

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE APPROVAL OF )  
PIPELINE SAFETY FEES FOR FISCAL YEAR )  
2020 ) Case No. 19-00113-PL  
\_\_\_\_\_ )**

**ORDER APPROVING FISCAL YEAR 2020 PIPELINE SAFETY FEE CALCULATIONS  
AND REVIEW OF THE FISCAL YEAR 2019 PIPELINE SAFETY FUND**

THIS MATTER comes before the New Mexico Public Regulation Commission (the "Commission") upon the pleading titled *Staff's Request for Review of Staff's Pipeline Safety Fee Calculation for Fiscal Year 2020 and Review of 2019 Fees* (the "FY 2020 Fee Request/FY 2019 Fund Review"). Legal Counsel of the Commission's Pipeline Safety Bureau Staff of the Transportation Division ("Pipeline Safety Staff" or "Pipeline Safety Bureau") filed the pleading on May 1, 2019 on behalf of the Pipeline Safety Bureau.

Whereupon, being duly informed,

**THE COMMISSION FINDS AND CONCLUDES:**

1. The Commission has jurisdiction over this matter pursuant to the Pipeline Safety Act, NMSA 1978, §§ 70-3-11 to 70-3-22 (the "Pipeline Safety Act"). See § 70-3-13.<sup>1</sup>

<sup>1</sup>**70-3-13. Powers and duties of commission.**

The commission:

A. shall promulgate, amend, enforce and repeal reasonable regulations establishing minimum safety standards for the transportation of oil, hazardous liquids as defined in 49 CFR 195.2 and gas and for the design, installation, inspection, testing, construction, extension, operation, replacement and maintenance, including internal and external surveillance for pipe integrity and installation of emergency flow restricting devices, of oil, hazardous liquid and gas pipeline facilities as may be required by federal law. Safety standards shall not be applicable to oil, hazardous liquid or gas pipeline facilities in existence on the date the safety standards are adopted; provided, however, that whenever the commission upon investigation and hearing determines that an oil, hazardous liquid or gas pipeline facility is hazardous to life or property, it may require the person operating the oil, hazardous liquid or gas pipeline facility to take the steps necessary to remove the hazards. Safety regulations shall be practicable and designed to meet the need for pipeline safety. Safety rules promulgated for oil, hazardous liquid and gas pipeline facilities or the transportation of oil, hazardous liquids and gas shall be consistent with federal law and rules. Safety rules adopted hereunder shall not apply to any transportation of oil or oil pipeline facilities regulated by the federal department of transportation. Rules adopted pursuant to the Pipeline Safety Act [70-3-11 NMSA 1978]

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2. Pursuant to § 70-3-21 of the Pipeline Safety Act, the Pipeline Safety Fund (the "Fund") was created in the state treasury to collect annual Pipeline Safety Fees ("Fees") for the purpose of enhancing the staffing and training of the Pipeline Safety Bureau, with the goal of assuming the function of inspection of interstate and intrastate pipelines.<sup>2</sup> Fund balances must

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shall substantially conform to federal pipeline safety rules;

B. may advise, consult, contract and cooperate with any agency of the federal government or any other state in projects of common interest in the regulation of safety of oil, hazardous liquid and gas pipeline facilities and the transportation of oil, hazardous liquids and gas and administer the authority delegated to the commission by any contract with the federal government or any agency thereof;

C. may accept, receive, apply for or administer grants or other funds or gifts from public or private agencies, including the federal government, or from any other person;

D. may make investigations consistent with the Pipeline Safety Act and, in connection therewith, enter private or public property at all reasonable times. The results of investigations shall be reduced to writing if any enforcement action is contemplated and a copy thereof furnished to the operator of the oil, hazardous liquid or gas pipeline facilities investigated before any enforcement action is initiated; and

E. may require persons subject to the Pipeline Safety Act to maintain the records, file the reports and develop the plans for inspection and maintenance of oil, hazardous liquid or gas pipeline facilities as the commission may, by rule, require for proper administration of the Pipeline Safety Act; provided, however, that the use of the term "rights of way" does not authorize the commission to prescribe the location or routing of any oil, hazardous liquid or gas pipeline facility.

**<sup>2</sup>70-3-21. Pipeline safety fund; created; assessment and collection of fees.**

A. The "pipeline safety fund" is created in the state treasury for the purpose of enhancing the staffing and training of the pipeline safety bureau of the commission with the goal of assuming the function of inspection of interstate as well as intrastate pipelines. The fund shall consist of fees collected pursuant to Subsection D of this section, appropriations, gifts, grants, donations and earnings from investment of the fund. Balances in the fund shall not be transferred to the general fund at the end of any fiscal year.

B. The pipeline safety fund shall be administered by the commission. Money in the fund is appropriated to the commission to carry out its duties pursuant to the provisions of the Pipeline Safety Act [70-3-11 NMSA 1978] and Chapter 62, Article 14 NMSA 1978. Not more than five percent of the fees collected pursuant to Subsection D of this section shall be used by the commission for administrative purposes.

C. Payments from the pipeline safety fund shall be made upon vouchers issued and signed by the director of the administrative services division of the commission or the director's authorized representative upon warrants drawn by the secretary of finance and administration.

D. The commission shall collect annual pipeline safety fees for the duties relating to inspection of intrastate pipelines from persons subject to the Pipeline Safety Act in accordance with and not to exceed the following amounts:

(1) for the transportation of gas:

(a) two dollars (\$2.00) per domestic service line;

(b) thirty-five dollars (\$35.00) per commercial service line;

(c) thirty-five dollars (\$35.00) per mile of line for the transportation of gas subject to inspection by the pipeline safety bureau, with a minimum assessment of four hundred dollars (\$400); and

(d) one hundred dollars (\$100) per master meter, direct sales lateral or liquified [sic] petroleum gas system; and

(2) for the transportation of oil, thirty-five dollars (\$35.00) per mile of transmission line subject to inspection by the pipeline safety bureau, with a minimum assessment of four hundred dollars (\$400). A

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not be transferred to the general fund at the end of any fiscal year. NMSA 1978, § 70-3-21 (A).

3. The FY 2020 Fee Request/FY 2019 Fund Review was filed on May 1, 2019, in satisfaction of the statutory and rule requirement that the Commission must conduct an annual public review of the Fees collected and the payments that were made from the Fund. *See* § 70-3-21 (E) of the Pipeline Safety Act, *supra*, and the Commission's Annual Pipeline Safety Rule 18.60.3.11 NMAC.<sup>3</sup>

4. The FY 2020 Fee Request/FY 2019 Fund Review stated that the Pipeline Safety

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fee shall not be assessed on mileage under the jurisdiction of or inspected by the federal department of transportation.

E. The commission shall annually conduct a public review of the fees collected and payments made from the fund and provide a summary to the legislative finance committee and the department of finance and administration. Based upon its findings, the commission shall adjust the annual fee rates authorized by Subsection D [*supra*] of this section in order to collect only that amount estimated to be necessary to carry out the provisions of the Pipeline Safety Act and Chapter 62, Article 14 NMSA 1978; provided that the fees shall not be greater than the amounts set forth in Subsection D [*supra*] of this section.

<sup>3</sup>Pursuant to Commission Rule 18.60.3.11 NMAC, the Pipeline Safety Staff is required to make this annual Fee and Fund filings with the Commission by May 1 of each year:

**18.60.3.11 COLLECTION PROCEDURE:**

A. By May 1 of each year, the pipeline safety bureau shall present to the commission a review of the fees collected and the payments made from the pipeline safety fund for the previous fiscal year.

B. By May 1 of each year, the pipeline safety bureau shall, in accordance with Subsection E of NMSA 1978 Section 70-3-21, present to the commission proposed rates for pipeline safety fees for the next fiscal year. The fees shall be based on the pipeline safety bureau's estimate of funding required for the next fiscal year, taking into consideration the estimated fund balance as of the end of the current fiscal year, the legislative appropriation provided to the commission for pipeline safety programs, the estimated federal grant-in-aid, the information provided pursuant to 18.60.3.8 and 18.60.3.10 NMAC, and any other factors deemed appropriate by the bureau.

C. Upon commission approval of the rates for pipeline safety fees, the pipeline safety bureau shall prepare a form for operators to use to calculate the total pipeline safety fee due. The pipeline safety bureau shall post the form on the commission's website and shall mail, email, or personally deliver the form to each operator. An operator shall be responsible for paying the fee due even if the operator does not receive a form from the bureau.

D. An operator shall pay the calculated fee by check made payable to the public regulation commission. An operator must send the fee by registered mail postmarked no later than June 1 or 15 days from the date of the commission order approving the rates for pipeline safety fees, whichever is later, of each year to the Public Regulation Commission, Pipeline Safety Bureau, P.O. Box 1269, Santa Fe New Mexico 87504-1269.

Bureau and the Commission's Administrative Services Division met in September 2018<sup>4</sup> and February 2019 to discuss and reconcile the actual accounting data for Pipeline Safety Fund Account Number 37700, including but not limited to the unearned revenues, prior year fund balances, audit reversions, current year revenues, and legislative appropriation targets. *See* paragraph 4 of the FY 2020 Fee Request/FY 2019 Fund Review.

5. The FY 2020 Fee Request/FY 2019 Fund Review stated at paragraph 5 of the FY 2020 Fee Request/FY 2019 Fund Review that:

a. According to the records of the Commission's Administrative Services Division and Pipeline Safety Bureau, the fees collected during fiscal year 2019 from federal grants totaled \$689,411, and for fiscal year 2019 from pipeline safety fee collections totaled \$1,234,705;

b. As per the Commission's Administrative Services Division's records, the projected pipeline safety bureau expenditures for fiscal year 2019 are estimated to be \$1,297,037; and

c. For Staff's fiscal year 2020 pipeline safety fee calculation, Staff is relying on the projected fiscal year 2019 fund balance per the Commission's Administrative Services Division recommendation and the approved fiscal year 2020 Budget.

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<sup>4</sup>In a standing order issued by the Commission on July 20, 2016 for Pipeline Safety Fees for fiscal year 2017 in Case No. 16-00132-PL, it was ordered:

Until further order by the Commission, managers from the Commission's Pipeline Safety Bureau Staff of the Transportation Division and from the Commission's Administrative Services Division are ordered to meet in December of each calendar year but no later than December 31st to discuss and to reconcile the actual accounting data for the Pipeline Safety Fund account number 37700, including but not limited to unearned revenues, prior year fund balances, audit reversions, current year revenues, and legislative appropriations targets.

See decretal paragraph B of the *Final Order Assessing Fees Under the Pipeline Safety Act*, filed July 20, 2016 in Case No. 16-00132-PL. Having met in June and September of 2017 (prior to the December 31 target date), the Pipeline Safety Bureau has satisfied this standing order.

6. The FY 2020 Fee Request/FY 2019 Fund Review stated, at paragraph 9, page 4, first bulleted paragraph, which the New Mexico Legislature, in the 2019 Regular Legislative Session, passed a budget to fund state agencies for Fiscal Year 2020 beginning July 1, 2019 that includes:

- a. An internal service funds/interagency transfer appropriation to the policy and regulation program of the Commission in the amount of \$123,200 from the Fund;
- b. Appropriations to fund the Pipeline Safety Bureau from federal funds in the amount of \$750,000;
- c. An internal service funds/interagency transfer appropriation to the Pipeline Safety Program in the amount of \$800,900; and
- d. An internal service funds/interagency transfer appropriation to program support of the Commission in the amount of \$133,100 from the Fund.

7. The Pipeline Safety Fee Calculation is based on the methodology established by the Commission in its fiscal year 2007 fee order in docket number 07-00058-PL; on a fiscal year 2020 budget and a projected end of fiscal year 2019 pipeline safety fund balance provided to Staff by the Commission's Administrative Services Division; on information provided to Staff from operators of gas and hazardous liquid pipelines pursuant to the Commission's Annual Pipeline Safety Fees Rules, Rule 18.60.3.8 NMAC (Information Required from Operators of Gas Pipelines) and Rule 18.60.3.10 NMAC (Information Required from Operators of Hazardous Liquid and Carbon Dioxide Pipelines); and on a Staff estimate of the federal funding to be received during fiscal year 2020.

8. Based on the Pipeline Safety Fee Calculation, Staff has estimated a fiscal year 2019 fee collection of \$1,199,542 and Staff proposes a total fee of \$1,199,542 to fund the

pipeline safety fund for the 2020 fiscal year estimated to be necessary to carry out the provisions of the Pipeline Safety Act and Chapter 62, Article 14, NMSA 1978.<sup>5</sup> See the Pipeline Safety Fee Calculation in Exhibit A to the FY 2020 Fee Request/FY 2019 Fund Review, which exhibit is incorporated herein by reference, at lines 20 and 41.

9. The FY 2020 Fee Request/FY 2019 Fund Review stated that the fiscal year 2019 Pipeline Safety Fee Calculation Recommendation also reflects a fund reserve calculation of 5% of the fiscal year 2020 Pipeline Safety Fee appropriations. The 5% fund reserve calculation is found on line 18 of Exhibit A. See paragraph 9, second bulleted paragraph, of the FY 2020 Fee Request/FY 2019 Fund Review.

10. The FY 2020 Fee Request/FY 2019 Fund Review requests that the Commission approve the following Pipeline Safety Fees for Fiscal Year 2020:

- a. \$35.00 per mile for transmission and jurisdictional gathering companies (see the FY 2020 Fee Request/FY 2019 Fund Review, paragraph 11, which refers to line 23 of Exhibit A);
- b. \$0.99 per residential (domestic) service line (see the FY 2020 Fee Request/FY 2019 Fund Review, paragraph 11, which refers to line 34 of Exhibit A); and
- c. \$9.88 per commercial (non-residential) service line (see line 38 of Exhibit A).

11. Pursuant to § 70-3-21 (B) of the Pipeline Safety Act, the Commission administers the Fund, and the money in the Fund is appropriated to the Commission to carry out its duties under the Pipeline Safety Act.

12. Pursuant to § 70-3-21 (D) of the Pipeline Safety Act, annual Pipeline Safety Fees

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<sup>5</sup>**62-14-1. Purpose and intent.** The purpose of Chapter 62, Article 14 NMSA 1978 is to prevent injury to persons and damage to property from accidents resulting from damage to pipelines, underground utility lines, cable television lines and related facilities by excavating and blasting.

are collected and placed in the Fund by the Commission, and the amounts collected in Fees shall not exceed the amounts listed in that statute.<sup>6</sup>

13. Pursuant to § 70-3-21 (E) of the Pipeline Safety Act, the Commission is required to:

a. Conduct an annual public review of Fund collections and payments for the previous fiscal year;

b. Provide to the Legislative Finance Committee and the Department of Finance and Administration an annual summary of the pipelines safety fees that were collected and the payments that were made from the Fund for the previous fiscal year; and

c. Authorize annual Pipeline Safety Fees that shall not exceed the amounts set forth in § 70-3-21 (D) of the Pipeline Safety Act.

14. Pursuant to § 70-3-21 (E) of the Pipeline Safety Act, the Commission is required to adjust the annual Pipeline Safety Fee rates in order to collect only that amount estimated to be necessary to carry out the provisions of the Pipeline Safety Act, and the Commission must

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<sup>6</sup>70-3-21. Pipeline safety fund; created; assessment and collection of fees.

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D. The commission shall collect annual pipeline safety fees for the duties relating to inspection of intrastate pipelines from persons subject to the Pipeline Safety Act in accordance with and not to exceed the following amounts:

(1) for the transportation of gas:

(a) two dollars (\$2.00) per domestic service line;

(b) thirty-five dollars (\$35.00) per commercial service line;

(c) thirty-five dollars (\$35.00) per mile of line for the transportation of gas subject to inspection by the pipeline safety bureau, with a minimum assessment of four hundred dollars (\$400); and

(d) one hundred dollars (\$100) per master meter, direct sales lateral or liquified [sic] petroleum gas system; and

(2) for the transportation of oil, thirty-five dollars (\$35.00) per mile of transmission line subject to inspection by the pipeline safety bureau, with a minimum assessment of four hundred dollars (\$400). A fee shall not be assessed on mileage under the jurisdiction of or inspected by the federal department of transportation.

The proposed Fees for residential (domestic) service lines of \$0.99 per line for fiscal year 2020, detailed in Paragraph 10 (b) hereinabove, are about 50% below the statutory limit, and the proposed Fee for transmission and jurisdictional gathering companies of \$35.00 per mile meets the statutory limit.

provide a summary of the annual Pipeline Safety Fee calculations to the Legislative Finance Committee and the Department of Finance and Administration, with the proviso that the pipeline safety fees shall not be greater than the amounts set forth in § 70-3-21 (D) of the Pipeline Safety Act, *supra*.

15. In addition to the Commission's duty to annually adjust Fees to only those amounts that are estimated to be necessary to carry out the provisions of the Pipeline Safety Act, section 70-3-21 (E) of the Pipeline Safety Act also requires the Commission to consider adjusting annual Fees to an ". . . amount necessary to carry out the provisions of . . . Chapter 62, Article 14 NMSA 1978," which is NMSA 1978, §§ 62-14-1 to 62-14-10 ("Excavation Damage to Pipelines and Underground Utility Lines").<sup>7</sup>

16. Pursuant to the Commission's Annual Pipeline Safety Fees Rule, specifically Rule 18.60.3.11 (B) NMAC,

**B.** By May 1 of each year,<sup>8</sup> the pipeline safety bureau shall, in accordance with Subsection E of NMSA 1978 Section 70-3-21, present to the commission proposed rates for pipeline safety fees for the next fiscal year. The fees shall be based on the pipeline safety bureau's estimate of funding required for the next fiscal year, taking into consideration the estimated fund balance as of the end of the current fiscal year, the legislative appropriation provided to the commission for pipeline safety programs, the estimated federal grant-in-aid, the information provided pursuant to 18.60.3.8 and 18.60.3.10 NMAC, and any other factors deemed appropriate by the bureau.

17. Exhibit A to the FY 2020 Fee Request/FY 2019 Fund Review represents the

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<sup>7</sup>As expressly authorized by § 62-14-10 of that statute, the Commission has promulgated its Pipeline Safety Excavation Damage Prevention Rules found at 18.60.5.1 to 18.60.5.22 NMAC. The purpose of these Rules is to implement Chapter 62, Article 14 NMSA 1978 by providing procedures for preventing excavation damage and for dealing with damage when it occurs. These Rules do not impose any particular duty on the Commission to allocate specific excavation or damage prevention costs when formulating annual pipeline safety fees.

<sup>8</sup>Again, the Pipeline Safety Staff filed the FY 2020 Fee Request/FY 2019 Fund Review on May 1, 2019, in satisfaction of the statutory deadline.

Recommended Pipeline Safety Fee Calculations for Fiscal Year 2020. Pipeline Safety Staff requests that the Commission adopt the Exhibit A calculations.

18. The methodology that the Pipeline Safety Bureau must use when calculating the Fees is controlled by the terms of a continuing Commission order, filed February 23, 2007, in Case No. 07-00058-PL regarding pipeline safety fee calculations. In that case the Commission issued a *Final Order Assessing Fee Under the Pipeline Safety Act and Granting Waiver* (the "Pipeline Fee Methodology Order"). The Pipeline Fee Methodology Order established a methodology based on a Commission-approved form for determining future Fees. See the Pipeline Fee Methodology Order, ordering paragraph C, which is referenced expressly in the FY 2020 Fee Request/FY 2019 Fund Review at paragraph 7.

19. The FY 2020 Fee Request/FY 2019 Fund Review stated that the Pipeline Safety Bureau used the proper calculation required by the Pipeline Fee Methodology Order and stated that this year's Pipeline Safety Fee calculation is based on numbers that were provided to the Bureau by the Commission's Administrative Services Division. See paragraph 9 of the FY 2020 Fee Request/FY 2019 Fund Review.

20. The FY 2020 Fee Request/FY 2019 Fund Review stated, at paragraph 12 of the FY 2020 Fee Request/FY 2019 Fund Review, that it is in the public interest for the Commission to:

- a. Adopt Pipeline Safety Staff's recommended Fees for Fiscal Year 2020;
- b. Issue an order notifying pipeline operators of the FY 2020 Pipeline Safety Fees;
- c. Post, through Pipeline Safety Staff, a copy of the order approving the Fiscal Year 2020 Pipeline Safety Fees on the Commission's website; and

d. Provide, through Pipeline Safety Staff, a copy of the order to the Legislative Finance Committee and the Department of Finance and Administration to meet the notice requirements of § 70-3-21 (E) of the Pipeline Safety Act.

21. The FY 2020 Fee Request/FY 2019 Fund Review also attaches an Operator Form as Exhibit B thereto and incorporated herein by reference, which Pipeline Safety Staff will use for Fee collections.

22. The FY 2020 Fee Request/FY 2019 Fund Review stated that Pipeline Safety Staff had asked the position of the Office of the New Mexico Attorney General, but the New Mexico Attorney General was unable to provide its position due to the timing of Staff's request.

23. The FY 2020 Fee Request/FY 2019 Fund Review indicated that a copy of the current request was served on all persons listed on the certificate of service for last year's pipeline safety fee docket in Case No. 18-00115-PL. As such, the Commission finds that due and proper notice has been provided.

24. The Commission finds that Exhibit A represents a reasonable proposed Fee calculation for the Fiscal Year 2020 Fee and should be adopted.

**IT IS THEREFORE ORDERED:**

A. Staff's Request for Review of Staff's Pipeline Safety Fee Calculation for Fiscal Year 2020 and Review of 2019 Fees, filed May 1, 2019, including the attached Exhibits A and B which are incorporated and adopted herein by reference, is hereby adopted and approved.

B. Pipeline Safety Staff shall notify pipeline operators about the pipeline safety Fee assessments for Fiscal Year 2020.

C. Pipeline Safety Staff shall post this Order on the Commission's website.

D. Pipeline Safety Staff shall provide copies of this Order to the Legislative Finance

Committee and the Department of Finance and Administration as required by law.

E. This Order is effective immediately.

F. Copies of this Order shall be served upon all parties listed on the attached Certificate of Service, which shall consist of Pipeline Safety Staff's most current list of pipeline operators. Copies shall be served via email, if the email address is known, and otherwise shall be served via regular mail.

G. This Docket is closed.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 16th day  
of May 2019.

NEW MEXICO PUBLIC REGULATION COMMISSION

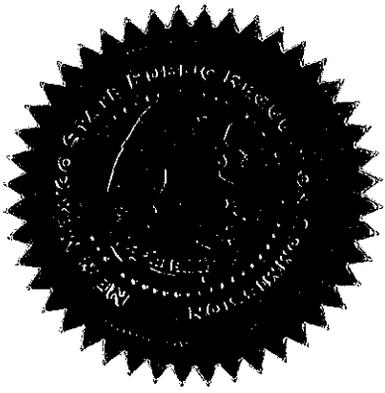
  
CYNTHIA HALL, COMMISSIONER

  
JEFFERSON L. BYRD, COMMISSIONER

  
VALERIE ESPINOZA, VICE-CHAIR

  
THERESA BECENTI-AGUILAR, CHAIR

TELEPHONICALLY APPROVED  
STEPHEN FISCHMANN, COMMISSIONER



**BEFORE THE PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE APPROVAL OF )  
PIPELINE SAFETY FEES FOR FISCAL YEAR )  
2020 ) Docket No. 19-00113-PL  
\_\_\_\_\_ )**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing **Order Approving Fiscal Year 2020 Pipeline Safety Fee Calculations and Review of the Fiscal Year 2019 Pipeline Safety Fund** issued by the New Mexico Public Regulation Commission on May 16, 2019, was served on May 16, 2019, by email and first-class mail to the parties indicated below:

**Via Email**

Jane Jernigan	<a href="mailto:nucanm@qwestoffice.net">nucanm@qwestoffice.net</a> ;
Gary R. Sloman	<a href="mailto:gsloman@qwest.net">gsloman@qwest.net</a> ;
Sunny Nixon	<a href="mailto:snixon@rodey.com">snixon@rodey.com</a> ;
Jason Montoya	<a href="mailto:JasonN.Montoya@state.nm.us">JasonN.Montoya@state.nm.us</a> ;
Brad Mathews	<a href="mailto:BradA.Mathews@state.nm.us">BradA.Mathews@state.nm.us</a> ;
Tim Martinez	<a href="mailto:Timothy.martinez@state.nm.us">Timothy.martinez@state.nm.us</a> ;
Avelino Gutierrez	<a href="mailto:Avelino.Gutierrez@state.nm.us">Avelino.Gutierrez@state.nm.us</a> ;
David Black	<a href="mailto:David.Black@state.nm.us">David.Black@state.nm.us</a> ;
Bradford Borman	<a href="mailto:Bradford.Borman@state.nm.us">Bradford.Borman@state.nm.us</a> ;

**AGAVE ENERGY  
J.B. SMITH, PRESIDENT  
PO BOX 158  
ARTESIA, NM 88211-0158**

**BLUEFISH PIPELINE, LLC  
STEVE ALLEY, VP OPERATIONS  
2500 TANGLEWILDE, SUITE 470  
HOUSTON, TX 77063**

**WESTERN REFINING  
LEONARD BLOOM, DIRECTOR OF  
PIPELINES  
123 W. MILLS AVE  
EL PASO, TX 79901**

**CITY OF ALBUQUERQUE TRANSMISSION  
JAKE DAUGHERTY,  
ENVIROLMENTAL COMPLIANCE  
COORDINATOR  
4600 EDITH BLVD. NE  
ALBUQUERQUE, NM 87107**

**CITY OF LAS CRUCES  
LUCIO M. GARCIA, P.E., CEM  
680 NORTH MOTEL BLVD.  
LAS CRUCES, NM 88007**

**CITY OF LAS VEGAS  
MAYOR ALFONSO E. ORTIZ JR.  
1700 N. GRANDE AVE  
LAS VEGAS, NM 87701**

**CITY OF SOCORRO**  
MAYOR RAVI BHASKER  
P.O. BOX K  
SOCORRO, NM 87801

**VILLAGE OF CORONA**  
BILL HIGNIGHT, MAYOR  
P.O. BOX 37  
CORONA, NM 88318

**DAIRY FARMERS OF AMERICA**  
MR. ED STEVEN, MANAGER  
1820 SOUTH INDUSTRIAL DR.  
PORTALES, NM 88130

**DCP**  
MR. BRENT BACKES, GENERAL VICE  
PRESIDENT  
370 17TH STREET, SUITE 2500  
DENVER, CO 80202

**EMW GAS ASSOCIATION**  
RONNIE REYNOLDS, MANAGER  
P.O. BOX 118  
ESTANCIA, NM 87106

**ENERGY TRANSFER COMPANY**  
MATTHEW S. RAMSEY, PRESIDENT  
800 E SONTERRA BLVD #400  
SAN ANTONIO, TX 78258

**FRONTIER FIELD SERVICES/AKA  
ENERGY GROUP**  
MARK COUFAL, SAFETY MANAGER  
4200 E. SKELLY DRIVE SUITE 700  
TULSA, OK 74135

**ENSTOR GRAMA STORAGE AND  
TRANSPORTATION, LP**  
SHERRI PEEBLES, DIRECTOR OF  
HEALTH AND SAFETY  
20329 STATE HWY 249, SUITE 400  
HOUSTON, TX 77070

**LEGACY RESERVES OPERATING**  
PAUL HOME - PRESIDENT, CEO  
P.O. BOX 10848  
MIDLAND, TX 70702

**LOS ALAMOS COUNTY**  
LOS ALAMOS COUNTY UTILITIES  
DEPARTMENT  
1000 CENTRAL AVE., SUITE 350  
LOS ALAMOS, NM 87544

**MERRION OIL & GAS**  
MR. T. GREG MERRION, PRESIDENT  
610 REILY AVE.  
FARMINGTON, NM 87401

**NEW MEXICO GAS CO.**  
MR. ED KACER, VP TECHNICAL  
SERVICE  
7120 WYOMING BLVD. NE #20  
ALBUQUERQUE, NM 87109

**PETROLEUM FUELS COMPANY**  
LAWRENCE E. REARICK,  
REGULATORY SPECIALIST  
6750 W. LOOP S., SUITE 748  
BELLAIRE, TX 77401

**PLAINS PIPELINE**  
MR. TROY VALENZUELA, VP OF  
ENVIRONMENTAL & REGULATORY  
COMPLIANCE  
333 CLAY STREET, SUITE 1600  
HOUSTON, TX 77002-4648

**BP AMERICA**  
WILL BURTON, VP OF OPERATIONS  
WEST  
380 AIRPORT ROAD  
DURANGO, COLORADO 81303

**VILLAGE OF WAGON MOUND**  
RAMONA E. CRUZ, DEPUTY CLERK  
P.O. BOX 87  
WAGON MOUND, NM 87752

**CITY OF DEMING**  
BENNY JASSO, MAYOR  
P.O. BOX 706  
DEMING, NM 88031

**TARGA - EUNICE COMPLEX,  
MONUMENT & SAUNDERS**  
CLARK WHITE, EXEC VICE  
PRESIDENT  
811 LOUISIANA STREET, SUITE 2100  
HOUSTON, TX 77002

**CITY OF LORDSBURG**  
AUTHUR CLARK SMITH, MAYOR  
409 WEST WABASH STREET  
LORDSBURG, NM 88045

**ZIA NATURAL GAS COMPANY**  
LESLIE GRAHAM, GENERAL  
MANAGER  
P.O. BOX 888  
RUIDOSO DOWNS, NM 88346

**CONOCO PHILLIPS**  
IAN ELLINGTON, SUPERVISOR  
COMPLIANCE  
600 N. DAIRY ASHFORD  
HOUSTON, TX 77079-1175

**TRINITY CO2**  
MR. BERRY F. PETTY, PRESIDENT  
AND CEO  
401 WEST WALL STREET  
MIDLAND, TX 79701

**EASTERN NM NATURAL GAS**  
GEORGE SENA, MANAGER  
P.O. BOX 248  
FORT SUMNER, NM 88119

**WILLIAMS NW DISTRICT**  
DON WICEBER, VP - GENERAL  
MANAGER  
ONE WILLIAMS CENTER  
TULSA, OK 74172

**ENTERPRISE**  
GRAHAM BACON, SR. VP,  
OPERATIONS AND EHS&T  
1100 LOUISIANA STREET  
HOUSTON, TX 77002

**TOWN OF MOUNTAINAIR**  
CHESTER RILEY, MAYOR  
P.O. BOX 115  
MOUNTAINAIR, NM 87036

**HOLLY ENERGY**  
MARK CUNNINGHAM, VP OF  
OPERATIONS  
2828 NORTH HARWOOD, SUITE 1300  
DALLAS, TX 75201

**XTO ENERGY**  
STEVE ROSE, SR. VP OF MIDSTREAM  
OPERATIONS  
FORT WORTH, TX 76102

**MARKWEST ENERGY**  
MR. JOHN MOLLENKOPF, VP OF  
OPERATIONS  
1515 ARAPAHOE ST, TOWER 1, STE 1600  
DENVER, CO 80202-2125

**NM DEPT. OF FINANCE & ADMIN**  
180 BATAAN MEMORIAL BLDG.  
SANTA FE, NEW MEXICO 87501

**OXY PERMIAN**  
BARBARA BERGERSEN, PRESIDENT  
AND GENERAL MANAGER  
5 GREENWAY PLAZA SUITE 110  
HOUSTON, TX 77046

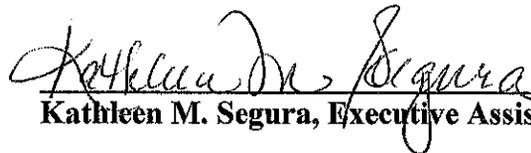
**NM LEGISLATIVE FINANCE COMM.**  
325 DON GASPAR, SUITE 101  
SANTA FE, NEW MEXICO 87501

**RATON NATURAL GAS COMPANY**  
DAVID LINK, PRESIDENT  
223 N. GUADALUPE #306  
RATON, NM 87501

**WILLIAMS**  
JARED ELLSWORTH, PIPELINE SAFETY  
MANAGER  
295 CHIPETA WAY  
SALT LAKE CITY, UTAH 84108

**DATED** this 16<sup>th</sup> day of May, 2019.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

  
\_\_\_\_\_  
**Kathleen M. Segura, Executive Assistant**