assuming the PRC approves them.

But customers will experience higher costs at different times during the year, especially during the winter, when home-heating expenses kick in. By law, the gas company simply passes those fuel costs through to retail consumers, who pay the same price for gas that the utility pays. The actual amount customers pay for that fuel depends on how much they consume in a given month.

Customer rates, in contrast, are set by the PRC, and they only apply to the company’s delivery services.

Still, there is some good news going into this winter: a drop in natural gas prices means monthly heating costs will likely be lower this holiday season compared with the last two years, when soaring gas prices pushed customer bills to their highest levels in well over a decade.

Case details

Overall, N.M. Gas is seeking recovery for \$278 million in capital investments that it has either already completed or that are now planned or underway.

That includes:

- Upgrades and improvements to the utility's 12,400-mile system of pipelines around the state, including testing and replacement of many sections, inspection of lines that are close to underground infrastructure, and installing new equipment to both comply with state and federal regulations and to meet industry standards for safety and reliability.
- Overhauling the company's information technology, including replacement of its aging customer information system and reinforcing cybersecurity and business functionality.
- Investment in new technology and equipment to track and access data on pipeline operations and to detect and repair leaks.

Regarding pipeline investments, the company can no longer postpone needed upgrades, given evolving government regulations and industry standards, said Tom Bullard, vice president of engineering, gas management and technical services.

"We did defer several projects in the last rate case and we're picking those up now, and we have more regulations we need to meet," Bullard told the Journal. "We have to keep the system safe and reliable. That's what's driving the capital investments."

The IT investments as well are critical, given the age of the company's systems, Weseen said.

"Our current system is now about 30 years old," he said. "We're doing a complete upgrade of the customer-facing system for billing, management and so forth. And we need to strengthen our cybersecurity capabilities, all of which imply increased costs."

Apart from investments, the utility says inflation in general, plus compliance with "expanding" regulatory requirements, have increased operational expenses. And rising labor costs are taking a significant toll.

"That's created upward pressure on salaries," Weseen said. "We need money available to keep folks, attract new people and replace them."

Excluding fuel costs, company rates are set for the services recorded on customers' bills, including the amount of gas actually delivered to each residential or commercial consumer, plus a "fixed charge," or system access fee, to be connected to N.M. Gas Co.

The delivery rates and fixed charge would both increase under the company proposal, generating a total of \$49 million in additional annual revenue for the utility.

Potential opposition

It's unclear what organizations will intervene in the case at the PRC, since most parties are still reviewing the new rate request.

But based on past rate cases, the Attorney General's Office, other consumer advocacy groups, and possibly some environmental organizations may intervene.

"Our primary objective in any rate case is to protect the interests of consumers," AG spokeswoman Lauren Rodriguez told the Journal. "We look forward to examining the rationale of the proposed rate increase."

A couple of N.M. Gas requests could draw particular attention and potential opposition, including the proposed hike in the fixed charge on monthly bills, and an increase in the company's return on equity, or profit margin.

In the 2022 rate case, the utility initially asked to raise the fixed charge on residential bills by \$2.25, from \$12 per month previously to \$14.25. But under the settlement agreement with intervening parties, the company lowered that to just a 40-cent increase, hiking the monthly charge to \$12.40 today.

Under its new request, N.M. Gas now wants to raise the residential charge by \$3.10, representing a 25% jump to \$15.50 per month.

New Energy Economy, a Santa Fe-based environmental and consumer advocacy organization, said it's still reviewing the N.M. Gas proposals, but it will certainly oppose both the increase in the fixed charge, and the company's request to hike its return on equity, or ROE, from 9.37% now to 10.5%.

“If the PRC approves the hike in fixed charges, it would be the highest monthly fixed fee of any utility in the state,” NEE Executive Director Mariel Nanasi told the Journal. “In addition, it’s inconsistent for N.M. Gas to say that they strive to keep costs as low as possible and then ask for an outrageous return on equity of 10.5%, which is out of line with 35 utilities in the West that have an average ROE of just 8.3%.”

Price reprieve this winter

Consumer advocates are paying close attention to both utility service costs and energy prices, given the sharp rise in home-heating expenses nationwide in recent years.

Natural gas prices skyrocketed during the last two winters due to a combination of factors, including a plummet in gas production during the pandemic, extreme winter chills in some parts of the country that drove up demand to keep homes and buildings warm, and then the war in Ukraine, which crippled European supplies and pushed U.S. liquid natural gas exports to record levels, reducing domestic stocks.

Extreme summer heat waves also spiked prices over the last two years as electric utilities fired up natural gas plants so consumers could crank up their air conditioners.

As a result, natural gas prices reached a 15-year high going into last winter. And that, in turn, drove N.M. Gas bills for average residential customers to \$211 last January, up from \$135 in January 2022, and just \$80 in January 2020, the year before the global pandemic broke out.

This winter, however, may be a bit easier on consumers, because natural gas prices have declined significantly, according to the National Energy Assistance Directors Association, or NEADA. In a new report this month, NEADA projected that residential consumers who rely on natural gas — which includes nearly half of all U.S.

homes — will spend about 8% less on their home heating throughout the upcoming winter, with average winter-long costs declining from \$787 last year to \$726 this winter.

“We’re expecting a pretty nice drop in natural gas prices,” said Tom Bullard. “That’s good news.”

N.M. Gas projects the wholesale price in November and December to hover around \$5 per thousand cubic feet, down from about \$7 at the start of last winter.

Still, that remains substantially above pre-pandemic years, when wholesale prices generally ranged from just \$2 to \$3 per thousand cubic feet.

Kevin Robinson-Avila

By the numbers

By the numbers

New Mexico Gas:

- *Headquartered in Albuquerque*
- *Serves more than 545,000 homes and businesses*
- *Employs 700 people in 26 offices statewide*
- *Maintains 12,400 miles of pipelines*

https://www.santafenewmexican.com/news/local_news/new-mexico-gas-requested-rate-hike-would-add-11-to-average-heating-bill/article_86586fe2-5331-11ee-a971-6f382bd761e4.html

New Mexico Gas' requested rate hike would add 11% to average heating bill

By Nicholas Gilmore ngilmore@sfnewmexican.com

Sep 14, 2023

New Mexico Gas Co. has released details regarding a rate increase the state's largest gas utility will formally request from state regulators this week.

The rate hike requested by the company would result in an 11% increase for the average residential customer, increasing average monthly heating bills by an estimated \$6.70, the company said in a news release.

The new rates, if approved by Public Regulation Commission, could go into effect by October 2024.

New Mexico Gas, an investor-owned utility and a subsidiary of Canada-based Emera Inc., provides natural gas to more than a half-million customers throughout the state, according to its website. In its coming request for a rate increase, which is due to the commission by Friday, the gas company will request to collect about \$49 million more annually in revenue from customers than it does at current rates.

The last rate increase for New Mexico Gas was approved by regulators less than a year ago, and it took effect in January. That 4.3% average increase brought up residential bills by an average of \$3 per month, according to regulatory filings, although the company had initially requested more than double the increase regulators granted.

The proposed rate hike for 2024 would cover what the company says are increasing costs related to operations and infrastructure improvements, including upgrades to an aging customer billing and account information system.

New Mexico Gas will also seek to recover expenses related to the ensuing rate case with the commission as well as costs related to "increased bad debt during the COVID-19 pandemic," the company's application to the commission states. Other expenses include studies related to an ongoing

liquefied natural gas project planned for Rio Rancho as well as fees related to customers' paying with credit cards.

“We strive to keep costs as low as possible,” New Mexico Gas President Ryan Shell said in the news release, “but we are experiencing inflation and increasing costs in many areas, including costs to comply with expanding regulatory requirements as well as costs for retaining and attracting a skilled workforce to serve our customers.”

Nicholas Gilmore

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) Case No. 23-00255-UT
RATES, RULES, AND CHARGES)
PURSUANT TO ADVICE NOTICE. 96)
NEW MEXICO GAS COMPANY, INC.)
Applicant.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing

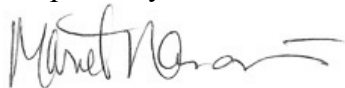
NEW ENERGY ECONOMY'S MOTION TO DISMISS
NEW MEXICO GAS COMPANY'S RATE CASE APPLICATION
FOR FAILURE TO PROVIDE ADEQUATE NOTICE TO RATEPAYERS
OR IN THE ALTERNATIVE TO REQUIRE NEW NOTICE THAT COMPORTS WITH
THE REQUIREMENTS OF LAW AND TO RESET SCHEDULE ACCORDINGLY
AND THE ATTACHED VERIFIED STATEMENT OF CHRISTOPHER K. SANDBERG
AND EXHIBIT B

was sent via email to the following parties on the date indicated below:

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DATED this 20th day of February, 2024.

Respectfully submitted,



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