BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL TO ACQUIRE NEW MEXICO GAS COMPANY, INC. BY SATURN UTILITIES HOLDCO, LLC. **JOINT APPLICANTS**	)	**Case No. 24-00266-UT**

JOINT REPLY TO JOINT APPLICANTS' RESPONSE TO JOINT MOTION TO DISMISS

COME NOW the Utility Division Staff of the New Mexico Public Regulation Commission ("Staff"), the New Mexico Department of Justice ("NMDOJ"), New Energy Economy ("NEE"), Western Resource Advocates ("WRA"), Coalition for Clean Affordable Energy ("CCAE") and New Mexico Affordable Reliable Energy Alliance ("NM AREA") (hereafter "Joint Movants") and pursuant to Decretal Paragraph C of the Hearing Examiners' May 28, 2025 *Order Setting Response and Reply Deadlines to Joint Motion to Dismiss or for Alternative Relief* ("May 28th Order"), hereby provide the following Joint Reply to Joint Applicants' Response to the Joint Motion to Dismiss. In support of this Joint Reply, the Joint Movants state as follows:

I. INTRODUCTION & SUMMARY OF ARGUMENT

On October 28, 2024, New Mexico Gas Company, Inc. ("NMGC"), Bernhard Capital Partners Management ("BCP"), Emera, Inc. ("Emera"), TECO Holdings, Inc. ("TECO") and a host of these entities' affiliates and subsidiaries (together the "Joint Applicants") filed an Application seeking approval for the acquisition of NMGC by the BCP family of equity funds and management entities.

The two prior acquisitions of NMGC by TECO and Emera established clear precedents as to the level of tangible and intangible customer benefits the Commission determined would satisfy the public interest standard.

- Adequate, relevant experience: TECO and Emera have more that 100 years of experience owning and operating a diverse set of retail gas and electric utilities that are comparable to NMGC in both customer bases and service territories. Case No. 13-00231-UT, Cert. of Stip., pp. 62-63; Case No. 15-00327-UT, Cert. of Stip. p. 48. This experience provides the assurance that the owners of NMGC will have the knowledge, the staff and the operating procedures in place to maintain the service standards
- Length of the commitment to hold the utility: Both TECO and Emera committed to holding NMGC for at least ten years. Case No. 13-00231-UT, Cert. of Stip., p. 42.
- Shared services and synergy savings: The TECO and Emera acquisitions featured shared services synergies that were estimated to provide up to $9.1 million in customer savings in the third year after closing, Case No. 13-00231-UT, Cert. of Stip., pp. 31, 76.
- Meaningful customer benefits: The TECO and Emera acquisitions provided tangible customer savings in the form of a rate freeze, valued at $30.4 million, *id.* p. 56, and a commitment to use an historical test year in the first post-acquisition rate case, valued at between $3 and $5 million. Case No. 15-00327-UT, Cert. of Stip. pp. 37-38.
- Shareholder funded economic development: Emera committed to $20 million economic development fund completely supported by the shareholders.
- Financial strength of the acquiror: The Emera companies operate six gas and electric utilities and have $39 Billion in assets.[1]

[1] https://www.emera.com/about-us

As is demonstrated below, in their October 28, 2024 Application, the Joint Applicants chose not to follow the precedential standards established in the Commission's TECO and Emera decisions:

- Adequate relevant experience: None of the seven BCP entities shown on page 29 of NMGC's Amended General Diversification Plan *(see JA Exhibit JMB-3)* had any experience owning or operating a utility comparable to NMGC, with respect to either the number of persons served (approximately 1.3 million) or the size of the geographical service territory (the majority of the cities, towns and communities in a state.) Direct Testimony of Ryan Shell, p. 1.
- Length of the commitment to hold the utility: The Application proposed only a five-year commitment to hold NMGC.
- Shared services and synergy savings: The Application included no operational or management synergies.
- Meaningful customer benefits: The Application included no immediate, tangible customer benefits in the form of a rate freeze, associated rate credits or other commitments about future rate filings.
- Shareholder funded economic development: The Application proposed only $5 million in shareholder funded economic development commitments.
- Financial strength of the acquiror: The proposed acquiror, the BCP family of funds, at $4.4 billion (*see* Direct Testimony of Jeffrey Baudier, p. 7) is a much smaller entity than the current owner, Emera.

The Joint Applicants' decision to file an Application that did not meet the standards in the TECO and Emera Final Orders was a conscious choice. In his April 11, 2025 deposition, Mr.

Baudier confirmed that the decision not to follow the standards set by the TECO and Emera Final Orders was a deliberate one. He stated that he was aware of the Commission's decisions in the TECO and Emera acquisitions but did not regard those decisions as precedential. Exhibit 1, Deposition of Jeffrey Baudier (4/11/25), pp. 136-37. Instead, BCP looked at the initial applications in both cases for guidance rather than the Commission's Final Orders. *Id.,* p. 137. BCP's decision to file an Application with fewer customer benefits was a negotiation tactic with the goal of acquiring NMGC with the fewest concessions to customers as possible. *Id.* pp. 143-44.

BCP and the other Joint Applicants did not attempt to improve the terms of their Application to match the terms of the prior acquisitions until the Staff and Intervenors filed their Direct Testimonies on April 18, 2025. At that point, the Joint Applicants had the option of requesting approval from the Hearing Examiners to withdraw and amend their Application to meet the TECO and Emera standards. Instead, they waited until May 16, 2025 and proposed revisions to their Application in their Rebuttal Testimonies which were intended to match a few of the commitments in the TECO and Emera decisions.

This tactic has deprived the Staff and Intervenors of the opportunity to fully analyze and respond to the revised Application. After carefully reviewing the Rebuttal Testimonies and conferring with each other about the best response to the Joint Applicants' tactics, the Joint Movants drafted and filed their Joint Motion to Dismiss or for Alternative Relief ("Joint Motion") on May 27, 2025. The filing of the Joint Motion was timely given the number of new rebuttal witnesses and the number and complexity of the revisions the Joint Applicants were proposing in their Rebuttal Testimonies.

The Joint Movants' basic legal argument is that the Joint Applicants, some of whom participated directly in the TECO and Emera acquisitions, knew that the Final Orders in those cases set the standard for Commission approval of the acquisition of NMGC in this case. However, instead of following that standard, the Joint Applicants deliberately filed an Application with far fewer customer benefits and protection than the prior cases. This was a deliberate tactic aimed at acquiring NMGC at the lowest cost and with the fewest regulatory conditions.

When it became apparent from the Staff and Intervenors' Direct Testimonies that this tactic would not work, the Joint Applicants waited and proposed significant revisions to their Application in their May 16th Rebuttal Testimonies. This was a continuation of the overall goal of acquiring NMGC at the lowest cost and with the fewest regulatory conditions. By using their Rebuttal Testimonies to propose revisions, they effectively prevented the Staff and Intervenors from conducting adequate discovery and analysis of the new proposals. They also deprived Staff and Intervenors of the opportunity to file testimony that addressed whether the proposed revisions met the standards set by the Commission in its TECO and Emera decisions.

For these reasons, the Joint Movants have requested the Hearing Examiners to dismiss this case without prejudice and allow the Joint Applicants to file a revised Application with their complete "best and final" proposals in a new docket. This proposed relief is the Joint Movants preferred one as it would restart the clock and give the Commission a clear, coherent record on which to base its decision. The Joint Movants' second proposal is for the Hearing Examiners to order the Joint Applicants to file their revised Application in this docket and restart the procedural schedule once that document has been filed. This is a less preferrable form of relief as the Commission would be dealing with a confused and often contradictory evidentiary record.

The third form of requested relief would be to strike the portions of the Rebuttal Testimonies that included revisions to the Application. These portions of the Rebuttal Testimonies have been fully identified in the Joint Response to the Hearing Examiners' May 28th Order. Although this is a better option than proceeding to hearing on the current schedule, it would still create a confusing evidentiary record for the Commission.

II. REPLY TO THE JOINT APPLICANTS' RESPONSIVE ARGUMENTS

1. The Joint Movants' Motion to Dismiss is Timely and is Consistent with Commission Rule 1.2.2.12.B.

The Commission's Rule of Procedure 1.2.2.12.B allows Staff or a party to file a motion to dismiss "at any time" during a proceeding "for lack of jurisdiction, failure to meet the burden of proof, failure to comply with the rules of the commission, or for other good cause shown." Ordering Paragraph F of the Hearing Examiners' November 27, 2024 Procedural Order gave the parties until February 17, 2025 to file motions to dismiss. However, it was not until the Joint Applicants filed their May 16th Rebuttal Testimonies that it became apparent to the Joint Movants that they would need to file their Joint Motion to Dismiss or for Alternative Relief. Until the filing of the Rebuttal Testimonies, the Staff and the Intervenors reasonably believed that the subject matter of the hearing would be the October 28, 2024 Application. The Joint Movants could not have predicted that the Applicants would propose a substantially revised Application for the Commission's consideration in their Rebuttal Testimonies.

As argued in the Joint Motion, by using their Rebuttal Testimony to file proposals that should have been included in their case in chief, the Joint Applicants violated Rule 1.2.2.35.N NMAC which governs the allowed subject matter of rebuttal testimonies. Therefore, the filing of the Joint Motion shortly after the filing of those Rebuttal Testimonies was timely and consistent with the plain language and intent of Rule 1.2.2.12.B NMAC.

2. The Joint Movants Have Met the Standard for Dismissal of the Application.

As argued in the Joint Motion, the Movants have met the standard for dismissal of this Application. As the Joint Applicants themselves admit in their Joint Response, dismissal is the appropriate remedy "to weed out wholly deficient filings." Joint Response, p. 9. By attempting to substantially revise their initial Application in their Rebuttal Testimonies, the Joint Applicants have admitted that they should have followed the standards set by the TECO and Emera Final Orders in their initial filing.

Despite this, the Joint Applicants still maintain that there are no standards which govern acquisition cases. Joint Response, pp. 9-10. However, in making this argument, the Joint Applicants ignore the express language in the Commission-approved TECO Certification which states that the terms of the approved Stipulation have persuasive precedential impact. Case No. 13-00231-UT, Cert. of Stip., p. 47. That Final Order also cited eight other prior acquisition cases that included terms and conditions the Commission considered to be precedential. *Id.,* pp. 45-47.

In the TECO Certification the Commission held as follows

> NMPRC Rule 1.2.2.20(D) NMAC states: "Precedential Effect. Unless the commission explicitly provides otherwise in the order approving the stipulation, approval of a stipulation does not constitute approval of or precedent regarding any principle or issue in the proceeding." The purpose of this restriction is to recognize that stipulating parties do not necessarily agree on each individual issue in a case, but rather agree to the end result - that the stipulation is a fair resolution. It protects stipulating parties from later having to defend concessions made by them to settle a particular case. However, the NMPRC's affirmative, independent finding, in support of its conclusion that a stipulated proposed acquisition is in the public interest, that a particular feature or commitment (i) benefits ratepayers; (ii) assists in preserving the NMPRC's jurisdiction; (iii) protects against diminishment of service; or (iv) protects against the improper subsidization of non-utility activities, may be cited as precedent. And, 1.2.2.20(D) NMAC does not preclude considering what conditions attached to NMPRC approvals of acquisitions, including approvals of stipulations, have contributed to findings that approvals were in the public interest. In this respect, NMPRC orders approving stipulations in acquisition cases may be cited for their persuasive value, and used as a guide, in later acquisition cases. *Id.,* pp. 46-47 (Citations omitted).

By attempting to revise their October 28, 2024 Application to meet some of the public interest terms and conditions in the TECO and Emera Final Orders, the Joint Applicants have effectively admitted that those standards govern this case. For this reason, they should have included those terms and conditions in their initial Application, i.e., their case in chief.

3. The Joint Applicants' Rebuttal Testimonies Are Not Proper Rebuttal

Commission Rule of Procedure 1.2.2.35.N NMAC sets the standard for the filing of rebuttal testimony. It states that rebuttal evidence "is evidence which tends to explain, counteract, repel, or disprove evidence submitted by another party or by staff. Evidence which is merely cumulative or could have been more properly offered in the case in chief is not proper rebuttal evidence."

The Joint Applicants argue that their Rebuttal Testimonies are proper because "the need for the rebuttal was not known until Staff and Intervenors made their positions known in their direct testimonies." Joint Response, p. 11. This is a meritless argument. Before filing their Application, the Joint Applicants were aware of the precedential impact of the TECO and Emera Final Orders as both NMGC and Emera were parties to that last acquisition case. As Mr. Baudier testified in his deposition, cited above, BCP chose to base its Application on the terms and conditions in the initial filings in the TECO and Emera cases and ignore the terms adopted by the Commission in both Final Orders. Exhibit 1, Deposition of Jeffrey Baudier (4/11/25), pp. 136-37.

However, Mr. Baudier's deposition testimony is not entirely accurate. In Case No. 15-00327-UT, unlike this case, Emera began by expressly stating it "agrees to, and reaffirms all provisions of the stipulation entered into in the recently concluded TECO Acquisition Case, Case No. 13-00231-UT." *See* Case No. 15-00327-UT, Application (9/11/15), Executive Summary, p.

2. Then, in the final approved Stipulation, Emera went beyond this initial commitment and agreed to customer benefits and protections that substantially improved the terms of the TECO Stipulation. If the Joint Applicants had taken the same approach at the outset of this case, the Staff and Intervenors would be in a very different posture than they currently find themselves.

The Joint Applicants argue that their Application should not be dismissed because no application at the Commission is ever approved as filed. Joint Response, p. 14. They also argue that the Staff and the Intervenors have been afforded more due process in this case than they were afforded in both the TECO and Emera cases. *Id.,* p. 13. These arguments ignore the fact that the TECO and Emara decisions established a precedent the Joint Applicants knew to be precedential but decided not to follow.

The Joint Applicants' arguments also misrepresent what occurred in both prior dockets. In TECO, the parties participated in a highly contested nine-day hearing. Immediately after the hearing, the joint applicants, fearing that their flawed application was in danger of being denied, opened settlement talks with the Staff and Intervenors. The applicants eventually agreed to a Stipulation that became the basis of the Final Order. *See* Case No. 13-00231-UT, *Staff's Motion to Vacate Briefing Schedule (5/1/14)*, p. 1. In the Emera case, there was far less procedure precisely because the joint applicants were willing to accept all the terms and conditions in the TECO Final Order at the outset of the case. *See* Case No. 15-00327-UT, Executive Summary, *supra.*

In this case, the Joint Applicants knowingly filed an Application that offered fewer customer benefits and protections than those contained in both the TECO and the Emera Final Orders. The Joint Applicants have belatedly attempted to meet the standards set by these Final

Orders while at the same time continuing to argue that no standards govern the approval of proposed utility acquisitions. Joint Response, p. 16.

The Joint Applicants' attempt to meet at least some the TECO and Emera terms and conditions by proposing substantial revisions to their Application in their Rebuttal Testimonies is a tactic which the Joint Movants respectfully request the Hearing Examiners to reject as contrary to basic due process considerations and Rule 1.2.2.35.N NMAC.

4. The Joint Applicants' New Procedural Proposal Is Unacceptable.

Against this background, the Joint Applicants' new procedural proposal to extend the schedule is unacceptable. Under this proposal, Staff and Intervenors would be given a very limited time to file surrebuttal testimony to respond to the Joint Applicants' May 16, 2025 Rebuttal Testimonies. Joint Response, pp. 42-43. The Joint Applicants would then be given the opportunity to file what they describe as "rejoinder testimony". *Id.* at 43. The Joint Applicants state that this proposal should satisfy the Staff and Intervenors as they "want some form of delay to evaluate the Joint Applicants' rebuttal testimony prior to hearing and they would like the opportunity to respond."

The Joint Applicants' new procedural proposal is not acceptable because the limited time for Staff and Intervenors' responses would deprive them of their due process right to provide adequate testimony. The Joint Applicants' new procedural proposal is also unacceptable because it does not require the Applicants to present, in one document, all of their best and final proposals to the Commission for consideration. The Joint Applicants' procedural proposal would allow them to continue to make piecemeal revisions to their Application to adjust to any new Staff and Intervenor testimonies.

The burden of proof should remain on the Joint Applicants to file a comprehensive Application that meets the standards established in the TECO and Emera Final Orders. The new procedure suggested by the Joint Applicants would allow them to evade their burden of proof to meet those standards. *International Minerals v. NMPSC,* 81 N.M. 280, 283, 466 P.2d 557 (1970) (Applicants in administrative proceedings have the burden to prove their requested relief by the preponderance of the evidence).

5. Striking the Joint Applicants' Rebuttal Testimonies is the Least Desirable Relief

As noted in the Joint Motion to Dismiss, striking the portions of the May 16th Rebuttal Testimonies identified in the Joint Response to the Hearing Examiners' May 28th Order is the least desirable form of relief. Joint Motion, pp. 3-4. The Applicants' Joint Response confirms the undesirability of that option. It is clear the Applicants will continue to argue the merits of their new proposals as they have done in the bulk of their Joint Response. *See* Joint Response, pp. 17-42.

Regardless of any order striking that testimony, the Joint Applicants' witnesses will certainly attempt to testify about their proposed revisions at the hearing. For example, the Joint Applicants are certain to argue that the introduction of the Staff and Intervenors' Direct Testimonies opens the door for their witnesses to testify about their new proposals. They are also certain to argue that any cross examination of their witnesses that explores the deficiencies in their current Application opens that same door. Thus, the remedy of striking the identified portions of the May 16th Rebuttal Testimonies would set the stage for a contentious hearing, with numerous evidentiary objections and arguments that would produce a confused, incoherent evidentiary record.

For these reasons, the Joint Movants respectfully renew their request that the Hearing Examiners adopt one of their preferred forms of relief by requiring the Joint Applicants to file, either in a new docket, or in a subsequent phase of this docket, a new application that fully incorporates all of their proposed terms and conditions in one document. This would place the burden of proof on the Joint Applicants where it belongs. *International Minerals, supra*.

6. Response to the Joint Applicants' Rebuttal Testimonies

As noted above, striking of the portions of the Joint Applicants May 16th Rebuttal Testimonies identified in the Joint Response to the Hearing Examiners' May 28th Order is not the optimal resolution of the issues raised in the Joint Motion to Dismiss. However, if this is the option that the Hearing Examiners choose, the Joint Movants provide the following arguments to support that option.

a. Rebuttal Testimony of Jeffrey Baudier

The Joint Movants have recommended that the entirety of Mr. Baudier's Rebuttal be stricken. Joint Response to May 28, 2025 Order, p. 2. The Joint Applicants aver that this does not comply with the Hearing Examiners' May 28th Order as the Joint Movants did not designate the pages and lines of that testimony they were requesting be stricken. To be clear, by requesting that the entirety of that testimony be stricken, the Joint Movants are including all the pages and lines in Mr. Baudier's Rebuttal.

As stated in the Joint Motion to Dismiss, Mr. Baudier's Rebuttal is a proposal for the Commission to consider an application that is substantively different than the one the Joint Applicants filed on October 28, 2024. Without repeating the arguments made in that Joint Motion, it is clear that Mr. Baudier's intention in making his new proposals is to bring the October 28, 2024 Application closer to the standards set by the Commission in its approvals of

the TECO and Emera acquisitions. For this reason, Mr. Baudier's new proposals should have been part of the initial Application instead of presented in his Rebuttal.

It is not the Joint Movants' intent in this pleading to argue the merits of Mr. Baudier's new proposals. Rather, the Joint Movants maintain that the use of Rebuttal Testimony to present these new proposals is an improper tactic that violates Rule 1.2.2.35.N NMAC and also violates their due process rights to perform adequate discovery and file responsive testimony.

For all these reasons, the entire Rebuttal Testimony of Mr. Baudier should be stricken.

b. Rebuttal Testimony of Suedeen Kelly

As stated in the Joint Response to the Hearing Examiners' May 28th Order, the entire Rebuttal Testimony of Suedeen Kelly should be stricken.

As shown in that Response, the bulk of Ms. Kelly's testimony is legal argument that is proper for post hearing briefs but not as the subject of expert testimony. *See* Joint Response to May 28th Order, pp. 3-4. The Joint Applicants have agreed that this in fact is the case. Joint Applicants' Joint Response, pp. 35-36.

Under the New Mexico Rules of Evidence, an expert may testify about scientific and technical issues, or other matters of specialized knowledge. Rules 11-702 and 703 NMRA. However, expert opinion testimony seeking to set forth a legal conclusion is inadmissible. *Mikeska v. Las Cruces Regional Medical Center, LLC,* 2016- NMCA-068, ¶ 17, 383 P.3d 266; *see also Beal v. Southern Union Gas Co.* 1960–NMSC–019, ¶¶ 30, 32, 66 N.M. 424, 349 P.2d 337 ("Testimony of expert witnesses is, in general, confined to matters of fact, as distinguished from matters of law"). Even an attorney testifying as an expert witness may not provide a legal opinion. *G&G Services, Inc. v. Agora Syndicate, Inc.,* 2000-NMCA-003, ¶¶ 46, 128, N.M. 434, 993 P.2d 751.

As also demonstrated in the Joint Response to the Hearing Examiners' May 28th Order, the remainder of Kelly's Rebuttal Testimony is cumulative as it merely repeats the information contained in the Application or in other witnesses' testimonies. Joint Response to May 28th Order, p. 4. In their June 2nd Response, the Joint Applicants admit this fact but argue that this cumulative testimony provides "necessary context" for other witnesses' testimony. Joint Response, p. 37. As the identified sections of Kelly's Rebuttal do not offer anything that has not been stated in the Application or by other witnesses it should be stricken as cumulative according to the requirements of Rule 1.2.2.35.N NMAC.

The final section of Kelly's Rebuttal that should be stricken is Page 23, at lines 10-18. This section merely restates one of the new proposals made by Mr. Baudier regarding an increase to the length of BCP's commitment to hold NMGC from 5 years to 10 years. The Joint Applicants admit that this is a new proposal. Joint Response, p. 38. A hold period of ten years is the standard set by the Commission in both the TECO and Emera acquisitions. As such, this commitment should have been stated in the Joint Applicants' case in chief rather than in rebuttal. For this reason, this proposal is not proper rebuttal testimony under Rule 1.2.2.35.N and should be stricken.

c. Rebuttal Testimony of Ryan Shell

In their Joint Response to the May 28th Order, the Joint Movants have correctly identified the sections of the Rebuttal Testimony of Ryan Shell that contain new proposals that should have been included in the Joint Applicants' case in chief. Joint Response to May 28th Order, p. 5. The Joint Applicants do not deny that these portions of Shell's Rebuttal contain entirely new proposals regarding shared services, a proposed rate freeze and new performance metrics. Joint Response, p. 39. However, they claim that this testimony is permissible rebuttal of the Staff and

Intervenors' Direct Testimonies. *Id.* This argument again ignores the fact that the TECO and Emera Final Orders set the standard for approval of the proposed acquisition of NMGC in this case. As Mr. Baudier stated in his deposition, *supra,* the Joint Applicants largely ignored those standards when they filed their Application. The Joint Applicants should not be allowed to use their Rebuttal Testimonies to belatedly revise their Application to include proposals that should have been included in their case in chief. For this reason, the identified portions of Shell's Rebuttal should be stricken.

d. Rebuttal Testimony of Lisa M. Quilici

In their Joint Response to the May 28th Order, the Joint Movants have correctly identified the sections of the Rebuttal Testimony of Lisa M. Quilici that should be stricken. Joint Response to May 28th Order, p. 5. The Joint Movants have argued that the identified portions of this Rebuttal are improper legal argument. Joint Applicants have denied this assertion and argue that Ms. Quilici is merely sharing her expert opinion in response to the Direct Testimony of Larry Blank. This argument is unpersuasive. The identified portions of Ms. Quilici's Rebuttal are legal arguments about basic regulatory principles. *See e.g.,* Quilici Rebuttal, p. 10, lines 1-12. This, and the other identified section of her Rebuttal, also contain legal arguments which are impermissible expert testimony.

The other identified proportions of Ms. Quilici's Rebuttal are cumulative restatements of other witnesses' testimonies. Joint Response to May 28th Order, p. 5. The Joint Applicants do not deny the cumulative nature of her Rebuttal but merely argue that she must repeat other witnesses to provide a basis for her opinions. Joint Response, pp. 39-40. The mere repetition of other witnesses' testimonies by another witness does not add any value to the record, is cumulative, and should be stricken.

e. Rebuttal Testimonies of Mark Miko and Peter Tumminello

The Joint Movants have comprehensively objected to the entire Rebuttal Testimonies of Mark Miko and Peter Tumminello on the grounds that both describe and support a new proposed shared services agreement with the newly acquired Delta Utilities. Joint Response to the May 28th Order, p. 3. The existence of a shared services agreement was one of the primary benefits citied by the Commission in both the TECO and Emera Final Orders. Therefore, the Joint Applicants should have incorporated any new shared services proposals in their initial Application. *See* Joint Motion to Dismiss, pp. 9, 14. They should not be allowed to correct this critical deficiency in their case in chief in their Rebuttal Testimonies.

The Joint Applicants have argued that the request to strike the entire testimonies of these witnesses does not comply with the requirement to specifically identify page and line numbers. As stated above with respect to Mr. Baudier's Rebuttal, the Joint Applicants' argument is baseless. The request to strike the entirety of the Rebuttal Testimonies of Mark Miko and Peter Tumminello includes all pages and lines of that testimony. Further specification is not necessary.

The Joint Applicants have not denied that the Miko and Tumminello Rebuttal Testimonies describe a new shared services proposal that was not mentioned in any other prior filing in this case. Joint Response, pp. 32-33. For this reason, the Miko and Tumminello Rebuttal Testimonies should be stricken as improper rebuttal under 1.2.2.35.N NMAC.

f. Rebuttal Testimony of Christopher Erickson

The Joint Movants have requested that Section VI of Mr. Erickson's Rebuttal Testimony, entitled *2025 Addendum*, and the incorporated JA Exhibit CAE- (Rebuttal), be stricken because this testimony is devoted to describing and analyzing the economic impact of new proposals that

should have been included in the Joint Applicants' case in chief. The Joint Movants' position is based on the legal arguments which support their request to strike the Baudier, Miko and Tumminello Rebuttals. The identified section of Mr. Erickson's Rebuttal is improper rebuttal and should be stricken.

g. Rebuttal Testimony of Karen Hutt

The Joint Movants have requested that page 9, line 8 through Page 10, line 3 of Ms. Hutt's Rebuttal be stricken as that portion discusses the extension of the current shared services agreement and a new replacement agreement. Striking this section of the Rebuttal Testimony of Karen Hutt is appropriate for the reasons stated above in the discussion of the Miklo and Tumminello Rebuttal Testimonies.

h. Rebuttal Testimony of Eric Talley

The Joint Movant's have withdrawn their Rule 1.2.2.35.N NMAC objection to the Rebuttal Testimony of Eric Talley.

III. CONCLUSION

For all the reasons stated herein, in the Joint Motion to Dismiss and in the Joint Response to the May 28th Order, the Joint Movants respectfully request the Hearing Examiners to dismiss the Application, without prejudice, or in the alternative require the Applicants to refile an Application in this docket that contains their best and final proposals to meet precedents established in the TECO and Emera Final Orders and the public interest standard in Section 62-6-13 of the Public Utility Act. As a less preferable option, the Joint Movants request the Hearing Examiners to strike the identified portions of the Joint Applicants' Rebuttal Testimonies.

Respectfully submitted this 6th day of June 2025 by

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Exhibit 1: Excerpts from the Deposition of Jeffrey Baudier

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I'm trying to look. Number 8, I think, would relate to that as well.
Q. "NM GC will, without prior commission approval, pay dividends anytime its credit metrics are below investment grade"?
A. Yeah.
Q. Okay.
A. There should be -- there should be statements that relate to NM GC's assets not being pledged or not having any obligation.
Q. Would that be like on page 38, number 3, "Books and records would be kept separate from those of the nonregulated businesses"?
A. That would be one. Number 5, "No NM GC debt is being reissued as a result of the transaction."
Q. And that number 5 is on page 35.
A. Correct.
Q. Okay. Are these, as far as you know, ring-fencing provisions that are already extant in the Emera and TECO deals?
A. I think primarily, yes. So I believe that as we -- as we drafted these, we looked at those prior cases or those prior applications, and in most instances attempted to replicate what was there.
Q. Do you recall if there were any ring-fencing

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provisions or financial protections that were in excess or additive to what Emera and TECO would have agreed to?
A. There may be multiple parts to that question.
On the ring-fencing I don't believe there are any additional. There was a second component that you said.
Q. Yeah. Is there -- I guess what we're asking is we've got the status quo on the ring-fencing.
Can you think of anything, after your quick review of this testimony, where BCP is saying, We're going to strengthen this particular or that particular ring-fencing provision? Is there anything like that in these ring-fencing?
A. In the ones in the application, no. I would say I don't believe so.
Q. Okay.
A. I couldn't tell you exactly, but I believe they're essentially the same.
Q. Okay. Would you go -- and I want to kind of use this to ask you some questions about the shared services and some of the other discussion that you had with Ms. Nanasi. But if you could go to page 28 of your testimony. And I'm looking particularly on the first paragraph. And on line 4, you start, "I understand the commission generally applies a six-factor test in determining the public interest."

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And if you would just reacquaint yourself, refresh your recollection on those -- on that six-factor test.
A. Okay. I've read those.
Q. What is your understanding of the relevance of these section factors in your application?
A. So I believe that these are the criteria that the -- that are the test, so to speak, that the commission would apply to determine whether, you know, simply stated, whether the application should be approved. And so that in the course of the proceeding, you should satisfy the commission and the -- I guess, ultimately, the commission, but the commission as well as the intervenors that the test has been met.
Q. When did you first, if you recall, learn about this six factor test?
A. Probably when I -- when I first engaged Mr. Alvidrez to help us -- represent us in the matter.
Q. Okay. So this was past the time when you had already made a bid for this asset, the gas company, from Emera?
A. It might have been past the time we had made a bid, but it could have been prior to the ultimate acceptance of the deal.
Q. Okay. The general question I have is when you

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were doing your due diligence -- and by "you," I mean BCP -- were these factors part of the due diligence? Did you -- did you look at these factors and say, Can we satisfy these if we decide do to buy this utility?
A. Yes. I believe that part of what I had first engaged Rick to do was to inform us as to what the requirements of approval would be, and kind of understand how that -- how it would be applied in New Mexico.
Q. Okay. Did you attempt to structure the deal when you were dealing with Emera in such a way that it would be more likely that these six factors would be met?
A. I think we certainly -- we certainly attempted to. I would say yes.
Q. Okay. The reason that I'm asking is that if you -- and I'll -- we don't necessarily have to go through them in detail, but if you look at the commission decisions in the prior two cases, the TECO case and the Emera case, as -- not as a financial person, because I'm not that at all, I don't even balance my own checkbook.
But as a regulatory lawyer, what these -- these two documents would tell me is, This is the blueprint for approval. Did you ever go through these -- either one of these documents and say, this is the blueprint and this is -- we need to make this deal look as much like these other deals in order to get approval?

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A. No, I would disagree with that characterization.
Q. Okay. Tell me why.
A. Because we believe each deal should stand on its own and we believe that the circumstances of the parties as they exist at the time, are what should be looked at to determine what constitutes whether it delivers benefits or not. Not what was provided perhaps ten years ago or, for example, things may have expired. They may not have been done exactly as they were in that order.
And so we -- we -- they might provide guidance but we did not think that we would -- and certainly not replicate the final determination because that was a stipulated settlement.
Q. Right. But they -- given that it was a deal that was approved, wouldn't -- wouldn't they at least provide some general guidance about how to structure your application in order to meet those general parameters? Wouldn't that be a fair way to do it?
A. It would be a fair way to do it. I would say what we looked at more was the initial application filed by Emera and TECO, as opposed to the ultimate settlement.
Q. Okay. Well, one of the -- and I don't think we need to get too far into it, but one of the puzzling things for me is that in both of these deals, the TECO deal and the Emera deal, the shared services agreement and

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the savings that were touted for those shared services were one of the primary ratepayer benefits that sold the deal. And that was even before there were any negotiations.
So were you concerned at all that you're coming in and now saying that getting rid of those shared services is a benefit?
MR. ALVIDREZ: I'm going to object to your characterization that it was a primary benefit. It wasn't.
MR. GOULD: No, no, I'm not -- I'll go through it.
Q. (BY MR. GOULD) I mean, this is what I'm trying to avoid. I could go through line by line of those -- of those deals. But you can read them as much as mine. But that was one of the -- one of the benefits that both hearing examiners listed.
So what do you take from that, that now you're saying to the commission, No, no, no, we're going to take away the shared services, put them in the gas company and that's a benefit?
A. We were not concerned, because we -- we knew what the actual costs being imposed were today, and we had experience with our carve-outs and understanding when you separate a regulated -- you know, we talked about having a

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subsidiary transaction. In many instances, just because a service is shared or allocated from a parent to a subsidiary does not necessarily in and of itself mean it's cheaper.
The other thing is that we also knew that part of the rationale from what we saw in either the TECO or the Emera case was that 100 jobs were lost and people were let go, and that that was part of the justification for the savings. And so we also saw a benefit in bringing jobs back to New Mexico. And so we saw that as a positive benefit of the transaction, but we also believe that because we've seen inefficiencies by running a gas company through an electric company, that we believed we could still effectively and efficiently stand up those services in New Mexico.
We continue to evolve that process and consider every option that we can do to drive the best rate savings to the New Mexico customers.
Q. So what I hear you saying is that -- well, let me -- if you could turn to page 13 of the certification of stipulation at 15, 327.
MR. ALVIDREZ: I've got right here.
A. Page 13?
Q. Page 13 of the certification for the 15 cases, in the Emera case.

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A. And so what page is that?
Q. Page 13. It's on 13. Sorry, I was unclear.
It says, "If the proposed transaction is approved NM GC will continue to receive some services through a services agreement with TECO Services, Inc., headquartered in Tampa, Florida. These services include accounting, finance," and there's a whole list.
It goes on to say, "Under the stipulation, consistent with good governance practices and based on an examination of its business needs, customer needs and objectives, NM GC Management will annually determine which, if any, service it will obtain from TSI, show a preference for services to be performed in New Mexico by NM GC employees for NM GC, make any and all changes, assessments or allocations from TCI transparent, and to the greatest extent possible use direct charges as opposed to assessments or allocations when identifying cost recovery under the cost allocation manual on file with the NM PRC." And then there's a citation to the stipulation.
Are you saying that NM GC Management, in your judgment, didn't do the proper evaluation and was accepting services -- shared services that it could have done more cheaply itself?
MR. ALVIDREZ: Objection, mischaracterizes his testimony.

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A. I'm not -- I'm not saying -- I'm not saying that. I don't know what -- I don't know what they did.
Q. (BY MR. GOULD) Okay. Well, let me ask you this. Have you ever seen a document that detailed this annual assessment of the TSI services and compared them to what could be achieved independently of TSI?
A. The document that I did look at -- I did not look at a document that was historically created to analyze that or report on that. I had what I had discussed with you in my testimony earlier, which is I had from Emera the listing of shared services, as well as the costs associated with those, as provided by Emera and then we made our own, not only assessment, but we determined that a number of those services we would not need.
Q. Okay.
A. I'm not saying that that same answer would have come true for New Mexico, but I know as a matter of you know, our analysis, we've been able to reduce 4 million dollars from that cost.
Q. But -- and my question is more specific. So there was a requirement in the stip and a requirement in the commission's order to do that annually, to reassess annually, which you would agree is good business practice, right?
A. Certainly.

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Q. Okay. Have you seen any document -- I don't mean from your end -- but from the gas company that would record and memorialize that discussion within the gas company management?
A. I have not.
Q. Okay. Going to a different part of that same document, the certification of stipulation, would you go to page 38. And there's a heading that's marked "E." It says, "Emera management to maintain ownership of NM GC." Do you see that?
MR. ALVIDREZ: That's not what it says.
MR. GOULD: In the stip.
MR. ALVIDREZ: Yeah, that's not -- it doesn't say "Emera's management."
MR. GOULD: What's what again?
MR. ALVIDREZ: It does not say "Emera's management."
MR. GOULD: Well, agreement -- Emera's agreement. Excuse me.
Q. (BY MR. GOULD) And I'll read it: Emera's commitment to maintain ownership of NM GC is reflected in the commitment in the TECO stipulation to not sell its interest in either NM GI or NM GC for at least ten years after the close of the transaction approved in the TECO acquisition case." Did I read that correctly?

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A. Yes.
Q. And then the commission goes on to state, "This commitment benefits ratepayers because it brings stability to both utility -- the utility and its customers and shows a commitment to New Mexico." Did I read that correctly?
A. That is correct.
Q. Knowing that the commission had a preference for longer-term deals, why did you structure this deal as a five-year deal?
A. That was a minimum starting point in our application, I guess.
Q. Why wouldn't you just look at this and say, The public interest standard, this is what the commission is applying, and apply for a ten-year deal?
A. Because we didn't know every component that went into -- again, this was a stipulated settlement. And so there could have been lots of give-and-takes with regard to that. We -- when we approach these transactions and we have histories of working with both regulatory bodies and intervenors, in numerous -- you know, whether it be ratemaking or acquisition transactions, et cetera, there is normally a difference between the initial filing and the ultimate result. And we take that into account when we make our initial filing. And one thing I don't want to do is presume what the commission or people -- intervenors

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may be interested in.
So we start off with what we believe is an acceptable application and then we're open to feedback with regard to what modifications may be needed to improve that application.
Q. But you understand that -- and I'm not asking you a legal question even though it does have a legal background to it. But as in your management position, you understand the significance of this certification and stipulation.
Do you understand that it's -- that it's not the statement of the participants in the case, but it's the statement of the judge that heard the case? Do you understand that?
A. Actually, I didn't take it to be that.
Q. Okay.
A. I thought that it was the judge's acceptance of the stipulation as provided by the parties.
Q. Right. But she has to, at some points, recommend to the commission, if you know this, that this is a good deal or a bad deal. Do you understand that?
A. I do understand that. And in my experience, there are three outcomes: The hearing examiner can reject the stipulation outright -- and again, this is just in my experience, I'm not exactly sure of the criteria in New

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL TO ACQUIRE NEW MEXICO GAS COMPANY, INC. BY SATURN UTILITIES HOLDCO, LLC. **JOINT APPLICANTS**	)	**Case No. 24-00266-UT**

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent via email a true and correct copy of the **Joint Reply to Joint Applicants' Response to Joint Motion to Dismiss** to the persons listed below.

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