

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF NEW MEXICO GAS)
COMPANY INC.'S APPLICATION FOR THE)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO)
CONSTRUCT A LIQUIFIED NATURAL GAS)
FACILITY.)

Case No. 22-00309-UT

NEW MEXICO GAS COMPANY, INC.,)

APPLICANT.)

NEW ENERGY ECONOMY'S
POST HEARING BRIEF-IN-CHIEF

January 29, 2024

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I. Introduction

Decisions taken at COP28 last month set in motion the global transition away from fossil fuels, as the Earth was at its [hottest in recorded history in 2023](#). Our winters are shorter, our summers hotter, and our natural disasters more extreme. As the exponential growth of renewable and clean power continues, as we seek to reduce our energy demand for fossil fuels through the adoption of better energy efficiency in buildings and industry, as the adoption of electricity replaces fossil fuels, [there is no case to be made for *increasing* fossil fuel production at a time when investment should be made elsewhere](#). Instead of approving increased gas expansion¹ (and nearly doubling gas investment and concomitant revenues for shareholders in four years² as New Mexico Gas Company (“NMGC”) plans, the Commission should send NMGC back to the drawing board.

As fossil fuels become obsolete, expanding new natural gas investment will create stranded assets in the future and harm local and regional communities that should instead be supported with technologies that facilitate a transition to clean, renewable energy.

NMGC’s LNG proposal and its efforts to expand gas usage (and company revenues at ratepayers’ expense) demonstrates NMGC’s lack of concern for our air, the environment, and our climate – the only place we can call home. Furthermore, Albuquerque and Rio Rancho are growing and expanding westward. The health and safety of more than 100,000 residents, including school-age children, and their quality of life will be adversely affected by the location

¹ NEE Exh. 3, NMGC Exhibit to response to NEE 4-7, at pdf p. 8 of 21 (“Project Justification Report,” “Justification: LNG storage could become a key component of NMGC’s future capacity expansion plans and revenue generation ...”).

² NEE Exh. 4, NEE 4-13.4, at pdf pp.18 of 26. (New Mexico Gas Company, Inc’s Response to New Energy Economy’s Fourth Set of Interrogatories and Requests for Production of Documents, p. 3 of 21).

of this LNG plant.³ We cannot expect other states or countries to phase out their fossil fuels when at the same time we continue to expand the use of gas, a dangerous and risky proposition.

NMGC documents New Energy Economy (“NEE”) received during litigation reveal that NMGC wants to build this LNG facility to meet internal financial metrics – to expand gas usage (as far as Mexico) and increase capital expenditures in order to enlarge rate base – which boosts earnings and provides dividends to shareholders. That is the *motive* for the LNG facility, not “price spike” protection.

There is no evidence that NMGC addressed, let alone considered, addressing Keystone’s deficiency with creative, cost-effective alternatives as the Commission’s order required.⁴ Calling ConocoPhillips, a gas supplier to NMGC, is not a proper way to consider alternatives.⁵ Essentially, the Commission was requiring the Company to investigate financial alternatives to mitigate price spike volatility, but the company did not undertake a vigorous exploration of alternatives because this exercise was deemed too costly and would have taken too much time.⁶ Rather than present actual cost alternatives, NMGC skirted the directive and defaulted to the option from which NMGC most stood to gain, the capital-intensive Company owned “solution” that will result in more cost, more risk, more gas usage, and greater harm to New Mexicans.

³ Bernalillo County Resolution No. 2023-110, (10/24/2023).

⁴ *See*, Section III, B, 2.

⁵ Tr. (Vol. 1) 170-176 (Bullard); NMGC Exh. 1 (Bullard Dir.) at 30.

⁶ NMGC Exh. 3 (Reed Dir.) at 73-74.

II. Legal Standard

A. **NMGC Bears the Burden of Proof to Establish That Its CCN Application Will Result in a Net Public Benefit and Is the Most Cost Effective Among Feasible Resources**

As the applicant in this administrative adjudication, NMGC has the burden of proof.⁷ The burden of proof is two-pronged: it includes both the *prima facie* burden of adducing sufficient evidence to go forward with a claim, and the burden of ultimate persuasion. The quantum of proof in administrative adjudications is, unless expressly provided otherwise, a preponderance of record evidence.⁸

For a traditional utility plant addition, the Public Utility Act requires public utilities to obtain a certificate of public convenience and necessity (“CCN”) before constructing or operating any new public utility plant or system.⁹ In determining whether to issue a CCN, the Commission must consider whether the new public utility plant or system is consistent with the public convenience and necessity.¹⁰ The “public convenience and necessity” standard implies a net public benefit.¹¹ The utility applicant has the burden to show that the resource it proposes is the most cost effective resource among feasible alternatives.¹² The “project must be the most cost

⁷ Case No. 19-00195-UT, *Recommendation on Replacement Resources, Part II*, at 13, fn. 20, (06/24/2020), approved by the NM PRC in its *Order on Recommendation on Replacement Resources, Part II* (7/29/2020).

⁸ *Id.*, at n. 21.

⁹ NMSA 1978, § 62-9-1(A).

¹⁰ NMSA 1978, §§ 62-9-1(A) & 62-9-6.

¹¹ NM PRC Case No. 19-00195-UT, *Recommendation on Replacement Resources, Part II*, at 60, fn. 145, (06/24/2020), approved by the NM PRC in its *Order on Recommendation on Replacement Resources, Part II* (7/29/2020); *Re Valle Vista Water Utility Co.*, 212 P.U.R. 4th 305, 309 (2001). (“The ‘public convenience and necessity’ standard requires a net public benefit.”); *see also*, *New Energy Econ. v. N.M. Pub. Regulation Comm’n*, 2018-NMSC-024, ¶ 14, 416 P.3d 277 (“The PRC has interpreted the ‘public convenience and necessity’ to entail a net public benefit.”).

¹² Case No. 19-00195-UT, *Recommendation on Replacement Resources, Part II*, at 60, (06/24/2020), *Order on Recommendation on Replacement Resources, Part II* (NM PRC 07/29/2020); *see also*, *Public Serv. Co. of N.M. v. NMPRC*, (“PNM v. PRC”) 2019-NMSC-012, ¶¶ 22-32, 444 P.3d 460; Corrected Recommended Decision, Case No. 15-00261-UT (Aug. 15, 2016) at 89, 96-99, *approved in* Final Order Partially Adopting Corrected Recommended Decision (Sept. 28, 2016); Final Order, Case No. 13-00390-

effective alternative to satisfy the utility's needs.”¹³ However, a showing of cost-effectiveness alone is not sufficient.¹⁴ To the extent NMGC already has Keystone as an alternative, this project is discretionary. NMGC must therefore demonstrate,

. . . at a minimum, that the Commission insist that [the Company] make a showing sufficient to obtain a CCN. That includes proof that the project will produce a net public benefit and that [the Company] has conducted an evaluation of reasonable alternatives to its proposal. The Commission should also carefully evaluate the public interest and ensure a fair balancing of the interests of investors and ratepayers. Furthermore, given the discretionary nature of [the Company's] request, the standard should be higher than for a CCN, and the scope of the Commission's considerations should be broader. The Commission should consider the extent of any public opposition, the extent to which [the Company's] justifications are not clearly demonstrated, and the extent to which any uncertainties will impact the public interest and create unreasonable risks for ratepayers.¹⁵

B. The Decision-Making Process Is Part of a Prudence Analysis

As the New Mexico Supreme Court has held: “We observe that there is a meaningful relationship from the perspective of the ratepayers between the consideration of alternatives and the cost of the chosen generation resource. The goal of the consideration of alternatives is, of course, to reasonably protect ratepayers from wasteful expenditure. The failure to reasonably consider alternatives was a fundamental flaw in [the utility's] decision-making process.”¹⁶

C. Environmental and Climate Risks

UT (Dec. 16, 2015) at 5-11; Order Partially Granting PNM Motion to Vacate and Addressing Joint Motion to Dismiss, Case No. 15-00205-UT (Dec. 22, 2015) at 10-11; *In Re Public Service Company of New Mexico*, Case No. 2382, 166 P.U.R. 4th 318, 337, 355-356 (1995).

¹³Case No. 15-00312-UT, *Recommended Decision*, (3/19/2018) at 75, approved in *Final Order*, (NM PRC 4/11, 2018), *citing*, Case No. 2382, 166 P.U.R.4th 318, 337, 355-356 (1995); Case No. 15-00261-UT, *Corrected Recommended Decision*, (Aug. 15, 2016), pp. 89-99, approved in *Final Order Partially Adopting Corrected Recommended Decision*, (NM PRC 9/28/2016); Case No. 13-00390-UT, *Certification of Stipulation*, (November 16, 2015), pp. 95-96, approved in *Final Order*, December 16, 2015, p. 7.

¹⁴ *Id.* at 78.

¹⁵ *Id.* at 79.

¹⁶ *PNM v. PRC*, 2019-NMSC-012, ¶32, 444 P.3d 460.

As this Commission has recognized in the past, the balancing and ultimate approval of a certificate of convenience and necessity involves policy considerations that are the province of the Commission.¹⁷ This involves an evaluation of just and reasonable costs,¹⁸ but factors that also must be evaluated are location,¹⁹ environmental impacts,²⁰ and reliability.²¹

III. NMGC's Proposed LNG facility Is Not in the Public Interest

NMGC is proposing to build a liquefied natural gas ("LNG") production and storage facility in Rio Rancho. NMGC's request for a Certificate of Public Convenience and Necessity authorizing construction of the LNG Facility should be denied because it does not meet the net public benefit standard.²²

¹⁷ Case No. 19-00195-UT, *Recommendation on Replacement Resources, Part II*, at 14, (06/24/2020), *Order on Recommendation on Replacement Resources, Part II* (NM PRC 07/29/2020).

¹⁸ NMSA 1978, § 62-8-1; *Hobbs Gas Co. v. New Mexico Pub. Serv. Comm'n*, 1980-NMSC-005, ¶ 4 (citing NMSA 1978, § 62-8-1).

¹⁹ NMSA 1978, § 62-9-3. ("[I]t is in the public interest to consider any adverse effect upon the environment and upon the quality of life of the people of the state that may occur due to plants, [and] facilities[.]").

²⁰ *In the Matter of the Application of Public Service Company of New Mexico for Approval to Construct, Own, Operate and Maintain the Ojo Line Extension and for Related Approvals* ("OLE" case), Case No. 2382, *Recommended Decision of the Hearing Examiner*, 166 P.U.R. 4th 79, (NMPUC 7/05/1995). ("The Commission cannot accept ... such fatal flaws, impacts to important environmental values...").

²¹ Case No. 19-00195-UT, *Recommendation on Replacement Resources, Part II*, at 14, 61 and 63, fn. 159, (06/24/2020), *Order on Recommendation on Replacement Resources, Part II* (NM PRC 07/29/2020).

²² See e.g., *Re Alto Lakes Water Corporation*, *Recommended Decision*, Case No. 07-00398-UT (Feb. 6, 2008) at 6, *approved in Final Order* (Feb. 14, 2008); *Re Valle Vista Water Co. Inc.*, *Recommended Decision*, Case No. 3571 (Mar. 18, 2001) at 6-7, *approved in Final Order* (June 19, 2001); *Re Southwestern Public Service Co.*, *Corrected Recommended Decision*, Case No. 2678, (Nov. 25, 1996) at 19-20, *approved in Final Order* (Jan. 28, 1997). See also *New Energy Econ. v. N.M. Pub. Regulation Comm'n*, 2018-NMSC-024, ¶ 14, 416 P.3d 277 ("The PRC has interpreted the 'public convenience and necessity' to entail a net public benefit.").

A. Price Spike Mitigation, Rather Than Reliability, Is the Predominant Issue That Must Be Addressed by Any Proposed Gas Storage Solution in New Mexico

Because of improvements made throughout the gas supply system after the 2011 winter storm, it is unlikely that NMGC will face substantial future threats to its ability to reliably provide gas to customers. During the 2011 storm, an extended period of extremely cold weather drove peak demand to 719,000 MMBtu, while at the same time, gas wellhead freeze-ups in the producing areas shut off gas supplies in the field and drove down the available gas supply.²³ The 2011 storm was equaled in severity by Storm Uri,²⁴ but, as NMGC's \$1000 per hour expert²⁵ John Reed acknowledged, the extensive improvements made to NMGC's supply, transportation, and system after 2011 were effective in preventing customer curtailments during Storm Uri in 2021.²⁶ NMGC's Vice President of Engineering, Gas Management, and Technical Services Tom Bullard has recognized that the Storm Uri was "primarily a pricing event," and in NMGC's 2021 *Compliance Filing*, Bullard stated that NMGC "is primarily focused in its evaluation on storage options available to the Company to mitigate the kind of price spikes observed in the 2021 Winter Event."²⁷ As Bullard has stated, "Storm Uri, while unusual, is not unique," and a future storm similar to Storm Uri is probable.²⁸

²³ Case No. 11-00039-UT, *Final Order* (filed 12/13/12) at 21.

²⁴ NMGC Exh. 3 (Reed Dir.) at 54.

²⁵ Tr. (Vol. II) 487 (Reed). While Reed did not want to guess at how much his company has been paid for its services in relation to this case, he has put in over 100 hours working on the matter and believes that half a million dollars may be a reasonable estimate. *Id.* at 487-488.

²⁶ NMGC Exh. 3 (Reed Dir.) at 54. A full discussion of the many improvements made by NMGC after the 2011 storm is available at NEE Exh. 1 (Subra Dir.) at pdf pgs. 67-70.

²⁷ Case No. 21-00095-UT, *New Mexico Gas Company, Inc. Compliance Filing and Supporting Testimony Filed Pursuant to Decretal Paragraph of the NMPRC's June 2021 Final Order Relating to the 2021 Winter Event* (filed 03/31/2022), at pdf p. 12 of 71, (Bullard Dir.) at 5.

²⁸ NMGC Exh. 2 (Bullard Reb.) at 44. Interestingly, in his cross examination, Reed attempted to argue that Winter Storm Uri "isn't real world, and hopefully these prices aren't going to be repeated." Tr. (Vol. II) 480 (Reed). However, when pressed, Reed had to acknowledge that Winter Storm Uri "did happen." *Id.*

The reason that price spike mitigation should be considered the primary concern of any New Mexico gas storage system is because New Mexico is located near some of the largest natural gas basins in the world. Reed explained New Mexico's ready access to natural gas supplies during his cross examination. When confronted with a hypothetical scenario of the proposed LNG tank being empty and facing down another winter storm, Reed explained that "[t]his is not an issue of the gas not being physically available, it's a question of how much you pay for it. The capacity is there[,]” and the pipeline system and supply system are typically robust.²⁹ The NMGC system, being located between both the Permian and the San Juan Basins, means that it is quite unlikely that NMGC would be unable to obtain gas from both markets at the same time.³⁰

In fact, NMGC has diversified its supply portfolio to originate supply not only from the Permian and San Juan Basins but also from the Piceance Basin,³¹ which contains trillions of cubic feet of natural gas.³² These additional gas supply sources create redundancy and resiliency, and NMGC was able to draw on these sources of gas during the once-in-a-century event³³ experienced in 2021.³⁴ However, as noted by NMGC, the use of these additional supply sources, while helpful to ensure ample supply, did not alleviate the 2021 price spikes, as they also suffered similar price spikes of all gas in the region.³⁵ Thus, the issue is whether NMGC's

²⁹ Tr. (Vol. II) 483-484 (Reed).

³⁰ *Id.* at 485.

³¹ Case No. 21-00095-UT, *New Mexico Gas Company, Inc. Compliance Filing and Supporting Testimony Filed Pursuant to Decretal Paragraph of the NMPRC's June 2021 Final Order Relating to the 2021 Winter Event* (filed 03/31/2022), at pdf p. 44-45 of 71, (Bullard Dir.) at 37-38.

³² *Id.* at pdf p. 45 of 71.

³³ NMGC Exh. 3 (Reed Dir.) at 7 (describing Storm Uri as “a once-in-a-century level of disruption[.]”).

³⁴ *Id.*

³⁵ *Id.*

proposed LNG storage system will provide cost-effective enhanced price spike mitigation rather than an incremental expansion of reliability.

B. Replacing Keystone with the Proposed LNG Facility Will Result in Greater Exposure to Intraday Market Prices During Severe Winter Storm Price Spike Events

NMGC states that it is impossible for it to establish a storage alternative “that is capable of preventing a reoccurrence of the 2021 Winter Event[.] NMGC purchases gas in the market, but does not control the market, and is therefore subject to fluctuations in market pricing regardless of what it does with respect to storage.”³⁶ As Reed stated in his direct testimony, “it is unreasonable to expect that any new infrastructure could provide complete price protection under the circumstances presented by Winter Storm Uri.”³⁷ Accordingly, the question is how much price spike mitigation a given storage system can provide during a severe winter storm event. As Reed explains, “the ability to supply replacement gas must be considered to fairly compare the non-LNG alternatives to the Company’s proposed LNG Facility.”³⁸ Of course, NMGC repeatedly claims that the proposed LNG facility will provide greater price spike mitigation than Keystone provides.³⁹

³⁶ Case No. 21-00095-UT, *New Mexico Gas Company, Inc. Compliance Filing and Supporting Testimony Filed Pursuant to Decretal Paragraph of the NMPRC’s June 2021 Final Order Relating to the 2021 Winter Event* (filed 03/31/2022), at pdf p. 11 of 71, (Bullard Dir.) at 4.

³⁷ NMGC Exh. 3 (Reed Dir.) at 77,

³⁸ *Id.* at 60.

³⁹ *Id.* at 73, (claiming that Keystone provides inadequate price protection); NMGC Exh. 2 (Bullard Reb.) at 9 (claiming that the proposed LNG facility provides more protection to customers from price volatility); NMGC Exh. 2 (Bullard Reb.) at 68 (claiming that the LNG facility “better mitigates price volatility”); NMGC Exh. 3 (Reed Dir.) at 77, (“while the LNG Facility will not provide complete price protection, building the LNG Facility is certainly a major step in the right direction in terms of making a resource available that provides the Company an opportunity to mitigate price spikes under similar circumstances.”).

NMGC's application and supporting testimony set forth two hypothetical analyses to attempt to show that the proposed LNG facility would provide greater price protection than Keystone:

(1) Bullard sets forth in his direct testimony a simplistic hypothetical where another winter storm results in prices similar to those seen in Storm Uri;⁴⁰ and

(2) Reed sets forth three cost-savings strategies, detailed in NMGC Exhibit JJR-3,⁴¹ that he claims could have been used if the LNG facility had been operational during Storm Uri.⁴² Both of these hypotheticals are deeply flawed, and in fact, when examined in light of the other testimony and evidence in this case, demonstrate that the proposed LNG facility would likely render NMGC and its customers *more* exposed to spiking gas prices during Storm Uri.

First, Bullard's simplistic hypothetical provides no meaningful analysis of how the LNG facility could be used during a price spike to mitigate gas costs better than Keystone. Bullard initially claims, without any reference to supporting materials, that in order to combat a pricing event similar to Storm Uri, NMGC "would have at least, and potentially more than, 650,000 Mcf of LNG inventory available for storm related purposes."⁴³ Presumably Bullard makes this claim based on his testimony that the target for the LNG facility would be to enter February with at least 625,000 to 650,000 Mcf of LNG in the tank.⁴⁴ However, this doesn't account for the target to leave February and enter March with at least 200,000 Mcf of LNG in the tank.⁴⁵ Nor does it factor in that it would be imprudent to run the tank nearly empty in the middle of February.⁴⁶

⁴⁰ NMGC Exh. 1 (Bullard Dir.) at 81-82.

⁴¹ NMGC Exh. 3 (NMGC Exhibit JJR-3) at 123.

⁴² NMGC Exh. 3 (Reed Dir.) at 73-76.

⁴³ NMGC Exh. 1 (Bullard Dir.) at 81.

⁴⁴ *Id.* at 65.

⁴⁵ *Id.*

⁴⁶ Tr. (Vol. II) 481-482 (Reed) (explaining that it would likely be imprudent to run the LNG tank almost completely empty in mid-February).

Perhaps this is why, in his simplistic hypothetical, Bullard only uses 400,000 Mcf of LNG, which he notes could “save the customers more than \$60,000,000 in this scenario.”⁴⁷

Bullard’s overly simplistic hypothetical assumes that NMGC uses 400,000 Mcf of LNG at a WACOG of \$10.00/MMBtu to avoid paying \$175.00/MMBtu for gas on the market, thus allowing for NMGC to save \$165.00/MMBtu on 400,000 Mcf of gas; thus “saving” \$66,000,000.⁴⁸ Using this overly simplistic approach to calculating “savings” and applying Bullard’s presumed average market price of \$175.00/MMBtu, one could say that using Keystone during Storm Uri “saved” customers over \$95,000,000, because the WACOG of the Keystone gas was \$1.77/MMBtu,⁴⁹ the “savings” would be \$173.23/MMBtu, which multiplied by the 548,965 MMBtu drawn from Keystone during Storm Uri⁵⁰ yields a total “savings” of \$95,097,206.95. Bullard’s simplistic hypothetical does not provide any meaningful evidence to support the assertion that the proposed LNG facility would provide greater price protection than Keystone; if anything, it demonstrates the opposite.

Bullard has previously explained that overbuying baseload gas with the expectation of shifting unneeded baseload supply into storage would ultimately mean increased exposure to price spikes, stating that this strategy would “reduce the amount of low-cost gas the Company would have available to withdraw during a winter event and therefore limit the Company’s ability to mitigate price spikes.”⁵¹ This reasoning explains why the LNG facility necessarily

⁴⁷ NMGC Exh. 1 (Bullard Dir.) at 82.

⁴⁸ *Id.*

⁴⁹ The WACOG of Keystone gas during Storm Uri comes from Reed’s analysis in NMGC Exhibit JJR-3 at ln. 18, which he notes is sourced from “Company Data.”

⁵⁰ This figure comes from Reed’s analysis in NMGC Exhibit JJR-3 at ln. 5; the concerning discrepancy between Reed’s figure and NMGC’s responses to discovery requests regarding the amount of gas withdrawn from Keystone during Storm Uri is discussed in detail *infra* at fn. 82.

⁵¹ Case No. 21-00095-UT, *New Mexico Gas Company, Inc. Compliance Filing and Supporting Testimony Filed Pursuant to Decretal Paragraph of the NMPRC’s June 2021 Final Order Relating to the 2021 Winter Event* (filed 03/31/2022), at pdf p. 15 of 71, (Bullard Dir.) at 8.

provides less overall price protection than Keystone—it holds less cheap summertime gas for wintertime use. As the engineering firm assisting NMGC in the 2021 case noted, one of the limitations “is that an LNG facility typically has a smaller storage capacity than underground storage and is therefore more dependent on refilling between withdrawals.”⁵² That is why Reed recognizes that “replacing flowing supplies with vaporized LNG is uncommon[.]”⁵³ And of course, any wintertime refilling through liquefaction would be at increased wintertime gas prices.⁵⁴

The LNG facility ultimately provides less price protection than the Keystone facility because it has less overall capacity. NMGC leases 2.7 Bcf of storage at Keystone, with 190,000 Mcf/d in withdrawal rights, and it subleases 1 Bcf of this storage, thereby retaining 1.7 Bcf of storage capacity at Keystone,⁵⁵ whereas the proposed LNG facility has only 1 Bcf of total storage capacity.⁵⁶ With Keystone, NMGC currently targets to enter November and December with 1,550,000 Mcf of gas in its retained portion of the Keystone storage,⁵⁷ whereas, with the proposed LNG facility, NMGC would target entering November and December with only 900,000 to 925,000 Mcf of gas in the tank.⁵⁸ Indeed, when Winter Storm Uri hit on February 12, 2021, NMGC owned 1,349,801 MMBtu of gas that was held in storage at Keystone.⁵⁹

⁵² Case No. 21-00095-UT, *New Mexico Gas Company, Inc. Compliance Filing and Supporting Testimony Filed Pursuant to Decretal Paragraph of the NMPRC’s June 2021 Final Order Relating to the 2021 Winter Event* (filed 03/31/2022), at pdf p. 26 of 71, (Bullard Dir.) at 19.

⁵³ NMGC Exh. 3 (Reed Dir.) at 75.

⁵⁴ *See id.* at 45, n. 71.

⁵⁵ NMGC Exh. 1 (Bullard Dir.) at 12-13.

⁵⁶ *Id.* at 42.

⁵⁷ WRA Exh. 1 (Gould Dir., AJG Exhibit 4) at pdf pg. 109 of 162 (Appendix B to NMGC’s 2022-2023 Annual Gas Supply Plan).

⁵⁸ NMGC Exh. 1 (Bullard Dir.) at 63-64.

⁵⁹ Case No. 21-00095-UT, *New Mexico Gas Company, Inc.’s Response to Bench Request Issued May 3, 2023* (filed 5/12/23) at 3.

NMGC has made differing claims of how much price protection the proposed LNG facility would provide during a severe winter storm like Storm Uri. In discussing a hypothetical heating seasons with a severe storm in January or February, Bullard testified that “the Company will vaporize 500,000 to 550,000 Mcf of LNG from the LNG Facility over a four- or five-day period to address storm-related reliability and price volatility issues.”⁶⁰ Alternatively, Bullard claimed in his rebuttal testimony that “during winter storm Uri the LNG facility would have been able to provide half of the swing gas required.”⁶¹ However, Bullard provides no figure for how much swing gas was required during Storm Uri. Looking to other data sources, NMGC purchased 1,085,307 MMBtu of gas on the day ahead and intraday markets during Storm Uri.⁶² Additionally, NMGC withdrew 548,965 MMBtu of gas from Keystone.⁶³ Accordingly, between its purchases on the day ahead and intraday markets and its stored gas withdrawals from Keystone, NMGC had a total supply of 1,634,272 MMBtu of swing gas during Storm Uri. Thus, Bullard’s claim that the LNG facility would have provided half of the swing gas during Storm Uri equates to 817,136 MMBtu of gas, which is unrealistic and likely imprudent considering Bullard’s testimony regarding NMGC’s targets for LNG use throughout the heating season.

The normal winter operations period for NMGC is November through March.⁶⁴ Bullard expects to enter the heating season on November 1 with 900,000 to 925,000 Mcf of gas in the LNG tank,⁶⁵ and NMGC would then target to come out of November with at least 900,000 to

⁶⁰ NMGC Exh. 1 (Bullard Dir.) at 66.

⁶¹ NMGC Exh. 2 (Bullard Reb.) at 43.

⁶² Case No. 21-00095-UT, *New Mexico Gas Company, Inc. 's Application for Expedited Approval of a Variance Approving Its Plan for Recovery of 2021 Winter Event Gas Costs Under the Extraordinary Circumstance Provision of 17.10.640.14 NMAC* (filed 4/16/21) at pdf pg. 101 (Exh. 7) (showing total volume of gas purchased on day ahead and intraday markets from Feb. 13 through Feb. 18, 2021).

⁶³ NMGC Exh. JJR-3 at ln. 5.

⁶⁴ NMGC Exh. 1 (Bullard Dir.) at 62.

⁶⁵ *Id.* at 63.

925,000 Mcf in the tank,⁶⁶ to come out of December with at least 775,000 to 800,000 Mcf in the tank,⁶⁷ to come out of January with at least 625,000 to 650,000 Mcf in the tank,⁶⁸ to come out of February with at least 200,000 Mcf in the tank,⁶⁹ and to come out of March with at least 200,000 Mcf in the tank.⁷⁰ Bullard explains that these targets are only estimates and that “the level of gas in the LNG Facility could be higher or lower than this at the end of the month depending on weather variations and gas supply issues.”⁷¹

However, with NMGC’s target figures in mind, both Bullard’s claim that the LNG facility would have provided half of NMGC’s swing gas needs during Storm Uri and Reed’s analysis in NMGC Exhibit JJR-3 fall apart. Under these targets, NMGC plans to have approximately 425,000 to 450,000 Mcf to combat February weather and price spikes, plus whatever it might be able to liquefy during the month. However, as Mr. Gould points out, liquefaction of a significant amount of LNG in the winter is unrealistic.⁷² Reed agrees that it is certainly possible that by mid-February the LNG facility could be only approximately 60% full, meaning that there could be just 600,000 Mcf of stored LNG.⁷³

Reed claimed that the LNG facility could “reduce costs during Storm Uri” in three ways: (1) by vaporizing and using stored LNG from the facility instead of buying intraday gas on the spot market; (2) by proactively planning to vaporize and use stored LNG from the facility in order to reduce the amount of gas purchased on the day-ahead market; and (3) by vaporizing and using additional stored LNG to allow NMGC to sell its day-ahead purchases on the spot

⁶⁶ *Id.* at 64.

⁶⁷ *Id.* at 65.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 66.

⁷¹ *Id.* at 64.

⁷² WRA Exh. 2 (Gould Reb.) at 4.

⁷³ Tr. (Vol. II) 453, (Reed).

market.⁷⁴ He claims that these three cost savings strategies could have resulted in as much as \$43.2 million in savings during Winter Storm Uri,⁷⁵ that savings of \$13.8 million would have been relatively easy to achieve,⁷⁶ and describes the LNG facility's ability to mitigate price spikes as "quite meaningful."⁷⁷

But all of these claims are based on two implausible assumptions: (1) that the tank would be completely full at the beginning of Storm Uri,⁷⁸ and (2) that it would be acceptable to run the tank almost completely dry—down to 43,996 MMBtu, or slightly more than 4% of capacity.⁷⁹ However, Reed conceded that in real world conditions, it is unlikely that the LNG tank would be completely full in the middle of February,⁸⁰ and it is nearly inconceivable that operators would run the tank this low in February, as such action would be imprudent, due to the need to keep some stored gas in reserve to address future needs.⁸¹ It is simply implausible there would have been nearly a full Bcf of LNG available to counteract Storm Uri. Instead, as Reed and Bullard's testimony indicates, it is much more plausible that NMGC would be limited to using 450,000 Mcf of LNG to navigate the storm.

If NMGC were constrained to using only 450,000 Mcf of LNG to combat the price spikes during Winter Storm Uri, the financial outcome would have been substantially worse than with Keystone. In such a scenario, there would have been less stored gas available than NMGC was able to withdraw from Keystone during Storm Uri.⁸² Accordingly, there would

⁷⁴ NMGC Exh. 3 (Reed Dir.) at 73-76.

⁷⁵ *Id.* at 76.

⁷⁶ Tr. (Vol. II) 449-450 (Reed).

⁷⁷ NMGC Exh. 4 (Reed Reb.) at 21.

⁷⁸ Tr. (Vol. II) 451 (Reed).

⁷⁹ NMGC Exh. JJR-3 at ln. 50.

⁸⁰ Tr. (Vol. II) 481 (Reed).

⁸¹ *Id.* at 481-482.

⁸² See NMGC Exh. JJR-3 at ln. 5 (total amount of gas withdrawn from Keystone from Feb. 12 to Feb. 18, 2021 was 548,965 MMBtu). It is concerning that the figures of gas withdrawn from Keystone during

have been insufficient stored gas to cover demand, and NMGC would have needed to make all of the same intraday purchases that were made when utilizing Keystone: 82,039 MMBtu at a cost of \$15,198,712.⁸³ *And, NMGC would have also had to make additional intraday purchases on the spot market of another 98,965 MMBtu to cover the reduced amount of stored gas available.*⁸⁴ When presented with the scenario and with 20/20 hindsight, Reed would have made this additional spot market purchase on February 17, the day on which NMGC made its lowest-cost spot market purchases throughout the entire storm: \$100/MMBtu.⁸⁵ This would amount to \$9,896,500 in *additional* spot market expenditures,⁸⁶ assuming that NMGC is able to make these additional purchases at the lowest price it paid for spot gas that week: \$100/MMBtu. However, transactions on the spot market that week ranged from \$50/MMBtu to some that went as high as \$600/MMBtu, and “[i]t’s difficult to say what any individual purchase would have cost.”⁸⁷ “[W]e don’t know what it would cost. It could have been an enormous cost.”⁸⁸ Indeed, the

Winter Storm Uri used by Reed in developing his financial analysis in NMGC Exh. JJR-3 do not mirror the figures provided by NMGC in response to discovery requests. *Compare* NMGC Exh. JJR-3 at ln. 5 (548,965 MMBtu received from Keystone during Storm Uri) *with* NMAG Exhibit 4 at 4 (501,057 MMBtu received from Keystone during the same period). NMGC maintains complete control of the data provided to Reed for his analysis and to the NMAG in response to its discovery request; the 47,908 MMBtu difference is cause for concern as to the accuracy of the data underlying the financial modeling conducted by Reed and NMGC. This 47,908 MMBtu difference is quite close to the single worst Uri deficiency from Keystone of 55,160 on 2/14/2021.

⁸³ NMGC Exhibit JJR-3 at lns. 1-4 (totaling the intraday purchases: 34,502 + 5,000 + 15,000 + 2,300 + 10,000 + 4,486 + 10,751 = 82,039); NMGC Exhibit JJR-3 at ln. 21 (total cost of intraday purchases was \$15,198,712); *see also* Tr. (Vol. II) 459 (Reed).

⁸⁴ 548,965 MMBtu withdrawn from Keystone, minus the 450,000 MMBtu available to be drawn from LNG equals a further shortfall of 98,965 MMBtu. *See* Tr. (Vol. II) 459 (Reed). Further, Reed conceded that in this scenario, with only 450,000 MMBtu of LNG to deploy to combat Storm Uri, where LNG cannot even cover the amount of gas provided by Keystone, his second and third cost-saving strategies (using LNG proactively to reduce the amount of day ahead purchases and using LNG in order to allow NMGC to sell its day ahead purchases onto the spot market) would be impossible. Tr. (Vol. II) 465 (Reed).

⁸⁵ *See* NMGC Exhibit JJR-3 at ln. 14; *see also* Tr. (Vol. II) 460 (Reed).

⁸⁶ Tr. (Vol. II) 464 (Reed).

⁸⁷ *Id.* at 471.

⁸⁸ *Id.*

average cost that NMGC paid for gas on the spot market through Winter Storm Uri was \$185.26/MMBtu.⁸⁹ *If NMGC had the LNG plant and had to purchase the additional shortfall of 98,965 MMBtu at this average cost, it would have spent an additional \$18,334,256 on the spot market during Winter Storm Uri—more than doubling the amount it actually spent on the spot market when utilizing Keystone storage.*

Reed's analysis in NMGC Exhibit JJR-3 sets forth an unrealistic and imprudent scenario of LNG usage during Storm Uri, and he admitted as much in cross examination,⁹⁰ yet Exhibit JJR-3 formed the basis of NMGC's (as well as Staff's⁹¹) justification that the LNG plant was cost effective long-term. A more realistic scenario, where NMGC can only prudently use 450,000 MMBtu of LNG to combat the storm, would have resulted in having to purchase more than twice as much gas on the spot market (*increasing* customers' exposure to price spikes) than with Keystone. With the proposed LNG facility, a realistic scenario where NMGC has only 450,000 MMBtu of LNG to deploy to mitigate against high gas prices during a Storm Uri event could easily result in customers incurring more than \$125 million in extraordinary gas prices, rather than the \$107 million that was incurred with Keystone. There is a significant risk that the LNG facility would make customers more vulnerable, not less, to higher gas costs during severe winter storms.

C. Lack of Information is a Risk for the Commission

1. NMGC Performed No Comprehensive Resource Alternatives Analysis Between a Company-Owned LNG Facility and Contractual Alternatives; Without a Meaningful Investigation into Hedging or Other Contractual Alternatives to Remedy High Prices or Nomination Cuts the Commission Cannot Properly Evaluate Alternatives

⁸⁹ This is the average cost of the 82,039 MMBtu purchased on the intraday market that week at a total cost of \$15,198,712. See NMGC Exh. JJR-3 at lns. 1-4 and ln. 21.

⁹⁰ Tr. (Vol. II) 481-482 (Reed).

⁹¹ Staff Exh. 1 at 10, 21 (Rilkoff Dir.).

In the PRC’s Final Order, Case No. 21-00095-UT, ¶ N (June 15, 2021), NMGC was directed to “evaluate and assess potential measures, 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 [2021 Storm Uri] and the potential for extraordinary gas expenses and curtailments to customers.”

NMGC has now come forward with a request for a CCN for a proposed LNG facility to be sited on the Quail Ranch property in Rio Rancho, home to over 110,000 residents and part of Bernalillo County, near seven schools, two community centers, and the Petroglyph National Monument. In its Application, NMGC has asserted that the PRC should approve the CCN because its proposed project is the only *feasible* option to ensure adequate service of gas.⁹²

NMGC has failed to provide essential information to enable the Commission to conclude that NMGC’s LNG project is the *only* option⁹³ or combination of options and merits a CCN. In prior cases, the Commission has equated “public convenience and necessity” with the public interest, declaring that “[t]he public interest is to be given paramount consideration; desires of a utility are secondary.”⁹⁴ In assessing whether to grant NMGC its requested CCN, the overlay to any analysis by the Commission must be the legislative directive that “it is in the public interest to consider *any adverse effect upon the environment and upon the quality of life of the people of*

⁹² NMGC Exh. 3 (Reed Dir.) at 73-74. (“[T]he prospect of finding a feasible site located near Company distribution facilities, and of adequate size and pressure, is questionable and it would be time-consuming and expensive to conduct such a search, and may not result in a viable local storage option.”); *see also* NMGC Exh. 4 (Reed Rebuttal) at 4; Tr. (Vol. 2) 373-376 (Reed); *compare* NMAG Exh. 2 (Rosenkranz Dir.) at 11, 26-28.

⁹³ Tr. (Vol. 1) 247 (Bullard) (The Rio Rancho LNG facility is the “only” facility that checks all the boxes.).

⁹⁴ *Re Public Service Company of New Mexico*, 119 PUR 4th 48, 49-50 (1990) (quoting *Matter of Rule Radiophone Serv., Inc.*, 621 P.2d 241, 246 (Wyo. 1980)).

the state that may occur due to plants, facilities and transmission lines needed to supply present and future electrical services.”⁹⁵

2. Critical Information is Missing, Without Which the Commission Cannot Make a Fully Informed Decision, as These Are Not Tangential Matters That Can Be Deferred Until After the Issuance of a CCN

In order to be able to determine if approval of NMGC’s application would produce a “net public benefit,” the Commission must be able to examine the factors that go into the equation. The outcomes of the various studies and permitting requests are not before the Commission, only a promise that these studies would be conducted post-approval.⁹⁶ Intervenor has asked NMGC experts to provide the PRC with information to show whether its proposed LNG facility (where sited) is safe and has no adverse effect upon the environment and the quality of life of the neighboring communities and New Mexico in general. NMGC failed to answer these critical questions positing instead, “it is too early to conduct any studies of air and water cumulative impacts.”⁹⁷ The Application and Supportive Testimonies are devoid of details regarding the inherent risks of LNG transportation because “NMGC has not developed an urban truck transportation plan at this time.”⁹⁸ NMGC has not conducted any kind of cumulative impact analysis of the direct or indirect greenhouse gas emissions that will result in the fugitive release or combustion of LNG.⁹⁹ “NMGC is not able to quantify to a reasonable degree of probability

⁹⁵ NMSA 1978, § 62-9-3 (2021) (Emphasis supplied).

⁹⁶ See NEE Exh. 7, NEE 2-13, at pdf page 7 of 13. (New Mexico Gas Company, Inc.’s Response to New Energy Economy’s Second Set of Interrogatories and Requests for Production of Documents) (List of permits that would be required before operations begin).

⁹⁷ NEE Exh. 1 (Subra Dir.), Exhibit WS-5, at pdf page 63 of 98 (New Mexico Gas Company, Inc.’s Formal Response to Joint questions from Intervenor and Staff Propounded on May 19, 2023 and May 25, 2023, p. 9).

⁹⁸ *Id.*, Exhibit WS-6, at pdf page 77 of 98 (New Mexico Gas Company, Inc.’s Response to New Energy Economy’s First Set of Interrogatories and Requests for Production of Documents, p. 10).

⁹⁹ *Id.*, at Exhibit WS-6, at pdf page 79 of 98 (New Mexico Gas Company, Inc.’s Response to New Energy Economy’s First Set of Interrogatories and Requests for Production of Documents, p. 13).

the negative impacts, if any, of the discretionary GHG emissions vent to atmosphere on the health of Rio Rancho and Albuquerque residents.”¹⁰⁰ “The yearly emissions resulting from discretionary venting of greenhouse gas (“GHG”) to the atmosphere is not reasonably determinable since it would vary depending on operations,”¹⁰¹ (which NMGC has not attempted to quantify); and “NMGC is not able to quantify to a reasonable degree of probability the potential increased health care costs, if any, of the discretionary GHG emissions vent to Rio Rancho and Albuquerque residents.”¹⁰² “The total annual CO₂ emissions will depend on the number of days of operation per year, which will depend on operating conditions and needs and cannot be determined to a reasonable degree of probability at this time.”¹⁰³

No information is available because NMGC does not seem to have a plan as to the extent to which its proposed facilities will operate and generate toxins and greenhouse gasses. But we do know that the goal is increased, not decreased use of natural gas. We also know that there are 51 public schools within 10 miles of the location of the proposed LNG facility, and “NMGC has not made contact with the principals/heads of these schools and no special safety arrangements have been made by NMGC as it relates to any of these schools.”¹⁰⁴ The operating, maintenance, and safety plans would be generated much later.¹⁰⁵ Additionally, glaringly absent from NMGC’s application is an independent PHMSA (Pipeline and Hazardous Materials Safety Administration)

¹⁰⁰ *Id.*, at Exhibit WS-6, at pdf page 85 of 98 (New Mexico Gas Company, Inc.’s Response to New Energy Economy’s First Set of Interrogatories and Requests for Production of Documents, p. 19).

¹⁰¹ *Id.*, at Exhibit WS-6, at pdf page 83 of 98 (New Mexico Gas Company, Inc.’s Response to New Energy Economy’s First Set of Interrogatories and Requests for Production of Documents, p. 17).

¹⁰² *Id.*, at Exhibit WS-6, at pdf page 85 of 98 (New Mexico Gas Company, Inc.’s Response to New Energy Economy’s First Set of Interrogatories and Requests for Production of Documents, p. 19).

¹⁰³ *Id.*, at Exhibit WS-4, at pdf page 56 of 98 (New Mexico Gas Company, Inc.’s Response to New Energy Economy’s Second Set of Interrogatories and Requests for Production of Documents, p. 11).

¹⁰⁴ *Id.*, at Exhibit WS-4, at pdf page 52 of 98 (New Mexico Gas Company, Inc.’s Response to New Energy Economy’s Second Set of Interrogatories and Requests for Production of Documents, p. 16).

¹⁰⁵ Tr. (Vol. 3) 611-612 (Barclay).

study¹⁰⁶ that certifies that this LNG facility would be able to comply with USDOT safety standards, including minimum standards for location, design, construction, operation, and maintenance required of large LNG facilities. Even though NMGC has agreed to comply with all PHMSA requirements, which would allegedly encompass all relevant hazards, including the potential impacts from the Battery Energy Storage project at Atrisco¹⁰⁷ and seismic activity,¹⁰⁸ NMGC will not conduct an *independent* PHMSA study¹⁰⁹ “because our pre-FEED contractors on our FEED contract used the PHMSA criteria to conduct the siting analysis.”¹¹⁰ NMGC will be employing the same pre-FEED contractors for the PHMSA study despite the fact that neither the pre-FEED contractors or any NMGC witness flagged, let alone addressed, the potentially hazardous battery storage or the seismic siting issues in their initial location review.

Lacking all of this critical information, the Commission cannot make an informed decision as to whether the LNG facility is safe, reliable, cost-effective, and environmentally responsible. Without this information the Commission cannot decide that the location will not have an “adverse effect upon the environment and upon the quality of life of the people of the state” due to the proposed LNG plants’ location.¹¹¹

As PRC Hearing Examiner Ashley C. Schannauer astutely noted in a previous case when a CCN was being requested and where lack of information was at issue, “the issues and potential harms associated with [a new energy project] are integral to the determination of whether the acquisition would produce a net benefit to the public and whether the Commission should issue a CCN. They are not tangential issues that can be deferred into the future after the issuance of the

¹⁰⁶ Tr. (Vol. 1) 243-246 (Bullard).

¹⁰⁷ Tr. (Vol. 3) 673 (Barclay).

¹⁰⁸ Tr. (Vol. 3) 712-714 (Jones).

¹⁰⁹ Tr. (Vol. 1) 243-246 (Bullard).

¹¹⁰ *Id.*

¹¹¹ NMSA 1978, § 62-9-3 (2021).

CCN.”¹¹² Moreover, while NMGC maintains that much of the information requested is premature and can be deferred into the future (i.e., after the CNN is granted, after construction), Hearing Examiner Schannauer further cautioned:

The grant of a CCN will also start in motion other events and commitments that may be difficult to stop or undo. The events and commitments, when started in motion, may produce pressure to accept and approve less than reasonable terms.¹¹³

3. Without a Meaningful Investigation into Hedging or Other Contractual Alternatives to Remedy High Prices or Nomination Cuts, the Commission Is Not Properly Equipped to Determine If the LNG Facility Is the Best Option Among Alternatives

In addition to the lack of information provided by NMGC regarding health and safety issues at the proposed LNG facility, there is insufficient information that NMGC adequately considered cost alternatives to the LNG plant. Thus, the PRC lacks sufficient information to review and compare lower-cost alternatives, such as the costs of negotiating more consumer-protective contract alternatives. NMGC asks that the Commission approve the facility first and worry about rate-making later. This would not be in the public interest where “saving ratepayers money” is a claimed goal of the project.¹¹⁴

Significantly, NMGC failed to perform comprehensive resource alternatives analysis between a company-owned LNG Facility and contractual alternatives. NMGC “has not analyzed its gas procurement contracts to determine if the contract terms are sufficiently protective of ratepayers against default, or whether contractual penalties, liquidated damages, or other

¹¹² Case No. 13-00390-UT, *Certification of Stipulation* (4/8/2015) at 102.

¹¹³ *Id.*

¹¹⁴ Tr. (Vol. 2) 302, 355, 428 (Reed) and NMGC Exh. 3 (Reed Dir.) at 60, 72, 74-76; Tr. (Vol. 1) 94-97, 126, (Bullard) and NMGC Exh. 1 (Bullard Dir.) at TCB-3, page 195 of 217, and at 82 (“Obviously, the savings could be higher or lower depending on several factors including the timing, duration, and severity of the storm, and the prices of gas over the period of the storm.”) (Emphasis supplied).

compensation in NMGC’s contracts for transport, storage, purchases or other contracts would protect ratepayers.”¹¹⁵ Despite Mr. Reed’s 45 years as a financial and economic consultant, including specifically energy market analysis, and energy contract negotiations that have resulted in hundreds of millions of savings through contract renegotiations,¹¹⁶ he did not review New Mexico Gas Company’s gas procurement contracts,¹¹⁷ nor did he analyze those gas procurements to determine if they were favorable to ratepayers or if they could be improved.¹¹⁸ Reed did not determine whether they offer protections against default.¹¹⁹ Reed conceded that he also did not conduct an examination of the Gas Company’s contracts to determine if negotiations or renegotiations should be undertaken to protect consumers from defaulting suppliers.¹²⁰ Other than the flawed comparison between Keystone to the proposed LNG facility (contained in NMGC Exh. 3, Exhibit JJR-3), Mr. Reed did not conduct an analysis to determine how much price protection from an event like Winter Storm Uri could be achieved if the Gas Company were to reconsider its gas supply, transportation, storage portfolio, hedging and purchasing practices, or any combination thereof.¹²¹

“According to a discovery response, NMGC also has not analyzed its hedging practices to determine if they are best practices or could use improvement. NMGC has skipped analysis of other, less costly alternatives (alone or in combination) and went right to LNG storage and transportation.”¹²² Even though the PRC’s order directed NMGC to “evaluate and assess

¹¹⁵ NEE Exh. 1 (Subra Dir.) at 4-5; *see also* NEE Exh. 6 (New Mexico Gas Company, Inc’s Response to New Energy Economy’s Third Set of Interrogatories and Requests for Production of Documents, pp. 3-14).

¹¹⁶ Tr. (Vol. 2) 444-445 (Reed).

¹¹⁷ *Id.* at 445.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 446.

¹²⁰ *Id.*

¹²¹ *Id.* at 447-448.

¹²² NEE Exh. 1 (Subra Dir.) at 5; *see also*, NEE Exh. 6 (New Mexico Gas Company, Inc’s Response to

potential measures [] including increased access to stored gas” to prevent a reoccurrence of this 2021 Storm Uri potential extraordinary gas expenses,¹²³ NMGC conducted no analysis or re-analysis of New Mexico’s Gas Company’s gas contracts for the purpose of examining the terms applicable to penalties, liquidated damages, or other compensation for protection against supply shortfalls, nor has it conducted an analysis of its hedging practices or examined NMGC’s contracts to determine if negotiations or renegotiations should be undertaken to protect customers from defaulting suppliers.¹²⁴

Mr. Reed also testified that “complete price protection, if even achievable, . . . would likely be cost prohibitive.” Even accepting his premise that “complete price protection” is unattainable, NMGC failed to review its hedging, contracting, and transportation practices—all avenues that could *mitigate* price spikes. Even without the ability to attain “complete price protection,” NMGC is not relieved of its responsibility to consider financial alternatives and weigh them against the costs of an LNG storage facility; NMGC has a *legal obligation* to consider these alternatives. A utility must “demonstrate that it ‘reasonably examined alternative courses of action.’”¹²⁵ In that case, where the record showed that PNM had failed to provide evidence of cost-effectiveness by assessing alternatives, the New Mexico Supreme Court stated, “*The failure to reasonably consider alternatives was a fundamental flaw in PNM’s decision-making process.*”¹²⁶

New Energy Economy’s Third Set of Interrogatories and Requests for Production of Documents, pp. 3-14).

¹²³ Tr. (Vol. 1) 173 (Bullard); Case No. 21-00095-UT, *Final Order*, ¶ N (NM PRC 6/15/2021).

¹²⁴ Tr. (Vol. 2) 444-448 (Reed); *see also*, NEE Exh. 6 (New Mexico Gas Company, Inc.’s Response to New Energy Economy’s Third Set of Interrogatories and Requests for Production of Documents, pp. 3-14).

¹²⁵ *PNM v. PRC*, 2019-NMSC-012, ¶¶ 22-32.

¹²⁶ *Id.* (Emphasis supplied).

Similarly, in PNM’s Ojo Line Extension (“OLE”) Case No. 2382,¹²⁷ the Commission reiterated PNM’s obligation to reasonably identify and evaluate all of its feasible resource alternatives, stating, “... a utility carries the burden in a resource acquisition case to show that the resource it proposes is the most cost-effective among feasible alternatives.” Finding that PNM’s alternatives analysis was not “sufficiently reliable,” the Commission in *OLE* rejected PNM’s request for a CCN for a transmission line. The PRC determined:¹²⁸

PNM has not properly shown that OLE is the best alternative even among those alternatives that PNM considered. Thus, even assuming a need on the transmission system for the sake of argument, the Commission remains unconvinced that the public convenience and necessity require or will require the OLE Project as the proper response to such a need.

The Commission further observed that it has the authority to examine alternatives to utility proposals to satisfy needs identified by a utility, that there may be various solutions for such needs, and that it would not be in the public interest for the Commission to grant a CCN for a proposed project which might meet a utility’s needs but is the worst among a range of alternatives.¹²⁹

Mr. Bullard agreed that one significant way to hedge against high gas prices is to buy call options as a form of insurance.¹³⁰ In fact, with its baseload gas purchases NMGC uses hedging strategies as a way to mitigate against high gas prices and this strategy has been “very successful.”¹³¹ NMGC uses “marketers” and “financial institutions”¹³² to buy options; in the past

¹²⁷ *In the Matter of the Application of Public Service Company of New Mexico for Approval to Construct, Own, Operate and Maintain the Ojo Line Extension and for Related Approvals* (“OLE” case), Case No. 2382, *Recommended Decision of the Hearing Examiner*, 166 P.U.R. 4th 318, 98, 102, (NMPUC 7/05/1995) (PNM’s alternatives analysis was not sufficiently reliable to determine whether the OLE transmission line project was in fact the best alternative among those presented by PNM) approved in *Final Order Approving Recommended Decision* (NM PUC 11/20/1995); *see also Recommended Decision*, Case No. 22-00270-UT, (NM PRC 12/08/2023) at 42, fn. 111, adopted in pertinent part by *Final Order* (1/3/2024).

¹²⁸ *Id.* at 98, 102, and 355-356.

¹²⁹ *Id.* at 337.

¹³⁰ Tr. (Vol. 1) 166 (Bullard).

¹³¹ *Id.* at 166-168.

¹³² *Id.* at 166-167.

10 years the Gas Company has spent a little under \$39 million on call options and in that same time period those call options have paid out \$123.5 million.¹³³ For every dollar spent on financial call options, they paid out \$3 in savings; hedging against price volatility for baseload gas successfully controlled the price of gas and mitigated the vulnerability to the vicissitudes of the market.¹³⁴

When NEE inquired about the gas company's exploration of the use of hedging to mitigate against swing gas price volatility Mr. Bullard testified, "Yes, we have, on a number of occasions, and it was prohibitively expensive. A couple years ago, and I forget exactly when, but we looked at hedging to swing volumes over the winter months, and it was in excess of \$100 million to hedge those volumes just for one winter, so it was very expensive."¹³⁵ Yet, in testimony and in a response to discovery, Mr. Bullard conceded that this inquiry amounted to only one call to ConocoPhillips, a NMGC gas supplier, that has an interest in selling NMGC high-priced gas.¹³⁶ While "complete" price protection was not attainable but an upper-end price protection at a higher strike price for all of the swing gas was, such protection would have cost approximately \$10 million a year and would have provided price protection for 18 years – the same capital cost price of the LNG, but with such contractual hedging, NMGC would not have been able to invest in "capital expenditures," hence no return on equity.¹³⁷

The PRC's order required NMGC to "*evaluate and assess potential measures, specifically, increased access to stored gas, including possible NMGC owned or controlled*

¹³³ *Id.* at 168; NEE Exh. 2, NEE 1-19, pdf pp. 17-18 (New Mexico Gas Company, Inc's Response to New Energy Economy's First Set of Interrogatories and Requests for Production of Documents, p. 17-18).

¹³⁴ *Id.* at 168-169; NEE Exh. 2, NEE 1-19, pdf pp. 17-18.

¹³⁵ *Id.* at 169.

¹³⁶ *Id.* at 170-172; NEE Exh. 2, NEE 1-25, pdf pp. 26-28.

¹³⁷ *Id.* at 174-176.

storage facilities[,]”¹³⁸ but NMGC did not conduct the fulsome assessment that the law required and that the Commission specifically ordered. NMGC did not hire a financial advisor to perform a comprehensive analysis of the different hedging strategies¹³⁹ that could be undertaken, even though their own experience has proved hedging can be very successful. NMGC only looked into “line-pack” “a little bit.”¹⁴⁰ One of NMGC’s interstate pipelines does offer “Park-and-Loan” services but that option was dismissed.¹⁴¹ NMGC did no comparison between NMGC-owned and non-NMGC-owned (but controlled) storage.¹⁴² There also is no information at all about the impact electrification is estimated to have on the forecasted need for (more) gas.¹⁴³ NMGC’s “evaluation and assessment” was de minimis and paltry, and does not suffice. The problem that was to be solved, whether with Keystone or the LNG facility, is *increased access* to another source of gas at reasonable prices, essentially back up gas, for price spike mitigation and redundancy. But NMGC just dusted off the 2012 NMGC-owned storage facility proposal, with new bells and whistles added, and without any meaningful alternative evaluation and assessment on a consistent and comparable basis. The PRC should not ignore the wide chasm between what an adequate record should include and the sparse information provided by NMGC to support its CCN.

4. Redundancy May be Achieved by Strengthening or Introducing Access to Alternative Load Paths but NMGC Did Not Pursue this Price Mitigation Strategy

As it relates to this case, the relevant point that the Commission was making in its 2021 Order, in response to Storm Uri and the “total extraordinary cost of gas to NMGC incurred

¹³⁸ Case No. 21-00095-UT, *Final Order*, ¶ N (NM PRC 6/15/2021) (Emphasis supplied).

¹³⁹ Tr. (Vol. 1) 173 (Bullard).

¹⁴⁰ *Id.* at 242.

¹⁴¹ *Id.* at 243.

¹⁴² Tr. (Vol. 2) 330-331 (Bullard).

¹⁴³ *Id.* at 330-333 (Bullard).

during this event,” was that it wanted NMGC to consider options to create the greatest insurance against a price spike incident in the future.¹⁴⁴ In order to be resilient and avoid disruption, whether at Keystone or a company owned or controlled storage facility, NMGC must have access to other gas at reasonable prices. That’s *why* hedging strategies or contractual agreements under firm transportation agreements¹⁴⁵ or other storage facilities in Texas or New Mexico that the company could rely on during a financially volatile period is key. The solution could be access to a combination of multiple storage facilities. The point of redundancy and resiliency is to maintain or restore function when there is a failure to deliver gas from one source.¹⁴⁶ The Commission has not been presented with these alternative options because NMGC did not pursue a meaningful price mitigation strategy.

5. Only Two Site Locations Are Included in the Record: One Which Was Chosen by NMGC in 2012 and the Other Which Wouldn’t Meet 49 CFR § 193 Flammable Vapor-Gas Dispersion Protection Requirements

Additionally, there was little review of alternative site locations. According to the pre-FEED contractors, NMGC evaluated two sites: Santa Fe Junction and Quail Ranch.¹⁴⁷ The Quail Ranch site was chosen as superior because at least according to the pre-FEED contractors the Santa Fe Junction site, which is smaller, might not meet the requirements set forth in “in 49 CFR § 193.2059 Flammable vapor-gas dispersion protection and associated sections of NFPA 59A-2001[.]”¹⁴⁸ During the hearing, Commissioner Ellison engaged in the following colloquy with Mr. Bullard about siting options:

¹⁴⁴ Case No. 21-00095-UT, *Final Order*, (NM PRC 6/15/2021).

¹⁴⁵ Tr. (Vol. 1) 491 (Reed).

¹⁴⁶ *Id.*, at 491-492 (redundancy is an important consideration); *see also* NMGC Exh. 1 (Bullard Dir.) at 19 (“NMGC would prioritize customer reliability and redundancy in operating the LNG Facility.”).

¹⁴⁷ NMGC Exh. 1 (Bullard Dir.) Exhibit TCB-3, at pdf p. 296 of 340.

¹⁴⁸ *Id.*, and continuing from at pdf pp. 296-306 of 340, *see especially* the concluding recommendation on p. 306: “The Santa Fe Junction site struggled with approximately half of the scenarios considered for LNG production and vaporization operations. This is indicative that extensive mitigating measures would

Q. (Commissioner Ellison and pointing to a map on the screen): “Would it be fair to say that the facility, you know, really could be located anywhere there is a double line [of interstate pipelines]?”

A. (Mr. Bullard): “Potentially, but as I mentioned, we also look at the pressures and the land availability. ...”

Q. (Commissioner Ellison): “From the interstate all the way up to almost Santa Fe, it could have been located pretty much anywhere along that line.”

A. (Mr. Bullard): “Yes, in theory. ...”

...

Q. (Hearing Examiner Medeiros) “Could the facility be closer to the junction with the El Paso Natural Gas Company interstate line down here where my cursor is pointing?”

A. (Bullard) It could from a feasibility, standpoint, absolutely. ...”

...

Q. (Commissioner Ellison): I guess the reason for my line of questioning here is that, you know, obviously some, you know, concern has been expressed about the specific location and the distance to some high schools and some other facilities. I just wanted to get a sense, when you look at the map, there seems to be a lot of other options. I just wanted to get a sense of, you know, what drove your decision to plan the siting around that particular location.

A. (Bullard): Understood. Hopefully that helps.¹⁴⁹

While there were 10 pages of detailed information that compared the Santa Fe Junction and Quail Ranch site, there is no such analysis in the record that compares all other feasible site location options for the Commission to review and evaluate.

6. No Analysis Has Been Undertaken to Evaluate the Impact of Future Gas Purchase Costs as a Result of Proposed LNG Plant

Another important omission from the record is testimony by NMGC witnesses about how the proposed LNG facility may contribute to *higher* gas purchase prices during a weather event, such as occurred in 2021.¹⁵⁰ Expert witness Rosenkranz testified, “the cost estimates do not

need to be applied for this site to make it acceptable such as vapor fences, extensive pipe-in-pipe piping of LNG rundown piping, non-optimized facility layout driven by vapor dispersion, and very deep secondary containment. Ultimately these mitigating measures would cost much more (over an order of magnitude more) than the alternative site property costs and is indicative that the site is too small for the LNG facility as planned.”

¹⁴⁹ Tr. (Vol. 1) at 227-230 (Bullard).

¹⁵⁰ NEE Exh. 1 (Subra Dir.) Exhibit WS-7, at pdf p. 93 of 98 (“Winter storm events, and their associated price hikes, are expected to be a regular occurrence for New Mexico . . .”) (New Mexico Gas Company Inc.’s Formal Response to Questions from NEE Propounded on June 12, 2023, p.5).

consider how replacing the Keystone Storage service with the LNG Facility would affect purchased gas costs. *Purchased gas costs are likely to be higher because the LNG Facility would have less available storage capacity than the status quo, which would reduce the opportunity to hedge winter gas costs.*¹⁵¹ (Emphasis supplied.) According to prior testimony by Mr. Bullard,¹⁵² “One of the limitations of LNG noted by CEPC [an engineering firm] is that an LNG facility typically has a smaller storage capacity than underground storage and is therefore more dependent on refilling between withdrawals.”¹⁵³ The proposed LNG facility can only store 1.0 Bcf,¹⁵⁴ whereas NMGC’s total capacity at Keystone storage is 2.7 Bcf, though the facility is much larger.¹⁵⁵ Thus, the proposed LNG facility with less storage capacity than Keystone might actually increase the cost of winter-time purchased gas to ratepayers. Gas is more expensive during the winter.¹⁵⁶ Mr. Bullard concedes that refilling the LNG tank in the winter is likely to be more costly than in the spring and fall, but he then ducks quantifying these costs by stating that it would be “hard.”¹⁵⁷ There is no future estimated cost projection analysis for the WACOG in NMGC’s Application or testimony. A future gas purchase cost analysis is critical information the Commission needs, given the reduced storage capacity of the proposed facility, to determine the cost effectiveness of the LNG facility and the reasonableness of the CCN. This lack of

¹⁵¹ NMAG Exh. 2 (Rosenkranz Dir.) at 20.

¹⁵² N.M. Rule Evid. 11-801(D)(2) (admission of an opposing party’s statement); Case No. 22-00270-UT, *Notice of Errata to Final Order*, (NM PRC 1-3-2024) at 20, ¶ 32 (“The Commission’s procedural rules allow the presiding officer and Commission to take administrative notice of relevant evidence in “decisions, records, and transcripts in other commission proceedings . . .”); 1.2.2.35(D) NMAC; *see* 1.2.2.35(A) NMAC (providing that “all relevant evidence is admissible. . .”).

¹⁵³ Case No. 21-00095-UT *New Mexico Gas Company, Inc. Compliance Filing and Supporting Testimony Filed Pursuant to Decretal Paragraph of the NMPRC’s June 2021 Final Order Relating to the 2021 Winter Event*, at pdf p. 26 of 71, (Bullard Dir.) at 19.

¹⁵⁴ NMGC Exh. 1, (Bullard Dir.) at Exhibit TCB-3, at pdf p. 262 of 340.

¹⁵⁵ Tr. (Vol. 1) 261 (Bullard); *see also* NMGC Exh. 3 (Reed Dir.) at 44

¹⁵⁶ NMGC Exh. 1 (Bullard Dir.) at 8.

¹⁵⁷ *Id.* at 79.

information presents a cost risk that prevents calculation of whether there is a “net public benefit.”

7. NMGC is Requesting a CCN that Includes Trucking LNG Yet NMGC’s Application and Testimony Is Lacking Information About This Potentially Hazardous Risk

NMGC also requests approval of a “trucking terminal [that] would also allow the Company to truck gas throughout the system, if needed and desired, with tanker trucks.”¹⁵⁸ In its 660-page Application, there is no mention of any risk from the transportation of LNG or mention of specific routes to be used for transportation and the extent to which the LNG may be transported.¹⁵⁹ Yet, Mr. Bullard testified that future plans for trucking will be deployed because it “provides a lot of flexibility for the plant for very little additional cost. It’s roughly 1% to 2% of the cost of the plant, and it gives us a flexibility, especially during commissioning, if we wanted to accelerate the commissioning process, to supplement the liquefaction with some trucked-in LNG.”¹⁶⁰

LNG trucking through major population centers places people, vehicles, and neighborhoods at risk of injury from highly flammable hazardous materials that create dangers well beyond the typical foreseeable consequences of vehicle accidents. However, NMGC’s witnesses, Bullard and Barclay, testified that “NMGC has not developed an urban truck transportation plan at this time.”¹⁶¹

A CCN cannot be granted until the above analyses have been done. As the Hearing Examiner Peter Springer noted in his Recommended Decision in the *OLE* case, “Even if needs

¹⁵⁸ NMGC Application at 7-8 ¶ 26; NMGC Exh. 1 (Bullard Direct) at 33.

¹⁵⁹ NEE Exh. 1 (Subra Dir.) at 4.

¹⁶⁰ Tr. (Vol. 1) at 230-231 (Bullard).

¹⁶¹ NEE EXH. 1 (Subra Dir.) at Exhibit WS-6, at pdf page 77 of 98 (New Mexico Gas Company, Inc.’s Response to New Energy Economy’s First Set of Interrogatories and Requests for Production of Documents, p. 10).

exist, there may be various solutions for such needs. It would not be in the public interest for the Commission to grant a CCN for a proposed project which might meet needs but is the worst among a range of alternatives.”¹⁶² In *OLE*, in which PNM sought a CCN for an additional transmission line extension, PNM’s own witness Rosenzweig testified that this Commission “should demand that PNM provide some indication that they’ve done a reasonable attempt to look at alternatives and that the alternative being proposed is the best of those alternatives.”¹⁶³

The Utah Public Utility Commission similarly denied a request for a proposed LNG facility where the utility (DEU) failed to adequately review other proposals to increase its gas supply. The PUC denied Dominion’s request, finding that:

DEU . . . has not adequately supported its conclusion that its chosen solution is in the public interest. Too many questions regarding the availability of lower cost options, that could mitigate supply reliability risk to varying degrees, remain unanswered for us to determine at this time that the LNG Facility is the lowest reasonable cost option.¹⁶⁴

Because of this lack of information, the utility commission concluded that “DEU’s decision-making process was flawed” so that the commission “could not conclude the short- or long-term impacts, including the attendant rate impacts of adding the LNG Facility to the rate base, would be in the public interest. . . . We reiterate, we cannot now properly evaluate the reasonableness of the LNG Facility as a means of approving supply reliability because we do not have adequate assurance other more cost-effective options are not available.”¹⁶⁵ The LNG proposal denial was in a case involving “supply reliability risk,” unlike here, where NMGC has acknowledged that

¹⁶² Case No. 2382, *Recommended Decision of the Hearing Examiner* (“OLE” case), p. 49; approved by *Final Order Approving Recommended Decision* (NM PUC 11-20-1995).

¹⁶³ *Id.*

¹⁶⁴ *Request of Dominion Energy Utah for Approval of a Voluntary Resource Decision to Construct a Liquefied Natural Gas (LNG) Facility*, 2018 WL 5311671 (Utah P.S.C. 2018).

¹⁶⁵ *Id.* at 13.

they are able to provide reliable service, even during events like Storm Uri.¹⁶⁶

“Providing predictable, reliable earnings and cash flow growth for [NMGC’s parent company’s] shareholders”¹⁶⁷ is not an acceptable rationale for constructing an LNG facility in New Mexico that may likely be unnecessary, expensive, and hazardous to humans and the environment. NMGC has not met its burden, and the CCN should be denied.¹⁶⁸

D. Siting Risks of NMGC’s CCN for LNG Facility and LNG Trucking Outweigh the Benefits

The site chosen by NMGC must be considered by the PRC in its calculation of whether there is a net public benefit for NMGC ratepayers to the proposed LNG facility.¹⁶⁹ “While the 160-acre site itself may be ‘undeveloped’ and ‘unpopulated’ it is generally located in a populated area. The LNG Facility is 2 miles away from Double Eagle Airport, 2.10 miles away from Petroglyph National Monument, 2.29 miles away from the Westside Housing Shelter, 2.25 miles away from Ventana Ranch Neighborhood, 2.97 miles away from Volcano Vista High School, and 3.27 miles away from Volcano Cliffs neighborhood.”¹⁷⁰ As the Hearing Examiner raised, the site is also close to PNM’s solar and battery facility¹⁷¹ – how close was not answered in

¹⁶⁶ 21-00095-UT, *Final Order*, at 8 (NM PRC 6/15/2021) (“2011 was primarily a curtailment event, while 2021 was primarily a pricing event.”); 21-00095-UT *New Mexico Gas Company, Inc. Compliance Filing and Supporting Testimony Filed Pursuant to Decretal Paragraph of the NMPRC’s June 2021 Final Order Relating to the 2021 Winter Event*, at pdf p. 22 of 71, (Bullard Dir.) at 15; see also WRA Exh. 1 (Gould Dir.) *passim*.

¹⁶⁷ NEE Exh. 1 (Subra Dir.) at 26, citing <https://investors.emera.com/news/news-details/2023/Emera-Reports-2023-Second-Quarter-Financial-Results/default.aspx>; see also NEE Exh. 3, NMGC Exhibit to response to NEE 4-7, at pdf p. 8 of 21, “Project Justification Report” (“Justification: LNG storage could become a key component of NMGC’s future capacity expansion plans and revenue generation ...”).

¹⁶⁸ *International Minerals & Chemical Corp. v. NM Pub Serv. Comm’n*, 81 N.M. 280, 466 P.2d 557 (1970).

¹⁶⁹ NMSA 1978, § 62-9-3.

¹⁷⁰ NEE Exh. 1 (Subra Dir.) at 8-9.

¹⁷¹ Tr. (Vol. 3) at 667-673 (Barclay); *id.* at 672 (“To date there has been no consideration [of a battery storage fire], but I would like to identify that in what’s called a hazard study, and make sure those risks or potential risks are, first, understood, and then can be mitigated. That mitigation could be anything from active fire water to just a communication plan with an adjacent facility.”).

NMGC’s Response to Bench Request #4. Rio Rancho, the nearest populated community to the proposed site, is home to 108,082 residents (2023). Rio Rancho is currently growing at a rate of 1.51% annually and its population has increased by 6.19% since the most recent census, in 2020.¹⁷² In the opinion of NEE’s expert, Wilma Subra, “the LNG facility will put all the populations listed above at risk of having their health and environment negatively impacted over the short and long term due to exposure to toxic chemicals and operational risks associated with the facility, its operations, incidents, and deviations.”¹⁷³

The Hearing Examiner granted the Joint Motion of Intervenors to take administrative notice of Bernalillo County Resolution No. 2023-110 into evidence in this case.¹⁷⁴ The Bernalillo County Commission recognized these potential hazards and voiced its opposition to the proposed facility through a Resolution objecting to the location of the facility.¹⁷⁵ A local community’s objection to an application for a CCN should be a relevant consideration when assessing public benefit, particularly as related to a site location.

The *OLE* case is instructive in this regard. In that case, the PRC ultimately denied PNM’s request for a CCN because its site location for a transmission line extension was found to unduly harm important environmental values and therefore violated NMSA 1978, § 62-9-3.¹⁷⁶ As the PRC made clear in that case, entitlement to a CCN does not dictate location approval under Section 62-9-3.¹⁷⁷ Further, as PNM acceded in that case, the Commission should deny a CCN (even when one is warranted) where a location permit is required and the proposed location

¹⁷² <https://www.census.gov/quickfacts/fact/table/rioranchocitynewmexico/POP010210>.

¹⁷³ NEE Exh. 1 (Subra Dir.) at 9.

¹⁷⁴ Vol. 1, at 23.

¹⁷⁵ Bernalillo County Resolution No. 2023-110, (10/24/2023) at 1-2.

¹⁷⁶ Case No. 2382 (*OLE*), *Recommended Decision of the Hearing Examiner*, at 105.

¹⁷⁷ *Id.* at 79.

would unduly impair important environmental values.¹⁷⁸ Here, there is grave doubt (given the lack of essential information in NMGC’s application and testimony, as more fully described *supra*) whether NMGC would be entitled to a CCN—even if it had chosen a location where public health and safety and environmental concerns were not at issue.

In the location review undertaken by the PRC in *OLE*, the Commission considered whether the location of OLE would negatively impact important environmental values. The PRC clarified that the subject areas to be considered could include “climatology and air quality; water resources; geology, physiography and mineral resources; soils; paleontology; flora and fauna, including game species and threatened and endangered species; land use; visual resources, socioeconomic resources; and cultural resources, including Native American religious sites.”¹⁷⁹ Such considerations would include quality of life matters, which the expert agreed were part of environmental concerns.¹⁸⁰ These were concerns the Commission was statutorily required to consider, but here we have no statutory framework in place for analyzing the request.

In reviewing the location of the proposed LNG facility, this location is rife with potential environmental, safety, and religious concerns that impact quality of life matters and were ignored or disregarded by NMGC when it chose the site.¹⁸¹

The proximity of the facility to the Double Eagle airport is concerning due to storage of combustible fuel at the airport, equally concerning is the proximity to a battery storage site and that the site is on top of an active seismic zone.¹⁸² These site features could provoke and

¹⁷⁸ *Id.* at 80.

¹⁷⁹ *Id.* at 64.

¹⁸⁰ *Id.* at 65.

¹⁸¹ *See, e.g.*, Bernalillo County Resolution No. 2023-110, (10/24/2023); *see also* NEE Exh. 1 (Subra) *passim*; CCAE, Exh. 1 (Velez) *passim*.

¹⁸² NEE Exh. 11 at pdf p. 3 of 33 (“The Rio Grande rift, which encompasses the corridor, is a major tectonically, volcanically, and seismically active continental rift in the western U.S.”); *id.* at pdf p. 23 of 33 (“The level of probabilistic hazard portrayed on the maps is controlled by the low level of historical

compound any LNG catastrophic event. Additionally, any future expansion of Rio Rancho and Albuquerque would have to take into account the obvious economic drawback to investing in commercial/residential development that includes a “backyard” LNG facility.

Natural gas production results in a veritable salad of toxic substances; siting an LNG facility so close to a populated area is a recipe for disaster. Whether through air pollution, ground water contamination, or damage caused by catastrophic explosions, fires, earthquakes, or human error, there is the potential for direct harm to communities in the proximity of these facilities.

These worst-case scenarios must be acknowledged as possible and must be planned for. As discussed in testimony by NEE expert Subra and NMGC expert Barclay, there have been environmental accidents that have recently occurred in association with operations of LNG facilities, including:

1. In 2014 at the Plymouth, Washington LNG plant, gas was ignited inside the LNG processing equipment, with fairly similar capacity as the proposed LNG Facility,¹⁸³ generating a mushroom-shaped cloud and large fire. The Plymouth facility experienced a catastrophic failure and resultant explosion.¹⁸⁴ The explosion blew apart the adsorber and sent pieces of machinery flying in all directions.¹⁸⁵ “Thankfully the inner wall of the tank that actually held the LNG was not pierced, it was dented.”¹⁸⁶ There was extensive damage that cost the company \$50 million.¹⁸⁷ The town of Plymouth and surrounding communities required evacuation within a 2-mile radius for 60 hours; five workers were injured in a very serious incident, some with severe burns; 168,214 Mcfs of natural gas was released into the atmosphere through the 9 months following the incident; and the plant was closed for two years.¹⁸⁸

seismicity ($M \leq 6$), and by the comparatively low activity rates of the faults (slip rates generally less than 0.1 mm/yr). We caution again, however, that the historical seismicity record is often a poor indicator of the earthquake potential of a region. In addition, the geologic evidence is irrefutable that large-magnitude earthquakes ($M \geq 6.8$) have occurred in the past and will undoubtedly occur in the future. Thus, although large earthquakes may be infrequent on a specific fault, the large number of faults in the corridor indicate that the apparent probability of a large earthquake occurring somewhere in the corridor is significant and increasing...”).

¹⁸³ Tr. (Vol. 3) at 588 (Barclay) (“similar function; vaporization capacity,” and “a peak shaving facility.”).

¹⁸⁴ *Id.* at 591.

¹⁸⁵ *Id.* at 594.

¹⁸⁶ *Id.* at 596.

¹⁸⁷ *Id.*

¹⁸⁸ NEE Exh. 13, *passim*; Tr. (Vol. 3) at 586-631 (Barclay).

2. In January 2022, at Sempra's Cameron LNG facility in Louisiana, a leak caused the emission of methane, ethane, propane, and butane in amounts exceeding permissible quantities. At Cameron, the LNG gas tank ruptured and caught fire; residents within a 1-mile radius were ordered to evacuate. One thousand households were without electricity for 48 hours. Residents escaping had to leave through a plume of toxic emissions. Since 2020, Cameron LNG has had a total of 67 accidental releases due to repeated equipment failures.¹⁸⁹
3. Also in 2022, at the Freeport, Texas LNG facility, an explosion and fire due to human error released carbon monoxide, nitrous oxides, particulate matter, sulphur dioxide, and volatile organic compounds. The cause of the fire was human error. The facility had a history of safety violations before the explosion.¹⁹⁰
4. In June 2023, at the Cheniere Sabine Pass LNG facility in Louisiana, a crack in a tank allowed leakage and an estimated 245 barrels of LNG escaped, spilled into the secondary containment, vaporized and released 825,000 cubic feet of natural gas into the atmosphere. The cost of the incident was \$34 million.¹⁹¹

NMGC has not promised that there will be any immediate emergency notification “to tell the people at the airport, the people in the schools, and the people who live in the subdivisions instantly when something happens such that they are notified and are told what to do and what not to do. Because the worst thing you can have them do is go right into the plume.”¹⁹²

Even without a catastrophic event, such as described above, the risks of siting an LNG plant so close to a dense residential area are substantial. Risks to air quality are significant; the LNG facility will be a major source of toxic air pollutants.¹⁹³ Toxic air emissions have been documented from processing equipment and bypass events associated with LNG storage tanks.

¹⁸⁹ *Id.*; Tr. (Vol. 4) at 951 (Subra) (“All of the facilities have leaks or spills, and this one will also. If it leaves the site and goes anywhere near where the airport is, where the school is, or makes it all the way offsite, then it’s going to impact the health of all of the people in that area. This happens again and again and again, and their health suffers, and they start getting sicker and sicker and sicker. Then they wonder, ‘Should we still be here? ‘Should the kids still be in school?’”).

¹⁹⁰ *Id.*

¹⁹¹ NEE Exh. 1 (Subra Dir.) at 16-19; Tr. (Vol. 4) 938-941, (Subra) (Sabine Pass “is significantly larger, but it has the same type of unit being proposed.... It has the potential to have the same type of unit emissions that occurs at the one on the Louisiana/Texas border.... you have people going to school, and at the airports almost immediately adjacent to the one being proposed here. [T]he one that's being proposed has the opportunity to have just as many leaks, or spills, or events.”).

¹⁹² Tr. (Vol. 4) 952 (Subra).

¹⁹³ NEE Exh. 1 (Subra Dir.) at 6.

According to NEE's expert, Subra, the NMGC facility, as proposed, will release into the air both toxic Volatile Organic Compounds and toxic non-volatile air pollutants, many known to be human cancer-causing agents.¹⁹⁴ It is well-known that school-age and young children are particularly at risk when exposed to chemicals in air and water, so locating the LNG facility close to a residential area, with schools and community centers nearby, is very concerning.¹⁹⁵

As history has shown, accidents happen due to human error or otherwise. The choice of this site exposes community members, including students, staff, and teachers at nearby schools, homeowners, pilots, customers, and staff members at the nearby airport, NMGC workers, and others to toxic chemicals, some of which are known to be cancer-causing agents. Consequently, the PRC should find that the proposed site of the LNG facility is inappropriate due to its proximity to Rio Rancho and vulnerable populations and that it violates NMSA 1978, § 62-9-3.

Another obvious problem with the location of the LNG facility is that the proposed site is on or directly adjacent to a seismic activity zone that is in the Albuquerque Basin, within a geologic feature known as the Rio Grande Rift.¹⁹⁶ The rift represents a large fracture in the earth's surface that bisects the State of New Mexico from the Colorado border to Las Cruces. According to the study, the investigators developed a series of nine scenario and probabilistic hazard maps that portray the ground shaking that could occur in the Albuquerque-Belen-Santa Fe corridor from future earthquakes in New Mexico. The resulting hazard maps indicate:

The level of probabilistic hazard portrayed on the maps is controlled by the low level of historical seismicity ($M \leq 6$), and by the comparatively low activity rates of the faults (slip rates generally less than 0.1 mm/yr). We caution again, however, that the historical seismicity record is often a poor indicator of the earthquake

¹⁹⁴ NEE Exh. 1 (Subra Dir.) at 7.

¹⁹⁵ Because infants and children are smaller than adolescents and adults, they will get a larger dose per unit size of chemicals they are exposed to in their environment.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6982419/#:~:text=Infants%20and%20children%20are%20at,their%20boundless%20curiosity%20and%20oral>

¹⁹⁶ Tr. (Vol. 3) 708-710 (Jones); NEE Exh. 10; *see also* NEE Exh. 12.

potential of a region. In addition, the geologic evidence is irrefutable that large-magnitude earthquakes ($M \geq 6.8$) have occurred in the past and will undoubtedly occur in the future. Thus, although large earthquakes may be infrequent on a specific fault, the large number of faults in the corridor indicate that the apparent probability of a large earthquake occurring somewhere in the corridor is significant and increasing as further paleoseismic studies are being performed.¹⁹⁷

Given these predictions and the known destruction and damage caused by catastrophic LNG events, there is no rational justification to choose this site for an LNG facility.

According to expert testimony, the current site for the LNG facility was first selected in 2012.¹⁹⁸ Factors reviewed then included proximity to NMGC's transmission pipelines, large tracts of undeveloped land, access to power, proximity to NMGC's load center, proximity to interstate transportation and land use. The site was selected as the only fit against the siting criteria.¹⁹⁹ This analysis has not been updated to reflect 12 years of local population increases and development in the area. Seismic activity in the region was glaringly *not* among the factors taken into consideration. Locating an LNG facility within a seismic activity zone is foolhardy (potentially extremely costly) and should have been considered in the calculation as far back as 2012. Yet, when asked if NMGC had any concerns relating to the proposed location of the LNG facility, NMGC's witness simply said, "No."²⁰⁰ However, if a CCN is approved before knowing what kind of construction and design it might take, and the associated costs, to account for the seismic activity zone where the LNG plant is currently planned to be located, we might "start in motion other events and commitments that may be difficult to stop or undo. The events and commitments, when started in motion, may produce pressure to accept and approve less than reasonable terms"²⁰¹ and put New Mexicans at risk.

¹⁹⁷ NEE Exh. 11 at pdf p. 23 of 33.

¹⁹⁸ Tr. (Vol. 1) at 250 (Bullard); NMAG Exh. 1 (Crane Dir.) at 12.

¹⁹⁹ Tr. (Vol. 1) at 247 (Bullard).

²⁰⁰ NMGC Exh. (Jones Dir.) at 20.

²⁰¹ Case No. 13-00390-UT, *Certification of Stipulation* (4/8/2015) at 102.

After the Governor’s Executive Order 2019-003 (Addressing Climate Change and Energy Waste Prevention), which recognized New Mexico’s responsibility to build a clean energy future and limit adverse climate change impacts that harm our natural and cultural heritage, the passage of the Energy Transition Act (“ETA”) in 2019, and other state and national policies that advance climate change awareness and quality of life concerns, the PRC has incorporated environmental and human safety factors in its decisions in utility applications for resources in Certificate of Public Convenience and Necessity (“CCN”) cases.²⁰²

Given this fatally inadequate record, NMGC cannot meet its burden to show a net public benefit for the addition of this facility and the CCN must be denied.

E. Climate Change Cannot Be Ignored

On January 26, 2024, President Biden took the unprecedented step of temporarily pausing the last phase of consideration before the final determination on the Calcasieu Pass Uprate Amendment Project (“CP2”), a peak liquefaction plant in Cameron Parish, Louisiana.²⁰³ This announcement was made *after* the staff of the Federal Energy Regulatory Commission

²⁰² See Case No. 19-00195-UT *Recommended Decision on Replacement Resources, Part II*, (6/24/2020), pp. 82-86, adopted by the Commission, *Order on Recommended Decision on Replacement Resources - Part II*, (NM PRC 7/29/2020) at 13 ¶51 (rejecting PNM’s preferred portfolio of replacement resources that included gas-fired resources, instead approving a portfolio of solar and battery storage resources that it found better satisfied the replacement resource requirements in the ETA); Case No. 19-00349-UT, *Recommended Decision*, pp. 46 (n.100), 62 (ns.145 & 146) & 77, *Order Adopting Recommended Decision with Additional Instruction*, (NM PRC. 12/16/2020) at 7, ¶19 (denying request by El Paso Electric Co. for a CCN to acquire a new gas-fired resource with a useful life that would extend beyond the January 1, 2045 “zero carbon resources” requirement standard in NMSA § 62-16-4.A(6) (2019)); Case No. 20-00222-UT *Order Granting Joint Motion to Take Administrative Notice of Climate Change, its Causes and its Likely Consequences*, (06/21/2021); Case No. 20-00222-UT, *Certification of Stipulation*, at p. 50; see also pp. 52-53, 239-251, adopted by *Final Order*, (NM PRC 12/15/2021) (Chief Hearing Examiner took administrative notice of climate change, recommending rejection of Avangrid/Iberdrola/PNM merger, in part, because Avangrid/Iberdrola’s control might potentially slow “the development of New Mexico’s renewable energy resources and higher prices for PNM’s customers.”).

²⁰³ <https://www.whitehouse.gov/briefing-room/statements-releases/2024/01/26/statement-from-president-joe-biden-on-decision-to-pause-pending-approvals-of-liquefied-natural-gas-exports/>; see attached Exhibit A.

prepared an environmental assessment for CP2, in accordance with the requirements of the National Environmental Policy Act.²⁰⁴ A relevant portion of the official statement from the President states:

In every corner of the country and the world, people are suffering the devastating toll of climate change. ... Wildfires destroying whole neighborhoods and forcing families to leave their communities behind. Record temperatures affecting the lives and livelihoods of millions of Americans, especially the most vulnerable.

[...]

My Administration is announcing today a temporary pause on pending decisions of Liquefied Natural Gas exports – with the exception of unanticipated and immediate national security emergencies. During this period, *we will take a hard look at the impacts of LNG exports on energy costs, America’s energy security, and our environment.* This pause on new LNG approvals sees the climate crisis for what it is: the existential threat of our time.²⁰⁵

Despite admissions in responses to discovery by NMGC²⁰⁶ and in testimony of Intervenors²⁰⁷ that there will be added GHG emissions, methane leaks and a degradation to our air quality, we have no environmental assessment whatsoever by NMGC regarding the harm the proposed LNG plant will have on Albuquerque and Rio Rancho residents. The only testimony that we have about environmental degradation, climate change, and associated public health risks are that people will get sicker and air pollution will exacerbate.²⁰⁸ NMGC’s explicit plan is to expand the use of gas²⁰⁹ and increase ratebase from \$833 million in 2023 to \$1,229 billion in

²⁰⁴ <https://www.federalregister.gov/documents/2022/08/11/2022-17258/notice-of-availability-of-the-environmental-assessment-for-the-proposed-venture-global-calcasieu>.

²⁰⁵ <https://www.whitehouse.gov/briefing-room/statements-releases/2024/01/26/statement-from-president-joe-biden-on-decision-to-pause-pending-approvals-of-liquefied-natural-gas-exports/>, (emphasis supplied); see attached Exhibit A.

²⁰⁶ See e.g., NEE Exh. 1 (Subra Direct), and Exhibits WS-4, (NEE 2-9) at pdf pp. 55 of 98; WS-6, (NEE 1-9; NEE 1-13; NEE 1-14; NEE 1-15) at pdf pp. 77-88 of 98; NEE Exh. 8, (NEE 5-4; NEE 5-5) at pdf p. 5 of 10. (“NMGC is unable at this time to reliably forecast whether demand will increase or decrease on a year over year basis for the next three decades. NMGC has not previously prepared a chart or graph as requested in this question.”).

²⁰⁷ *Id.*; NMAG Exh. 3 (Deleon Dir.); CCAE Exh. 1 at 11, 21 (Velez Dir.); WRA Exh. 1 at AJG-3 (Gould Dir.)

²⁰⁸ See e.g., Tr. (Vol. 4) 934, 947-949, 951 (Subra).

²⁰⁹ NEE Exh. 3, NEE 4-7, at pdf pp. 6-8 of 21 (New Mexico Gas Company, Inc’s Response to New Energy Economy’s Fourth Set of Interrogatories and Requests for Production of Documents, pp. 10-11

2027 “primarily resulting from the construction and ownership of the LNG storage facility[.]”²¹⁰

Just like President Biden wants to “*take a hard look at **the impacts of LNG exports on energy costs ... and our environment,***” the New Mexico Public Regulation Commission must take a *hard look* at how NMGC’s Quail Ranch LNG plant will drive up costs for consumers and will impact our environment and climate. If the Commission properly balances the interests of the NMGC’s shareholders and the interests of customers, then the Commission will deny this CCN application.

F. Approval of the CCN for LNG Facility and LNG Trucking will Exacerbate Carbon Emissions and Climate Change Contrary to the Policies of the United States and New Mexico Which Were Not Considered as Regulatory Risks by the Company

NEE’s expert witness Subra testified, and it is NEE’s position, that the Commission should take “bold action, consistent with Governor Lujan Grisham’s Executive Order,²¹¹ the Renewable Energy Act,²¹² and prior decisions by this Commission to deny any further investments in fossil fuel infrastructure . . .”^{213, 214} It is the Commission’s constitutional duty to protect the atmosphere to the end of providing a livable planet.²¹⁵ While other sections of this brief rebut NMGC’s claims that building the LNG facility is the best option for increasing reliability and reducing customer costs, this section focuses on the impact of granting the CCN

and NMGC Exhibit NEE 4-7).

²¹⁰ NEE Exh. 4, NEE 4-13.4, at pdf pp.18 of 26 (New Mexico Gas Company, Inc’s Response to New Energy Economy’s Fourth Set of Interrogatories and Requests for Production of Documents, p. 3 of 21).

²¹¹ NEE Exh. 1 (Subra Dir.) Exhibit WS-2, Executive Order on Addressing Climate Change and Energy Waste Prevention, Executive Order 2019-003, New Mexico Governor Michelle Lujan Grisham.

²¹² The Renewable Energy Act, NMSA 1978, §§ 62-16-1 to -10 (2004, as amended through 2019).

²¹³ NMPRC Case Nos. 19-00195-UT and 19-00349-UT, rejecting, respectively, PNM and EPE proposals for new gas-fired resources with 40-year useful lives after passage of the Energy Transition Act (ETA); NMSA 1978, §§ 62-18-1 to -23 (2019).

²¹⁴ NEE Exh. 1 (Subra Dir.) at 3, 4.

²¹⁵ NM CONST Art. 20, § 21; *see Sanders-Reed ex rel. Sanders-Reed v. Martinez*, 2015-NMCA-063, ¶ 16, 350 P.3d 1221, 1226 (Article XX, Section 21 of the New Mexico Constitution “recognizes a duty to protect the atmosphere and other natural resources, and it delegates the implementation of that specific duty to the Legislature . . . or its statutory delegates.”). Here, the statutory delegate is the NM PRC.

on the environment.

1. The LNG Plant Is a “Key Component” of NMGC’s Previously Unrevealed “Capacity Expansion Plans”

Even if one were to assume some modicum of control benefit that might result from the granting of the CCN, NEE would urge the Commission to consider that the natural and probable consequence of approving the requested CCN will be to enable the expansion and use of natural gas, and its concomitant revenue generation.

Granting the CCN will enable the increased use of natural gas within NMGC’s service territory, the State of New Mexico, and enable more of New Mexico’s natural gas to be transported and sold outside of New Mexico.

Conceptually, the proposed LNG Facility is designed to allow for the transfer of LNG from the storage tank to a tanker truck and tanker trucks could travel outside the state, so conceptually, the LNG Facility could allow, facilitate, and permit the shipment of LNG via tanker truck to locations outside New Mexico that natural gas pipelines do not reach. NMGC would not in any case be the transporter of LNG for sale to a customer outside of New Mexico.²¹⁶

New Energy Economy asked NMGC whether an LNG plant would increase the utilization of natural gas from the San Juan and Permian Basins. NMGC responded that the facility could “provide natural gas service to remote areas of New Mexico by supporting the installation of ‘satellite’ LNG storage tanks that could be supported with LNG from the proposed LNG Facility[.]”²¹⁷ Documents indicate that NMGC could:

lease seasonal LNG storage capacity or provide LNG fuel services . . . the full potential of these considerations has not been explored. Potential markets for LNG could include backup and standby fuel for power generation as well as a backup fuel source to critical National Laboratory and Department of Defense facilities. Combined with the emerging LNG transportation markets and New Mexico’s

²¹⁶ NEE Exh. 3, NEE 4-6, at pdf pp. 5 of 21 (New Mexico Gas Company, Inc.’s Response to New Energy Economy’s Fourth Set of Interrogatories and Requests for Production of Documents, p. 9).

²¹⁷ NEE Exh. 3, NEE 4-7, at pdf p. 6 of 21 (New Mexico Gas Company, Inc.’s Response to New Energy Economy’s Fourth Set of Interrogatories and Requests for Production of Documents, p. 10).

strategic location in the Southwest and Mexico transportation corridors, NMGC could possibly be positioned to leverage the investment in LNG storage and liquefaction to pursue future growth and obtain additional sources of revenue offsets for the ratepayer investment in this facility. Again, the extent of these opportunities has not been fully developed and further analysis is needed.²¹⁸

NMGC further responded about how an LNG plant would increase utilization of natural gas from the San Juan and Permian basins in its “Project Justification Report”²¹⁹ to EMERA, NMGC’s parent corporation. NMGC justified the project and associated capital expenditures based on the opportunities for future expansion, growth, and new revenue:

LNG storage could become a key component of NMGC future capacity expansion plans and revenue generation by allowing installation of ‘satellite’ LNG storage tanks that could provide natural gas service to remote areas of New Mexico. These satellite tanks would be supported from the proposed LNG Facility project design.

Other revenue opportunities include leasing seasonal LNG storage capacity and providing LNG fuel services. Markets for LNG include backup and standby fuel for power generation as well as a backup fuel source to critical National Laboratory and Department of Defense facilities. Combined with the emerging LNG transportation markets and New Mexico’s strategic location in the Southwest and Mexico transportation corridors, NMGC would be positioned to leverage the investment in LNG storage and liquefaction to pursue future growth and obtain new revenue.²²⁰

NMGC reveals “LNG storage could become a key component of NMGC future capacity expansion plans” – plans which NMGC has not shared with the Commission but were only revealed during discovery.

The implications of the Commission’s decision are concrete and tangible: approval would create new markets and increase the utilization and proliferation of natural gas. LNG could compete with electricity as a fuel source while New Mexico is working to eliminate fossil fuels from the electric sector and to encourage electric vehicles and beneficial electrification.

²¹⁸ *Id.*

²¹⁹ *Id.* at NMGC Exhibit to response to NEE 4-7; Tr. (Vol. 1) at 159-162, (Bullard); *id.* at 162 (“That’s potential down the line.”).

²²⁰ *Id.*

Approval would provide NMGC with expanded opportunities to build new natural gas infrastructure and sell a value-added product – natural gas in a form that can be transported wherever the “emerging LNG transportation markets and New Mexico’s strategic location in the Southwest and Mexico transportation corridors”²²¹ lead – everywhere. Stranded assets in this context may be the least of the Commission’s concerns; an even greater concern is the assets would maximize the use of gas for a half-century or more. Expansion is NMGC’s explicit plan.

In the Wisconsin case, cited by the Attorney General’s expert Ms. Sol Deleon, at pdf page 24-25, not only did the applicants perform three analyses to evaluate the overall economic benefit of the project, including load low, medium and high-growth scenarios, they provided an environmental assessment for that regulatory body to review before a determination was made.²²² We don’t have any evidence in our record that would justify the kind of fossil fuel expansion that NMGC is seeking.

If the Commission grants approval, it will be placing its indelible seal on NMGC’s expansionist plans to the detriment of New Mexico, the planet’s precious atmosphere, and the environment. The CCN should be denied.

2. Environmental & Safety Concerns Related to Transport of LNG Throughout New Mexico

NMGC has requested approval of a trucking terminal that would facilitate transporting LNG in tanker trucks.²²³ NMGC also envisions satellite storage for remote customers throughout the state that may be served by tanker-delivered LNG.²²⁴ “The Application and Supportive

²²¹ NEE Exh. 3, NEE 4-7, at pdf p. 7 of 21 (New Mexico Gas Company, Inc’s Response to New Energy Economy’s Fourth Set of Interrogatories and Requests for Production of Documents, p. 11).

²²² *Final Decision*, Public Service Commission of Wisconsin Docket No. 5-CG-106, 2021 WL 6125766 (Wis.P.S.C.) (Dec 22, 2021).

²²³ NMGC Application at 7-8, ¶26; NMGC Exh. 1 (Bullard Direct) at 33.

²²⁴ Tr. Vol. 1 at 231-232 (Bullard), and NEE Exh. 3, NMGC Exhibit to response to NEE 4-7, at pdf p. 8 of

Testimonies are devoid of any detail about the inherent risks of LNG transportation, what routes will be used for LNG transport, the extent to which LNG will be transported by truck, or any modeling relative to the “hazard zone.”²²⁵ In its 660-page Application, there is no mention of any risk from the transportation of LNG.

The risks associated with transportation of LNG from the facility via tanker trucks would arise as a direct result of approval of the application and are not dependent upon further approvals. NMGC is not currently seeking approval for NMGC to be able to transport LNG, and it does not need to do so. LNG can already be shipped by third parties. NMGC need never request transportation approval despite the likelihood for increased LNG transportation. Further, NMGC has indicated it has considered leasing portions of its storage capacity at times to third parties.²²⁶ Presumably, unless those third parties have their own pipeline capacity, they will be transporting their stored and liquified product to their end users via tanker trucks. The ability to transport LNG on tanker trucks is the point of building the loading facility – so NMGC can fill its storage tanks or transport LNG elsewhere on its system,²²⁷ and transportation safety is already an issue without NMGC itself seeking further approvals.

G. The Risk of a Black Swan Event at the LNG Facility Resulting in Long Term Lack of Gas Storage Makes Customers More Vulnerable

The proposed LNG plant is particularly susceptible to a black swan event²²⁸ – an outlier event carrying an extreme impact that would likely be rationalized after-the-fact as explainable and predictable. As Nassim Nicholas Taleb, the originator of the theory has explained, the

21.

²²⁵ NEE Exh. 1 (Subra Dir.) at 4.

²²⁶ Tr. Vol. 1 at 162-163 (Bullard); NEE Exh. 3, NEE 4-7, at pdf p. 7 of 21 (New Mexico Gas Company, Inc’s Response to New Energy Economy’s Fourth Set of Interrogatories and Requests for Production of Documents, p. 11).

²²⁷ NEE Exh. 3, NEE 4-7, at pdf p. 7 of 21 and NEE 4-23, at pdf pp. 16-17 of 21.

²²⁸ See https://en.wikipedia.org/wiki/Black_swan_theory.

purpose of his theory is not to predict such unpredictable events but to build robustness against such events. The proposed NMGC LNG plant is so vulnerable to a crippling black swan event because it is an extremely complex system that will serve as the lynchpin in NMGC's gas supply system.

The incident at the LNG facility in Plymouth, Washington demonstrates the fragility of NMGC's proposal. While Mr. Barclay sought to distance and distinguish the Plymouth facility from NMGC's proposal by discussing the age of the Plymouth facility and that it was built to meet an earlier set of federal regulations, the purpose and function of the facility was the same as NMGC's proposed facility.²²⁹ On March 31, 2014, the Plymouth facility experienced a catastrophic failure and resulting explosion that sent shrapnel flying throughout the area, injuring five workers, damaging much of the facility, and piercing the outside wall of one of the LNG tanks.²³⁰ This occurred because plant workers used a "pack and purge" operation to clear some pipes of gas, but due to operator error, there was a gas mixture left remaining in the piping.²³¹ Thankfully, the explosion did not pierce the inner wall of the LNG tank.²³² The incident released 168,214 Mcfs of natural gas into the atmosphere, and the repairs cost approximately \$50 million.²³³ The facility was shut down for two years.²³⁴ In the aftermath of the Plymouth incident, changes were made to the regulation to prevent a similar incident caused by faulty "pack and purge" in the future.²³⁵

²²⁹ Tr. (Vol. 3) 586-588 (Barclay).

²³⁰ *Id.* at 591-592; *id.* at 603.

²³¹ *Id.* at 593.

²³² *Id.* at 596.

²³³ *Id.* at 609.

²³⁴ *Id.* at 609-610.

²³⁵ *Id.* at 593.

Similar to the Plymouth incident, as was discussed during Bullard’s cross examination, if there was a fault with the proposed LNG tank, the entire facility could go completely offline, and NMGC would be unable to use LNG for the duration of the outage.²³⁶ This is much more serious than has occurred with the force majeures at Keystone, where typically the ability to withdraw gas is reduced but not eliminated.²³⁷

The risk of a black swan risk at the proposed LNG facility is fundamentally different than that posed by leasing space at Keystone. NMGC and its employees do not have any experience operating an LNG facility,²³⁸ which means a greatly increased risk of failure. Furthermore, failure and the necessary remediation at the LNG facility would fall squarely on NMGC, as it would be owned and operated by NMGC; whereas, if something were to happen to cause a catastrophic failure at Keystone, Kinder Morgan would be responsible for fixing the situation, and NMGC would likely be able to walk away from its storage contract and find storage elsewhere. Further, the risk to the proposed LNG facility posed by seismic activity²³⁹ or nearby solar energy storage²⁴⁰ has not been evaluated and quantified. The proposed LNG facility does not make NMGC’s gas supply system more robust; instead, it makes it more fragile.

Like the Plymouth event, the event at Freeport, Texas, which was offline for eight months, was also caused by human error. The outsized vulnerability of human error cannot be rejected (even if none of the other foreseen risks: seismic, battery storage, etc. come to fruition).

²³⁶ Tr. (Vol. 1) 117-118 (Bullard).

²³⁷ *Id.*; see also *New Mexico Gas Company’s Verified Supplemental Response to Hearing Examiner’s First Bench Request and Verified Response to WRA’s Motion* (filed 1/26/24).

²³⁸ NMGC Exh. 1 (Bullard Dir.) at 52.

²³⁹ See Tr. (Vol. 3) 712-713 (Jones); see NEE Exhibit 11 (explaining that ground-shaking hazard in the area could be “severe, damaging, and potentially disastrous”); and see Tr. (Vol. 3) 720-721 (Jones) (explaining there are no materials within the record of this case examining seismic risk).

²⁴⁰ See Tr. (Vol. 3) 669-670 (Barclay) (demonstrating that NMGC has not examined the risk posed to the LNG facility by a solar battery storage facility).

Because we do not have actual price spike mitigation strategies to evaluate in comparison to the risk of NMGC's put all-your-eggs-in-one-basket strategy the LNG discretionary proposal does not make logical or legally-defensible sense.

H. Force Majeure Declarations and Gas Cuts at Keystone, while Frustrating and Occasionally Troublesome, Have Been Declining in Recent Years and Do Not Justify the Extraordinary Expense Associated with the Proposed LNG Facility

In response to the First Bench Request, NMGC produced data that addressed all cuts of nominated Keystone gas deliveries since 2013 and all force majeure events declared by Keystone since 2014.²⁴¹ After WRA raised significant issues relating to NMGC's responses, NMGC produced corrected and additional data in response to the First Bench Request.²⁴² These documents reveal that NMGC has received the vast majority of all gas that it has requested and that the force majeure declarations and gas cuts at Keystone have been declining in recent years.

NMGC Bench Request Table 1-1 Supplemental and NMGC Bench Request Table 1-2 reveal the following data:

Year	# of cuts	Total Vol. of Cuts in MMBtu	# of Force Majeures (Impacting Withdrawal)	# of Cuts Due to Force Majeure
2023	0	-	-	-
2022	3	23,045	1	-
2021	5	85,356	1	3
2020	0	-	-	-
2019	6	24,044	-	-
2018	9	45,745	2	1
2017	2	36,440	-	-
2016	4	20,024	-	-
2015	14	128,969	3	11
2014	3	4,972	-	-
2013	1	4,000	-	-

²⁴¹ *New Mexico Gas Company, Inc.'s Response to Hearing Examiner's First Bench Request* (filed 1/24/24).

²⁴² *New Mexico Gas Company's Verified Supplemental Response to Hearing Examiner's First Bench Request and Verified Response to WRA's Motion* (filed 1/26/24).

These data sets show that there have been seven force majeure events declared at Keystone that have impacted withdrawal capability since 2013, and only four of these force majeure declarations resulted in cuts to NMGC nominated gas. A close examination of the data reveals that the only force majeure event that has caused any cuts to NMGC gas in the past five years was the force majeure declared during Storm Uri in February 2021 and that NMGC has received at least 99% of all gas it has nominated. Indeed, the data indicates that the only significant gas cuts from Keystone in the past five years occurred during Storm Uri, when despite the cuts, Keystone was able to provide over 500,000 Mcf of gas throughout the storm. As to non-force majeure cuts, NMGC admits that it does have any information or explanation as to the reason for such cuts.²⁴³ And as to claims of voluntary cuts by NMGC in response to telephonic requests by Keystone, NMGC has not provided any meaningful, quantifiable data on such requests, and Reed has stated that it is unusual to have phone calls from a gas storage provider asking the storage customer to voluntarily reduce nomination amounts.²⁴⁴

Furthermore, existing strategies have recently proven more than sufficient for NMGC to cope with the impact of force majeure declarations and gas cuts at Keystone. In response to a February 2022 winter storm, NMGC increased line pack, purchased additional gas supplies, injected additional gas into storage, and diversified supply from four different basins in order to avoid needing to go into the intraday market during the storm to purchase additional gas.²⁴⁵ These strategies were successful, despite supply cuts by Keystone.²⁴⁶ Reed concedes that NMGC

²⁴³ *Id.* at 2.

²⁴⁴ Tr. (Vol. II) 522-523 (Reed).

²⁴⁵ Case No. 21-00095-UT, *New Mexico Gas Company, Inc. Compliance Filing and Supporting Testimony Filed Pursuant to Decretal Paragraph of the NMPRC's June 2021 Final Order Relating to the 2021 Winter Event* (filed 03/31/2022), at pdf p. 35-37 of 71, (Bullard Dir.) at 28-30.

²⁴⁶ *Id.*

will continue to provide reliable and affordable service without the LNG facility.²⁴⁷ While force majeure declarations and gas cuts are certainly frustrating to NMGC, the inconvenience and occasional problems that they pose do not justify the immense cost of the proposed LNG facility, in fact, as stated more fully above there are many other strategies heretofore unexplored that could address the understandable legitimate operational imperfections of the status quo.

IV. Conclusion

Approval of NMGC's LNG facility would be contrary to the requirements set forth in NMSA 1978, §§ 62-9-1 and 62-9-3 and Commission precedent. The President of the United States of America, the State of New Mexico, the New Mexico Supreme Court, and the Public Regulation Commission have all recognized that we must consider the health and safety of the people and our environment when deciding whether fossil fuel projects should be allowed. The fact that NMGC has omitted major cost, environmental, public health and safety analyses, required by law, is damning and fatal. The Commission cannot proceed without this explicit information – where “a combination of adverse environmental [and] quality of life impacts”²⁴⁸ are too much – and without this data the Commission's hands are tied: it cannot act in good faith to approve the CCN.²⁴⁹

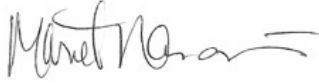
²⁴⁷ Tr. (Vol. II) 433-434 (Reed).

²⁴⁸ Case No. 2382, *Recommended Decision of the Hearing Examiner*, at 79-80, (NMPUC 7/05/1995), approved by *Final Order Approving Recommended Decision* (NM PUC 11/20/1995).

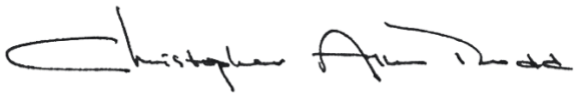
²⁴⁹ *Id.* at 79 (“The Commission cannot accept ... such fatal flaws, impacts to important environmental values...”).

DATED this 29th day of **January 2024**.

NEW ENERGY ECONOMY



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JANUARY 26, 2024

Statement from President Joe Biden on Decision to Pause Pending Approvals of Liquefied Natural Gas Exports

In every corner of the country and the world, people are suffering the devastating toll of climate change. Historic hurricanes and floods wiping out homes, businesses, and houses of worship. Wildfires destroying whole neighborhoods and forcing families to leave their communities behind. Record temperatures affecting the lives and livelihoods of millions of Americans, especially the most vulnerable.

From Day One, my Administration has set the United States on an unprecedented course to tackle the climate crisis at home and abroad – securing the largest climate investment in the history of the world, unlocking clean energy breakthroughs that will power a clean economy and create thousands of jobs, advancing environmental justice for all, and rallying world leaders to transition away from the fossil fuels that jeopardize our planet and our people.

But more action is needed.

My Administration is announcing today a temporary pause on pending decisions of Liquefied Natural Gas exports – with the exception of unanticipated and immediate national security emergencies. During this period, we will take a hard look at the impacts of LNG exports on energy costs, America's energy security, and our environment. This pause on new LNG approvals sees the climate crisis for what it is:

the existential threat of our time.

While MAGA Republicans willfully deny the urgency of the climate crisis, condemning the American people to a dangerous future, my Administration will not be complacent. We will not cede to special interests.

We will heed the calls of young people and frontline communities who are using their voices to demand action from those with the power to act. And as America has always done, we will turn crisis into opportunity – creating clean energy jobs, improving quality of life, and building a more hopeful future for our children.

###

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF NEW MEXICO GAS
COMPANY INC.'S APPLICATION FOR THE
ISSUANCE OF A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO
CONSTRUCT A LIQUIFIED NATURAL GAS
FACILITY.**

Case No. 22-00309-UT

**NEW MEXICO GAS COMPANY, INC.,

APPLICANT.**

CERTIFICATE OF SERVICE

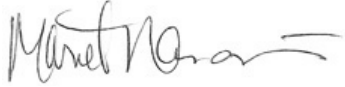
I HEREBY CERTIFY that on this date I caused to be sent to the individuals listed below, via email only:

**NEW ENERGY ECONOMY'S
POST HEARING BRIEF-IN-CHIEF AND EXHIBIT A**

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DATED: 29th day of January 2024.

NEW ENERGY ECONOMY

A handwritten signature in dark ink, appearing to read 'Mariel Nanasi', with a stylized flourish at the end.

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