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From: Sullivan-Leshin, Isaac, PRC
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**IN THE MATTER OF NEW MEXICO GAS COMPANY, INC.'S)
APPLICATION FOR AN EXPEDITED VARIANCE APPROVING ITS PLAN) CASE NO. 21-00095-UT
FOR RECOVERY OF THE GAS COSTS RELATED TO THE 2021 WINTER)
EVENT)**

Please file the attached FINAL ORDER into the above captioned case.

Thank you,

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF NEW MEXICO GAS COMPANY,)
INC.'S APPLICATION FOR AN EXPEDITED VARIANCE) CASE NO. 21-00095-UT
APPROVING ITS PLAN FOR RECOVERY OF THE GAS)
COSTS RELATED TO THE 2021 WINTER EVENT _____)**

FINAL ORDER

THIS MATTER comes before the New Mexico Public Regulation Commission (“NMPRC” or the “Commission”) on New Mexico Gas Company Inc.’s (“NMGC”) April 16, 2021 Application (“Application”) for Expedited Approval of a Variance Approving its Plan for Recovery of 2021 Winter Event Gas Costs Under the Extraordinary Circumstances Provision of 17.10.640.14. **WHEREUPON**, being duly informed, **THE COMMISSION FINDS AND CONCLUDES:**

NMGC’S APPLICATION:

NMGC’s Application, supported by the direct testimonies of Ryan A. Shell, Joshua J. Tilbury and Daniel P. Yardley, seeks approval of NMGC’s Plan for Recovery of its 2021 Winter Event Gas Costs under the Extraordinary Circumstances Provision of 17.10.640.14 NMAC.

NMGC’s Application seeks a variance from NMGC’s First Revised Rule No. 25 – Rate Rider No. 4 Details (“Rule No. 25”), NMGC’s Original Rider No. 1-4 Rate Rider No. 4 – Cost of Gas Component (“Rider No. 4”), and 17.10.640.13 NMAC in order to allow NMGC to change the methodology by which it may recover the increased cost of gas costs incurred by NMGC during February 2021 under extraordinary circumstances that will materially impact the cost of gas in NMGC’s Commission-approved Purchase Gas Adjustment Clause (“PGAC”), and collect this amount over a longer period than the normal PGAC reconciliation period, thereby reducing the monthly bill impact to customers.

NMGC requests expedited approval of its Application by June 16, 2021, so that it will have sufficient time to include these costs in customers' bills beginning on July 1, 2021.

PROCEDURAL HISTORY:

On April 28, 2021, the Commission issued an Initial Procedural Order commencing this proceeding and establishing an expedited procedural schedule. The Initial Procedural Order required NMGC to publish Notice, substantially in the form of Notice of Proceeding included in its Application and conformed to reflect the provisions of the Initial Procedural Order, on its website and in the *Albuquerque Journal*, as soon as possible; ordered NMGC to provide Notice of the Application to the attorney general and intervenors in NMGC's last rate case in accordance with 17.10.640.12(F); set an intervention deadline of May 17, 2021; ordered that Commission's Utility Division Staff ("Staff") and intervenors shall file direct testimony or a verified statement of position on the Application on or before May 18, 2021; ordered any rebuttal testimony or response to verified statement of position shall be filed on or before May 28, 2021; ordered that a proposed final order be filed on or before June 1, 2021; ordered that a public hearing, if deemed necessary by the Commission, shall be held June 9, 2021 to be presided over by a designated presiding officer, who may be designated by subsequent single signature order of one Commissioner via the Zoom videoconference platform; ordered that public comment may be provided orally at any Commission open meeting prior to, or at the commencement of the Commission's regular open meeting on June 2, 2021, for the members of the public who are not intervenors to comment on the proposed Application, regardless of whether or not the Commission determines a public hearing is required; and ordered that interested persons may also submit written public comments to the Commission via its Records Bureau's email address.

On May 3, 2021, the Commission issued a Single Signature Order Designated Presiding Officer, designating Ashley Schannauer as the presiding officer for the hearing scheduled in this matter for June 9, 2021, and providing the primary function of the presiding officer in this matter shall be (i) to issue a prehearing order(s) establishing procedures for the hearing and (ii) to regulate the course and conduct of the hearing, including ruling on the admissibility of evidence.

On May 10, 2021, the Commission issued its Amended Superseding Order Designating Presiding officer, adding the following primary functions of the presiding officer: (iii) issue protective orders and (iv) make rulings on requests for confidential treatment of information made pursuant to any protective order issued.

No parties intervened by the intervention deadline of May 17, 2021.

On May 18, 2021, Staff filed the Prepared Direct Testimony of Gabrielle Dasheno that provided Staff's position on NMGC's Application and responded to the Commission's April 28, 2021 Initial Procedural Order.

On May 28, 2021, NMGC filed the Rebuttal Testimony of Ryan A. Shell that responded to Staff's Direct Testimony.

On May 28, 2021, NMGC filed a Notice of Receiving Payment; 2021 Winter Storm Event Extraordinary Gas Costs.

On June 1, 2021 NMGC submitted its proposed final order. The same day, Presiding Officer Ashley Schannauer issued his Prehearing Order establishing procedures for the June 9, 2021 hearing.

On June 3, 2021, Commissioner Fischmann issued a bench request to NMGC requesting additional calculations by rate class of NMGC's Extraordinary Gas Costs incurred during the Winter Weather Event costs, cost recovery calculations and bill impacts.

On June 8, 2021, NMGC filed a Response to the June 3, 2021 Bench Request.

On June 9, 2021, a public hearing on this matter was held before the full Commission, via the Zoom videoconferencing platform, at which Presiding Officer Ashley Schannauer presided and NMGC and Staff's testimony and exhibits were admitted into evidence and the witnesses gave additional oral testimony under direct and cross-examination.

On June 11, 2021, a Second Bench Request was issued asking NMGC to address and make suggestions as to the appropriate carrying charges and mechanisms by which the appropriate carrying charges applicable to the financed Extraordinary Gas Costs might be recovered from customers.

On June 14, 2021, NMGC filed its Response to the Second Bench Request issued June 11, 2021.

APPLICABLE LAW

NMSA 1978, sections 62-8-7(E) and (F) authorize the Commission to adopt rules permitting the use of automatic fuel clauses, including PGACs by gas utilities. NMPRC Rule 17.10.640 NMAC governs the approval and use of a PGAC. The PGAC is intended to ensure the stability of a utility's annual earnings consistent with the utility's duty to provide adequate service at just and reasonable rates. Pursuant to Rule 640.6, the PGAC mechanism also is designed to aid in the levelization of the gas cost factor reflected in the PGAC component of the customer's bill. Rule 640 requires the Commission's consideration and approval of continued use of a PGAC once every four years.

Under New Mexico law, fuel costs, such as gas supply costs recovered through a PGAC, are pass-through costs with no markup or markdown by NMGC. An objective of the PGAC is to "ensure the stability of the utility's annual earnings consistent with the utility's duty to provide

adequate service at just and reasonable rates. The PGAC mechanism is also designed to aid in the levelization of the gas cost factor reflected in the PGAC component of the customer's bill." Rule 17.10.640.6 NMAC. The New Mexico Supreme Court has recognized that the purpose of a fuel clause is to "place the burden of volatile fuel costs on the consumer; thereby providing the public utility with a stable income stream," while also ensuring the consumer only pays for costs actually incurred on its behalf.¹ "By enacting Section 62-8-7(E) ... the Legislature plainly has determined that the benefits of such an efficient cost recovery system outweigh the possible burdens that it might impose on consumers and 'is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at just and reasonable rates to all customer classes."²

Rule 17.10.640.14 NMAC recognizes that extraordinary circumstances may occur and provides for Commission alteration of a utility's collections through its PGAC in such circumstances, providing:

Notwithstanding the provisions of this rule and specifically Subsection C of 17.10.640.12 NMAC, the commission may direct the utility to alter its collections through the PGAC as provided herein.

- A. Under-collection or over-collection situation. The utility may apply to the commission or the commission may order a hearing on its own motion whenever the utility or the commission has good reason to believe, on the basis of information available to it at the time, that the presently effective gas cost factor or the gas cost factor adjustment proposed in any gas cost factor statement filed pursuant to Subsection D of 17.10.640.12 NMAC would result in a substantial under-collection or over-collection of revenue.
- B. Substantial gas cost factor adjustments. The utility may apply to the commission or the commission may order a hearing on its own motion whenever the utility or the commission becomes aware of an extraordinary circumstance under which the gas cost factor adjustment calculated in accordance with this rule will result in a substantial change in the level of the

¹ *Albuquerque Bernalillo County Water Utility Authority v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-013, 148 N.M. 21, 40,

² *Id.*

PGAC in the following billing period and excessive fluctuations in the gas cost factor adjustments for future billing periods.

- C. Mitigation of concerns. After notice and hearing, the commission may order the utility to place in effect, for such period of time as the commission may direct, a specified increase or decrease in the amount of the gas cost factor or take any other action appropriate to the public interest to mitigate the concerns identified in Subsections A and B of this section.

NMGC's request for a variance pursuant to Rule 17.10.640.15 NMAC seeks to change the methodology by which it may recover the increased gas costs pursuant to its approved PGAC. Rule 17.10.640.14 NMAC provides that a utility may file a written application for an exemption or variance from this rule or its approved PGAC, which shall be verified by an officer of the utility, and shall be served on the Attorney General. The utility's application for an exemption or variance shall:

- (1) describe the need for a variance;
- (2) set out the effect of complying with this rule or the approved PGAC on the utility and its customers as a result of the condition;
- (3) identify any section of this rule or the approved PGAC for which the exemption or variance is requested;
- (4) define the result which the request will have if granted;
- (5) state how the exemption or variance will meet the objectives of this rule; and
- (6) state why the requested relief is a reasonable alternative.

2021 Winter Event and its Effect on NMGC

In February 2021, New Mexico and the surrounding region experienced a storm of unusual severity and duration. NMGC stated that it learned that this storm was coming and took steps to arrange for natural gas supplies during the storm. During the storm, gas supply failures in Texas, combined with significant increases in demand for natural gas throughout the region, caused natural gas prices to spike to levels never seen before. In this environment, NMGC stated that it ensured continuous gas supply for its customers, but in doing so, was subject to the dynamics of the exceptionally volatile natural gas markets, and asserts that it ultimately incurred over \$110

million in Extraordinary Gas Costs over a period of six days – an amount that NMGC normally spends over the entire winter heating season.³

NMGC stated that for it and its customers, the February 2021 cold weather event consisted of several intertwined components including 1) extremely cold weather, 2) increased demand for natural gas and electric service throughout the Southwest and Rocky Mountain regions, especially in Texas and New Mexico, 3) well-head and pipeline freeze-offs in natural gas and oil production areas in Texas and New Mexico, resulting in significantly decreased production of natural gas in the Permian Basin, 4) electricity and natural gas disruptions throughout the region, and 5) extreme volatility in the natural gas markets throughout the Rocky Mountain and Southwest regions that resulted in significant and sustained price increases for natural gas on a scale that NMGC has never seen before (these events collectively are referred to as the “2021 Winter Event” or “Event”).⁴

NMGC stated that the critical days were February 13 through February 18, 2021. NMGC also provided information related to the prices and events on February 10th, 11th, and 12th and February 20th, 21st and 22nd to provide a fuller picture of how rapidly events beyond NMGC’s control impacted both natural gas supply and gas prices.⁵

NMGC’s Activities During the 2021 Winter Event

NMGC stated that during the 2021 Winter Event, NMGC utilized all available resources to ensure uninterrupted gas utility service for its customers. NMGC Witness Joshua J. Tilbury testified that in advance of and in response to events of the 2021 Winter Event: 1) NMGC utilized baseload gas; 2) NMGC obtained “Swing Gas,” which can be sourced three ways - Storage Gas, Day-ahead Gas (i.e. gas purchased a day ahead of need in the “day ahead” market), and

³ NMGC Application, at 2.

⁴ NMGC App., 2-3.

⁵ NMGC App., 3.

Intraday Gas (i.e. gas purchased on the day needed in the “intraday market”); 3) NMGC utilized linepack capacity; 4) NMGC switched gas supply sources.⁶

Mr. Tilbury testified that NMGC had prepared for the storm, but events took place on the Presidents’ Day weekend that were challenging. Among these challenges were: 1) the weather got significantly worse than anticipated on Sunday the 14th and Monday the 15th; 2) the unpredictable extent of the supply disruptions in the Permian, which resulted in extraordinarily higher prices in the gas market on Saturday and then throughout the remainder of the Event; 3) demand for natural gas increased significantly, more than anticipated, during the storm, both in the entire Southwest region, and in NMGC’s territory; and 4) NMGC planned to rely heavily on its storage and could not have anticipated that it would have such limited access to its storage supply. The party that NMGC contracts with for storage, Kinder Morgan (“KM”), was affected by low pressure and equipment failure, causing them to declare Force Majeure. This cut NMGC's supply and prevented NMGC from accessing the full amount of gas it was entitled to.⁷

Mr. Tilbury testified that due to the strategies NMGC employed in its initial supply plan, switching its supply to the San Juan and Piceance Basins and oversupplying the system’s forecasted demand and buying intraday gas to replace supply disruptions, NMGC was able to address these challenges and obtain enough gas to meet demand. These strategies were successful and prevented NMGC from having to curtail service to any of its customers during the 2021 Winter Event.⁸

Regional Price Impacts During the 2021 Winter Event

⁶ Tilbury Dir., 3-8.

⁷ Tilbury Dir., 12-13.

⁸ Tilbury Dir., 13.

NMGC stated that during the 2021 Winter Event, gas prices rose exponentially throughout the region and introduced Exhibit 4 showing that the average price of gas for purchase for use on Wednesday, February 10th was around \$3.29 per MMBtu; that the average price of gas as reported in Platts on Thursday, February 11th was around \$4.36 per MMBtu and the average price of gas as reported by Platts on Friday, February 12th was around \$10.77 MMBtu. NMGC stated that these prices for gas to be used on Thursday and Friday the 11th and 12th were not unexpected with a storm like the one forecasted for the President's Day weekend.⁹

NMGC also stated that Exhibit 4 shows that prices for gas to be used on Saturday the 13th through Thursday the 18th rose dramatically before returning to "normal" on the 19th and thereafter. NMGC stated that the price spikes shown on the 13th through the 18th were extreme and unlike anything the region (or this Company) had ever seen.¹⁰

Total Extraordinary Cost of Gas to NMGC Incurred During this Event

As a result of the extraordinary prices charged for gas on February 13th through February 18th, NMGC stated that it paid \$110,119,522 above what it would have paid during this period if prices had remained at a similar level to what NMGC saw through February 12, 2021. Exhibit 7 to NMGC's Application provided detail for NMGC's calculation of "extraordinary" gas costs and was summarized by NMGC as follows:

a. To begin with, during the entire month of February 2021, NMGC's total gas purchase costs were \$138,393,000 and NMGC collected \$23,608,668 from customers under NMGC's PGAC. This results in a net cost of gas to NMGC of \$113,190,181 in February to be recovered under NMGC's PGAC.

⁹ NMGC App., 11.

¹⁰ NMGC App., 11.

b. As detailed in Exhibit 7 to NMGC's Application, NMGC estimated that \$110,119,552 of the \$113,190,181 is solely the result of the extraordinarily high costs and increased customer demand NMGC faced during the 2021 Winter Event. This number was calculated as follows:

i. First, as shown in Column B of Exhibit 7, NMGC determined the amount of Swing Gas NMGC purchased on each day of the event.

ii. Second, as shown in Column C of Exhibit 7, NMGC determined the actual cost of the Swing Gas on each day of the Event. This totaled \$113,190,181 for the days with extraordinary prices – the 13th through the 18th.

iii. Third, in Column D of Exhibit 7, is the cost of Swing Gas that NMGC originally anticipated incurring on each day of the Event experiencing extraordinary prices. This anticipated cost is based on history and based on NMGC's projections for gas costs in February as prepared and submitted to the Commission as part of NMGC's PGAC filings in January for February 2021. NMGC stated that this predictive data, predating the 2021 Winter Event, is good evidence of what NMGC could have anticipated spending had the Event's extraordinary pricing not occurred. This projected cost of what NMGC could have anticipated totaled \$3.07 million.

iv. Fourth, as shown in Column E of Exhibit 7, NMGC derived the Extraordinary Gas Costs incurred by NMGC during the Event by subtracting column 4 from column 3. This is the \$110,119,522 referred to above and reflects NMGC's best determination of "extraordinary" gas costs for purposes of this Pleading.¹¹

v. In a Notice of Receiving Payment filed on May 28, 2021 and in testimony at the Hearing NMGC informed the Commission that it had received \$2,618,784 from a supplier

¹¹ NMGC App., 14-16.

in payment of Emergency Gas Service (“EGS”), which reduced the \$110,199,522 to \$107,580,738. After receipt of this EGS payment, the \$107,580,738 now represents NMGC’s best determination of “extraordinary” gas costs for purposes of this Pleading.

NMGC asserts that the Public Utility Act (“PUA”) provides that “public utilities are affected with the public interest in that . . . public utilities’ business and activities involves the rendition of essential public services to a large number of the general public.” NMSA 1978, Section 62-3-1(A) and to this end, no statutes, regulations, rules, or service standards allow public utilities to curtail service to customers solely based on the cost of the underlying gas commodity, especially during a severe winter storm. Accordingly, NMGC asserts its actions to ensure gas utility service to customers in the middle of a winter storm at prices similar to those of similarly situated utilities in New Mexico were prudent and reasonable.¹²

Normal Operation of NMGC PGAC

NMGC utilizes a an authorized PGAC mechanism in accordance with 17.10.640 NMAC, Company Rule No. 25, and Company Rider No. 4.¹³

NMGC stated that under normal circumstances, throughout the year, is authorized through its PGAC to collect from its sales service customers the prescribed costs of acquiring gas purchased by NMAC. Such costs include the cost of buying the gas as well as other costs such as transportation charges on third-party pipelines, gas hedging costs, gas storage costs, company used fuel, inspection and supervision fees, and balancing account carrying charges. (collectively “PGAC Gas Costs”)¹⁴

¹² NMGC App., 16-17.

¹³ NMGC App., 17-18.

¹⁴ NMGC App., 18.

NMGC stated that normally, NMGC's PGAC gas costs vary month to month and year to year due to the cost of the gas commodity and the amount of demand by NMGC's customers. NMGC stated that for a number of reasons, over the last decade, these gas costs have declined significantly. For example, in 2010, NMGC stated that it incurred approximately \$300 million in commodity costs. In 2015, NMGC stated that it incurred approximately \$200 million in commodity costs. In 2020, NMGC stated that it incurred approximately \$100 million in commodity costs.¹⁵

NMGC stated that normally, each month, NMGC attempts to predict prices and usage for the upcoming month in order to set its gas cost factor for the following month. For example, if NMGC stated that it expects to incur \$10 million worth of PGAC Gas Costs during a given month, NMGC will establish a billing factor (which is filed with the Commission) to charge \$10 million in gas costs during a given month, and then charges the factor to all sales service customers on a per-therm basis. Through this process, NMGC stated that it sets its gas cost factors every month, and normally, each month all of NMGC's sales service customers are charged the same gas cost factor recovery rate. In the event NMGC's forecasted pricing or usage vary from the actual results, NMGC stated that it utilizes a balancing account to carry forward under collections or over collections to the next month for recovery.¹⁶

NMGC stated that normally, pursuant to the provisions of Rule 25, NMGC's goal is to have a balancing account balance of plus or minus 5% at the end of each PGAC year, which runs from September 1 to August 31 of each year. Rule 25 provides that it is NMGC's "intent to manage the Balancing Account to a cumulative balance of plus or minus five percent (5%) of the PGA

¹⁵ NMGC App., 18.

¹⁶ NMGC App., 18-19.

Year’s total gas purchase costs for the Reconciliation Period ending August 31st of each year.”
Rule 25.3.A.(2)(a).¹⁷

Consistent with normal PGAC practices, NMGC stated that it intends to recover its normal and expected gas costs for 2021 – including the \$3.07 million in “anticipated” Gas Costs for the period from February 13-18 as it normally would subject to the normal balancing rules under NMGC’s PGAC. NMGC stated that it is on schedule to do so, and as to these normally incurred annual gas costs, NMGC anticipates being able to balance within the constraints of the PGAC and NMGC Rules and does not need to seek extraordinary relief.¹⁸

NMGC’s Proposed Plan for Recovery of the Extraordinary Gas Costs Incurred During the 2021 Winter Event

NMGC’s witness Ryan A. Shell explained the basis for NMGC’s plan in his direct testimony. Mr. Shell stated that first, NMGC is requesting a variance from the PGAC rule and NMGC’s approved PGAC to provide for the collection of the Gas Costs incurred during the 2021 Winter Event over an extended period of time. Mr. Shell testified that the gas costs incurred by NMGC in the 2021 Winter Event were extraordinary: roughly equal to NMGC’s annual gas costs for 2020. To try to recover \$107.5 million in Extraordinary Gas Costs from customers during the remainder to the 2020-21 PGAC year (ending in August 2021) would place an avoidable burden on NMGC’s customers. Mr. Shell stated that, instead, NMGC is seeking a variance to recover the Extraordinary Gas Costs between now and the end of 2023. To do this, Mr. Shell stated NMGC has essentially divided NMGC’s February gas costs into two buckets. The first bucket consists of the “normal” gas costs NMGC reasonably expected to incur in February. These normal costs are

¹⁷ NMGC App., 19.

¹⁸ NMGC App., 19.

being processed through the “normal” PGAC mechanism – outside of NMGC’s Application and request.¹⁹

Second, Mr. Shell testified that NMGC has identified and isolated into a separate bucket the Extraordinary Gas Costs incurred by NGMC because of the extraordinary prices charged during the 2021 Winter Event, and has submitted to the Commission a request for an Order authorizing the recovery of these Extraordinary Gas Costs by the end of 2023.²⁰

Third, Mr. Shell stated that NMGC is focused on the fact that the passing of these costs on to customers will place an additional and unexpected financial burden on our customers at a time when the global COVID pandemic that has already greatly affected many of NMGC’s customers. Mr. Shell testified that NMGC has taken this into account as it crafted its proposal to recover these costs from its customers. Mr. Shell stated that NMGC has attempted to spread these costs over an extended period of time, and in a manner – seasonally adjusted rates – that lessens the financial impact on NMGC’s customers.²¹

Fourth, Mr. Shell testified that as the investigations examining the forces that let the extraordinary prices charged for gas proceed, NMGC does not at this time know whether another event such as this could or will take place next year, or in two years, or in twenty years. Mr. Shell stated that NMGC has concluded that an extended, and still relatively timely, recovery of these costs is necessary to avoid having NMGC’s customers, and NMGC, exposed to risk, both financial risk and gas supply risk, if another event such as this were to occur in the near future.²²

Finally, Mr. Shell testified that in the face of the uncertainty as to the cause of this Event, or the results of investigations into the Event, or even the possibility of a recurrence of this Event,

¹⁹ Shell Dir., 4-5.

²⁰ Shell Dir., 5.

²¹ Shell Dir., 5.

²² Shell Dir., 6.

or the occurrence of other types of unanticipated events, NMGC must continue to take action now to ensure the reliability of supply for next year and the years after that. Toward this end NMGC already borrowed quickly to pay the suppliers of gas to this company. Mr. Shell testified that NMGC needs to consider and plan for future borrowing and potential capitalization to replace this debt, thereby ensuring the continuation of a financially viable gas utility for New Mexicans while these costs are recovered from our customers. Mr. Shell testified that NMGC must arrange through this Commission for the recovery of these costs, on a timely basis, so it is in a position to act in the uncertain future. Against this background, NMGC stated it must retain its relations with suppliers of gas to allow NMGC to negotiate for and contract for a sufficient supply of gas to ensure reliable service next year, and years thereafter.²³

NMGC's Proposed Plan for Recovery

NMGC stated its proposed plan for the recovery of the Extraordinary Gas Costs incurred by NMGC during the 2021 Winter Event (“Cost Recovery Plan” or “Plan”) and requests for variances:

a. Recovery Period: NMGC proposed to recover the extraordinary PGAC Gas Costs incurred during the Event by the end of 2023 (“Recovery Period”). This would amount to a 30-month Recovery Period if recovery commences on July 1, 2021. NMGC stated that the use of an extended period for recovery is intended to minimize the impact of these costs on customers’ monthly bills.²⁴

b. Carrying Charge: Given the significant and emergent nature of the gas costs incurred by NMGC, the NMGC stated that it entered into a short-term financing arrangement with

²³ Shell Dir., 6-7.

²⁴ NMGC App., 21.

Scotia Bank to avoid exceeding the capacity of its revolving credit facility as it paid these costs. NMGC stated the new short-term financing arrangement in the amount of \$100 million provided funding to pay the gas invoices owed by NMGC on March 25, 2021. NMGC stated this short-term borrowing runs from March 25 to September 23, 2022 and was set at the floating LIBOR “London Inter Bank Offering Rate” rate plus 65 basis points. NMGC stated that the loan is prepayable at any time without penalty and this facility will need to be renegotiated or replaced prior to the expiration of the 18-month term. NMGC stated that it has not determined how this will be done or under what terms. However, NMGC stated it will address its overall long-term capitalization prior to the maturity of this facility and at the time of this short-term financing, the total of NMGC’s total long-term debt was \$385 million, so this additional debt reflects a significant increase in NMGC’s debt.²⁵

In order to facilitate the financing of the extraordinary PGAC Gas Costs through the Recovery Period ending in December 2023, NMGC stated that it is also seeking a variance to the carrying charge it will apply to the extraordinary PGAC Gas Costs related to the 2021 Winter Event. NMGC proposed a carrying charge of 3.7%, which is NMGC’s average cost of debt as determined in NMGC’s last rate case. NMGC proposed to begin applying the carrying charge beginning on March 25, 2021, which NMGC stated is the day that it paid the invoices for gas acquired during the time period included in the 2021 Winter Event.

NMGC stated that it is seeking this carrying charge for the following reasons:

- i. NMGC stated that there is still an outstanding balance from customers for February gas costs totaling approximately \$113 million dollars, of which \$107.5 million of

²⁵ NMGC App., 21-22.

Extraordinary Gas Costs will be collected during the Recovery Period under NMGC's proposed Cost Recovery Plan.²⁶

ii. NMGC stated that the gas costs incurred by NMGC during the 2021 Winter Event were reasonably and prudently incurred by NMGC and were necessary in order to ensure customers did not lose natural gas service during the worst winter storm event in a decade. NMGC stated that reasonably incurred PGAC Gas Costs, even in extraordinary circumstances, are recoverable through the PGAC.²⁷

iii. NMGC stated that its PGAC smooths customer gas costs during each PGAC year by using a balancing account, and therefore allows for a carrying charge for any under-collections or over-collections that NMGC experiences under its PGAC. NMGC reduces the impact of short-term price increases to customers by paying gas bills and recovering those costs from customers over a longer period. NMGC stated that the reason for allowing a carrying charge within the PGAC is that NMGC is carrying the cost of under-collections for the express purpose of minimizing the immediate impact of gas cost spikes on customers, especially during key winter heating months when customers may be more vulnerable to significant market price volatility.²⁸

iv. NMGC stated that customers benefit by having their bills smoothed over time rather than incurring large variable spikes in their bills from one month to the next that are difficult for customers to plan and budget for. that this benefit is present in the normal PGAC situation and will be even more true with NMGC's proposal to address the recovery of the Extraordinary Gas Costs arising out of the 2021 Winter Event. NMGC stated that this benefit, however, requires NMGC to incur costs to finance the amounts owed by customers through the

²⁶ NMGC App., 22.

²⁷ NMGC App., 22-23.

²⁸ NMGC App., 23.

Recovery Period ending at the end of 2023. NMGC stated that while it believes this is the right thing to do for customers, the amounts owed by customers will become part of NMGC's overall assets and will be folded into NMGC's long-term financing plan, which will include a mix of short-term borrowings, long-term borrowings, and equity infusions, all of which have a cost to NMGC.²⁹

v. NMGC stated that given that there is no guaranty that another occurrence such as the 2021 Winter Event will not occur again during the Recovery Period, the risk facing NMGC in such an event is unknown, and risks such as these could impact NMGC's ability to borrow for a future event, or for all the other needs of NMGC, and could impact NMGC's credit ratings. NMGC stated that given this uncertainty, it is important that NMGC work to position itself in a financially secure way so that it is able to address unusual events and circumstances, such as the 2021 Winter Event, when they occur. This is why the amount owed by customers for the 2021 Winter Event will be rolled into NMGC's long-term financing plan. NMGC stated that its long-term financing plan ensures NMGC maintains its credit rating and is well positioned financially so it can weather unanticipated future events.³⁰

vi. NMGC stated that it would be extraordinarily difficult for NMGC to attract sufficient capital to cover more than \$107.5 million dollars of expense over a 30-month period without a belief by lenders and the shareholder that NMGC will be able to recover the full expense, including the cost of financing the 2021 Winter Event costs, in a way that is designed to decrease the impact on customer bills. NMGC stated it is critical for the State of New Mexico that it maintain financially viable utilities, and the best way to do this is to provide a reasonable carrying charge for obligations of this magnitude. NMGC stated that recovery of NMGC's average cost of

²⁹ NMGC App., 23.

³⁰ NMGC App., 24.

debt is the best, most reasonable, approach to providing enough certainty to allow NMGC to handle this extraordinary obligation in a reasonable manner and preserve its ability to finance its operations into the future.³¹

c. Gas Cost Recovery Factor/Rate³²: NMGC proposed to recover the PGAC Gas Costs related to the 2021 Winter Event from all sales customers, both residential and non-residential by the end of 2023. NMGC's Witness Daniel P. Yardley, discussed NMGC's proposal to tailor the recovery from each of these classes of customers to the unique usage of those customers in his direct testimony and exhibits.³³

i. Residential Customers: NMGC proposed that for residential customers, the gas costs related to the 2021 Winter Event will be recovered through a seasonally adjusted per-therm charge applicable to all sales customers. NMGC stated that recovery on a per-therm basis is consistent with the recovery of gas costs through NMGC's PGAC and avoids shifting cost responsibility among NMGC's customer classes. NMGC stated that applying a seasonal adjustment is unique and described it as follows:

1. NMGC stated that its residential customers' usage is generally weather sensitive and during the winter months, and especially during periods of extreme cold, residential customers' gas consumption increases significantly compared to consumption during warm summer months. In order to mitigate the impact of collecting the extraordinary PGAC Gas Costs incurred during the 2021 Winter Event on residential customers during the peak usage winter months, NMGC proposed a seasonally adjusted factor applicable only to these Extraordinary Gas Costs. Under NMGC's Plan, NMGC would apply a lower recovery factor for the Extraordinary

³¹ NMGC App., 24.

³² For the purposes of this Pleading, NMGC used the terms "factor" and "rate" interchangeably to describe the charge NMGC proposes to use to recover the Extraordinary Gas Costs discussed in this Pleading.

³³NMGC App., 25. Yardley Dir.

Gas Costs to residential customers for the months of October through April when gas usage is high; and a slightly higher factor during the low-usage months of May through September.³⁴

2. NMGC stated that the seasonal volumetric rates for residential customers are \$0.0694 per therm for the billing months of October through April and \$0.2837 per therm for the months of May through September. NMGC stated that if calculated on a non-seasonal basis the volumetric rate would be \$0.1013 per therm. The proposed rates and projected residential monthly revenues under the proposed rates were provided in NMGC Revised Exhibit DPY-2.³⁵

3. NMGC stated that on an annual basis, the seasonal rates for residential customers provide the same level of recovery as would a per-therm rate, but that this rate design would level out the monthly bill impact on residential customers so the customer would experience a more consistent charge regardless of the season.³⁶

4. NMGC stated that its proposed seasonal rate is 100% volumetric, with no fixed component and the amount a customer pays will vary directly with usage: the more gas a customer uses the higher the customer's bill will be. NMGC stated that this design provides customers with the option of reducing their usage in order to reduce their bills.³⁷

5. The anticipated bill impacts on the residential customers are reflected in NMGC Revised Exhibit DPY-4, attached to Mr. Yardley's testimony. As demonstrated in NMGC Revised Exhibit DPY-4, NMGC stated the variations in monthly residential customer bill impacts are significantly reduced with the use of seasonally adjusted rates compared to an unadjusted rate. Mr. Yardley testified that for an average residential customer with an annual usage of 659 therms, the range of bill impacts if there was no seasonal adjustment

³⁴ NMGC App., 25.

³⁵ Yardley Dir., 4. NMGC App., 26.

³⁶ NMGC App., 26.

³⁷ NMGC App., 26.

would range from a high of \$12.59 in January to a low of \$1.47 in July. However, with the seasonal adjustment, Mr. Yardley testified those impacts are \$8.62 in January when customers are using more gas and \$4.11 in July when customers are using significantly less gas.³⁸

6. NMGC stated Revised Exhibit DPY-2 shows the costs NMGC will collect on a month-by-month basis from residential customers over 30 months.³⁹

ii. Non-Residential Customers: NMGC proposed a rate of \$0.1013 per therm for non-residential sales customers. The proposed rates and projected non-residential monthly revenues under the proposed rates were provided in NMGC Revised Exhibit DPY-2.⁴⁰

1. NMGC proposed that the rate would be set on a fixed per therm charge based on usage. This rate, unlike the proposed rates for residential customers, will not vary by season since the majority of non-residential customers are not weather sensitive and do not need special seasonal changes in order to levelize their bill impacts. Rather, NMGC stated a seasonal rate would likely do the opposite of bill levelization for non-residential customers. For example, a consistent per-therm charge year-round avoids imposing a high seasonal summer rate on high load-factor non-residential customers and those with significant summer use. Imposing a seasonal rate with a higher charge during summer loads on non-residential customers would result in significant cost impacts to these customers and would result in them paying more than their share.⁴¹

2. NMGC stated Revised Exhibit DPY-2 shows the costs NMGC will collect on a month-by-month basis from residential customers over 30 months.⁴²

³⁸ Yardley Dir., 6.

³⁹ NMGC App., 27.

⁴⁰ NMGC App., 27.

⁴¹ NMGC App., 27.

⁴² NMGC App., 27.

d. Amortization Schedule: NMGC stated that the proposed rate structure, with a seasonal rate for residential customers and a non-seasonal rate for non-residential customers, is designed to collect the total amount of costs associated with the Event by the end of 2023. NMGC stated Revised Exhibit DPY-3 shows the amortization of the Extraordinary Gas Costs over 30 months and NMGC Revised Exhibit DPY-3 provides the amortization of the Extraordinary Gas Costs reflecting the projected revenues and carrying costs over the recovery term. NMGC stated the projected balance at the end of the 30-month term approaches zero. Additionally, NMGC stated Revised Exhibit DPY-5 shows the calculation of the rate to recover the required Inspection and Supervision fees.⁴³

e. Monthly PGAC Filings: NMGC requested a variance to recognize that each month during the Recovery Period, NGMC will supplement its normal PGAC filing to the Commission with a filing detailing the separate residential and non-residential gas cost factors NMGC will be charging for recovery of the 2021 Winter Weather Event gas costs. NMGC stated that the residential gas cost factor will be either of the two seasonal rates, depending on the time of year, and the non-residential gas cost factor will be as established in the proceeding. Each month these factors will then be passed on to customers as set forth in the next paragraph.⁴⁴

f. Customers' Bills: Because of limitations in NMGC's billing program, NMGC proposed to include the applicable recovery of Extraordinary Gas Costs incurred during the 2021 Winter Weather Event in the current cost of gas line item on each sales customers' bill. To accommodate this billing limitation, NMGC proposed to provide notice in/on for both residential and non-residential cost of gas factors during the Recovery Period (through December 2023). "The [insert month] cost of gas is estimated to be \$x.xxx/therm (residential) and \$x.xxxx/therm (non-

⁴³ NMGC App., 27-28.

⁴⁴ NMGC App., 28.

residential). For updated prices call 888-664-2726. This month's bill includes an additional amount in the cost of gas portion of the bill to reflect the cost of gas incurred by NMGC during the February 2021 Winter Weather Event."⁴⁵

NMGC stated that it will revisit the status of the gas cost recovery under this Plan and report to the Commission in October 2022 the status of the Recovery Plan, including whether the full recovery is on schedule, and if not, any necessary adjustments in the rate of recovery to allow the cost recovery plan to come in on balance as of December 31, 2023 and proposes to roll any remaining balance over to the PGAC consistent with the testimony of Mr. Yardley.⁴⁶

NMGC stated that it understands that for all sales customer classes there is a risk of an "intergenerational" impact. This occurs when new customers join the system who did not contribute to the cost incurred in February 2021 or customers that were here in February 2021 leave the system. NMGC stated that its billing system is simply not technologically able to charge different rates to customers based on when they became customers and cannot verify that new customers are in fact new to the system. NMGC stated its proposed 30-month recovery period attempts to balance the need to try and decrease the impact of the 2021 Winter Event on current customers on one hand, while being fair to new customers on the other.⁴⁷

As of the filing of this Application, NMGC stated that it understands that there are several investigations into the 2021 Winter Event including investigations initiated at the Federal and State levels. NMGC stated that it is and will continue to cooperate fully in all these investigations. To the extent any of these investigations find culpability by any third-party including producers, storage facility operators, suppliers, marketing entities, or other third parties of any form or nature,

⁴⁵ NMGC App., 28.

⁴⁶ NMGC App., 28-29.

⁴⁷ NMGC App., 29.

and result in remuneration to NMGC, NMGC stated that it will promptly communicate this result to the Commission, and the recovery will be used to reduce the amount not yet collected from customers. NMGC stated should the third-party recovery occur after December 31, 2023, NMGC would work with the Commission to provide a credit to customers.⁴⁸

Additionally, NMGC stated that it is itself investigating and evaluating possible claims it may have against third parties, while also considering best options to continue or enhance supplies of gas and gas supply reliability to NMGC and its customers. Among the concerns NMGC is considering as it evaluates any third-party claims it might have or might seek to assert is consideration of reasonable continuity of business, supply, storage and other relations necessary to maintain reliable and affordable supply to NMGC's customers.⁴⁹

Given the disruption to NMGC's anticipated access to gas stored for it in the Texas storage facility, NMGC stated that it is actively considering or reconsidering its storage relationships and considering alternative facilities including revisiting the issue of constructing liquefied natural gas storage near NMGC's load centers. To the extent NMGC determines that NMGC-controlled storage, free of third-party control, is the most appropriate option to ensure future reliability at fair, just and reasonable rates, NMGC stated that it will seek prior Commission-approval for any such project.⁵⁰

NMGC stated that trying to recover \$107.5 million from customers by August 31, 2021, as would normally occur under Rule 25, would cause significant increases to customer bills. NMGC stated that if NMGC were to have started collecting this amount in April 2021, with the intention of recovering the full amount in the PGAC year ending August 2021, the charge would have been

⁴⁸ NMGC App., 29-30.

⁴⁹ NMGC App., 30.

⁵⁰ NMGC App., 30.

\$1.3431 per therm, and the bill impact to an NMGC residential customer with average usage would have been approximately \$56.00/month in April and down to \$19.00/month in August. NMGC stated that it understands that such a dramatic increase in customer bills, especially during the current pandemic-caused economic slowdown, could prove to be very difficult for customers.⁵¹

Mr. Shell testified that consistent with 17.10.640.15 NMAC, he verified that without an Order from the Commission approving the request sought by NMGC, there is no reasonable method for NMGC to recover these gas costs without significant impact to customers. First, Mr. Shell stated that NMGC's customers cannot reasonably pay the amount of gas costs incurred during the 2021 Winter Event in the time remaining in the 2020-21 Gas Cost year, and therefore a variance extending the period for repayment through 2023 is necessary to facilitate the customers' ability to repay these gas costs incurred on their behalf. Accordingly, Mr. Shell asserted a variance and order approving NMGC's plan for recovery of these Extraordinary Gas Costs is in the best interests of NMGC's customers.⁵²

Second, Mr. Shell stated that the gas costs paid by NMGC in February 2021 have placed a significant strain on NMGC that can best be relieved with a timely Order from the Commission approving NMGC's plan for recovery of these obligations. Mr. Shell testified that as NMGC recovers these gas costs from customers through 2023, NMGC will need to continue to operate and prepare for the next Event, should it occur, as well as normal operations. Mr. Shell asserted it is in the best interests of NMGC's customers to have a financially strong and viable utility, and the plan put forward in this application best supports a healthy utility while considering the impact on customers.⁵³

⁵¹ NMGC App., 19.

⁵² Shell Dir., 7.

⁵³ Shell Dir., 7.

Staff's Position on NMGC's PGAC Proposal

Staff witness Gabriella Dasheno testified that her testimony addressed Staff's assessment of NMGC's request to adjust its methodology of its Gas Cost Factor in its approved PGAC. Ms. Dasheno stated that Staff is sensitive to the increased costs experienced by utilities across New Mexico. Ms. Dasheno stated that Staff recognizes the need for utilities to apply for variances related to the extreme costs related to the cold weather experienced in February, and Staff also recognizes that the short time needed for a decision may not allow sufficient time to evaluate all the issues related to the adjustment of the PGAC. Ms. Dasheno stated that Staff recommends that the Commission consider whether a utility should share in absorbing some part of the excessive costs that are being passed on to its customers due to extraordinary events. Ms. Dasheno asserted that, while the costs experienced during the 2021 Winter Event were beyond the utility's control, NMGC is proposing that the entire burden of the costs be passed on to the customers, with little or no impact to the utility. In addition, Ms. Dasheno stated the Commission may consider whether a limitation should be placed on the amount of costs that may permissibly be passed on to the customer in the case of an extraordinary event, such as the one that occurred in February 2021.⁵⁴

Prior to the Hearing Staff recommended the following:

- (a) NMGC should not be allowed to recover any interest and fees from its customers related to the Extraordinary Gas Costs of this event; and
- (b) NMGC should be allowed to collect \$110,119,522 for a period of 30 months, as requested. Staff adjusted the rates for December 2023 on the 2021 Winter Weather Event Residential and Non-Residential Extraordinary Gas Cost Revenues only to

⁵⁴ Dasheno Dir., 12-13.

equate the collection of gas cost recovery to zero. For December 2023 Residential changed from \$0.07 to \$0.0007. Non-residential changed from \$.010 to \$0.00081.⁵⁵

At the hearing, Ms Dasheno agreed to the revised amount – following the receipt of the EGS funds, and the revised billing amounts provided in the NMGC Revised Exhibits DPY 2, 3, 4 and 5.

Ms. Dasheno testified that, Staff also recommends that NMGC reach out to the representatives in its service area, as well as to the Governor of New Mexico to begin discussions about allocating state funds to alleviate the cost impacts of the 2021 Winter Weather Event on its customers. Ms. Dasheno stated that NMGC has extensive knowledge and expertise regarding the impact the 2021 Winter Event and related Extraordinary Gas Costs had on its customers, therefore, they are in the best position to advocate on behalf of their customers.⁵⁶

Ms. Dasheno stated that Staff recommends approval of NMGC's PGAC gas factor adjustment for a 30-month collection period with the following conditions:

(a) Require NMGC to file invoices received from gas suppliers in Case No. 21-00095-UT related to the costs incurred for the 2021 Winter Event.

(b) Require NMGC to provide proof of any attempts or actual negotiations with Kinder Morgan and other natural gas suppliers to reduce the cost of gas and mitigate the impact of the 2021 Winter Event on NMGC's customers. Require 100% of monies from the reduction of costs to be returned to NMGC's customers.

(c) Require monthly reconciliation filings of all costs charged in relation to the 2021 Winter Event.

⁵⁵ Dasheno Dir., 14.

⁵⁶ Dasheno Dir., 14.

(d) Require NMGC to notify the Commission immediately upon receipt of emergency aid (Federal, State, or County) that it receives. Require NMGC to identify impacts of such aid to the balance of the invoices and balancing account used to true up the costs of the Extreme Pricing Event.

(e) Require a regulatory review of the impact of the 2021 Winter Event and all transactions within six months of approval of NMGC's Application for variance.⁵⁷

NMGC's Response to Staff

NMGC witness Ryan A. Shell addressed the testimony of Staff witness Dsheno. Mr. Shell stated that NMGC agrees with the following recommendations of Staff:

- NMGC can file in this docket, as confidential documents under seal, or upon entry of a protective order, invoices NMGC received from gas suppliers related to costs incurred for the 2021 Winter Event;
- NMGC can provide, as confidential documents under seal, or upon entry of a protective order, communications it has with Kinder Morgan and other natural gas suppliers to reduce cost of gas and mitigate the impact of the 2021 Winter Event on customers;
- NMGC agrees that 100% of monies NMGC receives from the reduction of costs charged in relation to the 2021 Winter Event shall go to NMGC's customers; in fact, NMGC has already filed with the Commission Notice of an offset to the Amount claimed by NMGC of funds received from a supplier for EGS during this event;
- NMGC will file monthly reconciliation filings of all costs charged in relation to the 2021 Winter Event;

⁵⁷ Dsheno Dir., 14-15.

- NMGC will notify the Commission immediately upon receipt of any emergency aid (Federal, State, or County) that it receives related to the 2021 Winter Event, and will identify the impact of such aid on the balance of invoices and balancing account used to true up the costs of the 2021 Winter Event; and
- NMGC will participate in regulatory review of the impact of the 2021 Winter Event and all transactions; however, NMGC believes that twelve months from the date of approval of the application for variance will be a more appropriate time frame to review rather than the six recommended by Staff, as that will allow for the next Legislative session to have occurred and NMGC will have gone through both a summer and winter heating season so the data will be more complete regarding how well NMGC's collection proposal is operating.⁵⁸

Mr. Shell testified that NMGC is not opposed to working with state officials now and in the next legislative session to discuss the impacts of the 2021 Winter Event on customers and whether the State can allocate funds to assist customers. However, Mr. Shell noted that is not the only utility whose customers experienced hardship because of the 2021 Winter Event, and efforts to obtain relief from the state could require participation from intervenors, the NMPRC, and other utilities.⁵⁹

Mr. Shell testified that NMGC does not agree with Staff's suggestion that the Commission should consider placing a limitation on the amount of gas costs that may be recovered by customers for several reasons. Mr. Shell stated that, first, in no case should the Commission consider placing such a limitation retroactively. Mr. Shell stated that the Commission has not previously put NMGC on notice that NMGC may not be allowed to recover the costs it incurred to provide

⁵⁸ Shell Reb., 3-4.

⁵⁹ Shell Reb., 4.

customers with gas, and certainly did not do so prior to NMGC and other utilities incurring extraordinary commodity costs in February 2021. Moreover, Mr. Shell stated that the Commission has never provided any guidance on what the limit for commodity costs should be to allow the utilities to manage their activities accordingly. Mr. Shell testified that this would be a significant and retroactive change to the administration of PGACs and would amount to retroactive application of a determination.⁶⁰

Mr. Shell stated that, second, going forward, such a limit is not in the customer's interest. Mr. Shell stated that if there is a limit to recovery, then the utility will be forced to curtail customers whenever the limit is reached and such a result would have a detrimental effect on customers and could lead to curtailments of service caused by prices only and is not advisable.⁶¹

Mr. Shell further asserted that this proceeding is not the appropriate venue to make far reaching policy decisions and if the Commission is inclined to explore placing a monetary cap on the amount of commodity costs utilities are allowed to incur, then the appropriate forum is a rulemaking where all stakeholders have a chance to be heard and the Commission can craft a well-informed policy.⁶²

Mr. Shell testified that NMGC does not agree with the suggestion that the Commission should not allow NMGC to recover the requested carrying charges from its customers related to the Extraordinary Gas Costs of the 2021 Winter Event. Mr. Shell stated that NMGC incurred Extraordinary Gas Costs on behalf of its customers during the 2021 Winter Event; the costs were so great that they exceeded NMGC's liquidity at the time, and that NMGC had to undertake a Short-Term Loan of less than 18 months in an amount of \$100 million in order to be able to pay

⁶⁰ Shell Reb., 5.

⁶¹ Shell Reb., 5.

⁶² Shell Reb., 5-6.

the invoices for gas costs that were due in March and thereby avoid defaulting on its obligations to its counterparties. Mr. Shell stated that while NMGC is sensitive to the increased costs customers will bear in relation to the 2021 Winter Event, NMGC has worked hard to propose a plan that minimizes the impact on its customers as much as possible while still keeping NMGC whole.⁶³

Mr. Shell testified that it is appropriate for NMGC to request and for the commission to approve the carrying charge requested by NMGC for several reasons.

First, to pay these Extraordinary Gas Costs, Mr. Shell testified that NMGC entered into a short-term borrowing of less than 18 months that charges a floating interest rate. So, NMGC incurred an obligation that carries with it an interest charge to NMGC and burdens NMGC with significant additional debt obligations. Furthermore, Mr. Shell stated that because this borrowing is short-term, NMGC will need to refinance the loan in the future and pay the prevailing interest rates which exist at that time. Mr. Shell asserted the carrying charge requested by NMGC – NMGC’s average cost of debt - most accurately reflects this cost to NMGC during the period of recovery set forth in NMGC’s Application and request.⁶⁴

Second, Mr. Shell testified that carrying costs are real costs to NMGC, which is why NMGC’s PGAC - Rule 25 - and the Commission’s regulation 17.10.640 NMAC recognizes that recovery of a carrying charge on costs incurred by NMGC for purchasing gas. Mr. Shell asserted that a carrying charge is a normal and recognized cost of a prudent and reasonable gas purchase program that is included in NMGC’s existing PGAC as approved by the Commission. Mr. Shell testified that this concept is also built into other situations where the utility pays upfront costs and recovers those costs at a later date or over time including:

⁶³ Shell Reb., 6.

⁶⁴ Shell Reb., 6-7.

1. Allowance for Funds Used During Construction (AFUDC): This system allows the utility to capitalize the carrying costs, time value of the money, in order to compensate the utility for the fact that its investing money today for facilities will be later dedicated for public use.
2. Balancing Accounts have a carrying charge where essentially the utility charges interest on under collections, but recognizing the time value of money for customers, interest is paid on over collections.
3. Regulatory Assets are allowed to have a carrying charge, most often at the Weighted Average Cost of Capital, which includes a Return on Equity.⁶⁵

Mr. Shell explained that to deny the recovery of a carrying charge here would be contrary to and inconsistent with NMGC's PGAC rule as approved by the Commission, and the way the Commission normally treats similar costs.

Third, Mr. Shell testified that requiring shareholders to pay costs that were reasonably and prudently incurred for the benefit of customers in an extraordinary situation, without justification, would amount to an unlawful taking of property under the New Mexico Constitution and would be subject to judicial review. Mr. Shell clarified that while he is not a lawyer, his understanding is that there is law on this point which would support NMGC's position that this would be an unlawful taking.⁶⁶

Fourth, Mr. Shell testified that it is his understanding is that the Commission has already allowed other utility service providers to recover debt-related expenses incurred during the 2021 Winter Event. Mr. Shell stated that it is his understanding that Central Valley Electric Cooperative ("Central Valley") (Case No. 21-00047-UT) sought a variance to allow it to recover extraordinary

⁶⁵ Shell Reb., 7-8.

⁶⁶ Shell Reb., 8.

fuel and purchase power adjustment clause (“FPPAC”) costs it incurred due to the 2021 Weather Event. Within its request, Central Valley sought to recover approximately \$190,000 of interest charges it will incur due to an Emergency Loan Central Valley need to pay for FPPAC costs. Mr. Shell stated that the Commission approved this request in its Order Approving Variance entered on March 24, 2021 in that docket and to allow Central Valley to recover interest costs, but require investor-owned utilities such as NMGC to provide the same benefit to customers for free, would amount to inconsistent treatment of similarly situated utilities.⁶⁷

June 9, 2021 Public Hearing

At the June 9, 2021 Public hearing, Staff withdrew its argument that a limitation should be placed on the amount of Extraordinary Gas Costs that NMGC might permissibly recover from customers and its objection to NMGC’s recovery of carrying costs and fees related to the amount of Extraordinary Gas Costs NMGC had financed.

On examination by Commissioner Maestas, NMGC witness Shell acknowledged that notwithstanding its position that it should receive carrying charges on the \$100M Scotia Bank loan at its average cost of debt, NMGC would not oppose the Commission authorizing NMGC to recover its carrying costs on the Extraordinary Gas Costs based on the actual known financing costs for the 18 months of the Scotia Bank short term loan and conditionally approving the recovery of later financing costs based on the results of a subsequent competitively procured financing.

COMMISSION DETERMINATIONS:

1. NMGC is a public utility as defined in the Public Utility Act, NMSA 1978, Sections 62-1-1 to 62-16-10.

⁶⁷ Shell Reb., 9.

2. The Commission has jurisdiction over the parties and over this case.
3. Due and proper notice of Case No. 21-00095-UT and its subject matter has been given in accordance with the Public Utility Act and Commission Rules.
4. NMGC experienced extraordinary circumstances pursuant to Rule 640.14.B due to the 2021 Winter Event.
5. NMGC has demonstrated that its actions to mitigate the impact of the 2021 Winter Event on NMGC and its customers, is in the public interest, and should be approved.
6. As modified herein, NMGC's Cost Recovery Plan seeking to reduce the monthly bill impact to customers which would occur under its normal PGAC by spreading out recovery of this \$107.5 million in Extraordinary Gas Costs resulting from the Cold Weather Event over a longer period than the normal PGAC reconciliation period is in the public interest, adjustment to NMGC's approved PGAC is warranted pursuant to Rule 640.14, and variances are warranted pursuant to Rule 640.15.
7. NMGC's Proposed Cost Recovery Plan should be approved subject to the following modifications and conditions which the Commission finds are necessary to adequately balance the interests of the utility and its customers in light of the significant financial impacts of the Winter Weather Event.
8. NMGC's proposed 30-month Recovery Period for Extraordinary Gas Costs should be accepted.
9. NMGC should utilize the modified recovery method concept which includes a residential rate based on annual usage, an irrigation rate based on February Usage, and a uniform rate for all other non-residential usage set forth in Table 4 of NMGC Exhibit No. 6 – NMGC's Response to Bench Request Issued on June 3, 2021.

10. NMGC should recover carrying charges for the full \$107.5M in Extraordinary Gas Costs financed by NMGC at a rate equal to the LIBOR +.65% interest rate applicable to the \$100M Scotia Bank Short-Term Loan rather than NMGC's initial proposal to recover carrying costs at its 3.7% average cost of debt.

11. NMGC should utilize the cost recovery mechanism described in NNMGC's answer to Paragraph 3 of the Second Bench Request which NMGC indicates it has utilized in accordance with the terms of the \$100M Scotia Bank Short-Term Loan by selecting a monthly "Interest Period" (a period of time over which the LIBOR is fixed based on prevailing rates at the time each "Interest Period" is renewed), currently .75% based on the 30-day LIBOR. NMGC should promptly inform the Commission if it anticipates seeking a change in this process, and why.

12. NMGC should report to the Commission quarterly, starting with October 15, 2021, as to the previous three months' interest rates charged by the bank to NMGC and report its actual interest rates as compared to the rates used in setting recovery of the Extraordinary Gas Costs and adjust the amortization of the recovery balancing account accordingly so as to keep track of over- or under-collection.

13. NMGC should investigate alternative commercial refinancing opportunities over the course of the term of the \$100M Scotia Bank Short-Term Loan and make an application to the Commission for approval of refinancing that loan either no later than 45 days prior to the end of the current 18-month term of the \$100M Scotia Bank Short-Term Loan or at the time the floating LIBOR interest rate being charged to NMGC under this loan increases by 50 basis points from the current .75% interest rate.

14. Prior to any refinancing, NMGC should appear before the Commission to update the Commission on: 1) the status of recovery of the Extraordinary Gas Costs, 2) NMGC's plan for

refinancing, 3) any adjustments to rates to the extraordinary gas cost amortization schedule to bring it in on balance and on time consistent with the period of recovery approved by the Commission, and 4) any other relevant matter in the Commission's discretion.

15. The following Staff recommendations should be accepted and approved as orders of the Commission:

(a) Require NMGC to file invoices received from gas suppliers in Case No. 21-00095-UT related to the costs incurred for the 2021 Winter Event.

(b) Require NMGC to provide proof of any attempts or actual negotiations with Kinder Morgan and other natural gas suppliers to reduce the cost of gas and mitigate the impact of the 2021 Winter Event on NMGC's customers. Require 100% of monies from the reduction of costs to be returned to NMGC's customers.

(c) Require NMGC to notify the Commission immediately upon receipt of emergency aid (Federal, State, or County) that it receives. Require NMGC to identify impacts of such aid to the balance of the invoices and balancing account used to true up the costs of the Extreme Pricing Event.

(d) Require a regulatory review of the impact of the 2021 Winter Event and all transactions within six months of approval of NMGC's Application for variance.

IT IS THEREFORE ORDERED:

A. NMGC's Cost Recovery Proposal and requested relief seeking variances to its approved PGAC due to extraordinary circumstances is GRANTED as modified herein, and NMGC is authorized to implement its Cost Recovery Plan to recover its Extraordinary Gas Costs as modified herein.

B. As per the terms of the Commission's June 14, 2021 Second Bench Request, NMGC's and Staff's Responses to the Second Bench Request issued June 11, 2021 are admitted into evidence.

C. NMGC's proposed 30-month Recovery Period is approved.

D. NMGC shall utilize the modified recovery method concept which includes a residential rate based on annual usage, an irrigation rate based on February Usage, and a uniform rate for all other non-residential usage set forth in Table 4 of NMGC Exhibit No. 6 – NMGC's Response to Bench Request Issued on June 3, 2021.

E. NMGC shall recover carrying charges for the full \$107.5M in Extraordinary Gas Costs financed by NMGC at a rate equal to the LIBOR +.65% interest rate applicable to the \$100M Scotia Bank Short-Term Loan rather than NMGC's initial proposal to recover carrying costs at its 3.7% average cost of debt.

F. NMGC shall utilize the cost recovery mechanism described in NNMGC's answer to Paragraph 3 of the Second Bench Request which NMGC indicates it has utilized in accordance with the terms of the \$100M Scotia Bank Short-Term Loan by selecting a monthly "Interest Period" (a period of time over which the LIBOR is fixed based on prevailing rates at the time each "Interest Period" is renewed), currently .75% based on the 30-day LIBOR. NMGC shall promptly inform the Commission if it anticipates seeking a change in this process, and why.

G. NMGC shall report to the Commission quarterly, starting with October 15, 2021, as to the previous three months' interest rates charged by the bank to NMGC and report its actual interest rates as compared to the rates used in setting recovery of the Extraordinary Gas Costs and adjust the amortization of the recovery balancing account accordingly so as to keep track of over- or under-collection.

H. NMGC shall investigate alternative commercial refinancing opportunities over the course of the term of the \$100M Scotia Bank Short-Term Loan and make an application to the Commission for approval of refinancing that loan either no later than 45 days prior to the end of the current 18-month term of the \$100M Scotia Bank Short-Term Loan or at the time the floating LIBOR interest rate being charged to NMGC under this loan increases by 50 basis points from the current .75% interest rate.

I. Prior to any refinancing, NMGC shall appear before the Commission to update the Commission on: 1) the status of recovery of the Extraordinary Gas Costs, 2) NMGC's plan for refinancing, 3) any adjustments to rates to the extraordinary gas cost amortization schedule to bring it in on balance and on time consistent with the period of recovery approved by the Commission, and 4) any other relevant matter in the Commission's discretion.

J. NMGC shall file invoices received from gas suppliers in Case No. 21-00095-UT related to the costs incurred for the 2021 Winter Event. NMGC shall file any confidential documents under seal, or upon entry of a protective order.

K. NMGC shall provide proof of any attempts or actual negotiations with Kinder Morgan and other natural gas suppliers to reduce the cost of gas and mitigate the impact of the 2021 Winter Event on NMGC's customers and 100% of monies from the reduction of costs shall be returned to NMGC's customers. NMGC shall file any confidential documents under seal, or upon entry of a protective order.

L. NMGC shall immediately notify the Commission upon receipt of emergency aid (Federal, State, or County) that it receives. NMGC shall identify the impacts of such aid to the balance of the invoices and balancing account used to true up the costs of the 2021 Winter Event.

M. Utility Division Staff shall perform and NMGC shall participate in a regulatory review of the impact of the 2021 Winter Event and implementation of NMGC's Recovery Plan within six months of the date of this Order.

N. Within twelve months of the date of this Order, NMCG shall make a filing with the Commission, consistent with the format of its "fresh look" filing in Case 16-00097-UT, evaluating and assessing potential measures, and specifically, increased access to stored gas, including possible NMGC owned or controlled storage facilities, that may be adopted to prevent a reoccurrence of this event and the potential for extraordinary gas expenses and curtailments to customers.

O. This Order is effective immediately

P. Any matter not specifically ruled on during the hearing or in this Order is disposed of consistent with this Order.

Q. Copies of this Order shall be served upon all persons listed on the attached Certificate of Service.

R. This docket is closed.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 15th day of
June, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Cynthia B. Hall, electronically signed

CYNTHIA B. HALL, COMMISSIONER DISTRICT 1

/s/ Jefferson L. Byrd, electronically signed

JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2

/s/ Joseph M. Maestas, electronically signed

JOSEPH M. MAESTAS, COMMISSIONER DISTRICT 3

/s/ Theresa Becenti-Aguilar, electronically signed

THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4

/s/ Stephen Fischmann, electronically signed

STEPHEN FISCHMANN, COMMISSIONER DISTRICT 5



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF NEW MEXICO GAS COMPANY,)
INC.'S APPLICATION FOR AN EXPEDITED VARIANCE) Case No. 21-00095-UT
APPROVING ITS PLAN FOR RECOVERY OF THE GAS)
COSTS RELATED TO THE 2021 WINTER EVENT)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Final Order** was sent

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

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DATED this 15th day of June, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

Isaac Sullivan-Leshin, Paralegal

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