

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF AN INQUIRY INTO THE )  
PROMULGATION OF RULES TO PROTECT )  
CONSUMERS' RIGHTS WITH RESPECT TO PROPANE )  
SERVICE TO IMPLEMENT SENATE BILL 468, "AN ACT )  
RELATING TO BUSINESS; ENACTING A NEW )  
SECTION OF THE PUBLIC REGULATION )  
COMMISSION ACT; PROVIDING FOR THE )  
REGULATION OF PROPANE SERVICE". ) **Case No. 09-00314-UT**  
)  
CONSUMER RELATIONS DIVISION STAFF OF THE )  
NEW MEXICO PUBLIC COMMISSION, )  
)  
PETITIONER )

FINAL ORDER PROMULGATING 17.10.2 NMAC

**THIS MATTER** comes before the Commission upon the *Notice of Proposed Rulemaking* that was issued in this proceeding on July 6, 2010 (the "NOPR"). Having reviewed the record and being fully advised,

**THE COMMISSION FINDS AND CONCLUDES:**

1. The Commission is charged with protecting consumers' rights with respect to propane service as provided by NMSA 1978, §8-8-4.1(A), consistent with the Commission's jurisdiction as provided in the New Mexico Constitution, Art. XI, § 2, and other applicable law.

2. On August 20, 2009, the Consumer Relations Division Staff ("Staff") of the Commission filed a Petition for Notice of Inquiry. In support of the request for the opening of an inquiry, Staff noted that the New Mexico Legislature recently passed Senate Bill 468 which gave the Commission the authority to: 1) "...adopt rules to protect consumer rights with respect to propane service..." and 2) "...report by December 2009 to the appropriate interim legislative

committee appointed by the New Mexico legislative council on the progress of the rulemaking pursuant to this section.”

3. Staff stated in its motion that it would be in the best interest for the Commission to initiate a notice of inquiry to provide notice to the proper parties and begin the process of promulgating rules. The Commission issued such an order on September 15, 2009, and listed the scope of the inquiry as identifying the consumer protection issues relating to propane services that currently exist in New Mexico, the solutions to consumer protection issues in New Mexico given the scope of Senate Bill 468 and the existing resources and staffing of the Commission, and to develop a consensus proposed rule for adoption by the Commission.

4. Staff assembled a working group and met with members of the propane industry, Construction Industries Division, and consumers, as well as members of consumer advocate groups on November 5, 2009. Staff and the working group met a total of five times in workshop meetings in November and December of 2009 and several times throughout April of 2010.

5. On June 25, 2010, Prosperity Works (formerly Community Action New Mexico), a consumer advocacy group, filed Response Comments which included a proposed draft rule.

6. On July 6, 2010, the Commission issued the NOPR, attaching Prosperity Works’ rule as the Commission’s proposed rule. The NOPR stated that no other parties had submitted a draft rule at that time. The NOPR also stated that a new rule should be promulgated in order to effectuate fully NMSA 1978, §8-8-4.1 and that a rulemaking process should be instituted. The NOPR was published as required in the NEW MEXICO REGISTER on July 30, 2010, and it was also published in the Albuquerque Journal and the Las Cruces Sun-News.

7. Scores of written comments were submitted to the Commission from individuals, state legislators, Commission staff members, the Attorney General's Office, and groups representing propane dealers and propane customers. Their comments are found in the Commission's electronic record of this case.

8. On September 23, 2010, a public hearing was held before the Commission. The following persons spoke at the hearing:

Propane consumers supporting the proposed rule: Betty and Harvey Hagenstad, Joan Oller, Nick Lovato, Patrick Montoya, David Clements, Eric Oppenheimer, Lara Fitzgerald, Dylan Garrison, Edwin Gurule, Judy Martinez

Michael Donnelly for AARP

Lisa Martinez and Marvin Vaughn for the Construction Industries Division (Liquefied Petroleum (LP) Gas Bureau) of the Regulation and Licensing Department  
Rio Arriba County Commissioner Felipe Martinez

Kira Jones and Pilar Faulkner for Prosperity Works

State Representative Debbie Rodella

Propane consumers opposing the proposed rule: Mike Daly, Linda Pelton

Peter Gould, attorney for the New Mexico Propane Gas Association

H. Brook Laskey, attorney for propane dealers and insurance companies

Allegra and Paul Pacheco for Pecos Propane, Inc.

Billy Romero for Romero's Rio Grande Propane

Lisa Fickling for Conway Oil Company

Tom Cadenhead for Santa Fe Propane

Dana Keys for Ferrell Gas

Paul Greaves, propane dealer in Colorado

Wendell Nicholson, Gallup Propane Service

Alan Wells for Heritage Propane

Richard Griffin for Griffin's Propane, Inc.

Joanne Martinez for Kit Carson Energy, Inc.

Aaron Rosetta for Nation's Gas Technologies

Roy Stephenson, Director of the Commission's Utility Division

Tim Holloran, attorney with the Commission's Legal Division

9. The period for written comments was extended to September 30, 2010.

10. The consumers' main concerns were purchase price transparency and ensuring that low-income customers receive propane during winter. The dealers' main concerns were the rule's conflicts with safety laws and its cost to dealers.

11. Based on the written comments and the comments at the hearing, the Commission substantially changed the NOPR's proposed rule in large part because the propane industry is not a public utility to be regulated as such. Rather, it is composed of retail businesses of various sizes that make deliveries to customers, many of whom are located in remote parts of New Mexico.

12. The Final Rule, attached as Exhibit A, should be approved because it carries out the Legislature's mandate to protect consumers by requiring that dealers provide customers with clear, accurate, and timely prices and charges, provide public access to prices and charges, and inform customers of their consumer rights. It also strongly encourages dealers to offer budgeted

billing so that customers have levelized payments spread throughout the year and to offer payment plans for delinquent customers. The Final Rule also provides for the Commission to process and resolve customer complaints, while not limiting other remedies that customers may seek.

13. The Final Rule should also be adopted because it protects consumers' rights without infringing on dealers' right to contract or subjecting dealers to costly reporting and recordkeeping. It also allows for safety laws to take precedence should they conflict with the Final Rule.

14. The Commission has the jurisdiction to and authority to adopt and issue these rules pursuant to NMSA 1978, §§8-8-4 and 8-8-4.1.

15. Due and proper notice has been given.

**IT IS THEREFORE ORDERED:**

A. New Rule, 17.10.2 NMAC, attached to this Final Order as Exhibit A, is approved and adopted as provided in this Final Order.

B. The new 17.10.2 NMAC approved by this Final Order shall be filed and published in the New Mexico Register as required by the State Rules Act, NMSA 1978, §§ 14-4-1, *et seq.*, and implementing rules and shall be effective December 15, 2010.

C. This Final Order is effective immediately.

D. Copies of this Order, along with the Final Rule, shall be e-mailed to all persons listed on the attached Certificate of Service if their email addresses are known, and if not known, mailed to such persons via regular mail.

E. This docket is closed.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 23rd day of  
November, 2010.

NEW MEXICO PUBLIC REGULATION COMMISSION



*abstained - Did not Vote*  
\_\_\_\_\_  
DAVID W. KING, CHAIRMAN *DWK*

*[Signature]*  
\_\_\_\_\_  
JEROME D. BLOCK, VICE CHAIRMAN

*[Signature]*  
\_\_\_\_\_  
JASON A. MARKS, COMMISSIONER

*[Signature]*  
\_\_\_\_\_  
THERESA BECENTI-AGUILAR, COMMISSIONER

*[Signature]*  
\_\_\_\_\_  
SANDY JONES, COMMISSIONER

**EXHIBIT A**

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES**  
**CHAPTER 10 GAS SERVICES**  
**PART 2 PROPANE CUSTOMER PROTECTION**

**17.10.2.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.  
[17.10.2.1 NMAC - N, 12-15-10]

**17.10.2.2 SCOPE:**

**A.** This rule applies to propane dealers operating within New Mexico subject to the jurisdiction of the New Mexico public regulation commission.

**B.** Nothing in this rule shall supersede a federal or New Mexico law, rule, code or regulation designed to protect customer safety or public safety with respect to propane. If there is a conflict with this rule, such law, rule, code or regulation shall take precedence to the extent of that conflict.

**C.** All proceedings conducted by the commission under this rule shall be governed by the commission's rules of procedure, Sections 1.2.2.2 through 1.2.2.40 NMAC.

[17.10.2.2 NMAC - N, 12-15-10]

**17.10.2.3 STATUTORY AUTHORITY:** Sections 8-8-4, 8-8-4.1 and 8-8-15 NMSA 1978.

[17.10.2.3 NMAC - N, 12-15-10]

**17.10.2.4 DURATION:** Permanent.

[17.10.2.4 NMAC - N, 12-15-10]

**17.10.2.5 EFFECTIVE DATE:** December 15, 2010.

[17.10.2.5 NMAC - N, 12-15-10]

**17.10.2.6 OBJECTIVE:** The purpose of this rule is to establish a uniform set of standards defining the rights and responsibilities of propane customers and dealers. The purpose of this rule is also to ensure that dealers provide customers with transparent, accurate and timely information. This rule establishes a process within the commission for the resolution of customers' complaints.

[17.10.2.6 NMAC - N, 12-15-10]

**17.10.2.7 DEFINITIONS:** Unless otherwise specified, as used in this rule:

**A.** "**Budget billing plan**" means an agreement between a customer and a dealer intended to levelize or average the monthly billing for propane and propane services;

**B.** "**Customer**" means a purchaser of propane who purchases propane from a dealer to heat the interior of a dwelling or structure or to heat water, is legally liable for the payment of those purchases and does not purchase propane for resale;

**C.** "**Customer rate variation**" means a variation of prices charged by a propane dealer to customers;

**D.** "**Dealer**" means a retail distributor of propane who delivers propane to customers' premises and fills propane tanks at those premises;

**E.** "**Delinquent**" means the status of a bill rendered to a customer for propane service which remains unpaid after the due date of the bill;

**F.** "**Important Information for New Mexico Propane Consumers (IINMPC)**" means a document in Spanish and English for residential customers created and updated by the commission and posted on its website that shall contain at a minimum:

(1) the toll-free telephone number of the commission's consumer relations division;

(2) information regarding LIHEAP application forms, qualification requirements, application procedures and locations at which residential customers may submit LIHEAP applications;

(3) information regarding New Mexico energySmart application forms, qualification requirements, application procedures and locations at which residential delivery customers may submit energySmart applications; and

(4) other information as may be specified by the commission from time to time such as:

(a) tips for new and existing consumers;

- (b) a description of propane;
- (c) questions consumers may ask dealers;
- (d) service termination rights and obligations as set forth in this rule;
- (e) tips for budget billing plans; and
- (f) payment plans and payments.

**G.** "LIHEAP" means the low-income home energy assistance program administered by the New Mexico human services department or a tribe's or pueblo's low-income home energy assistance program administered under Section 27-6-18.1 NMSA 1978;

**H.** "New Mexico energySmart" means the low-income weatherization assistance program administered by the New Mexico finance authority;

**I.** "Payment agreement" means an agreement between a dealer and a customer in which the customer makes a series of payments scheduled over a period of more than forty-five (45) days to pay the customer's past due balances;

**J.** "Propane" means liquefied petroleum gas and LP gas;

**K.** "Residential customer" means a person who purchases propane from a dealer to heat the interior of a dwelling house or other structure used as a residence, who is legally liable for the payment of those purchases and who does not purchase propane for resale;

**L.** "Service" means the provision of propane by a dealer to a customer to heat the interior of a dwelling or other structure or to heat water;

**M.** "Schedule of charges" means the documentation provided by the dealer to the customer identifying and serving as notice of all relevant charges and fees and prices related to propane services.

[17.10.2.7 NMAC - N, 12-15-10]

**17.10.2.8 VARIANCE:** Dealers or customers seeking a variance from this rule shall follow the commission's procedure in Section 1.2.2.40 NMAC.

[17.10.2.8 NMAC - N, 12-15-10]

**17.10.2.9 TANK RENTAL, OWNERSHIP AND REMOVAL:**

**A. Rentals:** A dealer shall disclose to customers, in writing, upon initiation of service and upon request, all annual tank rental fees, including fees for tank removal, propane pump-out, minimum fills and partial fills.

**B. Ownership:** A customer may use his own tank and regulator.

**C. Removal of rental tank:** A customer may change propane dealers for any reason, absent a contractual agreement to the contrary. When a customer who rents a tank from a dealer lawfully changes dealers, the first dealer shall remove its rental tank from the customer's property within thirty (30) days after receiving written notice of the change and shall issue a refund within thirty (30) days for the unused propane and tank rental balances due under terms of the tank rental agreement.

[17.10.2.9 NMAC - N, 12-15-10]

**17.10.2.10 BUDGET BILLING PLANS:**

**A.** A dealer should offer reasonable budget billing plans to its residential customers. The offer of budget billing plans shall not be unreasonably withheld.

**B.** Budget billing plans shall be binding contracts under New Mexico law and shall be in writing. The pricing and time period language shall be printed in no less than 12-point boldface type of uniform font.

**C.** Budget billing plans may include a requirement for a deposit sufficient to ensure full payment to the dealer.

**D.** A budget billing plan shall provide that if a credit remains at the end of the budget billing plan term, that credit, including any deposit, shall be reimbursed to the residential customer not later than thirty (30) days after the end date of the plan, unless the dealer and residential customer agree otherwise.

[17.10.2.10 NMAC - N, 12-15-10]

**17.10.2.11 PAYMENTS AND PAYMENT AGREEMENTS:**

**A.** A dealer shall make a reasonable effort to enter into a payment agreement with a residential customer with a delinquent or past due account.

**B.** Payment agreements shall be binding contracts under New Mexico law and shall be in writing. The pricing and time period language shall be printed in no less than 12-point boldface type of uniform font.

**C.** A dealer shall make reasonable efforts to provide service to a residential customer who offers cash payments.

**D.** A dealer shall make reasonable efforts to incorporate LIHEAP payments, if applicable, into payments and payment plans.

[17.10.2.11 NMAC - N, 12-15-10]

**17.10.2.12 CONTENTS OF BILLS AND METERED FUEL TICKETS:**

**A. Bills for propane goods, services and equipment shall include:**

- (1) the number of gallons metered;
- (2) the date the bill is due;
- (3) the amount due for, and explanation of, special services and fees including but not limited to, hazardous materials and environmental fuel surcharges;
- (4) the total amount due for a previous balance separately presented from the current charges;
- (5) gross receipts taxes and any other taxes, if not part of the base rate;
- (6) the address and phone number of the dealer designating where the customer may initiate an inquiry or complaint regarding the bill as rendered of the service provided;
- (7) the toll-free number of the consumer relations division of the commission, together with a statement advising customers that they may contact the commission if they are unable to resolve a billing dispute with the dealer; and
- (8) a current copy in English and Spanish of the document IINMPC to be provided upon initiation of service for new customers, and annually in October for existing customers.

**B. Metered fuel tickets:**

(1) for those customers who receive metered fuel tickets, if the information in (A)(1)-(7) above is omitted from the ticket, dealers shall provide it on a document either attached to the ticket or mailed to the customer within thirty (30) days of delivery;

(2) the document IINMPC shall be provided upon initiation of service for new customers, and annually in October for existing customers.

[17.10.2.12 NMAC - N, 12-15-10]

**17.10.2.13 PUBLIC NOTICE OF CUSTOMER RIGHTS:**

A dealer shall display a current copy of the IINMPC document in English and Spanish at all of its retail locations and on its website if applicable, and shall make this information available to the general public upon request. The document shall contain the telephone number for filing a complaint with the consumer relations division of the commission.

[17.10.2.13 NMAC - N, 12-15-10]

**17.10.2.14 NOTICE, AVAILABILITY AND PUBLIC ACCESS TO SCHEDULE OF CHARGES:**

A dealer shall keep for at least ninety (90) days and provide public access to, its current charges for service, including the current price of propane and pricing categories used to establish customer rate variations. This information shall be available to customers and potential customers upon request. The dealer shall make this information available in writing to new customers before an agreement is entered to commence propane service and to existing customers with the next propane delivery after the effective date of this rule. A dealer is not required to disclose prices under special agreements.

[17.10.2.14 NMAC - N, 12-15-10]

**17.10.2.15 REPORTS TO THE COMMISSION:**

A dealer shall report the information required by Section 17.10.2.14 NMAC within ten (10) business days upon commission request.

[17.10.2.15 NMAC - N, 12-15-10]

**17.10.2.16 QUOTED PRICES AND CHARGES:**

When a customer places a valid order for propane, the dealer shall honor the quoted price for the requested delivery, even if the actual delivery is at some other date for reasons not caused by the customer.

[17.10.2.16 NMAC - N, 12-15-10]

**17.10.2.17 MINIMUM QUANTITY REQUIREMENT:**

Prior to delivery, a dealer shall notify customers of the minimum quantity of propane required for their tank size, and of the charges for that minimal fill and for partial fills below the minimal amount. A dealer shall use reasonable efforts to help a customer maintain an adequate supply of propane. A dealer shall not require a customer to make a minimum purchase of more than 100 gallons at a time or more than the total capacity of the customer's existing tank, whichever is less, unless the customer and the dealer have entered into a budget billing plan. This applies to all deliveries, including the initial installation.

[17.10.2.17 NMAC - N, 12-15-10]

**17.10.2.18 CUSTOMER RECORDS:**

**A.** Upon request, a dealer shall furnish to the customer copies of the customer's records for the prior twelve months. A dealer may charge a reasonable fee for copying these records.

**B.** A dealer shall furnish copies of a customer's records relevant to a matter in dispute to anyone authorized in writing by the customer to receive these records.

**C.** A dealer shall correct any non-disputed mistakes in a customer's payment history that are brought to its attention.

[17.10.2.18 NMAC - N, 12-15-10]

**17.10.2.19 COMPLAINTS:**

**A.** A dealer shall fully and promptly investigate and respond to all oral and written complaints made directly to the dealer by customers or prospective customers. The dealer shall make a good faith attempt to resolve the complaint and shall promptly notify the customer of its proposed disposition of the complaint, but no later than thirty (30) business days after the complaint was made. The dealer shall send written confirmation of its proposed disposition of the complaint to the customer.

**B.** If a dealer cannot resolve a complaint to a customer's satisfaction, the dealer shall provide the complainant with the name, address and current local or toll-free telephone number of the consumer relations division of the commission.

**C.** At any time, a customer may file an informal complaint against a dealer by contacting the consumer relations division or may file a formal complaint with the commission, as stated in Sections 1.2.2.13 through 1.2.2.15 NMAC. For Native Americans requesting help with translation, commission staff should contact the appropriate tribal or pueblo official for assistance.

**D.** Nothing in this rule shall bar customers or the attorney general from pursuing remedies for complaints under the Unfair Practices Act, Sections 57-12-1 through 57-12-26 NMSA 1978. Nothing in this rule shall bar customers from pursuing remedies for disputes in New Mexico courts.

[17.10.2.19 NMAC - N, 12-15-10]

**HISTORY OF 17.10.2 NMAC: [RESERVED]**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF AN INQUIRY INTO THE )  
PROMULGATION OF RULES TO PROTECT )  
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**Case No. 09-00314-UT**

**CONSUMER RELATIONS DIVISION STAFF OF THE )  
NEW MEXICO PUBLIC COMMISSION, PETITIONER )**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of **Final Order Promulgating 17.10.2 NMAC** issued November 23, 2010, was sent on November 24, 2010 by first-class postage prepaid mail or by electronic mail to the individuals listed below.

Ray Engstrom  
Southwestern Gas Services  
19 Desert Plume Tr.  
Santa Fe, NM 87508

Paul Pacheco  
Pecos Propane, Inc.  
PO Box 1007  
Pecos, NM 87552-1007

Alan Wells  
Heritage Propane  
6300 Montano NW Ste C  
Albuquerque, NM 87120

Tony Provencio  
Heritage Propane  
505 Cedardale Loop  
Las Cruces, NM 88005

Wayne Leslie  
Heritage Propane  
20 Raindance Road  
La Luz, NM 88337

Lance Ross  
Servigas/Ikard & Newsom  
301 N Motel Blvd  
Las Cruces, NM 88005-4116

Ralph Flores  
Meeder Equipment  
601 Oliver Ross Dr NW  
Albuquerque, NM 87121

David Archuleta  
AmeriGas  
PO Box 1500  
El Prado, NM 87529-1500

Penny Peryatel  
Northern NM Gas Co.  
PO Box 308  
Raton, NM 87740-0308

Donnie Arthur  
Arthur Propane Inc

Prosperity Works  
Kira Jones & Pilar Faulkner

Michael Donnelly  
AARP New Mexico

PO Box 97  
Des Moines, NM 88418-0097

Pamela E. Hall  
Cylinder Exchange Service, LLC  
PO Box 1628  
Alamogordo, NM 88311-1628

Baron Glassgow  
NM Propane Gas Assoc.  
6501 E. Greenway Pkwy.  
#103-457  
Scottsdale, AZ 85254

Lisa Martinez  
Construction Industries Division  
Regulation and Licensing Dept.  
2550 Cerrillos Road  
Santa Fe, NM 87505

Betty & Harvey Haagenstad  
HCR 77, Box 1A  
Ojo Caliente, NM 87549

Keven J. Groenewold, P.E.  
NM Rural Electric Coop. Assoc.  
614 Don Gaspar Avenue  
Santa Fe, New Mexico 87505

Senator Lynda M. Lovejoy  
PO Box 705  
Crownpoint, NM 87313-0705

Dana Keys  
Ferrelgas  
4151 Cerrillos Road  
Santa Fe, NM 87507

Hon. President  
Jicarilla Apache Nation  
P.O. Box 507

400 Central SE #101  
Albuquerque, NM 87102

Billy Romero  
Romero's Rio Grande Propane  
PO Box 2980  
Taos, NM 87571-2980

Bryan Stegall  
CIC/LP Commissioner  
Heritage Propane  
5524 El Paso Drive  
El Paso, TX 79905

Marvin Vaughn  
Construction Industries Division  
Regulation and Licensing Dept.  
LP Gas Bureau Chief  
2550 Cerrillos Road  
Santa Fe, NM 87505

Representative Sandra D. Jeff  
PO Box 631  
Crownpoint, NM 87313-0631

Luis A. Reyes  
Kit Carson Electric Co-op  
PO Box 578  
Taos, NM 87571-0578

Senator Phil A. Griego  
PO Box 10  
San Jose, NM 87565-0010

Peter Gould, Esq.  
PO Box 34127  
Santa Fe, NM 87594-4127

Hon. Joe Shirley, Jr.,  
President Navajo Nation  
P.O. Box 9000

535 Cerrillos Road  
Santa Fe, NM 87501

Robert L. Rivera  
Lobbyist  
604D Griffin Street  
Santa Fe, NM 87501

Brian Harris, Esq.  
NM Attorney General  
408 Galisteo Street  
PO Drawer 1508  
Santa Fe, NM 87504-1508

Dolores Connor  
Las Cruces New Mexico  
Municipal League  
PO Box 846  
Santa Fe, NM 87504-0846

Representative Jim R.  
Trujillo  
1901 Morris Place  
Santa Fe, NM 87505

Clifton Tuggle  
Gallup Propane Services,  
Inc.  
PO Box 1870  
Gallup, NM 87305-1870

Bill McCamley  
PO Box 6552  
Las Cruces, NM 88001

Rio Arriba County  
Commission  
1122 Industrial Park Road  
Española, NM 87532

Hon. Governor  
Ohkay Owingeh  
P.O. Box 1099

Dulce, NM 87528

Window Rock, AZ 86515

San Juan Pueblo, NM 87566

Hon. Governor  
Pueblo of Cochiti  
P.O. Box 70  
Cochiti Pueblo, NM 87072

Hon. Governor  
Pueblo of Jemez  
P.O. Box 100  
Jemez Pueblo, NM 87024

Hon. Governor  
Pueblo of Nambe  
Route 1, Box 117-BB  
Santa Fe, NM 87506

Hon. Governor  
Pueblo of Pojoaque  
78 Cities of Gold Road  
Santa Fe, NM 87506

Hon. Governor  
Pueblo of Santa Ana  
2 Dove Road  
Santa Ana, NM 887004

Hon. Governor  
Pueblo of Santo Domingo  
P.O. Box 99  
Santo Domingo, NM 87052

Hon. Governor Pueblo of  
Tesuque  
Route 42, Box 360-T  
Santa Fe, NM 87506

Hon. Debbie Rodella  
NM State Representative  
16 Private Drive  
Española, NM 87532

Taos County Commission  
105 Albright St.  
Taos, NM 87571

Hon. Governor  
Pueblo of Zuni  
P.O. Box 339  
Zuni, NM 87327

Hon. Carleton Naiche-Palmer  
Mescalero Apache Tribe  
P.O. Box 227  
Mescalero, NM 88340

Executive Director  
Eight Northern Indian Pueblos  
Council  
P.O. Box 969  
San Juan Pueblo, NM 87566

Juan Roybal  
P.O. Box 236  
Peñasco, NM 87553

Edwin Gurule  
P.O. Box 26  
Tres Piedras, NM 87577

Santa Fe County Commission  
P.O. Box 276  
Santa Fe, NM 87504

Hon. Lawrence T. Morgan  
Navajo Nation Council  
P.O. Box 3390  
Window Rock, AZ 86515

Hon. Governor  
Pueblo of Acoma  
P.O. Box 309  
Acoma, NM 87034

Hon. Governor  
Pueblo of Isleta  
P.O. Box 1270  
Isleta Pueblo, NM 87022

Hon. Governor  
Pueblo of Laguna  
P.O. Box 194  
Laguna Pueblo, NM 87026

Hon. Governor  
Pueblo of Picuris  
P.O. Box 127  
Peñasco, NM 87553

Hon. Governor  
Pueblo of Sandia  
481 Sandia Loop  
Bernalillo, NM 87004

Hon. Governor  
Pueblo of Santa Clara  
P.O. Box 580  
Española, NM 87532

Hon. Governor  
Pueblo of San Ildefonso  
Route 5, Box 315-A  
Santa Fe, NM 87506

Hon. Governor Pueblo of Taos  
P.O. Box 1846  
Taos, NM 87571

Hon. Governor  
Pueblo of Zia  
135 Capitol Square Drive  
Zia Pueblo, NM 87053-6013

Hon. Richard Martinez  
New Mexico State Senator  
P.O. Box 934  
Española, NM 87532

Gary Martinez  
HCR 77 Box 3B  
Ojo Caliente, NM 87532

Santa Fe Propane  
7513 Avenger Way  
Santa Fe, NM 87507

Paul "Bear" Brewer  
Jamestown Insurance Co.  
P.O. Box 516  
Richmond, TX 77406

Luis F. Fulton  
Ro-Lo Corporation  
P.O. Box 579  
Roswell, NM 88202

AAA Gas Co.  
3702 Hwy 528 NE  
Rio Rancho, NM 87144

Lisa Fickling  
Conway Oil Company  
1348 US 60 84  
Clovis, NM 88101

Chairman  
All Indian Pueblo Council  
2401 12<sup>th</sup> Street NW  
Albuquerque, NM 87103

Clemente Alvarado  
HCR 77 Box 7  
Ojo Caliente, NM 87549

Robert P. Snow  
P.O. Box 1230  
Abiquiu, NM 87510

Mr. & Mrs. Eli Lucero  
HC77 Box 3  
Ojo Caliente, NM 87549

Senator Gay G. Kernan  
New Mexico State Senate  
928 W. Mesa Verde  
Hobbs, NM 88240

Helen Burch  
75 Lou Rd.  
Dexter, NM 88230

Felipe D. Martinez  
Rio Arriba County Commissioner  
P.O. Box 127  
Tierra Amarilla, NM 87575

Honorable Debbie Rodella  
State Representative  
16 Private Drive  
Española, NM 87532

Executive Director  
Five Sandoval Indian Pueblos  
1043 Highway 313  
Bernalillo, NM 87004

Nick Lovato  
HCR 77 Box 22  
Ojo Caliente, NM 87549

Frank B. Thompson  
PT Risk Management Insurance  
10621 S. 51st Street  
Phoenix, AZ 85044

Celestine and Jeanette Lucero  
HCR 77, Box 23A  
Ojo Caliente, NM 87549

Adobe Propane  
c/o Rex Freeman and Daniel  
Stern  
P.O. Box 28685  
Santa Fe, NM 87592-8685

Steve Barajas  
P.O. Box 985  
Capitan, NM 88316

Manuelito Navajo Children's  
Home, Inc.  
P.O. Box 58  
Gallup, NM 87503-0058

Patrick Montoya  
HCR 77, Box D 12  
Ojo Caliente, NM 87549

Dylan Garrison  
HCR 77, Box 5A  
Ojo Caliente, NM 87549

Edwin Gurule  
P.O. Box 26  
Tres Piedras, NM 87577

Servi Gas  
P.O. Box 645  
Ruidoso Downs, NM 88346

Nick Lovato  
HCR 77, Box 22  
Ojo Caliente, NM 87549

David Clements  
Box 233  
Ojo Caliente, NM 87549

Joanne Martinez  
Kit Carson Energy, Inc.  
118 Cruz Alta Road  
Taos, NM 87571

H. Brook Laskey  
Miller Stratvert P.A.  
500 Marquette NW, Ste 1100  
Albuquerque, NM 87102

Lara Fitzgerald  
Black Mesa Bed and Breakfast  
US Highway 285  
Ojo Caliente, NM 87549

Richard Griffin  
Griffin's Propane, Inc.  
P.O. Box 2737  
Silver City, NM 88062

Eric Oppenheimer  
Box 249  
Ojo Caliente, NM 87549

Joan Oller  
Palo Amarillo Drive  
Sandia Park, NM 87047

Paul Greaves  
13200 E. 160<sup>th</sup> Ave.  
Brighton, CO 80601

Michael Daly  
900 S Boardman Ave.  
Apt H78  
Gallup, NM 87301-4750

Tom Cadenhead  
Santa Fe Propane  
7513 Avenger Wa  
Santa Fe, NM 87507

Aaron Rosetta  
Nations Gas Technologies  
P.O. Box 356  
Navajo, NM 87328

Wendell Nicholson  
Gallup Propane Service  
P.O. Box 1870  
Gallup, NM 87305

Ray Engstrom swgs@zianet.com  
Wayne Leslie wnleslie@msn.com  
Lance Ross lross.sgin@live.com  
Penny Peryatel penny@ratongas.com  
Michael Donnelly mdonnelly@aarp.org;  
Pamela E. Hall hall4301@msn.com  
Billy Romero bromero@taosnet.com  
Robert L. Rivera rlrivera@ix.netcom.com  
Baron Glassgow bglassgow@npga.org  
Brian Harris bharris@nmag.gov;  
Luis A. Reyes lreyes@kitcarson.com;  
Clifton Tuggle cntuggle@msn.com

Paul Pacheco  
Alan Wells  
Tony Provencio  
Ralph Flores  
David Archuleta  
Kira Jones  
Bryan Stegall  
Lisa Martinez  
Keven Groenewold  
Marvin Vaughn  
Lynda Lovejoy  
Phil A. Griego

pecospropane@cybermesa.com  
awells@heritagepropane.com  
tprovencio@heritagepropane.com  
RalphEFlores@meeder.com  
archuleta@amerigas.com  
kira@prosperityworks.net  
bstegall@heritagepropane.com  
lisamartinez@state.nm.us  
kgroenewold@nmelectric.coop;  
marvin.vaughn@state.nm.us;  
Lynda.lovejoy@nmlegis.gov  
senatorgriego@yahoo.com;

Jim R. Trujillo jimtrujillo@msn.com;  
Scott Scanland lobbyist@swcp.com;  
Paul Brewer bear@alumni.rice.edu  
Lisa Fickling lisaf@conwayoil.com  
Richard Griffin gasman@gilanet.com  
W. Nicholson galluppropane@yahoo.com  
R. Engstrom swgs@zianet.com;

Peter Gould  
Laura Robbins  
Judy A. Martinez  
Joanne Martinez  
Lara Fitzgerald  
Michael Daly  
Debbie Rodella

pguldlaw@aol.com;  
laura@laurarobbinsmosaics.com;  
jmartinez@puebloofacoma.org  
jmartinez@KitCarson.com  
ara@blackmesabnb.com  
Arrowengineering1@gmail.com  
debbie.rodella@nmlegis.gov

**Hand delivered to:**

Nancy Burns, Staff Counsel  
NMPRC-Legal Division  
PO Box 1269  
Santa Fe, NM 87504-1269

**Hand delivered to:**

Roy Stephenson, Esq.  
NMPRC Utilities Division  
PO Box 1269  
Santa Fe, NM 87504-1269

**Hand delivered to:**

Rick Blumenfeld  
NMPRC –OGC  
PO Box 1269  
Santa Fe, NM 87504-1269

**Hand delivered to:**

Mora Varela  
NMPRC-Consumer Relations  
PO Box 1269  
Santa Fe, NM 87504-1269

**DATED this 24th day of November, 2010**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

  
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**Ana C. Kippenbrock, Paralegal**