

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF NEW MEXICO GAS COMPANY,)
INC.'S INTEGRATED RESOURCE PLAN FOR THE)
PLANNING PERIOD OF 2024 THROUGH 2033 IN) Docket No. 24-00203-UT
COMPLIANCE WITH 17.7.4.9 NMAC)
_____)**

ORDER ADOPTING RECOMMENDED DECISION

THIS MATTER comes before the New Mexico Public Regulation Commission (the “Commission”) upon the Recommended Decision issued by co-presiding hearing examiners John F. Kreienkamp and Alejandro Rettig y Martinez.

The Commission adopts, approves, and accepts the Recommended Decision without modification. Consistent with the Recommended Decision, the Commission finds that New Mexico Gas Company Inc.’s (“NMGC”) Integrated Resource Plan (“IRP”) is deficient in part and orders NMGC to re-file its IRP within this docket.

JURISDICTION AND PROCEDURAL HISTORY

1. The Commission has jurisdiction over this matter.¹
2. NMGC filed its IRP for the planning period of 2024 through 2033 on April 16, 2024.²
3. On May 16, 2024, WRA filed its protest against NMGC’s IRP, arguing that NMGC’s IRP was deficient because it does not contain summaries and evaluations required by the Commission’s rules for IRPs.³

¹ See NMSA 1978, §§ 62-17-1 to -17-11 (2005, as amended through 2019).

² See, e.g., Order Commencing Proceeding (May 30, 2024), Exhibit A - New Mexico Gas Company, Inc.’s Integrated Resource Plan for the Planning Period of 2024 through 2033 in Compliance with 17.7.4.9 NMAC. This order summarizes relevant procedural history. The full electronic record of this proceeding is available at <https://edocket.prc.nm.gov>.

³ *Id.*, Exhibit B – Protest by Western Resource Advocates of New Mexico Gas Company Inc.’s 2024-2033 Integrated Resource Plan.

4. CCAE filed a concurrence with WRA’s protest the following day.⁴

5. On May 30, 2024, the Commission issued an Initial Order, finding that WRA’s protest demonstrated to the Commission’s reasonable satisfaction that a hearing was necessary.⁵ The order commenced a proceeding to determine whether NMGC’s IRP complied with the requirements of 17.7.4 NMAC.⁶

6. The Commission subsequently appointed John F. Kreienkamp and Alejandro Rettig y Martinez as co-presiding hearing examiners in this case.⁷

7. Following briefing and a hearing at which the parties presented argument,⁸ the hearing examiners issued a Recommended Decision that recommended that the Commission find NMGC’s IRP deficient in part and order NMGC to re-file its IRP.⁹

8. No party filed exceptions to the Recommended Decision.

DISCUSSION

9. The Efficient Use of Energy Act¹⁰ (EUEA) requires “public utilities supplying . . . natural gas service to customers [to] periodically file an integrated resource plan with the Commission.”¹¹ Commission rules require public utilities to include certain contents and conduct certain evaluations when preparing these plans.¹² Under one such rule, 17.7.4.11(B) NMAC:

the utility shall evaluate, as appropriate, renewable energy, energy efficiency, load

⁴ *Id.*, Exhibit C – Coalition for Clean Affordable Energy’s Concurrence in Western Resource Advocates’ Protest of New Mexico Gas Company’s 2024-2033 Integrated Resource Plan.

⁵ *Id.* at 3.

⁶ *Id.* at 4.

⁷ Order for Public Hearing and Appointing Co-Presiding Officers (June 10, 2024).

⁸ See 1.2.2.7(P)(6) NMAC (“[P]ublic hearing means a portion of a proceeding, open to the public and conducted by the commission or presiding officer, that affords an opportunity to present such evidence, *argument*, or other appropriate matters as the commission or presiding officer deems relevant or material to the issues.”) (emphasis added).

⁹ Recommended Decision (Jan. 6, 2025) at 1, 14-15.

¹⁰ Section 62-17-10.

¹¹ *Id.*

¹² 17.7.4.10 NMAC; 17.7.4.11 NMAC.

management and conventional supply-side resources on a consistent and comparable basis and take into consideration risk and uncertainty of energy supply, price volatility and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. The evaluation shall be based on a present-value analysis of revenue requirements and shall include discussion of any economic, risk, environmental, and reliability analyses.¹³

10. Another Commission rule, 17.7.4.10(C) NMAC, requires the utility to include a “summary of foreseeable resource needs for the planning period” in its IRP.¹⁴

11. Commission rules also establish a filing cadence for IRP filings—every four years—and provide procedures for protests and Commission review. Under these provisions, the Commission reviews a gas utility’s IRP for “compliance with the procedures and objectives set forth [in the gas utility IRP Rule].”¹⁵

12. When conducting this review, “the [C]ommission may accept the proposed IRP as compliant with this rule without a hearing, unless a protest is filed that demonstrates to the commission’s reasonable satisfaction that a hearing is necessary.”¹⁶ “If the [C]ommission has not acted within forty-five (45) days after the filing of the proposed IRP, that IRP is deemed accepted as compliant with this rule.”¹⁷

13. Finally, “[i]f the [C]ommission determines the proposed IRP does not comply with the requirements of [the IRP Rule], the [C]ommission will identify the deficiencies and return it to the utility with instructions for re-filing.”¹⁸

14. As discussed in the Recommended Decision, WRA and CCAE contend that

¹³ 17.7.4.11(B) NMAC.

¹⁴ 17.7.4.10(C) NMAC

¹⁵ 17.7.4.15(A) NMAC.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

NMGC's IRP is deficient because it omits evaluations required by 17.7.4.11(B) NMAC and summaries required by 17.7.4.10(C) NMAC.

15. With respect to 17.7.4.11(B) NMAC, NMGC conceded that its IRP did not contain the evaluations contained in the rule.¹⁹ Nevertheless, NMGC argued that the rule provides NMGC discretion regarding whether to conduct these evaluations and that they were not appropriate at this time.²⁰ Staff contended that the IRP's discussion of NMGC's Energy Efficiency Program was sufficient to comply with 17.7.4.11(B) NMAC.²¹

16. Both NMGC and Staff argued that the IRP contained the "summary of foreseeable resource needs for the planning period" required by 17.7.4.10(C).²²

17. The Commission adopts the Recommended Decision's conclusions with respect to both rules.

18. In short, NMGC's IRP is deficient under 17.7.4.11(B) NMAC because it neither contains the evaluations contemplated by that provision nor provides the assumptions and analyses that led NMGC to conclude that these evaluations were unnecessary.²³

19. NMGC's IRP, however, complies with 17.7.4.10(C) NMAC as the required "summary of foreseeable resource needs for the planning period" is discernable in the IRP's discussion of "Gas Supply Sources & Strategy" on pages 15 through 18.²⁴

FINDINGS AND CONCLUSIONS

20. NMGC's IRP does not comply with the requirements of the Commission's rules.

¹⁹ See, e.g., NMGC's Initial Brief at 7.

²⁰ See, e.g., *id.* at 7-10 (noting that 17.7.4.11(B) NMAC requires gas utilities to conduct evaluations "as appropriate").

²¹ Staff's Initial Brief at 9.

²² See, e.g., *id.* at 4-5; NMGC's Initial Brief at 6-7.

²³ Recommended Decision at 5-7. The Commission also adopts the Recommended Decision's analysis and conclusions concerning NMGC's constitutional due process and equal protection arguments. See *id.* at 9-14.

²⁴ *Id.* at 8 (citing NMGC's IRP at 15-18).

21. NMGC must either incorporate the evaluations described by 17.7.4.11(B) NMAC into its IRP or provide the assumptions and analyses that led it to determine that these evaluations were inappropriate.

22. NMGC must re-file its IRP to address the deficiencies identified by this order and the Recommended Decision.

23. The Recommended Decision is reasonable and well-stated.

24. The Commission incorporates by reference any findings and conclusions stated in the body of this order.

IT IS THEREFORE ORDERED:

A. The hearing examiners' Recommended Decision and all rulings, determinations, and findings and conclusions contained in it are incorporated as the Commission's findings of fact and conclusions of law.²⁵

B. Not later than 90 days from the date of this order, NMGC shall correct the deficiencies identified by this order and the Recommended Decision in a re-filed IRP.

C. When filed, NMGC's IRP shall be re-filed within this docket.

D. NMGC's re-filed IRP shall be subject to the review process provided by 17.7.4.15(A) NMAC.

E. Any matter not specifically ruled on during this proceeding is resolved consistent with this order.

F. This Order is effective when signed.

²⁵ The Recommended Decision is attached to this order as Exhibit A.

G. The Commission shall serve a copy of this Order upon all persons listed on the attached Certificate of Service via e-mail if their e-mail addresses are known, and otherwise, via regular mail.

H. In computing time in accordance with statute, regulation, or Commission order, the computation shall begin on the date that this Order is filed with the Chief Clerk of the Commission's Records Management Bureau or the Chief Clerk's designee.

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

NEW MEXICO PUBLIC REGULATION COMMISSION

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

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

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





NEW MEXICO
**PUBLIC REGULATION
COMMISSION**

COMMISSIONERS

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Santa Fe, NM 87504-1269

CHIEF OF STAFF

Cholla Khoury

January 6, 2025

TO PARTIES OF RECORD IN CASE NO. 24-00203-UT

This is the Recommended Decision of hearing examiners John F. Kreienkamp and Alejandro Rettig y Martinez. Unless and until the Commission considers the matter and votes to approve it, the Recommended Decision has no legal effect. This matter will be considered at a future Open Meeting of the Commission. To confirm when the matter will be considered, please see the Commission's Open Meeting agenda, which is posted on the Commission's website at least 72 hours before each Open Meeting at: <https://www.nm-prc.org/nmprc-open-meeting-agenda/>.

Parties to the proceeding may file exceptions to the Recommended Decision as provided in Rule 1.2.2.37(C) NMAC of the Commission's Procedural Rules. Other interested persons may submit written comments in the record of this proceeding before the Commission takes final action in the matter.

The Commission may hold a deliberative meeting to address this matter in closed session in advance of the Open Meeting at which the matter will be considered, in accord with Section 10-15-1(H)(3) of the Open Meetings Act. NMSA 1978, § 10-15-1(H)(3) (2013). In such event, notice of the deliberative meeting will be posted on the Commission's website 72 hours in advance of the deliberative meeting at the https address set forth above.

Sincerely,

A handwritten signature in blue ink that reads "Anthony F. Medeiros". The signature is stylized with a large, flowing 'A' and 'M'.

Anthony F. Medeiros
Chief Hearing Examiner
New Mexico Public Regulation Commission

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**IN THE MATTER OF NEW MEXICO GAS COMPANY,)
INC.'S INTEGRATED RESOURCE PLAN FOR THE)
PLANNING PERIOD OF 2024 THROUGH 2033 IN)
COMPLIANCE WITH 17.7.4.9 NMAC)**

Case No. 24-00203-UT

RECOMMENDED DECISION

**JOHN F. KREIENKAMP and ALEJANDRO RETTIG Y MARTINEZ
Hearing Examiners**

Issued January 6, 2025

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Recommended Decision**Case No. 24-00203-UT**

John F. Kreienkamp and Alejandro Rettig y Martinez, co-presiding hearing examiners in this case, submit this recommended decision to the Commission pursuant to 1.2.2.37(B) NMAC. The hearing examiners respectfully recommend that the Commission adopt the following analysis, findings of fact and conclusions of law, and decretal paragraphs in a decision and order.

1. SUMMARY

The Commission commenced this proceeding following Western Resource Advocates' (WRA) protest of New Mexico Gas Company, Inc.'s (NMGC or Company) Integrated Resource Plan (IRP) for the Planning Period of 2024 through 2033. In short, WRA and the Coalition for Clean Affordable Energy (CCAЕ)—who later joined WRA's protest—contend that NMGC's IRP does not comply with the Commission's administrative rules concerning IRPs, specifically 17.7.4.10 NMAC and 17.7.4.11 NMAC.

Below, the hearing examiners find NMGC's IRP partially deficient under 17.7.4.11 NMAC, which requires NMGC to conduct certain evaluations using specific criteria and assumptions "as appropriate." The hearing examiners also reject NMGC's arguments that the Commission would violate the Company's due process and equal protection rights by finding the IRP deficient. As a result, the hearing examiners recommend that the Commission find NMGC's IRP deficient and order NMGC to re-file its IRP.

2. PROCEDURAL HISTORY¹

NMGC filed its IRP for the planning period of 2024 through 2033 on April 16, 2024. On May 16, 2024, WRA filed its protest against NMGC's IRP. CCAЕ filed a concurrence with WRA's

¹ This section provides only a broad summary of the procedural history of this case. For more minute detail, please consult the full case history contained in the Commission's eDocket filing system.

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protest the following day. In short, WRA's protest contends that NMGC's IRP is deficient because it does not contain summaries and evaluations required by the Commission's administrative rules for IRPs.

On May 30, 2024, the Commission issued an Initial Order, finding that WRA's protest demonstrated to the Commission's reasonable satisfaction that a hearing was necessary. The order commenced a proceeding to determine whether NMGC's IRP complies with the requirements of 17.7.4 NMAC. The Commission subsequently appointed the undersigned hearing examiners to preside over this proceeding.

Following consultation with the parties, the hearing examiners issued a procedural order that required briefing on the following issues:

- Whether NMGC's IRP complied with 17.7.4.10 NMAC and 17.7.4.11 NMAC
- what specific deficiencies, if any, are found in the IRP and what re-filing instructions the Commission should provide the NMGC if it ultimately determines that the IRP is deficient; and
- Whether the resolution of this case requires an evidentiary hearing and, if so, what specific issues of fact and witness testimony are necessary to resolve it.

The procedural order also set oral argument before the hearing examiners on October 1, 2024.

WRA, CCAE, Commission's Utility Division Staff (Staff), and NMGC filed initial briefs and response briefs on September 5, 2024, and September 20, 2024, respectively. The oral argument was conducted as scheduled on October 1, 2024. The Commission received no public comment orally or in writing regarding this proceeding.

3. LEGAL STANDARDS

The Public Utility Act² vests the Commission with the “general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations ... and to do all things necessary and convenient in the exercise of its power and jurisdiction.”³

3.1. The Efficient Use of Energy Act

The Efficient Use of Energy Act⁴ (EUEA) requires “public utilities supplying . . . natural gas service to customers [to] periodically file an integrated resource plan with the Commission.”⁵ Under the EUEA, public utilities shall “incorporate a public advisory process” when preparing integrated resources plans, and the plans themselves shall:

evaluate renewable energy, energy efficiency, load management, distributed generation and conventional supply-side resources on a consistent and comparable basis and take into consideration risk and uncertainty of fuel supply, price volatility and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers.⁶

The Commission’s administrative rules expand on these statutory requirements by outlining the specific contents of IRPs and required evaluations.⁷

² NMSA 1978, §§ 62-1-1 to -6-28 and 62-8-1 to -13-16 (1884, as amended through 2021). *See* § 62-13-1 (identifying the statutes within the Public Utility Act).

³ Section 62-6-4(A).

⁴ NMSA 1978, §§ 62-17-1 to -17-11 (2005, as amended through 2019).

⁵ Section 62-17-10.

⁶ *Id.*

⁷ *See* 17.9.572.4.10 NMAC; 17.9.572.4.11 NMAC. The Commission’s administrative rules also provide guidance regarding IRP procedures not at issue in this proceeding, including the public advisory process, confidentiality provisions, variances, and exemptions. *See generally* 17.7.4 NMAC.

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Commission administrative rules also establish a filing cadence for IRP filings—every four years—and provide procedures for protests and Commission review. Under these provisions, the Commission reviews a gas utility’s IRP for “compliance with the procedures and objectives set forth [in the gas utility IRP Rule].”⁸ When conducting this review, “the [C]ommission may accept the proposed IRP as compliant with this rule without a hearing, unless a protest is filed that demonstrates to the commission’s reasonable satisfaction that a hearing is necessary.”⁹ “If the [C]ommission has not acted within forty-five (45) days after the filing of the proposed IRP, that IRP is deemed accepted as compliant with this rule.”¹⁰ Finally, “[i]f the [C]ommission determines the proposed IRP does not comply with the requirements of [the IRP Rule], the [C]ommission will identify the deficiencies and return it to the utility with instructions for re-filing.”¹¹

3.2. Evidentiary Burdens

In administrative proceedings generally, as well as Commission proceedings specifically, the evidentiary burden is carried by the proponent of an order or the moving party, unless specifically provided otherwise.¹² Here, the hearing examiners recommend—and the parties agree¹³—that the Commission may resolve this proceeding without an evidentiary hearing through

⁸ 17.7.4.15(A) NMAC.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² 3 DAVIS, KENNETH CULP, ADMINISTRATIVE LAW TREATISE § 16.9 at 255-57 (2d ed. 1980). *See Int’l Minerals and Chemical Corp. v. N.M. Pub. Serv. Comm’n*, 1970-NMSC-032, ¶ 10, 81 N.M. 280, 466 P.2d 557 (“Although the statute does not specifically place any burden of proof on [complainant] International, the courts have uniformly imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof.”).

¹³ *See* Staff’s Initial Brief, at 10 (“the resolution of this case does not require or otherwise legitimately merit an evidentiary hearing”); NMGC’s Initial Brief, at 15-16 (“the resolution of this case does not require an

questions of law: first, whether NMGC's IRP complied with the Commission's administrative rules and, second, whether directing NMGC to re-file its IRP comports with constitutional due process and equal protection.¹⁴ Thus, in the context of this proceeding, no party bears an evidentiary burden.

4. DISCUSSION

The scope of this proceeding is narrow. WRA and CCAE—through protest and subsequent briefing—contend that NMGC's IRP is deficient because it omits evaluations required by 17.7.4.11(B) NMAC and summaries required by 17.7.10(C) NMAC.¹⁵ This section addresses those issues as well as NMGC's additional arguments that constitutional due process and equal protection prevent the Commission from finding its IRP deficient.¹⁶ In short, this section finds NMGC's IRP deficient, in part, and rejects NMGC's due process and equal protection arguments.

4.1. NMGC's IRP is deficient under 17.7.4.11(B) NMAC.

The Commission's administrative rules provide that:

the utility shall evaluate, as appropriate, renewable energy, energy efficiency, load management and conventional supply-side resources on a consistent and comparable basis and take into consideration risk and uncertainty of energy supply, price volatility and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. The evaluation shall be based on a present-value analysis of revenue requirements and shall include discussion of any economic, risk, environmental, and reliability analyses.¹⁷

evidentiary hearing"); Joint Brief-in-Chief of WRA and CCAE, at 9 ("WRA and CCAE do not believe that this case requires an evidentiary hearing.").

¹⁴ See Procedural Order, at 2, 4.

¹⁵ See Joint Brief-in-Chief of WRA and CCAE, at 4-8.

¹⁶ See NMGC Initial Brief, at 12-15.

¹⁷ 17.7.4.11(B) NMAC.

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NMGC concedes that it has not performed these analyses.¹⁸ Thus, the Commission need only decide what, if any, requirements this provision imposes on NMGC with respect to this IRP.

As a general matter, 17.7.4.11(B) NMAC imposes two requirements on filing utilities. First, filing utilities must “evaluate, as appropriate,” certain resources and load management mechanisms “to identify the most cost-effective portfolio of resources” for customers.¹⁹ Second, when utilities conduct these analyses, they must:

- evaluate these resources and strategies “on a consistent and comparable basis;”
- “take into consideration risk and uncertainty of energy supply, price volatility and costs of anticipated environmental regulations;”
- “be based on a present-value analysis of revenue requirements;” and
- “include discussion of any economic, risk, environmental, and reliability analyses.”²⁰

When appropriate, this language requires utilities to conduct certain evaluations using specific criteria, which utilities must then include in their filed IRPs.²¹

This language, however, does not require utilities to conduct each of the listed evaluations for each IRP, regardless of their usefulness or cost. Instead, it provides discretion to utilities—within reasonable limits—to evaluate these alternatives “as appropriate.”²² In other words, a utility itself may determine whether performing these evaluations for its initial IRP filing is feasible or

¹⁸ NMGC Initial Brief, at 7.

¹⁹ 17.7.4.11(B) NMAC.

²⁰ *Id.*

²¹ 17.7.4.11(B) NMAC. *See also* 17.7.4.10(D) NMAC (requiring IRP to contain “anticipated resources to be added during the planning period and *the evaluation of various options that could reasonably be added to the utility’s resource portfolio*”) (emphasis added); 17.7.4.10(H) NMAC (requiring IRP to contain “other information that may aid the commission in reviewing the utility’s planning processes”).

²² 17.7.4.11(B) NMAC.

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appropriate.²³

But given that a baseline function of the IRP statute and the Commission's implementing administrative rules is to facilitate utility submission and Commission *review* of IRPs, it is not enough for utilities to decide that these evaluations are not required *and* omit their bases for that decision.²⁴ Similarly, the discretion conferred to utilities by the language "as appropriate" is not unfettered. A utility may not avoid the evaluations contemplated by 17.7.4.11(B) NMAC when those evaluations would plainly help the utility "identify the most cost-effective portfolio of resources to supply the energy needs of customers."²⁵

Here, NMGC concedes that it has not performed the evaluations contemplated by 17.7.4.11(B) NMAC.²⁶ Moreover, its IRP omits the assumptions and analyses that led NMGC to conclude that these evaluations were unnecessary. NMGC's IRP is, therefore, deficient,²⁷ and it should be required to re-file an IRP that either incorporates the evaluations described by 17.7.4.11(B) NMAC or provides the assumptions and analyses that led it to determine that these evaluations were inappropriate.²⁸

²³ This discretion does not limit the Commission's authority to conduct additional investigations or require additional information to be filed. *See* 17.7.4.16 NMAC. In fact, additional required filings could include the analyses contemplated by 17.7.4.11(B). *Id.*

²⁴ *See generally* NMSA 1978, § 62-17-10; 17.7.4 NMAC. *See also* 17.7.4.10(H) NMAC (requiring IRP to contain "other information that may aid the commission in reviewing the utility's planning processes").

²⁵ 17.7.4.11(B) NMAC.

²⁶ NMGC Initial Brief, at 7.

²⁷ To the extent NMGC argues that its IRP is compliant because it contained the rationale for deeming these analyses inappropriate, the hearing examiners reject the argument. *See* NMGC Initial Brief, at 7-10. When a utility omits these analyses from its IRP, it should not be necessary for the Commission to combine guesswork and significant inference to understand the decision.

²⁸ The Company indicated during oral argument that it would not be especially burdensome or objectionable to require it to explain its reasoning for not performing this analysis. *See* Tr. at 92-93 ("If the -- if it's to simply explain the rationale -- because the Company does do an informal analysis of these things to decide whether they have to go run these models. If it's to provide that, I don't know that that would be a due process

4.2. NMGC's IRP complies with 17.7.4.10(C) NMAC.

WRA and CCAE also argue that NMGC failed to comply with 17.7.4.10(C) NMAC, which requires an IRP to include a “summary of foreseeable resource needs for the planning period.” This argument is not well taken. Granted, as NMGC appeared to concede during oral argument,²⁹ the Company's IRP does not always track the actual verbiage or content structure of the Commission's rules. The content itself, however, required by 17.7.4.10(C) NMAC does appear to be present on pages 15 through 18 of the IRP (titled “Gas Supply Sources & Strategy”).³⁰ NMGC is correct that this section of its IRP discusses, among other items, the Company's “foreseeable need for storage alternatives since the Commission's denial of the Company's application for a liquefied natural gas facility and its foreseeable need to potentially source more gas from the Permian Basin as production in the San Juan Basin declines.”³¹ Taken as a whole, the “Gas Supply Sources & Strategy” section clearly summarizes NMGC's foreseeable resource needs, even if it may not have been expressly labeled as such.³²

issue. If the Commission would like some insight as to why we did not provide an analysis of the cost effectability [sic] of the load management or other resources, we can do that.”).

²⁹ See Tr. at 26-27 (“Could we have done a little bit more, a better job of organizing everything? Absolutely. We admit it. We have some work to do on organizing our IRP to make it very clear as to what we are doing and why we are doing it.”). See also Staff's Response Brief, at 5 (observing that “the descriptive headings used in NMGC's IRP may not be in perfect lockstep with the content requirement descriptors in 17.7.4.10 NMAC”).

³⁰ WRA, CCAE, and Staff focused their arguments in briefing on the subsequent section of NMGC's IRP, titled “Anticipated Resources to be Added During Planning Period” (appearing on pages 19-20). See Joint Brief-in-Chief of WRA and CCAE, at 5-6; Staff's Initial Brief, at 4-5. However, the section most relevant to 17.7.4.10(C) NMAC is titled “Gas Supply Sources & Strategy.”

³¹ NMGC's Response Brief, at 5.

³² In their response brief, WRA and CCAE again focused on the “Anticipated Resources to be Added During Planning Period” section of NMGC's IRP. They argued both that this section was insufficient in detail to satisfy 17.7.4.10(C) NMAC and that it was improper for a summary of foreseeable resource needs to be “lumped in with the identification of anticipated resource additions.” Both of these arguments are unpersuasive. First, 17.7.4.10(C) NMAC does not, by its terms, require exacting or elaborate detail, instead expressly requiring a “summary.” This summary is present in the “Gas Supply Sources & Strategy” section of the IRP. Second, nothing

4.3. Requiring NMGC to refile its IRP does not violate constitutional due process.

NMGC contends that the Commission would violate the Company's constitutional due process rights by requiring it to refile its IRP. The hearing examiners reject this argument.

As a threshold matter, it is unclear whether NMGC possesses sufficient property interests in the outcome of this IRP compliance decision to mount a due process challenge.³³ In a recent decision upholding the Commission's administrative rules for IRPs for electric utilities, the New Mexico Supreme Court held that electric utilities had not established a recognized property interest in the outcome of an IRP compliance decision where the nature of the proceeding was the "mere [] *acceptance* of those filings as technically compliant with agency requirements."³⁴ The Commission's administrative rules for gas utility IRPs similarly call for "acceptance" following a "compliance review."³⁵ As the Court recently cast doubt on whether this type of proceeding could create a protected property interest, NMGC may be unable to satisfy the "[t]he first inquiry in every due process challenge."³⁶

Even assuming that NMGC possesses a sufficient property interest, its due process challenge suffers from other deficiencies. "Due process is not a concrete concept, but rather 'is flexible in nature and may adhere to such requisite procedural protections as the particular situation

in 17.7.4.10(C) NMAC prohibits, as WRA and CCAE appear to suggest, required content from being "lumped in" with other similar content.

³³ See *El Paso Elec. Co. v. New Mexico Pub. Regulation Comm'n*, ___-NMSC-___, ¶ 36, ___ P.3d ___ (S-1-SC-39673, Dec. 6, 2024).

³⁴ *Id.* ¶ 34.

³⁵ 17.7.4.15(A) NMAC.

³⁶ *El Paso Elec. Co.*, ___-NMSC-___, ¶ 36 (quoting *James v. Cleveland Sch. Dist.*, 45 F.4th 860, 864, 867 (5th Cir. 2022)). The Commission need not resolve whether the adjudicative nature of the gas IRP rule creates a recognized property interest as NMGC's due process challenge is deficient on other grounds.

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demands.”³⁷ In general, however, due process in the administrative context requires “reasonable notice and opportunity to be heard and present any claim or defense.”³⁸ Thus, the Commission may not “radically depart[] from past practice without proper notice.”³⁹

Here, NMGC has failed to establish a past practice that would trigger due process concerns. NMGC principally contends that the Commission’s inaction in response to the Company’s prior unprotested IRPs—leading them to be deemed compliant by operation of law—has created a past practice.⁴⁰ In short, in this case, it would be an absence of a Commission order or Commission precedent that would create the past practice triggering due process requirements. Our jurisdiction’s due process precedents, however, recognize past practices that stem from Commission decisions and orders.⁴¹ They do not require the Commission to extend the principle beyond that.⁴²

NMGC alternatively argues that prior Commission cases established a precedent or practice in favor of its interpretation of 17.7.4.1(B) NMAC. During the oral argument, NMGC cited to Case No. 12-00145-UT, suggesting that it established a practice of accepting IRPs without the analysis

³⁷ *TW Telecom of New Mexico, L.L.C. v. New Mexico Pub. Regulation Comm’n*, 2011-NMSC-029, ¶ 17, 150 N.M. 12, 256 P.3d 24 (quoting *US West Commc’ns, Inc. v. N.M. State Corp. Comm’n*, 1999-NMSC-016, ¶ 25, 127 N.M. 254, 980 P.2d 37).

³⁸ *El Paso Elec. Co. v. New Mexico Pub. Regulation Comm’n*, ___-NMSC-___, ¶ 4, ___ P.3d ___ (S-1-SC-38874, S-1-SC-38911, May 1, 2023) (quoting *TW Telecom*, 2011-NMSC-029, ¶ 17).

³⁹ *Id.* (quoting *Hobbs Gas Co. v. New Mexico Pub. Serv. Comm’n*, 1993-NMSC-032, ¶ 7, 115 N.M. 678, 858 P.2d 54).

⁴⁰ *See, e.g.*, NMGC Initial Brief, at 12-13.

⁴¹ *See, e.g.*, *Hobbs Gas Co.*, 1993-NMSC-032, ¶¶ 5, 9 (prior practice established by two Commission orders approving continued use of purchased gas adjustment clause). *See also* Tr. at 32 (“I don’t have a Supreme Court decision that says that a simple operational law activity that gets carried over time and time again and then changes, it constitutes a due process, the argument under Hobbs Gas or electric. There is always an order. I do agree with you, I don’t have a citation to anything like that.”).

⁴² *Id.*

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outlined by 17.7.4.1(B) NMAC.⁴³ A close review of Case No. 12-00145-UT, however, shows that 17.7.4.1(B) NMAC was neither identified as an area of deficiency by the initial protest⁴⁴ nor mentioned in the Commission's order resolving the protest.⁴⁵ The case therefore did not establish a precedent concerning the interpretation of 17.7.4.1(B) NMAC.

Similarly, NMGC suggested in briefing that its interpretation of the rule is consistent with the Commission's order in Case No. 15-00011-UT granting a one-time variance to Raton Natural Gas Company from filing an IRP.⁴⁶ However, the relevant issue in Case No. 15-00011-UT was whether to grant the utility a variance from the entirety of 17.7.4 NMAC, not which pieces of information were required within an IRP.⁴⁷ Moreover, the language of the Commission's order suggested at that time that the analysis outlined by 17.7.4.1(B) NMAC was indeed a requirement.⁴⁸ In short, neither of these cases established a precedent or practice in favor of NMGC's interpretation of 17.7.4.1(B) NMAC.

That NMGC received sufficient notice of the standard applied in this proceeding serves as a final, alternative basis to reject the Company's due process argument. Notice is sufficient when it

⁴³ See Tr. at 88 ("The Commission -- there was a protest of that IRP. The protest was ultimately satisfied and the Commission accepted in a final order the IRP that was presented in the 2012. So they did it, actually entered a final order accepting that IRP. That IRP is very similar to this. It did not have the analysis that is laid out in 11 B, which then ultimately goes to where we were talking about as that -- there is a reason for that the discretion.").

⁴⁴ See Case No. 12-00145-UT, National Nuclear Security Administration Protest of New Mexico Gas Company's Integrated Resource Plan, at 9 (citing to "Rule 17-NMAC-7-4-10.C and 10.D") (May 2, 2012).

⁴⁵ See Case No. 12-00145-UT, *Final Order* (Jul. 12, 2012).

⁴⁶ NMGC Initial Brief, at 12 n.1 (citing Case No. 15-00011-UT, Order Granting in Part Application for Variances (Feb. 4, 2015)).

⁴⁷ Case No. 15-00011-UT, Order Granting in Part Application for Variances, at 4 (Feb. 4, 2015).

⁴⁸ See *id.* ("Raton claims it would be 'onerous' to 'engage experts' to 'perform an economic analysis of energy efficiency and load management alternatives to gas supply,' *as required.*") (emphasis added).

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provides a meaningful opportunity to respond.⁴⁹ Typically, notice received early in a proceeding, for instance, through pre-filed testimony from Staff or an intervenor, satisfies this bar because it allows the affected party the opportunity to object and present relevant evidence if necessary.⁵⁰ Here, NMGC received the relevant notice before the outset of the proceeding through WRA's Protest, had the opportunity to present argument on the appropriate standard, and declined the opportunity to present evidence. Moreover, administrative rules in effect since 2007 have placed NMGC on notice that the Company may be required to re-file its IRP following a deficiency finding by the Commission⁵¹ and that the Commission may investigate any matter pertaining to the IRP and require the Company to file additional information.⁵² Taken together, this notice far exceeds the requirements of due process.

For these reasons, NMGC's due process argument fails.

4.4. Requiring NMGC to refile its IRP does not violate constitutional equal protection.

NMGC also argues that interpreting 17.7.4.11(B) NMAC as requiring the Company to provide additional information in its IRP would "constitute discriminatory application of the IRP Rule in violation of NMGC's constitutional right to equal protection."⁵³ That is, according to NMGC, the Commission "cannot interpret the IRP Rule one way for NMGC and another for Zia

⁴⁹ See *TW Telecom*, 2011-NMSC-029, ¶ 17; *Resolute Wind I LLC v. New Mexico Pub. Regulation Comm'n*, 2022-NMSC-011, ¶ 24, 506 P.3d 346.

⁵⁰ See, e.g., *Matter of Rates & Charges of Mountain States Tel. & Tel. Co.*, 1986-NMSC-019, ¶ 26, 104 N.M. 36, 715 P.2d 1332.

⁵¹ See 17.7.4.15(A) NMAC.

⁵² See 17.7.4.16 NMAC.

⁵³ NMGC's Initial Brief, at 13. NMGC asserts its right to equal protection under both the state and federal constitutions. See N.M. Const. art. II, § 18, and U.S. Const. amend. XIV, § 1.

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and Raton.”⁵⁴ This argument, which again appears to be premised upon the erroneous proposition that the Commission’s inaction in response to past IRPs established a past practice, is unpersuasive.

Preliminarily, NMGC’s briefing in this case did not provide adequate authority to support its contention that ruling in WRA and CCAE’s favor would violate the constitutional right of equal protection. The principal case cited by NMGC with respect to its equal protection claim, *Community Public Service Company v. New Mexico Public Service Commission*,⁵⁵ involved express statutory distinctions between rural electric cooperatives and other public utilities. Ultimately, the New Mexico Supreme Court concluded that “there is no real basis for applying one set of rules to one and a different set to the other.”⁵⁶ That decision is not a valid parallel to this proceeding, since the IRP rule draws no distinction between different gas utilities and WRA and CCAE maintain (correctly) that their interpretation would apply with equal force to all such utilities.⁵⁷ *Community Public Service Company* is therefore not itself adequate legal authority for NMGC’s equal protection claim.⁵⁸

⁵⁴ NMGC’s Initial Brief, at 14.

⁵⁵ 1966-NMSC-053, 76 N.M. 314, 414 P.2d 675.

⁵⁶ *Id.* ¶ 10. The Court explained that, although “absolutely equal treatment of parties performing similar service is not demanded in order for a legislative act to withstand an attack on its constitutionality ... it is nevertheless imperative that where classification is attempted, the same must be reasonable and based on real differences bearing a proper relationship to the classification, and there must be uniformity of treatment within each class.” *Id.* ¶ 7.

⁵⁷ See Reply Brief of WRA and CCAE, at 12 (“We would ask that the Commission hold all gas utilities to the same standards equally. To that end, the instructions that we recommend to the Commission in this case are intended to solicit information necessary for compliance with the regulations that all utilities should follow.”).

⁵⁸ The analysis required under the equal protection clauses of the state and federal constitutions is also considerably more complex than the briefing supplied in this case would suggest. As explained by the New Mexico Supreme Court, before addressing the merits of an equal protection claim, the court must first “identify the appropriate level of scrutiny for reviewing the challenged law.” *Wagner v. AGW Consultants*, 2005-NMSC-016, ¶ 12, 137 N.M. 734, 114 P.3d 1050. “What level of scrutiny we use depends on the nature and importance of the individual interests asserted and the classifications created by the statute.” *Id.* For its part, in articulating

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More importantly, ruling in WRA and CCAE's favor in this proceeding would not constitute disparate treatment for NMGC.⁵⁹ As has already been addressed in this recommended decision, and as was repeatedly observed throughout the oral argument, the issues presented by WRA and CCAE's protest have never before been considered by the Commission. NMGC is not receiving disparate treatment; it is simply a party to the first adjudication in which this issue has been considered. The Commission's adjudicatory process often involves issues of first impression, but the fact that an issue has not yet been decided does not itself create a legitimate equal protection claim. To be clear, if the Commission does ultimately issue an order requiring the Company to provide additional analysis or information within its IRP, the same requirement would apply in equal measure to other gas utilities moving forward.

5. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The hearing examiners respectfully recommend that the Commission find and conclude as follows:

1. NMGC is certified and authorized to provide public utility service within the State of New Mexico, provides gas-utility services within New Mexico, and is a public utility subject to the jurisdiction of the Commission under the Public Utility Act.
2. The Commission has jurisdiction over NMGC and the subject matter of this case.

its equal protection claim, NMGC did not address the applicable level of scrutiny, thereby leaving its argument somewhat undeveloped.

⁵⁹ See *Wagner*, 2005-NMSC-016, ¶ 21 (explaining that the right of equal protection "is essentially a mandate that similarly situated individuals be treated alike, absent a sufficient reason to justify the disparate treatment"); see also *Breen v. Carlsbad Mun. Sch.*, 2005-NMSC-028, ¶ 10, 138 N.M. 331, 120 P.3d 413 ("The threshold question in analyzing all equal protection challenges is whether the legislation creates a class of similarly situated individuals who are treated dissimilarly.").

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3. NMGC's IRP does not comply with the requirements of the Commission's administrative rules, which require NMGC to either incorporate the evaluations described by 17.7.4.11(B) NMAC into its IRP or provide the assumptions and analyses that led it to determine that these evaluations were inappropriate.

4. NMGC should re-file its IRP to address the deficiencies identified by the recommended decision.

6. DECRETAL PARAGRAPHS

The hearing examiners respectfully recommend that the Commission order as follows:

A. The hearing examiners' recommended decision and all rulings, determinations, and findings and conclusions contained in it—regardless of whether separately stated, numbered, or designated—are incorporated as the Commission's findings of fact and conclusions of law.

B. Not later than 90 days from the date of the Commission's order, NMGC shall correct the deficiencies identified by the recommended decision in a re-filed IRP.

C. NMGC's IRP shall be re-filed within this docket.

D. NMGC's re-filed IRP shall be subject to the review process provided by 17.7.4.15(A) NMAC.

E. Any matter not specifically ruled on during oral argument or in the decretal paragraphs of this recommended decision or in the Commission's order is resolved consistent with this recommended decision or Commission order.

F. This order is effective immediately.

G. A copy of this order shall be served on all parties listed on the official service list for this case.

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ISSUED under the seal of the Commission at Santa Fe, New Mexico, this **6th** day of **January, 2025**.



NEW MEXICO PUBLIC REGULATION COMMISSION

A handwritten signature in black ink, appearing to read "John F. Kreienkamp", written over a horizontal line.

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Appendix A: Glossary of Acronyms and Defined Terms

<u>Acronym/Defined Term</u>	<u>Meaning</u>
CCAE	Coalition for Clean Affordable Energy
Commission	New Mexico Public Regulation Commission
Company	New Mexico Gas Company, Inc.
EUEA	Efficient Use of Energy Act
IRP	Integrated Resource Plan
NMGC	New Mexico Gas Company, Inc.
Staff	Commission's Utility Division Staff
WRA	Western Resource Advocates

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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DATED this January 6, 2025.

NEW MEXICO PUBLIC REGULATION COMMISSION

*Ana Kippenbrock*Ana C. Kippenbrock, Law Clerk

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF NEW MEXICO GAS COMPANY,)
INC.'S INTEGRATED RESOURCE PLAN FOR THE)
PLANNING PERIOD OF 2024 THROUGH 2033 IN) Docket No. 24-00203-UT
COMPLIANCE WITH 17.7.4.9 NMAC)
_____)**

CERTIFICATE OF SERVICE

I CERTIFY that on this day I sent via email a true and correct copy of the foregoing
Order Adopting Recommended Decision to the parties listed below.

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DATED this 7th day of February, 2025.

NEW MEXICO PUBLIC REGULATION COMMISSION

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