

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF THE APPLICATION )  
OF NEW MEXICO GAS COMPANY, INC. )  
FOR APPROVAL OF REVISIONS TO ITS )  
RATES, RULES, AND CHARGES PURSUANT )  
TO ADVICE NOTICE NO. 87 )  
NEW MEXICO GAS COMPANY, INC. )  
Applicant. )

**Case No. 21-00267-UT**

**DIRECT TESTIMONY AND EXHIBITS**

**OF**

**LESLEY J. NASH**

**December 13, 2021**

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

**I. INTRODUCTION**

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

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

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

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

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

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

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

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 In January 2017, I joined NMGC as Legal Counsel. In January 2021, I was  
2 promoted to Senior Legal Counsel. Currently, I represent the Company in a variety  
3 of areas, including litigation, claims, employee relations, contract negotiation and  
4 administration, and compliance. My administrative responsibilities include  
5 assisting with supervision of in-house legal and compliance staff, and involvement  
6 in the oversight of the legal department budget, including reviewing and approving  
7 outside legal expenses.

8  
9 I am currently licensed to practice law in New Mexico.

10  
11 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NEW MEXICO**  
12 **PUBLIC REGULATION COMMISSION (“NMPRC” OR THE**  
13 **“COMMISSION”)?**

14 **A.** Yes. I presented written testimony in the Company’s last rate case, NMPRC Case  
15 No. 19-00317-UT.

16  
17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

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

- 19       ▪ In Section II, I describe and quantify NMGC’s base period litigation-related  
20 expenses, demonstrate that they were reasonable and prudently incurred and  
21 therefore provide a reasonable basis for the Future Test Year level of

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1           litigation expense to be recovered in rates pursuant to Section 62-13-3 of  
2           the New Mexico Public Utility Act (the “PUA”) and 17.10.630.7(O)  
3           NMAC (“Rule 630.7(O”). As used in this testimony, “Base Period”  
4           expenses mean expenses incurred in the twelve-month period ending June  
5           30, 2021. “Future Test Year” expenses are the amounts, with or without  
6           adjustments, for the period of the calendar year 2023, considered to be a  
7           reasonable basis for setting revised base rates in this proceeding.

- 8           ▪ In Section III, I describe and quantify NMGC’s expected Future Test Year  
9           litigation-related expenses and demonstrate that they are expected to be  
10           reasonable and prudently incurred based on the Base Period litigation-  
11           related expenses. These Future Test Year litigation-related expenses are  
12           also included in NMGC’s revenue requirement, which is sponsored by  
13           NMGC Witness Erik C. Buchanan.
- 14           ▪ In Section IV, I identify expenses, including legal and consultant expenses,  
15           incurred (or to be incurred) in preparing and presenting this rate case, and  
16           demonstrate that they are reasonable and prudently incurred.
- 17           ▪ In Section V, I discuss two additions to headcount in the Legal Department,  
18           including one compliance coordinator, and one senior contracts analyst.
- 19           ▪ In Section VI, I discuss insurance expenses.
- 20           ▪ In Section VII, I discuss NMGC’s compliance with the requirements of  
21           17.1.2.10(B)(2)(d) NMAC.

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

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

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

4 NMGC Exhibit LJN-1 Summary of Litigation Expenses;

5 NMGC Exhibit LJN-2 Tort Claim Litigation Expenses;

6 NMGC Exhibit LJN-3 Commercial Litigation Expenses;

7 NMGC Exhibit LJN-4 Human Resources Litigation Expenses;

8 NMGC Exhibit LJN-5 NMPRC Litigation Expenses;

9 NMGC Exhibit LJN-6 FERC Litigation Expenses;

10 NMGC Exhibit LJN-7 Rate Case Expenses; and

11 NMGC Exhibit LJN-8 Final Order Report.

12

13 **II. BASE PERIOD LITIGATION EXPENSES**

14

15 **Q. WHAT IS THE STANDARD FOR ALLOWING RECOVERY OF**  
16 **LITIGATION EXPENSES?**

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

22

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 **Q. PLEASE EXPLAIN THE TERM “REASONABLE AND PRUDENTLY**  
2 **INCURRED.”**

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

7

8 **Q. BRIEFLY DESCRIBE WHAT COMPRISES THE COMPANY’S**  
9 **LITIGATION EXPENSES.**

10 **A.** Litigation expenses consist primarily of the legal fees associated with outside  
11 counsel and their staffs incurred specifically in connection with litigation as defined  
12 by Rule 630.7(O). Litigation-related costs also include matter-related costs, such  
13 as expert witness fees, court reporter expenses, court fees, reproduction costs, and  
14 miscellaneous litigation-related charges. NMGC’s internal labor costs associated  
15 with litigation are not included in the litigation expenses.

16

17 **Q. HOW DOES NMGC TREAT INTERNAL LEGAL EXPENSES FOR**  
18 **LITIGATED MATTERS IN NMGC’S COST OF SERVICE?**

19 **A.** Internal costs associated with litigation work by attorneys and paralegals employed  
20 by the Company are included in the Company’s administrative and general  
21 accounts, which are indirectly allocated to operations and maintenance accounts.

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 Salaries and internal litigation-related costs are not considered part of the litigation  
2 expenses addressed in my testimony. Rather, this testimony relates only to outside  
3 legal fees and costs for litigated matters.

4  
5 **Q. PLEASE DESCRIBE THE LITIGATION-RELATED OUTSIDE COUNSEL  
6 FEES AND COSTS INCURRED BY NMGC IN THE BASE PERIOD.**

7 **A.** Generally, the fees associated with outside counsel are based on hourly billing rates  
8 for outside counsel and paralegals. As noted, the Company also reimburses  
9 litigation-related costs incurred or paid by outside counsel in connection with their  
10 representation of NMGC in litigated matters. Outside counsel bills NMGC in a  
11 statement that shows what services were provided by attorneys and paralegals, the  
12 hourly rates for such services, and other costs incurred or paid by outside counsel.  
13 Litigation-related outside counsel fees and costs are directly charged to the  
14 appropriate internal NMGC account for that matter.

15  
16 **Q. BRIEFLY DESCRIBE THE TYPE OF LITIGATION IN WHICH NMGC  
17 HAS BEEN INVOLVED DURING THE BASE PERIOD.**

18 **A.** NMGC is routinely involved in the following kinds of civil litigation: 1) personal  
19 injury and property damage cases (referred to as “Tort Claims”); 2) general civil  
20 litigation, including contract disputes and land disputes (referred to as “Commercial  
21 Litigation”); and 3) employment, labor, and workers’ compensation cases (referred

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 to as “Human Resources Claims”). In addition, as a regulated public utility, NMGC  
2 is regularly involved in regulatory proceedings before the NMPRC and the Federal  
3 Energy Regulatory Commission (“FERC”) (referred to as “NMPRC Matters” and  
4 “FERC Matters”).

5  
6 **Q. DOES NMGC EXPECT TO BE INVOLVED IN SIMILAR KINDS OF**  
7 **LITIGATION MATTERS DURING THE PERIOD RATES WILL BE IN**  
8 **EFFECT?**

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

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

14 **A.** The amount of litigation expenses NMGC incurred during the Base Period is  
15 \$1,100,300.86. Please see NMGC Exhibit LJM-1 for a summary of these expenses.

16  
17 **Q. HAVE YOU DETERMINED WHETHER NMGC’S BASE PERIOD**  
18 **LITIGATION EXPENSES ARE REASONABLE FOR INCLUSION IN**  
19 **RATES IN THIS PROCEEDING?**

20 **A.** Yes. I have determined that the litigation expenses NMGC incurred during the  
21 Base Period are reasonable and were prudently incurred. I and members of



**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

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

9  
10 **Q. WHAT STANDARD DID YOU USE TO DETERMINE THAT THE**  
11 **COMPANY'S BASE PERIOD LITIGATION EXPENSES ARE**  
12 **REASONABLE AND PRUDENT?**

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

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 expenses are a proxy for rate-effective period expenses and thus should not be  
2 evaluated solely by the nature of the claims or even the results of the litigation.

3  
4 By New Mexico standards, NMGC is a relatively large, well-capitalized and well-  
5 insured company doing business in an environment in which litigation is a  
6 frequently used method for resolving disputes. Company personnel interact  
7 routinely with customers and other members of the public in providing service and  
8 conducting business generally. NMGC operates in a heavily regulated industry.  
9 NMGC will be sued, and will bring suit, in the regular course of its business. In  
10 addition, NMGC, as a utility, will necessarily and routinely initiate, defend, or  
11 intervene in proceedings before state and federal regulatory bodies. In all these  
12 matters, NMGC must be represented by counsel.

13  
14 **Q. WHAT GENERAL MEASURES HAS NMGC TAKEN TO MANAGE AND,**  
15 **WHERE POSSIBLE, REDUCE LITIGATION EXPENSES?**

16 **A.** The mission of the NMGC Legal Department is to provide high quality, cost-  
17 effective and efficient legal services to assist NMGC in achieving its business goals.  
18 Qualified and experienced in-house counsel have been employed by the Company  
19 to: 1) provide legal advice, including taking steps to avoid or mitigate the risks of  
20 litigation before lawsuits or other litigation is initiated and, where appropriate, to  
21 represent the Company in litigated matters; 2) select cost-effective, qualified

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 outside counsel to represent NMGC in litigation; 3) oversee what outside counsel  
2 does in representing the Company, to help ensure that matters are handled  
3 efficiently; 4) make strategic and important tactical decisions in all litigation; 5)  
4 establish budgets for certain matters; and 6) control legal fees and costs in all legal  
5 matters, including routinely reviewing invoices for litigation-related legal services.  
6

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

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

18 In evaluating Base Period litigation expenses in individual cases for prudence and  
19 to ascertain whether Base Period litigation expenses are reasonably representative  
20 of Future Test Year conditions, I considered these factors and the circumstances of  
21 each matter in making my determination. No one factor is dispositive in my

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 analysis, as litigation expenses reflect both events within NMGC's control as well  
2 as those outside the Company's control. I have not included the details of  
3 settlements in the matters identified in my exhibits because: 1) a settlement may  
4 be subject to court confidentiality orders or there may be confidentiality provisions  
5 in the settlement agreements themselves; and 2) public disclosure of the settlement  
6 amounts and the way in which the Company reached a particular settlement figure  
7 may make it more difficult for NMGC to negotiate settlements in future cases or  
8 may provide information that could be used to undermine the Company's  
9 settlement strategy in pending or future matters.

10

11 **Q. ARE THE BASE PERIOD LITIGATION EXPENSES PERTAINING TO**  
12 **TORT CLAIMS REASONABLE AND PRUDENT?**

13 **A.** Yes. These expenses are summarized in NMGC Exhibit LJM-2. These claims  
14 involve property damage and personal injury claims filed by and against NMGC.  
15 For claims filed against NMGC, the Company hired qualified defense counsel  
16 experienced in personal injury and property damage litigation. On the other side of  
17 the equation, the Legal Department contracted with commercial practitioners to  
18 collect money from third parties who damaged NMGC's property. NMGC also  
19 hired qualified counsel to seek temporary restraining orders to protect NMGC  
20 employees from customers who made threats of imminent harm or death while  
21 NMGC field employees were performing their duties. These litigation expenses

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1           are also necessary to achieving recoveries that reduce the overall costs of repairing  
2           NMGC's property and are, in my opinion, reasonable and prudent.

3

4   **Q.    ARE THE BASE PERIOD LITIGATION EXPENSES PERTAINING TO**  
5   **COMMERCIAL LITIGATION REASONABLE AND PRUDENT?**

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

10

11 **Q.    ARE THE BASE PERIOD LITIGATION EXPENSES PERTAINING TO**  
12 **HUMAN RESOURCES LITIGATION REASONABLE AND PRUDENT?**

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

17

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

20 **A.**   Yes.  These expenses are summarized in NMGC Exhibit LJN-5.  NMGC is required  
21           by law to file with the NMPRC to obtain approval to engage in various activities

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 related to its business and to make filings with the NMPRC related to various rules  
2 or docketed matters. The Company must also respond to orders issued by the  
3 NMPRC. In some instances, it is necessary to intervene in proceedings that may  
4 set an important precedent applicable to NMGC in future cases. NMGC retains  
5 qualified counsel in state regulatory proceedings who have substantial experience  
6 with the PUA and regulatory law in general to represent NMGC in these matters.  
7 In my opinion, the litigation expenses pertaining to NMPRC matters are reasonable  
8 and prudent.

9

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

12 **A.** Yes. These expenses are summarized in NMGC Exhibit LJM-6. The Legal  
13 Department retains qualified counsel in FERC law and procedures to represent  
14 NMGC in these matters. In my opinion, the litigation expenses pertaining to FERC  
15 matters are reasonable and prudent.

16

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

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

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

5

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

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

18

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

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

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

4  
5 In addition to participation in FERC rate cases, NMGC also completes routine  
6 compliance filings with FERC. NMGC is required to provide transportation  
7 services under NMSA 1978, Section 62-6-4.1A. As such, while NMGC is not  
8 directly regulated by FERC, NMGC has FERC filing obligations related to certain  
9 transportation services offered by NMGC. These filings can be complex and  
10 voluminous due to the nature of the services offered, and NMGC is represented by  
11 specialized counsel in relation to such filings.

12  
13 **III. FUTURE TEST YEAR LITIGATION EXPENSES**

14  
15 **Q. WHAT IS THE TOTAL AMOUNT OF LITIGATION EXPENSES**  
16 **INCLUDED FOR RECOVERY IN THE COST OF SERVICE?**

17 **A.** To arrive at its Future Test Year litigation expenses, NMGC brought forward the  
18 reasonable and prudent Base Period litigation expenses and then applied the  
19 inflationary escalator (as testified to by NMGC Witness Buchanan) to the Base  
20 Period litigation expenses in order to estimate its Future Test Year litigation  
21 expenses. The total amount of litigation expenses included for recovery in the cost  
22 of service is \$1,166,536.



**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 **Q. IS THE AMOUNT OF FUTURE TEST YEAR LITIGATION EXPENSE**  
2 **INCLUDED IN THE COST OF SERVICE REASONABLE AND**  
3 **PRUDENT?**

4 **A.** Yes, it is. My opinion is based on the historic costs involved in litigation matters,  
5 the cost-saving measures described above that NMGC employs in engaging and  
6 supervising outside counsel, the level of ongoing and anticipated activity, and  
7 anticipated increases in expenses. This confirms my opinion that NMGC's estimate  
8 of Future Test Year litigation expense is reasonable and representative of the level  
9 of expense that NMGC will incur when new rates become effective, and that the  
10 amount expected to be spent on litigation is prudent.

11

12 **IV. RATE CASE EXPENSES**

13

14 **Q. DO THE COMMISSION AND COURTS TYPICALLY LOOK AT**  
15 **ANYTHING SPECIFIC TO DETERMINE WHETHER RATE CASE**  
16 **EXPENSES ARE RECOVERABLE?**

17 **A.** Yes. In *In re PNM Gas Services*, 2000-NM-12, ¶¶ 68-75, 129 N.M. 1, 1 P.3d 383,  
18 the New Mexico Supreme Court recognized that reasonable and prudently incurred  
19 rate case expenses are recoverable as a part of a utility's operating expenses.  
20 Typically, when considering such expenses, the Commission starts with estimated  
21 rate case expenses. Because rate case expenses are part of a utility's operating  
22 costs, a utility ordinarily provides projected rate case expenses in a rate case in

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 order to avoid constant adjustments in the proposed revenue requirement that  
2 relying on frequent updates of actual expenses would necessarily entail during the  
3 proceeding. The Commission then must base its decision on the evidence about the  
4 expenses. Historically, the Commission has considered evidence of actual  
5 expenditures provided at the end of the case, efforts to minimize legal expenses,  
6 and the Commission's own expertise and experience with amounts of rate case  
7 expenses typically incurred by a utility in a comparable rate case proceeding.  
8 Under standards described by the New Mexico Supreme Court in *In re PNM Gas*  
9 *Services*, the Commission is not bound to or limited to considering those factors  
10 and can consider other types of information such as those reviewed by courts in  
11 awarding attorneys' fees. *Id.*

12  
13 **Q. WHAT AMOUNT OF RATE CASE EXPENSES IS NMGC SEEKING TO**  
14 **RECOVER IN THIS CASE?**

15 **A.** The total projected rate case expenses in this case are \$1,632,000 which includes  
16 incremental expenses incurred by the Company to provide notice to customers,  
17 copying the filing, and costs of outside consultants, accounting firms, and attorneys  
18 in preparing and litigating the case. These expenses are summarized in NMGC  
19 Exhibit LJM-7. This exhibit provides both actual and projected litigation-related  
20 rate case expenses. At the time I testify in this proceeding, I will provide an update  
21 to NMGC Exhibit LJM-7 that will reflect expenses incurred up through that date

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1           and a projection of the costs to be incurred through the remainder of the case. This  
2           information can also be found in Rule 630 Schedule I-1, sponsored by NMGC  
3           Witness Jimmie L. Blotter.

4

5   **Q.    ARE THE CURRENT PROJECTIONS OF RATE CASE EXPENSES**  
6   **REASONABLE AND PRUDENT?**

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

14

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

16   **A.**   This rate case involves several complex issues. Based on its own experience and  
17          its observation of other utility rate case filings involving future test year periods,  
18          NMGC believes that many of these issues may be contested and require substantial  
19          litigation. NMGC also considered other costs associated with filing a rate case such  
20          as those for reproduction and providing notice. Further, as discussed earlier, NMGC  
21          has implemented processes and mechanisms to effectively control the expenses,

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 including the development of Company resources and the assignment of qualified  
2 in-house counsel to oversee and participate in proceedings and the selection of  
3 qualified outside counsel from Keleher & McLeod, P.A., who have substantial  
4 experience with the PUA and regulatory law in general, to assist in this proceeding.  
5 In addition, it is reasonable to retain outside experts and consultants to advise and  
6 testify on specific issues in a general rate case proceeding. NMGC's engagement  
7 of these outside services for this case is a necessary and cost-effective means to  
8 meet the requirements of a complex rate case filing.  
9

10 **Q. PLEASE DESCRIBE THE "OTHER COSTS" REQUESTED IN THIS**  
11 **PROCEEDING.**

12 **A.** As detailed in NMGC Exhibit LJM-7, the other costs requested in this filing include  
13 reproduction costs for notice to customers, forms updates, and the voluminous rate  
14 case documents; travel, meals and lodging; and other miscellaneous costs necessary  
15 for the filing of the case.  
16

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

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

- Roger A. Morin, Ph.D.;

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

- 1           • Deirdre M. Kann, Ph.D.;
- 2           • Daniel P. Yardley (Yardley Associates);
- 3           • Expergy;
- 4           • Ernst & Young;
- 5           • GT Ortiz Energy Consulting, LLC;
- 6           • Concentric Energy Advisors, Inc.; and
- 7           • ICF International Inc.

8           I will discuss the services and expenses for consultants Roger A. Morin Ph.D.,  
9           Deirdre M. Kann, Ph.D., Daniel P. Yardley, Expergy, Ernst and Young, and GT  
10          Ortiz Energy Consulting, LLC. The services for Concentric, Expergy and Ernst &  
11          Young will be discussed by NMGC Witnesses Buchanan and Blotter. The services  
12          and expenses for ICF International Inc. will be discussed in the testimony of NMGC  
13          Witness Gerald E. Weseen.

14

**A. Roger A. Morin, Ph.D.**

15

16   **Q.   PLEASE DESCRIBE THE CONSULTING SERVICES PROVIDED BY**  
17   **ROGER A. MORIN, PH.D.?**

18   **A.**   Roger A. Morin Ph.D. is a regulatory finance economist whom NMGC has engaged  
19          to evaluate and recommend the cost of equity capital for ratemaking purposes as  
20          well as a reasonable debt/equity ratio that is appropriate in setting NMGC's cost of  
21          capital.

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1   **Q.    WHAT IS DR. MORIN’S BACKGROUND?**

2   **A.**    Dr. Morin is Emeritus Professor of Finance at the Robinson College of Business,  
3            Georgia State University and Professor of Finance for Regulated Industry at the  
4            Center for the Study of Regulated Industry at Georgia State University. He is also  
5            a principal in Utility Research International, an enterprise engaged in regulatory  
6            finance and economic consulting to business and government.

7

8            Dr. Morin has taught at the Wharton School of Finance at University of  
9            Pennsylvania, Amos Tuck School of Business at Dartmouth College, Drexel  
10           University, University of Montreal, McGill University, and Georgia State  
11           University. Dr. Morin was a faculty member of Advanced Management Research  
12           International, and is currently a faculty member of S&P Global Intelligence.

13

14           Dr. Morin is the author or co-author of several books and articles in academic  
15           journals on the subject of finance.<sup>1</sup> A second edition of his book titled Modern  
16           Regulatory Finance is forthcoming in December of 2021. Dr. Morin has been a  
17           cost of capital witness before nearly 50 regulatory bodies in North America,  
18           including the NMPRC and the FERC.

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<sup>1</sup> Utilities’ Cost of Capital, Public Utilities Reports, Inc., Arlington, Va. 1984; Regulatory Finance, Public Utilities Reports, Inc., Arlington, Va. 1996; The New Regulatory Finance, Public Utilities Reports, Inc., Arlington, Va. 2006.

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 **Q. HOW MUCH IS IT EXPECTED TO COST TO RETAIN DR. MORIN, AND**  
2 **IS THIS COST REASONABLE AND PRUDENTLY INCURRED?**

3 **A.** NMGC estimates that it will cost \$80,000 to retain Dr. Morin. The cost for retaining  
4 Dr. Morin was reasonable and prudently incurred in light of the importance of his  
5 testimony, the complexity of the issues in his testimony, and his experience with  
6 those issues. Further, the cost is consistent with the cost of similar witnesses in  
7 other rate cases.

8

9 **B. Deirdre M. Kann Ph.D.**

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

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

15

16 **Q. WHAT IS DR. KANN'S BACKGROUND?**

17 **A.** Dr. Kann received a B.S. Degree in mathematics with a minor in geography from  
18 Towson University (formerly Towson State University); an M.S. Degree in  
19 geography (meteorology concentrate) from Northern Illinois University; and a  
20 Ph.D. in atmospheric sciences from Purdue University. Dr. Kann was employed by  
21 the National Meteorological Center (now the National Center for Environmental

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 Prediction) for eight years and for National Weather Service for 22 years as the  
2 Science Operations Officer for the Albuquerque National Weather Service Forecast  
3 Office. Dr. Kann has also authored manuscripts and articles for professional  
4 publications and taught classes at four universities. This information can be found  
5 in further detail in the Direct Testimony of Deirdre M. Kann, Ph.D. and NMGC  
6 Exhibit DMK-1.

7  
8 **Q. HOW MUCH IS IT EXPECTED TO COST TO RETAIN DR. KANN, AND**  
9 **IS THIS COST REASONABLE AND PRUDENTLY INCURRED?**

10 **A.** NMGC estimates that it will cost \$25,000 to retain Dr. Kann. The cost for retaining  
11 Dr. Kann was both reasonable and prudently incurred in light of her skills and  
12 experience. Dr. Kann has extensive experience with analyzing and predicting  
13 weather, specifically in New Mexico. Dr. Kann also testified in NMGC's prior rate  
14 cases.

15  
16 **C. Daniel P. Yardley (Yardley Associates)**

17 **Q. PLEASE DESCRIBE THE CONSULTING SERVICES PROVIDED BY**  
18 **DANIEL P. YARDLEY.**

19 **A.** Daniel P. Yardley is a consultant whom NMGC has engaged to provide expert  
20 testimony on rate design and mechanisms that have been adopted in other  
21 jurisdictions and are being presented for consideration by this Commission. Mr.



**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 Yardley is also expected to testify regarding NMGC's Fully Allocated Cost of  
2 Service study.

3

4 **Q. WHAT IS MR. YARDLEY'S BACKGROUND?**

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

13

14 **Q. HOW MUCH IS IT EXPECTED TO COST TO RETAIN MR. YARDLEY,  
15 AND IS THIS COST REASONABLE AND PRUDENTLY INCURRED?**

16 **A.** NMGC estimates that it will cost \$225,000 to retain Mr. Yardley. As this is a  
17 complex and essential aspect of the rate case, with which Mr. Yardley has  
18 substantial skill and experience, the cost for retaining Mr. Yardley was both  
19 reasonable and prudently incurred. Mr. Yardley also testified in NMGC's prior rate  
20 case.

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**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

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**D. Expergy**

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

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

**Q. WHAT IS EXPERGY'S BUSINESS?**

**A.** Expergy is a consulting firm that specializes in providing expert testimony on behalf of clients involved in utility rate and regulatory proceedings. Expergy has extensive experience in testifying before numerous regulatory commissions nationwide on cash working capital studies and other utility-related matters.

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

**A.** NMGC estimates that it will cost \$40,000 to retain Expergy. The cost for retaining Expergy was both reasonable and prudently incurred in light of their experience and expertise regarding these matters, and is similar to prior expenses NMGC has incurred for lead lag studies.

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

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**E. Ernst & Young**

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

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

**Q. WHAT IS E&Y’S BUSINESS?**

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

**Q. HOW MUCH IS IT EXPECTED TO COST TO RETAIN E&Y, AND IS THIS COST REASONABLE AND PRUDENTLY INCURRED?**

**A.** NMGC estimates that it will cost \$80,000 to retain E&Y. Given the need for their service and their expertise, the cost for retaining E&Y was both prudent and reasonable.

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

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

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1    **A.**    GT Ortiz Energy Consulting, LLC (“GTO Consulting”) is a utility consulting  
2           company that provides advice and guidance on the complex issues to which  
3           witnesses must testify in a rate case in New Mexico. Gerard T. Ortiz, principal of  
4           GTO Consulting, has extensive regulatory experience, including overseeing rate  
5           cases and testifying numerous times before the Commission.

6  
7    **Q.**    **WHY WAS GTO CONSULTING RETAINED, HOW MUCH IS IT**  
8           **EXPECTED TO COST TO RETAIN THEM, AND IS THIS COST**  
9           **REASONABLE AND PRUDENTLY INCURRED?**

10   **A.**    GTO Consulting has unique expertise regarding witness preparation for regulatory  
11           proceedings in New Mexico. GTO Consulting will assist NMGC in preparing  
12           witnesses to provide testimony in relation to this case. NMGC estimates that it will  
13           cost \$25,000 to retain GTO Consulting. The cost for retaining GTO Consulting  
14           was both reasonable and prudently incurred in light of GTO Consulting’s skill and  
15           expertise.

16  
17   **Q.**    **SHOULD RECOVERY OF THE RATE CASE EXPENSES THAT YOU**  
18           **HAVE DESCRIBED BE AUTHORIZED IN THIS PROCEEDING?**

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

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**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

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**V. ADDITIONAL EMPLOYEES**

**Q. PLEASE DESCRIBE THE EMPLOYEES THAT NMGC IS SEEKING TO ADD IN YOUR AREA OF RESPONSIBILITY.**

**A.** NMGC is adding a Compliance Coordinator and a Senior Contracts Analyst in the Legal Department. The Compliance Coordinator will support compliance functions of the Company, including regulatory and industry-related compliance obligations, internal and external audits, and management of Company compliance programs. The Senior Contracts Analyst will support all contracting functions of the Company, including contract negotiation and documentation related to insurance, safety compliance, and pricing.

**Q. WHY ARE YOU ADDING THESE EMPLOYEES?**

**A.** These employees are needed at this time to support NMGC in meeting regulatory compliance requirements, and to ensure that NMGC continues to enter contracts that are protective of the Company and its customers.

NMGC is adding the Compliance Coordinator position because of increased external compliance requirements and increased formality and rigor of Company compliance programs. Increased external compliance requirements include: new cyber security directives from the Federal Transportation Security Administration; cyber security and other requirements related to federal contracting; and Payment

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 Card Industry standards promulgated by the Payment Card Industry Security  
2 Standards Council. In response to the increased complexity of compliance  
3 requirements, NMGC is formalizing compliance programs across the Company to  
4 align management of compliance obligations, controls, and incident reporting. The  
5 compliance coordinator will support the compliance functions of the Company by  
6 assisting the management of all compliance programs.

7  
8 NMGC is adding the Senior Contracts Analyst position in response to the  
9 increasing volume of contracts and capital projects being entered into by the  
10 Company. Additionally, external and internal contracting requirements for the  
11 Company are becoming increasingly complex due to changes in the regulatory  
12 environment (particularly due to cyber security concerns) and increased focus on  
13 active safety management and compliance review of NMGC contractors.

14  
15 **Q. HOW DOES ADDING THESE EMPLOYEE BENEFIT NMGC AND ITS**  
16 **CUSTOMERS?**

17 **A.** These employees support essential legal and compliance functions of the Company.  
18 These are essential risk management functions that protect the Company's financial  
19 and reputational health for the benefit of customers. The Compliance Coordinator  
20 will assist in supporting NMGC meeting its regulatory compliance obligations, and  
21 will also assist in ensuring timely reporting, audit responses, and incident

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 management. The Senior Contracts Analyst will support NMGC in vetting third  
2 parties and negotiating contracts that properly protect the Company and in turn its  
3 customers from contractual third-party risk and litigation.

4

5 **V. INSURANCE EXPENSES**

6

7 **Q. WHAT INCREASES IS THE COMPANY SEEING IN ITS COSTS**  
8 **RELATING TO INSURANCE?**

9 **A.** NMGC has seen an increase in its cost for essentially all lines of business insurance.  
10 These projected amounts are provided by our Risk Department at Tampa Electric  
11 Company (“TEC”), and I have provided these numbers to NMGC Witness  
12 Buchanan for inclusion in the model.

13

14 **Q. CAN YOU EXPLAIN WHY THESE COSTS ARE INCREASING?**

15 **A.** Yes, I work with our Risk Department at TEC and have had several discussions  
16 with the Risk Manager and the Company’s broker relating to the placement of the  
17 coverage. The insurance markets are cyclical, and the market has recently become  
18 a “restricted market”, where there is more demand for insurance than there is  
19 supply. This alone increases the cost of coverage in basically all lines of insurance.  
20 Company-specific factors also come into play in pricing, such as loss history.  
21 Additionally, some lines of insurance, such as cyber insurance, have seen  
22 significant price increases as claims under such policies have increased.

**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1    **Q.    ARE THE AMOUNTS THE COMPANY EXPECTS TO PAY FOR**  
2           **PROPERTY, GENERAL LIABILITY, AND OTHER INSURANCE IN 2022**  
3           **AND 2023 REASONABLE?**

4    **A.**    Yes. We evaluate the Company’s coverage needs to put together a package of  
5           insurance policies that together limit the exposure of the Company to any one event.  
6           Our Risk Manager uses multiple insurers to cover our risks and works with our  
7           broker to ensure that the terms and conditions of our insurance placement are fair  
8           and reasonable, and consistent with prevailing insurance market conditions. We  
9           also review our deductible levels and purchase limits to ensure they are appropriate.  
10  
11           It is a prudent management decision to purchase appropriate insurance to protect  
12           the assets of the Company and thus, it is reasonable and prudent to incur these  
13           expenses. This is a benefit to the financial health and stability of NMGC, which is  
14           beneficial to its customers.

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

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

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



**DIRECT TESTIMONY OF  
LESLEY J. NASH  
NMPRC CASE NO. 21-00267-UT**

1 **Q. IS NMGC IN COMPLIANCE WITH THE COMMISSION’S FINAL**  
2 **ORDERS IN EACH OF NMGC’S CASES DECIDED DURING THE**  
3 **PRECEEDING FIVE YEARS?**

4 **A.** Yes, NMGC is in compliance with all Commission Final Orders in each of  
5 NMGC’s cases decided during the preceding five years. Pursuant to the provisions  
6 of 17.1.2.10(B)(2)(d) NMAC, NMGC files with the Commission each year its  
7 “Annual Final Order Report Pursuant to the New Mexico Public Regulation  
8 Commission Rule 17.1.2.10(B)(2)(d) NMAC” (the “Final Order Report”). NMGC  
9 last filed its Final Order Report on April 30, 2021, for the period January 1, 2016  
10 through December 31, 2020. A copy of NMGC’s latest Final Order Report is  
11 attached as NMGC Exhibit LJN-8. The Final Order Report details all Final Order  
12 Requirements from the preceding five years applicable to NMGC and demonstrates  
13 that NMGC is in compliance with those requirements.

14

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

16 **A.** Yes, it does.