

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)**

**ORDER SUSPENDING ADVICE NOTICE NO. 105; ORDER APPOINTING HEARING
EXAMINER**

THIS MATTER comes before the New Mexico Public Regulation Commission (the “Commission”) upon Advice Notice No. 105 (“NMGC AN 105”), filed by New Mexico Gas Company (“NMGC”), and 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 by Western Resource Advocates (“WRA”), The Coalition for Clean Affordable Energy (“CCAЕ”), Prosperity Works, and The Southwest Energy Efficiency Project (collectively, “Joint Movants”).

The Commission finds that NMGC AN 105 should be suspended for a period of nine months from the effective date of NMGC AN 105, until October 30, 2025.¹ The Commission further finds that a hearing examiner should be appointed to preside over this matter.

JURISDICTION AND PROCEDURAL HISTORY

1. The Commission has jurisdiction over this matter, pursuant to Sections 62-6-4 and 62-8-7 of the Public Utility Act (“PUA”).²
2. On December 31, 2024, NMGC filed NMGC AN 105, which includes Second Revised Rule No. 16 – Line Extension Policy. NMGC AN 105 bears an effective date of January 30, 2025.
3. On January 14, 2025, the Joint Movants filed the Joint Motion. In the Joint Motion, the Joint Movants protest Second Revised Rule No. 16, request that the Commission suspend

¹ See NMSA 1978, § 62-8-7 (2011).

² NMSA 1978, §§ 62-6-4 (2003) and 62-8-7.

NMGC AN 105, request that the Commission set an expedited schedule for filing responses to the Joint Motion, and request that the Commission set this matter for hearing.

4. The Joint Movants state that they contacted the entities that were served by NMGC with NMCG AN 105, to inquire as to their positions regarding the Joint Motion and received the following responses: NMGC opposes the Joint Motion; The New Mexico Department of Justice (“NMDOJ”) supports it, and New Energy Economy supports it.

5. On January 16, 2025, the Commission issued 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 (“Jan. 16th Order”). In the Jan. 16th Order, the Commission suspended the effective date of NMGC AN 105, until February 11, 2025, and the Commission set a deadline of January 24, 2025, for expedited responses to the Joint Motion.

6. On January 23, 2025, Staff of the Utility Division of the Commission (“Staff”) filed its 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 (“Staff’s Response”).

7. On January 24, 2025, NMGC filed its Expedited Response to Joint Protest and Motion to Suspend (“NMGC’s Response”).

DISCUSSION

8. In the Joint Motion, the Joint Movants argue that NMGC’s Second Revised Rule No. 16 - Line Extension Policy (the “Policy”) is contrary to state policy under Executive Order 2019-003 and to the Commission’s rule, 17.10.650 NMAC, “Service Standards for Gas Utilities” (“Rule”).

9. The Joint Movants state that NMGC filed the Policy pursuant to the Uncontested Stipulation in NMGC’s most recent general rate case, in Docket No. 23-00255-UT. The Joint Movants cite Paragraph 24 of the Uncontested Stipulation, which provides:

NMGC agrees to file a revised Rule No. 16 Line Extension Policy, before December 31, 2024, after a process that reevaluates the credits (revenue credits, lot credits (both vacant & other) and system improvement credits) and the Advantage Program Advance. The Company agrees to consult with WRA, PRC Staff, and any other interested party in its evaluation process. Once the revised policy is filed, parties and Staff retain the right to object to the new line extension policy and seek Commission review and hearing.³

10. The Joint Movants note that, on July 25, 2024, the Commission issued its Final Order in Docket No. 23-00255-UT, approving the Certification of Stipulation and Uncontested Stipulation. They state that the Hearing Examiner in that docket recommended approval of a collaborative process for review of and updates to NMGC’s line extension policy, which process would involve the participation of WRA, CCAE, NMDOJ, New Mexico Affordable Reliable Energy Alliance, and Staff.

11. The Joint Movants state that the review process for the Policy began with a stakeholder meeting held by NMGC to discuss the findings made in NMGC’s evaluation of its line extension policy. Having reviewed the filed Policy, the Joint Movants state that NMGC did not resolve any of the issues that they raised in the collaborative process. They argue that implementation of the policy “will result in unjust, unreasonable and discriminatory rates,” in violation of Sections 62-8-1 and 62-8-6 of the Public Utility Act.⁴

³ Joint Motion (Jan. 14, 2025) ¶ 1 (quoting Docket No. 23-00255-UT, Uncontested Stipulation (March 1, 2024) ¶ 24).

⁴ NMSA 1978, §§ 62-8-1 (1953) and 62-8-6 (2008).

12. The Joint Movants argue that it would be in the public interest to suspend the NMGC AN 105 for hearing and decision.⁵ They contend that the Policy is based upon “highly speculative assumptions that NMGC has made in their proposed revisions regarding both customer connections to the gas system and the estimated revenues these hypothetical customers will generate.”⁶ The Joint Movants argue that basing the Policy upon allegedly speculative and unrealistic assumptions violates the Rule’s requirement that an extension plan “must be related to the investment that can be made prudently for the probable revenue and expenses to be incurred.”⁷

13. The Joint Movants further argue that “the assumptions NMGC has relied upon are inconsistent with state policy goals,”⁸ specifically citing Governor Lujan Grisham’s Executive Order 2019-003. The Joint Movants contend that “NMGC’s assumptions about average usage are not an accurate and reliable projection of the future gas use of customers,” arguing that “[h]omes built since 2000 have been built under increasingly energy efficient building codes.”⁹

14. The Joint Movants contend that “NMGC is moving in this revised rule from the two types of lot credits to a single ‘general lot credit’ valued at \$1814 per lot.”¹⁰ They argue that this change, in combination with “increasing expected revenues from four (4) to five (5), has the effect of nearly doubling the credit for undeveloped lots (from \$950 to \$1814) and nearly quadrupling the credit for developed lots (from \$475 to \$1814).”¹¹ The Joint Movants further contend that the possibility of combining the lot credits was not raised during the stakeholder

⁵ This Order summarizes some, but not all, of the arguments made in the Joint Motion, as this is not a dispositive order.

⁶ Joint Motion ¶ 9.

⁷ 17.10.650.10(G) NMAC.

⁸ Joint Motion ¶ 9.

⁹ Joint Motion ¶ 10.

¹⁰ Joint Motion ¶ 12.

¹¹ Joint Motion ¶ 12.

discussions. Instead, according to the Joint Movants, “NMGC indicated that it would continue both developed and undeveloped lots although with increased credit amounts.”¹²

15. Finally, the Joint Movants refer to the NMGC merger matter, pending in Docket No. 24-00266-UT. They note that the Uncontested Stipulation, in Docket No. 23-00255-UT, was entered into before intervenors, Staff and the Commission were aware that NMGC’s parent corporation, Emera, Inc., was working on a sale of NMGC. The Joint Movants further note that the Uncontested Stipulation was approved by the Commission on July 25, 2024 – just days before the proposed sale to Bernhard Capital Partners was announced on August 5, 2024. The Joint Movants argue that “[t]he Commission should not allow significant revisions to NMGC’s line extension policy that reflect a pro-growth strategy to become effective without knowing more about the business plans, financial capacity and strategies of NMGC’s potential new owner.”¹³ The Joint Movants recommend a hearing and procedural schedule for review of the Policy that tracks slightly behind the schedule in Docket No. 24-00266-UT.

16. In Staff’s Response, Staff recommends that the Commission order that this matter go to hearing to fully investigate the substantive issues concerning the Policy. Staff states that it “understand[s] that one of the core disputes centers on the future revenue estimates, for new customers, presented by NMGC in their estimates for cost recovery for line extension projects.”¹⁴ Staff adds that, “[g]iven NMGC’s apparent omission of potentially substantive details, highlighted by the Joint [Movants], and the 23-00255-UT Stipulation’s provision allowing for further ‘review

¹² Joint Motion ¶ 12.

¹³ Joint Motion at 16.

¹⁴ Staff’s Response (Jan. 23, 2025) at 2.

and hearing’ Staff support the Joint [Movants’] call for a suspension of NMGC’s A/N 105 until further information (evidence) can be gathered.”¹⁵

17. In NMGC’s Response, NMGC states that, “[w]hile NMGC does not object to transparency and does not oppose a hearing, it respectfully requests that the [Commission] consider whether it is appropriate to delay the proposed benefits to new customers on the basis raised in the Joint Motion.”¹⁶ NMGC further states that, “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),”¹⁷ as directed by the Commission in the Jan. 16th Order.

18. NMGC requests that the Commission consider several factors when determining whether a hearing is needed. NMGC states that the Policy does not change customer rates, instead, it “governs how much a potential new customer should pay upfront to receive natural gas utility service.”¹⁸ NMGC argues that “[d]elaying 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,” and that “[d]elay 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.”¹⁹ NMGC adds, “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.”²⁰

¹⁵ Staff’s Response at 2.

¹⁶ NMGC’s Response (Jan. 24, 2025) at 1.

¹⁷ NMGC’s Response at 1.

¹⁸ NMGC’s Response at 2.

¹⁹ NMGC’s Response at 2.

²⁰ NMGC’s Response at 2.

19. NMGC argues that it complied with all of the commitments that it made in the Uncontested Stipulation in Docket No. 23-00255-UT. NMGC further argues that the changes to the lot and revenue credits in the Policy “are tied to average customer usage and average revenue, which will be updated after every rate case NMGC files going forward.”²¹ NMGC contends that, as a result, “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.”²² In addition, NMGC argues that “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.”²³

20. Finally, should the Commission order a hearing in this matter, NMGC requests that the Commission reject any attempt to tie NMGC AN 105 to Docket No. 24-00266-UT. NMGC argues that “the issues in the two cases are separate and distinct from each other and have no bearing on one another.”²⁴

FINDINGS AND CONCLUSIONS

21. The Commission finds that this matter should be assigned to a hearing examiner. The Joint Motion and the responses thereto raise material issues of fact concerning the Policy. Accordingly, the Commission further finds that NMGC AN 105, which is currently suspended until February 11, 2025, should be suspended for a period of nine months from its stated effective

²¹ NMGC’s Response at 3.

²² NMGC’s Response at 3.

²³ NMGC’s Response at 3.

²⁴ NMGC’s Response at 4.

date. As the effective date stated in NMGC AN 105 is January 30, 2025, the initial nine-month suspension period runs through October 30, 2025.²⁵

22. The Commission further finds that the procedural schedule in this matter should not be dependent upon the procedural schedule in Docket No. 24-00266-UT. There may or may not be facts and issues that are relevant to both this matter and the pending merger matter. However, even if there are such shared issues, it is only necessary to ensure that any relevant findings and holdings made in the two matters are consistent. Coordination of the proceedings is not necessary to achieve this goal. The review in this matter should proceed based upon the law applicable to the Policy, including the Rule.

IT IS THEREFORE ORDERED:

- A. NMGC AN 105 is hereby SUSPENDED through October 30, 2025.
- B. Hearing Examiner Christopher Ryan is hereby appointed to preside over this matter, to take all action necessary and convenient within the limits of the Hearing Examiner's authority, to conduct any necessary hearings, and to take any other action in this case that is consistent with law, including issuing a Recommended Decision.
- C. This Order is effective when signed.
- D. A copy of this Order shall be served upon all persons listed on the attached Certificate of Service via e-mail if their e-mail addresses are known; otherwise, via regular mail.
- E. In computing time in accordance with Statute, Regulation, or Commission Order, the computation shall begin on the date that the Order is filed with the Chief Clerk or Chief Clerk designee.

²⁵ The Commission may extend the suspension period by an additional three months pursuant to Section 62-8-7(C) of the PUA. NMSA 1978, § 62-8-7(C) (2011).

**SIGNED under the Seal of the Commission at Santa Fe, New Mexico, this 6th day of
February, 2025.**

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Gabriel Aguilera, electronically signed
GABRIEL AGUILERA, COMMISSIONER

/s/ Greg Nibert, electronically signed
GREG NIBERT, COMMISSIONER

/s/ Patrick J. O'Connell, electronically signed
PATRICK J. O'CONNELL, COMMISSIONER



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Order Suspending Advice Notice No. 105; Order Appointing Hearing Examiner* was emailed on this date to the parties listed below.

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DATED this 7th day of February, 2025.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ LaurieAnn Santillanes, electronically signed
LaurieAnn Santillanes, Paralegal