

**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. ) Case No. 24-00266-UT  
JOINT APPLICANTS )  
\_\_\_\_\_ )

**REVISED APPLICATION REBUTTAL TESTIMONY**

**OF**

**ERIC L. TALLEY**

**October 10, 2025**

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ERIC L. TALLEY  
NMPRC CASE NO. 24-00266-UT**

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**I. INTRODUCTION AND PURPOSE**

**Q. PLEASE STATE YOUR NAME AND A BRIEF HISTORY OF YOUR ACADEMIC QUALIFICATIONS.**

**A.** My name is Eric L. Talley. I am the Marc and Eva Stern Professor of Law and Business<sup>1</sup> as well as the Faculty Co-Director of the Millstein Center for Global Markets and Corporate Ownership at Columbia University. A more complete summary of my background and professional qualifications is presented in my Revised Application Direct Testimony.

**Q. HAVE YOU SUBMITTED OTHER PRE-FILED TESTIMONY IN THIS CASE?**

**A.** Yes. On May 16, 2025, I submitted Rebuttal Testimony in this case. On July 3, 2025, I submitted Revised Application Direct Testimony in support of the Revised Application filed by the Joint Applicants.

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

**A.** The purpose of my Rebuttal Testimony is to address and respond to testimony in this case (In the Matter of the Joint Application for Approval to Acquire New Mexico Gas Company, Inc. By Saturn Utilities Holdco, LLC) regarding the proposed corporate and capital structure of the Transaction, and private equity ownership of a utility. In this Joint

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<sup>1</sup> In June 2025, I was installed in the above-named endowed chair from Columbia Law School, and I simultaneously relinquished my previous endowed chair, the Isidor & Seville Sulzbacher Professorship.

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1 Application, Emera Inc. (“Emera”), New Mexico Gas Company (“NMGC”), Saturn  
2 Utilities Holdco, LLC (“Saturn Holdco”), and affiliates, are requesting approval for a  
3 transaction in which Saturn Holdco will acquire NMGC and Emera, with Emera U.S.  
4 Holdings, Inc., and TECO Holdings, Inc., will divest their existing ownership of NMGC  
5 (the “Transaction”).

6  
7 My testimony responds to that of Christopher C. Walters on behalf of the New Mexico  
8 Affordable Reliable Energy Alliance (“NM AREA”) with respect to private equity  
9 ownership of a utility, Larry Blank on behalf of the Utility Division Staff (“Staff”) of the  
10 New Mexico Public Regulation Commission (“Commission”) with respect to the  
11 acquisition premium, Christopher K. Sandberg on behalf of New Energy Economy  
12 (“NEE”) with respect to the proposed capital structure of the Transaction, and Bradley T.  
13 Cebulko on behalf of Western Resources Advocates (“WRA”) with respect to the  
14 Transaction’s financing.

15  
16 **Q. BRIEFLY SUMMARIZE THE RESPONSES IN YOUR TESTIMONY.**

17 **A.** Private capital investment is fully compatible with utility ownership and regulation and  
18 does not present idiosyncratic regulatory challenges or risks to customers. Private  
19 ownership can provide benefits to ratepayers they could not experience under NMGC’s  
20 public owner.

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**II. TRANSACTION STRUCTURING**

**Q. MR. SANDBERG QUOTES AN INTERVIEW FOR THE PROPOSITION THAT A “PRIVATE EQUITY FIRM USES A LITTLE BIT OF ITS OWN MONEY, A LITTLE BIT OF INVESTORS’ MONEY, AND A WHOLE LOT OF BORROWED MONEY TO BUY COMPANIES”<sup>2</sup> – DO YOU FIND THAT TO BE THE CASE IN THIS TRANSACTION?**

**A.** No. Some casual observers may habitually equate all “private equity” acquisitions to heavily leveraged transactions, but this Transaction is a good illustration that doing so is often misconceived and inaccurate. Although infrastructure funds (like Saturn) are a species of private capital investor, they are substantially different from other—often more speculative and leveraged—versions of private capital. That excerpt Mr. Sandberg quotes seems to be a sweeping and categorical generalization of private capital structures, and it does not describe this Transaction (or relate to it in any way, as far as I can determine).

**Q. IS MR. WALTERS CORRECT THAT THE TRANSITION TIMELINE UNDER THE TRANSITION SERVICES AGREEMENT INDICATES A LACK OF EXPERIENCE?<sup>3</sup>**

**A.** No. The process of transition and integration to a new owner (including through a “TSA”) is standard protocol in nearly every company acquisition. The decision to enter one, and the duration thereof, is driven by a variety of elements of expertise leaving with the seller

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<sup>2</sup> Direct Testimony of Christopher K. Sandberg, at 25.

<sup>3</sup> Walters Direct Testimony at page 15, line 10 to page 19, line 10.

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(some intended and some unanticipated) that the purchaser must replace. Without a TSA, a seller could inadvertently walk away with institutional knowledge, such as where human resources saves personnel records or the password for a locked file, and have no obligation to help the purchaser after the closing. The need for this type of institutional knowledge does not typically arise all at once. Annual and semi-annual processes may reveal unanticipated gaps that require reaching out to the erstwhile seller to track down additional information. Given these common-sense reasons for a TSA, it would be improper to infer that BCP Applicants lack experience because they entered a TSA. To the contrary, given the back-office roles being shifted from Emera to New Mexican employees, in my opinion it would have revealed a profound lack of experience had the BCP Applicants *neglected* to enter a TSA.

**III. BENEFITS OF PRIVATE EQUITY OWNERSHIP**

**Q. ARE YOU AWARE OF WITNESSES IN THIS PROCEEDING ALLEGING THAT PRIVATE-EQUITY OWNERSHIP IS HARMFUL?**

**A.** Yes. Both Mr. Walters and Mr. Sandberg have alleged risks or harms inherent to private capital versus publicly traded holding companies.<sup>4</sup> They do not appear to address many of the advantages of private capital ownership.

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<sup>4</sup> See, e.g., Walters Direct Testimony at page 36, lines 11 to 16, page 39, line 11 to page 40, line 13, and page 42, lines 1 to 10; Sandberg Direct Testimony at page 23, lines 8 to 12, page 24 line 8 to Page 33 line 19.

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1   **Q.    ARE THERE ANY ADVANTAGES TO PRIVATE EQUITY OWNERSHIP**  
2       **STRUCTURES?**

3   **A.**    Yes. As discussed at length in my Revised Application Direct Testimony, there are several  
4       distinct advantages of a private ownership structure that public ownership cannot offer.  
5       With dramatically reduced agency costs, private capital structures often lead to better and  
6       more attentively managed companies over the long term. Much of modern financial  
7       economics is predicated around structuring companies to minimize problems that can occur  
8       when those who control a firm are not coterminous with its owners (including stockholders  
9       and other stakeholders).<sup>5</sup> When this gulf between ownership and control is appreciable, a  
10      variety of value destroying behaviors can manifest. When, in contrast, this gap narrows,  
11      significant efficiencies can ensue.

12  
13   **Q.    HAVE INTERVENOR WITNESSES ALLEGED THAT PUBLIC HARMS ARE**  
14       **ASSOCIATED WITH PRIVATE EQUITY OWNERSHIP?**

15   **A.**    To the extent some witnesses criticize private structures as a policy matter, their objection  
16       appears largely to be directed to the debt-equity structures that private capital structures  
17       maintain, and the possibility in certain cases that the portfolio company will be driven into  
18       too much leverage with a risk of financial distress. While the debt-equity structure is  
19       appropriate for all capital structures, it bears observing that the adverse effects of leverage  
20       are no less problematic with public ownership structures. Indeed, as noted above, and in

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<sup>5</sup> See ADOLF BERLE & GARDINER MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY (1932); Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

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1 my Revised Application Direct Testimony, shareholder activists of public companies are  
2 well known for pushing targeted companies into highly leveraged recapitalizations in order  
3 to extract dividends and share buybacks. Thus, the effects of leverage are not confined in  
4 any respect to privately owned companies.

5  
6 **Q. ARE THE INTERVENORS CORRECT THAT A “SHORT INVESTOR TIME**  
7 **HORIZON” IS AN ISSUE WITH THE NATURE OF PRIVATE EQUITY THAT**  
8 **NEARLY GUARANTEES THE BCP APPLICANTS WILL TREAT NMGC AS A**  
9 **SHORT-TERM INVESTMENT?<sup>6</sup>**

10 **A.** No. In fact, I am somewhat befuddled by this assertion. As discussed in my Revised  
11 Application Direct Testimony, some of the primary advantages of private ownership are  
12 long-term value preservation and creation. This is particularly true with infrastructure  
13 funds, which typically have long lifespans. In contrast, public companies often do not have  
14 the luxury of having long time horizons, and they are often pressured to create short-term  
15 liquidity. For this reason, public company exit timelines are often highly unpredictable  
16 and skew towards short-termism: When short-term pressures drain long-term value from  
17 the firm, management often is able to stay put because the company’s growth prospects  
18 have stalled out and the firm is made an unattractive target. On the other hand, if a third-  
19 party believes the public company is undervalued or improperly managed (irrespective of  
20 its time horizon), the company risks a hostile takeover in the near term.

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<sup>6</sup> Sandberg Direct Testimony at page 30 at line 17; See also Cebulko Direct Testimony at page 11, line 19 to page 15, line 7.

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Private companies, on the other hand, have substantial discretion over the duration that they hold their investments, and they are typically bound contractually to hold assets for a long period of time (possibly indefinitely). There is no risk of hostile takeovers cutting hold periods short. And fund managers have shown increased interest in holding their investments for ever longer durations. This is evidenced by the precipitous rise of “GP-led secondaries.” These secondary funds, also referred to as “continuation funds” crop up when a private fund nears the end of its lifespan, and the general partner (“GP”) is reluctant to divest high-performing portfolio companies. The GP of a secondary fund creates a new fund vehicle to buy its prized portfolio companies and thereby restart the clock on the fund’s lifespan. These are among the fastest-growing fund types, and they reflect the private capital market’s overall emphasis on longer hold times.

**Q. IS THE INSTANT TRANSACTION’S CAPITAL STRUCTURE SUFFICIENTLY PROTECTIVE OF NMGC?**

**A.** Yes. To the extent that there can be risks in any ownership structure, including private capital ownership, such concerns can readily be mitigated, and in this case appropriate steps appear to have been put in place to protect the public’s interest. There are a variety of measures that a private capital company can implement to protect the operating assets and business viability of the portfolio company. A key one of them is maintaining an adequate equity component in the capital structure.

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1 In my opinion, the proposed Transaction structure and its ring-fencing provisions help  
2 ensure that there are adequate protections against excessive leverage and financial distress,  
3 and there is nothing about the proposed acquisition that appears odd, peculiar, or out of  
4 step from what have now become common private capital acquisitions.

5  
6 **Q. IS MR. SANDBERG’S CHARACTERIZATION OF PRIVATE EQUITY AS**  
7 **“CUSTOMER-ANTAGONISTIC” ACCURATE?**

8 **A.** No. To the contrary, as discussed in my Revised Application Direct Testimony, private  
9 capital now has a long track record in utilities ownership, which has not given rise to the  
10 parade of horrors that Mr. Sandberg seems to envision.

11  
12 **IV. ACQUISITION PREMIUM**

13 **Q. WHAT IS THE IMPORTANCE OF AN “ACQUISITION PREMIUM” IN**  
14 **CORPORATE TRANSACTIONS?**

15 **A.** As used by most practitioners and economists, this term refers to the difference between  
16 the acquisition price paid for an asset and the asset’s market value as a going concern prior  
17 to news of the acquisition. A variety of authoritative treatises agree about this terminology,  
18 which is highly conventional. For stand-alone public companies, the fair market value of  
19 the asset as a going concern is often proxied by its pre-announcement stock price. This  
20 term provides public shareholders a useful shorthand when considering a buyout offer.  
21 Shareholders can individually sell some shares on the stock market for the current stock

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1 price, or they can collectively sell all of their shares for the stock price plus the acquisition  
2 premium offered by the would-be acquirer.

3  
4 In contrast, I know of no definition in accepted corporate finance authorities that posits an  
5 acquisition premium to be the difference between the acquisition price and target  
6 company's *book value*. The term "book value" typically relates to the accounting value  
7 with which assets are carried on the balance sheet of a business. These asset values are  
8 recorded at historical cost, and they are invariably depreciated aggressively (for tax and  
9 other purposes) to levels that bear virtually no relation to actual market declines in their  
10 fair value. In fact, even if an asset's fair value increases after it lands on a business's  
11 balance sheet, it will over time be reflected in depreciated form in book value and not  
12 marked to market. Consequently, even in the absence of an acquisition, the fair market  
13 going-concern value of a company will tend to exceed its book value, often by a significant  
14 margin. And therefore, any endeavor to measure acquisition premium on the basis of book  
15 value is also likely to overshoot its value, often considerably. The term as used by the  
16 intervenors appears to more closely resemble what accounting professionals would  
17 normally call the "gain on sale" of discrete assets – a term that is unrelated to the acquisition  
18 premium.

19  
20 **Q. DO YOU AGREE WITH DR. LARRY BLANK'S ASSERTION THAT VALUE**  
21 **"WAS CREATED BY THE GOVERNMENT WITH CUSTOMERS SUBJECT TO**  
22 **A GOVERNMENT-PROTECTED MONOPOLY"?**

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1     **A.**     I would argue it is the other way around. If the “government” in this instance refers to the  
2             Commission, then government actually imposes constraints on the value of the utility, by  
3             limiting the utility’s ability to set rates beyond those needed to generate reasonable risk-  
4             adjusted returns. If the utility were permitted to charge higher, monopoly prices, its going-  
5             concern value would exceed its value as a regulated entity. Customers benefit from the  
6             utility’s constrained valuation by paying a regulated rather than monopoly price. But if the  
7             utility takes no action, the endeavor produces no value.

8  
9             In addition, NMGC’s “value” is not the only item reflected by the purchase price. A  
10            purchase price is not set simply by the future discounted cash flows of the target. Every  
11            corporate transaction with a closing period, such as this Transaction, must also account for  
12            “close-ability.” In other words, the purchase price can rise where an acquirer has less  
13            certain access to funding or where required approvals are less certain to be obtained. And  
14            thus, for example, a private capital purchaser may have a pricing advantage over a strategic  
15            purchaser (i.e., a purchaser in the target’s industry) because strategic bidders often  
16            encounter enhanced antitrust scrutiny. Such deal uncertainty may be reflected in a higher  
17            headline bid by the strategic purchaser. It would be highly unusual to say this additional  
18            amount may be attributed to the government.

19  
20     **Q.**     **DO YOU AGREE WITH DR. LARRY BLANK’S SUGGESTION THAT THE**  
21             **GOVERNMENT’S SUPPOSED ENTITLEMENT TO AN AMOUNT EQUAL TO**

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**THE TRANSACTION’S ACQUISITION PREMIUM SHOULD FLOW TO  
CUSTOMERS?**

**A.** No. As described above, the “government” should not be entitled to an acquisition premium simply because it caps NMGC’s rates at a level no higher than its risk-adjusted rate of return in the regulated market. But assuming for the sake of argument that the government somehow did have such an entitlement, it is important to note that customers are not synonymous with the Commission. The Commission takes actions on behalf of both the utility and its customers. It ensures utilities receive a constitutionally required fair return and that customers are not overcharged or undercharged relative to that return. This is unambiguously a balancing act – one undertaken on behalf of multiple stakeholders. Staff’s position that the Commission’s only allegiance is to customers is troubling and ultimately untenable.

**Q. WOULD UNDESIRABLE CONSEQUENCES RESULT FROM GRANTING  
RATEPAYERS A PERCENTAGE OF THE ACQUISITION PREMIUM OVER  
THE BOOK VALUE OF NMGC?**

**A.** Yes. From an economic perspective, this proposal not only seems ad hoc and poorly conceived, but it would threaten to wreak havoc on the acquisitions market in several ways.

To see why, it may be helpful to walk through a simple example. Consider a utility with a going-concern market value of \$1 billion, and which has assets whose fair market value is \$800 million, but have been depreciated to \$200 million in book value. Clearly, no rational

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owner would sell this business for less than its going concern value of \$1 billion. Enter a third-party potential acquirer, who has the ability to manage the utility more efficiently (through stewardship and long-term investments), and in doing so can increase the utility's total valuation to \$1.2 billion. Suppose the would-be acquirer makes a bid of \$1.2 billion and puts in place sufficient protections to protect rate payers and make them no worse off than the status quo (and potentially even better off). Assume (consistent with Dr. Blank's testimony) that any successful bidder would be required, post-closing, to book the "acquisition premium" as a regulatory liability. Given the above numbers, this implies that the bidder would have to surrender back \$1 billion in value (i.e., the difference between the \$1.2 billion purchase price and the \$200 million book value of the assets). Accounting for that concession would leave the buyer with a company whose net valuation under its new, more efficient ownership, has now shrunk from \$1.2 billion to \$200 million (i.e., \$1.2 billion less the regulatory liability). In other words, our buyer can pay \$1.2 billion and (after Dr. Blank's proposed impoundment) purchase an asset that is worth only \$200 million to the buyer – an immediate \$1 billion loss. No rational buyer would ever agree to this purchase, at least for a price of \$1.2 billion. The deal would never eventuate, and no efficiency gains would be possible.

**Q. WOULD A DEAL EVER BE CONSUMMATED UNDER THE FACTS OF THE HYPOTHETICAL IN YOUR RESPONSE ABOVE?**

**A.** One might optimistically posit that there could still be an acquisition, but that the buyer and seller would simply have to readjust purchase price to account for the post-closing

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1 claw-back described above. However, this hope is almost certainly illusory, and any such  
2 adjustment would be impossible in this example. To see why, note that the lowest the  
3 buyer could ever go in making an offer that a rational seller would accept is to offer a \$1  
4 billion acquisition price (the company's going-concern value). But even here, the buyer  
5 would immediately have to disgorge an \$800 million credit (i.e., the difference between  
6 the \$1 billion purchase price and the \$200 million book value of the assets), leaving the  
7 buyer with an asset it values at \$200 million (i.e., \$1 billion less the \$800 million credit).

8  
9 If the proposed regulatory liability that Dr. Blank propounds were to be implemented, an  
10 absurd result would follow. There could never be an acquisition on any terms,  
11 notwithstanding the fact that transferring ownership to the buyer would result in a \$200  
12 million increase in social valuation, with no costs (and even some potential benefits) to rate  
13 payers. Such an outcome is illogical and wasteful, and it is inconsistent with fundamental  
14 principles of finance and valuation.

15  
16 **Q. DOES DR. LARRY BLANK'S SUGGESTION THAT AN AMOUNT EQUAL TO**  
17 **THE ACQUISITION PREMIUM SHOULD BE BOOKED AS A REGULATORY**  
18 **LIABILITY FOR THE BENEFIT OF NMGC'S CUSTOMERS DIFFER FROM**  
19 **PROPOSING A RATE CREDIT TO CUSTOMERS?**

20 **A.** The regulatory liability proposed by Dr. Blank differs from a rate credit in that it will not  
21 benefit customers until NMGC's next rate case and that it will directly reduce NMGC's  
22 rate of return thereafter. But like the rate credit, the full amount of this offset will be

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1       shouldered by the BCP Applicants as an additional cost of purchasing NMGC. The  
2       hypotheticals above therefore apply to the same extent as if the amount of the acquisition  
3       premium was provided as a rate credit. In the extreme case, there would never be a value  
4       producing acquisition of any utility.

5  
6       **Q.    IS MR. BRADLEY CEBULKO CORRECT IN SAYING THE “PREMIUM” IS A**  
7       **“DEFICIT” THAT THE BCP APPLICANTS ONLY HAVE 12-15 YEARS TO**  
8       **OVERCOME?**

9       **A.**   No. As described above, what Mr. Cebulko refers to as a “premium” is apparently the  
10      difference between the purchase price and book value. I therefore assume that Mr. Cebulko  
11      argues there will be a “deficit” because he believes the fair market value of NMGC will  
12      fall to the book value of NMGC after the Transaction closes. That is simply not the case.  
13      The fair market value for a private company can be difficult to estimate between  
14      acquisitions. But at the close of the Transaction, NMGC’s fair market value will be  
15      identified as the purchase price. NMGC’s value may rise after the Transaction, or it may  
16      fall. But there is no reason to assume the going-concern value would ever equal the book  
17      value. There is accordingly not a “deficit” equal to the “premium” as Mr. Cebulko seems  
18      to put forth those terms.

19  
20      **Q.    DO YOU AGREE WITH MR. CHRISTOPHER SANDBERG’S SUGGESTION**  
21      **THAT THE COMMISSION SHOULD REQUIRE “BCP” TO “PUT UP” A MULTI-**

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**1        MILLION-DOLLAR PERFORMANCE BOND TO PROTECT RATEPAYERS**  
**2        FROM “FORESEEABLE RISK”?**

3        A.     No. A performance bond would not be issued by a utility to protect ratepayers from  
4        “foreseeable risk.” Performance bonds generally guarantee performance, such as the  
5        completion of a construction project according to specifications. These bonds are released  
6        after the successful completion of a measurable accomplishment. The nebulous and  
7        indefinite bond suggested by NEE to protect from “foreseeable risk” is therefore contrary  
8        to established market practice. Rather, foreseeable risks should be impounded as part of  
9        the regulated, risk-adjusted rate of return. The Commission will continue to assess this rate  
10       of return after the transaction closes, just as it does today.

**12       V. CONCLUSIONS**

13       Q.     PLEASE SUMMARIZE YOUR CONCLUSION.

14       A.     On the basis of the analysis above, I continue to be of the opinion that the proposed  
15       Transaction does not introduce any material complexities, structuring concerns, or  
16       financial concerns for New Mexico customers. To the contrary, the proposed ring-fencing  
17       protections and private capital organizational structure will, in my opinion, improve the  
18       financial security of NMGC and make it no more difficult for the Commission to regulate  
19       effectively.

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BY SATURN UTILITIES HOLDCO, LLC.**

**Docket No. 24-00266-UT**

**JOINT APPLICANTS**

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**ELECTRONICALLY SUBMITTED AFFIRMATION OF  
DR. ERIC L. TALLEY**

In accordance with 1.2.2.35(A)(3) NMAC and Rule 1-011(B) NMRA, Dr. Eric L. Talley, Isidor and Seville Sulzbacher Professor of Law at Columbia Law School, affirms and states under penalty of perjury under the laws of the State of New Mexico: I have read the foregoing Revised Application Rebuttal Testimony. I further affirmatively state that I know the contents of my Revised Application Rebuttal Testimony and it is true and accurate based on my personal knowledge and belief.

**SIGNED** this 10<sup>th</sup> day of October 2025.

/s/Eric L. Talley  
Eric L. Talley

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**CERTIFICATE OF SERVICE**

I CERTIFY that on this date I sent via email a true and correct copy of the *Revised Application Rebuttal Testimony of Eric L. Talley*, to the people listed here.

|                                              |                                                                                        |
|----------------------------------------------|----------------------------------------------------------------------------------------|
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**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**Revised Application Rebuttal Testimony  
of Eric L. Talley**

**Case No. 24-00266-UT**

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Case No. 24-00266-UT

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