

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.	)	Docket No. 24-00266-UT
	)	
JOINT APPLICANTS	)	

REVISED APPLICATION REBUTTAL TESTIMONY AND EXHIBIT

OF

SUEDEEN KELLY

October 10, 2025

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I. WITNESS IDENTIFICATION AND QUALIFICATIONS

Q. PLEASE STATE YOUR NAME AND OCCUPATION.

A. My name is Suedeen Kelly. I am a partner and co-chair of the energy practice group in the Washington, D.C. office of Jenner & Block LLP.

Q. PLEASE SUMMARIZE YOUR PROFESSIONAL QUALIFICATIONS AND EXPERIENCE AS RELEVANT TO THIS TESTIMONY.

A. I am familiar with state regulation of public utilities, including public utility mergers and acquisitions, from the four years I served as a Commissioner of the New Mexico Public Service Commission (1983-1986), two of which as Chairwoman (1984-1986). In this role, I was responsible for state regulation of gas, electric, and water public utilities. I am also familiar with federal regulation of public utilities from the six years I served as a Federal Energy Regulatory Commission (“FERC”) Commissioner (2003-2009). As a FERC Commissioner, I made decisions in approximately 1,300 cases each year, including as relevant to this matter, proceedings regarding proposed mergers, acquisitions, and other change-of-control transactions.

In addition to my practical expertise, I also have academic expertise in state and federal regulation of public utilities from my decades of experience as a law professor. I teach and publish on relevant topics, including public utility regulation, economic regulation of business, and regulation of the energy sector. From 1986 until 2003, I was a professor of law at the University of New Mexico School of Law. Since 2022, I have been an adjunct

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1 professor at the George Washington University Law School, where I currently teach a
2 course on the future of the electric grid.

3
4 My practical experience in regulation of public utilities includes the decades I worked as
5 an attorney in private and public practice in New Mexico and Washington, D.C. From
6 1978 to 1982, I managed a private law practice representing clients in state and federal
7 litigation and regulatory proceedings, with a focus on public utility law. In 1982, I worked
8 in the Consumer Division of the Office of the New Mexico Attorney General, representing
9 residential and small business consumers in matters before the New Mexico Public Service
10 Commission. From 1986 until 2001, I managed a part-time practice in state and federal
11 energy and public utility law representing clients with respect to natural gas and oil
12 intrastate and interstate pipelines and distribution facilities and water and electric public
13 utility regulation. From 2001 to 2003 I created and led the public utility practice at Modrall,
14 Sperling, Roehl, Harris & Sisk in Albuquerque, New Mexico. After serving as a FERC
15 Commissioner, I chaired the energy practice groups at Patton Boggs LLC and Akin Gump
16 Strauss Hauer & Feld LLP in Washington, D.C. before moving to Jenner & Block LLP in
17 2017. I am ranked as a “Band 1” practitioner in energy (electricity – regulatory and
18 litigation) by Chambers and Partners.

19
20 Based on the above experience, I have a thorough understanding of the nature of public
21 utility regulation at the state and federal levels and the key features of regulatory statutes
22 administered by state public utility commissions, with a particularly deep background in
23 New Mexico public utility regulation.

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1 An updated copy of my curriculum vitae is attached as JA Exhibit SK-1 (Rebuttal).

2
3 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

4 **A.** I am testifying on behalf of Joint Applicants in support of their Revised Joint Application
5 for New Mexico Public Regulation Commission (“NMPRC” or “Commission”)
6 authorization for the proposed acquisition of TECO Energy, NMGI, and NMGC by
7 Saturn Holdco (the “Transaction”).¹

8
9 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS CASE?**

10 **A.** Yes. I initially submitted Rebuttal Testimony in support of the Application on May 16,
11 2025. Then, in accordance with the Order Setting Filing Date for Revised Application
12 issued on June 30, 2025, I submitted Revised Application Direct Testimony and Exhibits
13 on July 3, 2025 (“Revised Application Direct Testimony”). My Revised Application Direct
14 Testimony incorporated the matters discussed in my Rebuttal Testimony.

15

¹ The “Joint Applicants” are New Mexico Gas Company, Inc. (“NMGC”); Emera Inc. (“Emera”); Emera U.S. Holdings Inc. (“EUSHI”); New Mexico Gas Intermediate, Inc. (“NMGI”); TECO Holdings, Inc. (“TECO Holdings”); TECO Energy, LLC (formerly TECO Energy, Inc.) (“TECO Energy”); Saturn Utilities, LLC (“Saturn Utilities”); Saturn Utilities Holdco, LLC (“Saturn Holdco”); Saturn Utilities Aggregator, LP (“Saturn Aggregator”); Saturn Utilities Aggregator GP, LLC (“Saturn Aggregator GP”); Saturn Utilities Topco, LP (“Saturn Topco”); Saturn Utilities Topco GP, LLC (“Saturn Topco GP”); BCP Infrastructure Fund II, LP (“BCP Infrastructure Fund II”); BCP Infrastructure Fund II-A, LP (“BCP Infrastructure Fund II-A”); and BCP Infrastructure Fund II GP, LP (“BCP Infrastructure II GP,” and together with BCP Infrastructure Fund II and BCP Infrastructure Fund II-A, the “BCP Infrastructure Funds”).

Saturn Aggregator, Saturn Aggregator GP, Saturn Topco, Saturn Topco GP, and Saturn Utilities, Saturn Holdco, and the BCP Infrastructure Funds, collectively, are the “BCP Applicants.”

TECO Energy, NMGI, and NMGC, collectively, are the “NMGC Group.”

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II. INTRODUCTION

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to testimony submitted by multiple parties in this proceeding regarding the preservation of the Commission’s jurisdiction following consummation of the Transaction, ownership of public utilities by private equity funds, the acquisition premium in the Transaction, use of the Commission’s six-factor test for assessing the Transaction, the proposed severe weather fund, and arguments regarding future capital expenditures and environmental concerns. With respect to the Commission’s continuing jurisdiction, I respond to the testimony submitted by Darren K. Zigich, Felicia S. Jojola, and Naomi A. Velasquez on behalf of NMPRC Utility Division Staff (“Staff”); the testimony submitted by Jesse George on behalf of New Energy Economy (“NEE”); and the testimony submitted by Bradley T. Cebulko on behalf of Western Resource Advocates (“WRA”). With respect to private equity ownership of public utilities, I respond to the testimony of Christopher Sandberg on behalf of NEE; the testimony of Christopher C. Walters on behalf of New Mexico Affordable Reliable Energy Alliance (“NM AREA”); and the testimony of Mr. Cebulko on behalf of WRA. With respect to the acquisition premium, I respond to testimony submitted by Larry Blank on behalf of Staff and testimony submitted by Mr. Cebulko on behalf of WRA. With respect to use of the six-factor test, I respond to testimony submitted by Mr. Sandberg on behalf of NEE and Mr. Cebulko on behalf of WRA. With respect to the proposed weather fund, I respond to the testimony of Bryce Zedalis on behalf of Staff. With respect to arguments on capital expenditures, I respond to the testimony of Jason C. Price on behalf of the Coalition for Clean Affordable Energy (“CCAIE”); Dwight D. Etheridge on behalf of the U.S. Department of Energy

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1 representing the federal executive agencies; and the testimony of Mr. Cebulko on behalf of
2 WRA. With respect to arguments on environmental issues, I respond to the testimony of
3 Stefani L. Penn, Mr. Price, and Angela J. Vitulli on behalf of CCAE; the testimony of Mr.
4 George on behalf of NEE; and the testimony of Michael Kenney on behalf of WRA.

5
6 **Q. WHAT ARE YOUR KEY CONCLUSIONS REGARDING THE COMMISSION'S**
7 **CONTINUING JURISDICTION OVER NMGC?**

8 **A.** I agree with Staff witness Zigich's overall assessment that Commission jurisdiction over
9 NMGC will be preserved following the Transaction. Additionally, I do not believe the
10 additional reporting requirements Mr. Cebulko recommends are necessary for effective
11 Commission oversight of NMGC. Likewise, I believe that the additional information
12 sought by NEE witness George regarding the compliance records of certain companies—
13 which are not parties to this proceeding or affiliates of such parties—is not needed for the
14 Commission to fulfill its statutory duty in evaluating the Transaction. I also disagree with
15 Mr. George's suggestion that the structure of the BCP Applicants may be used to evade
16 regulatory scrutiny.

17
18 **Q. WHAT ARE YOUR KEY CONCLUSIONS REGARDING PRIVATE EQUITY**
19 **OWNERSHIP OF PUBLIC UTILITIES?**

20 **A.** I disagree with NEE witness Sandberg's argument that it is inherently detrimental for
21 private equity firms to acquire public utilities like NMGC. In my experience and
22 considering the regulatory framework applicable to public utilities, infrastructure
23 investment funds like the BCP Infrastructure Funds are often well-suited to public utility

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1 ownership and are emerging as an important source of capital for the energy sector.
2 Additionally, in light of the 10-year holding period commitment, I also disagree with
3 arguments that the BCP Applicants as private equity funds are likely to retain ownership
4 of NMGC for too short a period of time. I also do not share WRA witness Cebulko's
5 concern that the BCP Applicants will maximize their short-term returns at the expense of
6 NMGC customers.

7
8 **Q. WHAT ARE YOUR KEY CONCLUSIONS REGARDING THE ACQUISITION**
9 **PREMIUM?**

10 **A.** I disagree with WRA witness Cebulko's argument that the acquisition premium associated
11 with this Transaction will put undue pressure on the BCP Applicants to extract value from
12 NMGC in the short term at the expense of customers. Additionally, I do not believe the
13 public interest would be served by requiring NMGC to record the acquisition premium as
14 a regulatory liability, as Staff witness Blank recommends, or otherwise share the
15 acquisition premium with customers.

16
17 **Q. WHAT ARE YOUR KEY CONCLUSIONS REGARDING THE SIX-FACTOR**
18 **TEST?**

19 **A.** While certain witnesses criticize Emera for not considering each of the factors addressed
20 in the Commission's six-factor test when evaluating potential buyers for NMGC, I believe
21 these criticisms reflect a misunderstanding of the respective roles of the Commission and
22 private companies that own public utilities. The six-factor test discussed above is a tool
23 the Commission uses in carrying out its responsibility to ensure that acquisitions of public

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1 utilities are not inconsistent with the public interest. There is no general duty for the
2 existing owner of a public utility to emphasize or consider these factors when courting or
3 evaluating acquisition offers. In my experience, it is appropriate and expected for the
4 managers and directors of a public utility holding company that is considering a sale to
5 focus on satisfaction of their fiduciary duties with an emphasis on the financial impact of
6 the potential transaction—and with the recognition that any proposed transaction will be
7 reviewed by and must secure the approval of regulators who properly will be focused on
8 whether the deal is consistent with the public interest.

9
10 **Q. WHAT ARE YOUR KEY CONCLUSIONS REGARDING THE PROPOSED**
11 **SEVERE WEATHER FUND?**

12 **A.** I believe it was reasonable for the Joint Applicants to maintain their commitments to
13 customer rate credits, economic development, and charitable contributions rather than
14 voluntarily adopting Mr. Zedalis's proposal for a severe weather fund.

15
16 **Q. WHAT ARE YOUR KEY CONCLUSIONS REGARDING ARGUMENTS ON**
17 **CAPITAL EXPENDITURES AND ENVIRONMENTAL CONCERNS?**

18 **A.** I believe that this proceeding is not the correct venue for addressing the arguments that
19 have been raised about future NMGC capital expenditures and future trends in greenhouse
20 gas and other emissions, electrification, and the use of alternative fuels.

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III. THE COMMISSION’S CONTINUING JURISDICTION OVER NMGC

Q. DO YOU AGREE WITH STAFF WITNESS ZIGICH’S OVERALL ASSESSMENT THAT “COMMISSION JURISDICTION OVER NMGC WILL BE PRESERVED FOLLOWING THE PROPOSED TRANSACTION”?

A. Yes. I agree with Mr. Zigich’s overall assessment that, in light of the commitments in the Revised Joint Application and the Amended General Diversification Plan, “Commission jurisdiction over NMGC will be preserved following the proposed transaction.”² As I explained in my direct testimony, public utilities like NMGC provide essential services to the public, but for structural reasons tend toward monopoly or otherwise imperfect competition. It is therefore of the utmost importance that public utilities remain subject to comprehensive and robust regulatory oversight, regardless of any changes in ownership. Commission precedent reflects this principle by requiring that when evaluating proposed change-in-control transactions, the Commission must consider whether its “jurisdiction will be preserved.”³ I agree with Mr. Zigich’s overall assessment that this critical requirement is satisfied with respect to the Transaction.

Mr. Zigich noted that Staff witnesses Jojola and Velasquez have raised certain “concerns regarding potential impediments to Commission oversight.”⁴ While these witnesses recommended Joint Applicants provide certain additional information or commitments, I

² Zigich Direct at 9.

³ See *In the Matter of the Acquisition by EPCOR Water (USA) Inc. of the Common Stock of N.M. Am. Water Co., Inc.*, No. 11-00085-UT, 2011 WL 11767724 (NMPRC Dec. 2, 2011 recommended decision; adopted Dec. 22, 2011).

⁴ Zigich Direct at 10.

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1 do not believe any of their concerns go to the central issue of whether Commission
2 jurisdiction will be preserved. Notably, Ms. Jojola and Ms. Velasquez conclude that the
3 commitments made by Joint Applicants meet the requirements for Class I and Class II
4 Transactions, which are important for ensuring preservation of the Commission's authority
5 with respect to transactions involving affiliated interests.⁵

6
7 **Q. DO YOU AGREE WITH WRA WITNESS CEBULKO'S RECOMMENDATION**
8 **THAT NMGC SHOULD BE REQUIRED TO COMPLY WITH REPORTING**
9 **REQUIREMENTS APPLICABLE TO PUBLICLY TRADED COMPANIES?**

10 **A.** No. Based on my experience, I do not believe the additional reporting requirements Mr.
11 Cebulko recommends⁶ are necessary for effective Commission oversight of NMGC.
12 While more extensive reporting requirements can provide transparency benefits, they also
13 can impose significant compliance burdens and can have distortionary effects, like
14 encouraging a disproportionate focus on the reporting company's short-term metrics rather
15 than long-term health.⁷ Accordingly, I believe it is important for federal and state
16 policymakers to carefully design reporting regimes so that requirements are properly
17 tailored to the relevant industry, activities, and risks. Indeed, state and federal officials
18 have developed specific reporting requirements that apply to natural gas utilities like
19 NMGC.⁸ The Commission also has authority to require public utilities like NMGC to

⁵ Jojola Direct at 13-20, Velasquez Direct at 14-21.

⁶ See Cebulko Direct at 53-56.

⁷ See Kelly Direct at 22 & n.36.

⁸ See, e.g., Jojola Direct at 14-15 (discussing Staff's understanding that NMGC will continue to comply with various state compliance reporting requirements, such as 17.3.220 NMAC (NMPSC Rule 220) and

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1 provide books, records, accounts, documents, and other information upon request and the
2 Joint Applicants have made express commitments recognizing and reinforcing this
3 authority.⁹ Given this context and based on my experience, I do not believe wholesale
4 adoption of otherwise inapplicable U.S. Securities and Exchange Commission and/or
5 Sarbanes-Oxley Act reporting requirements is warranted here.

6
7 **Q. DO YOU AGREE WITH NEE WITNESS GEORGE’S ARGUMENT THAT THE**
8 **COMMISSION CANNOT FULFILL ITS STATUTORY DUTY TO EVALUATE**
9 **THE TRANSACTION WITHOUT ADDITIONAL INFORMATION ABOUT THE**
10 **COMPLIANCE HISTORY OF OTHER COMPANIES THAT ARE NOT PARTIES**
11 **TO OR AFFILIATES OF PARTIES TO THIS PROCEEDING?**

12 **A.** No. Mr. George raises concerns about “compliance issues” involving companies he
13 characterizes as “BCP-owned affiliates” and claims the Commission “cannot fulfill its
14 statutory duty under N.M.S.A. 1978, §§ 62-6-12 and 62-6-13 without probing the full track
15 record of the acquiring party, including its non-utility affiliates.”¹⁰ Mr. George’s concerns
16 are tied to a discovery dispute regarding interrogatories on the compliance history of certain
17 companies owned by funds that are managed by Bernhard Capital Partners Management,
18 LP (“BCP Management”) but are not parties to this proceeding.

17.3.220.6 NMAC (NMPSC Rule 610)). NMGC also regularly submits reports to FERC, such as FERC Form Nos. 549D and 552, and the obligation to submit these reports will not change as a result of the Transaction.

⁹ See Kelly Direct at 13-14.

¹⁰ George Direct at 10-16.

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1 In evaluating this argument, I believe it is important to recognize the ways in which Mr.
2 George fundamentally mischaracterizes the relationship between the companies whose
3 compliance records are at issue and the BCP Applicants. As the Joint Applicants explained
4 in response to NEE’s motion to compel responses to interrogatories on this topic, the
5 companies’ whose compliance histories are at issue—referred to in that filing as “Third-
6 Party Companies”—“are neither parties to this proceeding nor affiliates of parties to this
7 proceeding” and none “are or would be under common control, governance, or operations
8 with the Joint Applicants.”¹¹ These Third-Party Companies are owned by investment funds
9 that are not parties to this proceeding or affiliates of parties to this proceeding.¹² The funds
10 that own the Third-Party Companies are advised and supported by BCP Management, but
11 BCP Management does not itself own or control those funds.¹³ The same is true of BCP
12 Management’s relationship with the BCP Infrastructure Funds that would be the indirect
13 upstream owners of NMGC if the Transaction is approved.¹⁴ While BCP Management
14 provides advice and support to the funds it manages and the companies in which those
15 funds have invested, it does not “have the authority to compel action on the part of the
16 funds [it advises], nor of the companies that the funds own.”¹⁵ As such, Joint Applicants
17 argued that these “Third-Party Companies” are “not the proper subject of discovery in this
18 matter and their operations are not relevant to this matter.”¹⁶

¹¹ Joint Applicants’ Response to Motion to Compel at 2-3.

¹² *See id.* at 3.

¹³ *See id.*

¹⁴ *See id.* at 16-18.

¹⁵ *Id.* at 18.

¹⁶ *Id.* at 13.

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1 Notably, the Hearing Examiner directly addressed this dispute in a September 19, 2025
2 order and agreed with the Joint Applicants, finding that (1) NEE failed to demonstrate “that
3 the companies from which it seeks information are owned by any of the Joint Applicants,”
4 and (2) NEE failed to establish why those companies would be “obligated under New
5 Mexico law to disclose information to NEE in discovery pursuant to the present
6 proceeding.”¹⁷

7
8 Based on the record developed in connection with NEE’s Motion to Compel and the nature
9 of the relationship between the Joint Applicants and the Third-Party Companies, I believe
10 the additional information NEE seeks regarding the Third-Party Companies’ compliance
11 records is not needed for the Commission to fulfill its statutory duty in evaluating whether
12 the Transaction is “unlawful or is inconsistent with the public interest.”¹⁸

13
14 **Q. DO YOU AGREE WITH NEE WITNESS GEORGE’S SUGGESTION THAT BCP**
15 **APPLICANTS’ CORPORATE STRUCTURE MAY BE USED TO EVADE**
16 **REGULATORY SCRUTINY?**

17 **A.** No. Mr. George argues that the discovery dispute discussed above regarding the
18 compliance records of Third-Party Companies and the structure of the BCP Applicants’
19 holdings “signals a corporate culture aimed at evading direct scrutiny.”¹⁹ He also argues
20 that “[i]f BCP can use layered ownership to shield itself from accountability for violations

¹⁷ Order on Motion to Compel at P 4.

¹⁸ N.M.S.A. 1978 § 62-6-13.

¹⁹ George Direct at 13-14.

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1 at Epic Piping, Elevation Solar, or National Water Infrastructure, the same tactic could be
2 used to shield a future NMGC from [Commission] inquiries or public disclosure.”²⁰ I
3 disagree with these assertions.

4
5 I believe it is important to bear in mind that the Third-Party Companies whose compliance
6 records are of concern to NEE are not subject to this Commission’s jurisdiction—indeed,
7 most are not public utilities whatsoever. On the other hand, there is no question that NMGC
8 is and will remain a Commission-jurisdictional public utility. Additionally, I believe the
9 position the Joint Applicants took in the discovery dispute regarding the compliance
10 records of Third-Party Companies was reasonable given the limited nature of the
11 relationship between the Third-Party Companies and the Joint Applicants. The Hearing
12 Examiner evidently agreed, siding with the Joint Applicants and rejecting NEE’s motion
13 to compel. In his order, the Hearing Examiner noted that the Joint Applicants provided
14 “detailed factual context” and legal analysis in support of their position.²¹ Given this
15 record, I do not believe any adverse inference about the Joint Applicants’ culture of
16 compliance and forthrightness with the Commission is warranted based on this discovery
17 dispute.

18
19 Additionally, based on my experience, I do not believe the BCP Applicants’ corporate
20 structure creates opportunities to evade regulatory oversight. Mr. George raises

²⁰ *Id.* at 15.

²¹ Order on Motion to Compel at PP 6-7.

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1 generalized concerns about “BCP’s layered ownership structure,”²² but does not specify
2 why a multi-level ownership structure is problematic. NMGC itself is a Commission-
3 jurisdictional public utility and, as discussed in my direct testimony, NMGC’s upstream
4 owners will continue to be subject to Commission oversight as public utility holding
5 companies.²³ New Mexico law defines “public utility holding company” as “an affiliated
6 interest that controls a public utility through the direct *or indirect* ownership of voting
7 securities of that public utility.”²⁴ Accordingly, each of NMGC’s upstream owners will be
8 public utility holding companies subject to Commission jurisdiction, no matter how many
9 intermediary holding companies exist. I also note that the proposed post-Transaction
10 ownership structure is not materially more complex than NMGC’s current ownership
11 structure.²⁵ Based on the foregoing factors and my professional experience, I do not
12 believe the BCP Applicants’ corporate structure will interfere with the Commission’s
13 ability to effectively regulate NMGC.

²² George Direct at 15-16.

²³ Kelly Direct at 6, 17.

²⁴ N.M.S.A. 1978 § 62-3-3(N) (emphasis added); *see id.* § 62-3-3(A) (defining “affiliated interest” as “a person who directly *or indirectly, through one or more intermediaries*, controls or is controlled by or is under common control with a public utility”) (emphasis added).

²⁵ *See* Exh. JMB-5 (Revised Application).

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IV. PRIVATE EQUITY OWNERSHIP

Q. DO YOU AGREE WITH NEE WITNESS SANDBERG’S ARGUMENT THAT IT IS INHERENTLY DETRIMENTAL FOR PRIVATE EQUITY FIRMS TO ACQUIRE PUBLIC UTILITIES LIKE NMGC?

A. No. Mr. Sandberg suggests that private equity ownership of public utilities is inherently harmful, emphasizing “[t]he detrimental effects of acquisitions of critical areas of the U.S. economy by private equity firms.”²⁶ As discussed in my direct testimony, I disagree with this general assessment.²⁷

In my experience, there is considerable diversity in the business models and investment strategies of private equity funds, many of which do not fit the corporate raider stereotype that Mr. Sandberg invokes in his testimony. Indeed, recent years have seen the growth of infrastructure investment funds—like the BCP Infrastructure Funds—that work with large, experienced, and sophisticated institutional investors who understand and want to support the business model of well-managed, rate-regulated public utilities.²⁸ In my experience, these infrastructure investment funds are often well-suited to public utility ownership and are emerging as an important source of capital for the energy sector. While critics like Mr. Sandberg argue that private equity firms prioritize short-term profits over the long-term interests of the companies they own (and those companies’ customers),²⁹ in my experience

²⁶ Sandberg Direct at 24-34.

²⁷ See generally Kelly Direct, Part IV.

²⁸ *Id.* at 19-20.

²⁹ See, e.g., Sandberg Direct at 25-26.

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1 that is not a fair critique of infrastructure investment funds.³⁰ In fact, private equity firms
2 actually can be more insulated from short-term financial pressures than publicly traded
3 companies that are required to publicly report their earnings on a quarterly basis.³¹
4 Appropriately tailored private equity ownership also can provide other meaningful benefits
5 for public utilities, including improved accountability and support for public utility
6 management.³²

7
8 One other critical factor in my experience is that public utilities like NMGC that are
9 acquired by private equity firms continue to be thoroughly regulated at both the state and
10 federal level. The uniquely robust nature of public utility regulation—including
11 ratemaking authority and the ability to disallow proposed transactions—provides a
12 powerful tool for protecting the public interest within the context of private equity
13 ownership.³³ In my experience, the comprehensive nature of public utility regulation
14 means that comparisons to private equity ownership in other industries without comparable
15 regulatory structures—such as Mr. Sandberg’s discussion of private equity ownership in
16 the healthcare sector³⁴—are of limited relevance.

³⁰ See Kelly Direct at 21-22.

³¹ *Id.* at 22-23.

³² *Id.* at 23-24.

³³ See *id.* at 24-25.

³⁴ Sandberg Direct at 27-30.

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1 I acknowledge that Mr. Sandberg also discusses “concerns about the negative effects of
2 private equity” in the specific context of public utility ownership.³⁵ However, based on
3 my experience, I do not find his arguments compelling.

4
5 *First*, Mr. Sandberg references a section of a 2020 text by Scott Hempling that discusses
6 “‘at least four unique issues’ raised by private equity buyouts: heavy debt financing, short
7 investor time horizon, limited utility experience, and loss of public disclosure.”³⁶
8 However, in my experience, the concerns that Mr. Hempling flags can be addressed
9 through regulatory oversight that ensures the public utility maintains an appropriate capital
10 structure and is properly insulated from holding company debt, scrutinizes proposed
11 change-of-control transactions to ensure the public interest is protected, and establishes
12 appropriate requirements with respect to public utility management and access to books
13 and records. Additionally, Mr. Hempling acknowledges that the concerns he raises may
14 not apply to all private equity acquisitions, noting that “new owners and new management
15 might create a more responsive, and streamlined service culture” and that private equity
16 firms may be “subject to less pressure to set and meet the short-term profit goals normally
17 expected of publicly-traded companies.”³⁷ Based on my experience, I believe Mr.

³⁵ *Id.* at 30-34.

³⁶ *Id.* at 30 (quoting Scott Hempling, *Regulating Mergers and Acquisition of U.S. Electric Utilities: Industry Concentration and Corporate Complication* at 457 (2020) (“Hempling”)). Mr. Sandberg describes Mr. Hempling as a “[f]ormer FERC ALJ.” *Id.* I note that Mr. Hempling served as a FERC administrative law judge from 2021 to 2024; Mr. Hempling had no affiliation with FERC when he published the text referenced in Mr. Sandberg’s testimony. See Scott Hempling: Attorney at Law , <https://scotthemplinglaw.com/> (last visited Oct. 7, 2025).

³⁷ Hempling at 457-58.

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1 Hempling’s concerns are less likely to apply to infrastructure investment funds than more
2 stereotypical private equity firms.

3
4 *Second*, Mr. Sandberg highlighted the proposed acquisition of ALLETE, Minnesota
5 Power’s parent company, by the Canada Pension Plan Investment Board and Global
6 Infrastructure Partners, noting that the Administrative Law Judge presiding in the
7 Minnesota Public Utilities Commission (“Minnesota PUC”) proceeding concerning the
8 acquisition recommend that the Commission disallow the proposed transaction. Mr.
9 Sandberg claimed that this case is instructive because, like the Transaction at issue here,
10 “the alleged benefits are—at best—short term patches which attempt to mask the long-term
11 dangers of placing a critical public service into the hands of the private equity parties
12 seeking approval....”³⁸ However, the Minnesota PUC on October 3, 2025 unanimously
13 approved that proposed acquisition.³⁹ In the open meeting in which this decision was
14 discussed, several members of the Minnesota PUC emphasized that their continued
15 regulatory authority to oversee Minnesota Power will protect against any risks posed by
16 the acquisition.⁴⁰ Commissioner Hwikwon Ham also emphasized that private equity

³⁸ Sandberg Direct at 31.

³⁹ The written Minnesota PUC decision had not been posted as of 10:00 a.m. EDT on the day this testimony was filed (October 10, 2025).

⁴⁰ Webcast Recording Minnesota PUC Meeting, Remarks of Chair Seiben at 1:49:00 (Oct. 3, 2025) (“The Minnesota PUC is going to retain its oversight over Minnesota Power. Again, we are a state regulatory agency, and we will continue to regulate Minnesota Power, its rates, resource acquisitions, service quality standards, and other important functions that get to the very core of why we regulate as we do. The laws of Minnesota that apply to Minnesota Power remain, and we will continue to regulate Minnesota Power under the laws and rules of the state of Minnesota.”); *id.*, Remarks of Comm’r Ham at 1:22:00 (noting that the Minnesota PUC can deal with any misbehavior through rate cases); *id.*, Remarks of Comm’r Partridge at 1:39:00 to 1:48:00 (explaining she decided to approve the proposed acquisition after considering “the expansive regulatory authority of this Commission” and after she

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1 ownership is likely to provide more stable access to capital, noting that as a publicly traded
2 company ALLETE was exposed to financial market instability, including the risk of
3 extreme market reactions to unpredictable events like wildfires.⁴¹ Based on my experience,
4 I agree with these Commissioners' assessments and I believe their reasoning applies to the
5 Transaction at issue here.

6
7 *Third*, Mr. Sandberg argues that the El Paso Electric ("EPE") rate cases in Texas and New
8 Mexico following the company's acquisition by the Infrastructure Investments Fund
9 demonstrate the "detrimental effects of private equity ownership of utilities."⁴² In my
10 view, however, EPE's recent rate cases in fact show that state regulators retain the authority
11 to ensure that local public utilities owned by private equity firms continue to charge rates
12 that are just and reasonable. I note for context that these rate cases were filed during a
13 period in which average utility rates increased significantly due to a variety of factors,
14 including inflation and the need for significant infrastructure investments.⁴³ In my
15 experience, there is little value in scrutinizing a single utility's rate increases without any
16 comparisons to peer utilities, as Mr. Sandberg does with respect to EPE. Nevertheless, I

"assumed the absolute worst in these investors, and ... tested whether our regulations and the enforceable commitments of these agreements would hold up to protect the utility, its workers, its customers, and the communities Minnesota Power serves").

⁴¹ *Id.*, Remarks of Comm'r Ham at 1:15:15 – 1:17:30.

⁴² Sandberg Direct at 31-34.

⁴³ *See, e.g.*, Umair Irfan, *Why US Power Bills Are Surging*, Wired (Oct. 4, 2025), <https://www.wired.com/story/power-bills-in-the-us-are-soaring-and-will-rise-further-still/> (reporting that residential electricity rates have risen more than 30 percent on average since 2020 due to a variety of factors, such as "[r]ising electricity demand, volatile fuel prices, inflation, tariffs, a slowdown in transmission line construction, and long delays in adding new generators to the power grid").

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1 note that while EPE did seek significant rate increases in recent proceedings, those requests
2 have not been determinative of the rates EPE’s customers actually pay. Instead, there have
3 been extensive proceedings in each rate case, with state regulators retaining authority to
4 establish rates that are just and reasonable—and in the 2021 Texas rate case the rate
5 approved by the Public Utility Commission of Texas was significantly lower than that
6 initially proposed by EPE.⁴⁴ This is consistent with my experience and the account I
7 provide in my Direct Testimony about how continued regulatory oversight of public utility
8 operations and rates help ensure that private equity ownership does not lead to adverse
9 impacts on customers.

10
11 **Q. DO YOU AGREE WITH ARGUMENTS FROM WRA WITNESS CEBULKO AND**
12 **NM AREA WITNESS WALTERS THAT THE BCP APPLICANTS AS PRIVATE**
13 **EQUITY FUNDS ARE LIKELY TO RETAIN OWNERSHIP OF NMGC FOR TOO**
14 **SHORT A PERIOD OF TIME?**

15 **A.** No. Both Mr. Cebulko and Mr. Walters suggest that, as private equity funds, the BCP
16 Applicants are likely to retain ownership of NMGC for too short a period of time and will
17 be overly focused on short-term gains.⁴⁵ In my view, this argument fails to give appropriate
18 weight to the BCP Applicants’ commitment to hold NMGC for at least 10 years. Based on
19 my experience, I believe a 10-year holding period provides a significant degree of stability,
20 ensures the owners remain committed to the public utility’s long-term health, and is

⁴⁴ See *Application of El Paso Elec. Co. to Change Rates*, No. 52195, 2022 TEX. PUC LEXIS 4954 (Tex. Pub. Util. Comm’n Sep. 15, 2022; rehearing denied Nov. 3, 2022).

⁴⁵ See Cebulko Direct at 12-15; Walters Direct at 40-42.

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1 consistent with holding period requirements in other recent utility acquisitions.⁴⁶
2 Additionally, as discussed above and in my Direct Testimony, in my experience private
3 equity infrastructure investment funds often are *less* focused on short-term metrics than
4 publicly traded companies.⁴⁷
5

6 **Q. DO YOU AGREE WITH WRA WITNESS CEBULKO’S CONCERN THAT THE**
7 **BCP INFRASTRUCTURE FUNDS AS PRIVATE EQUITY FUNDS WILL**
8 **MAXIMIZE SHORT-TERM RETURNS AT THE EXPENSE OF NMGC**
9 **CUSTOMERS?**

10 **A.** No. Mr. Cebulko argues that because the BCP Applicants are private equity funds that
11 intend to hold NMGC for only a “short period of time,” they “have a built-in incentive to
12 maximize near-term returns in order to position NMGC for resale”—a goal that is
13 “fundamentally misaligned with customers’ long-term interest in safe, affordable, and
14 reliable gas service.”⁴⁸ In particular, Mr. Cebulko contends that the BCP Applicants intend
15 “to accelerate [NMGC’s] rate base growth during the very period that coincides with its
16 promised ownership horizon, thereby boosting earnings and resale value within the

⁴⁶ Kelly Direct at 21.

⁴⁷ See *supra* at 11-12, 17-18; Kelly Direct at 22-23.

⁴⁸ Cebulko Direct at 15. Mr. Sandberg quotes a report that similarly argues that private equity firms “pursue aggressive financial-engineering strategies—such as severe cost-cutting, charging excessive management fees, paying themselves debt-funded dividends, and selling off valuable assets—that prioritize extracting short-term value over the long-term stability of the companies they control.” Sandberg Direct at 26 (quoting *Private Equity, Public Damage*, Americans For Tax Fairness et al. (Feb. 2025), https://pestakeholder.org/wp-content/uploads/2025/02/PESP-ATF-AFR_Report_PE-Tax-Code_2025.pdf).

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1 expected window of exit.”⁴⁹ Mr. Cebulko further claims that “the BCP Applicants intend
2 to accelerate investment in rate base regardless whether the investments are necessary.”⁵⁰
3

4 As discussed in the preceding response, I disagree with Mr. Cebulko’s assessment that the
5 10-year holding period to which the BCP Applicants have agreed is too short to ensure
6 stability and an appropriate focus on NMGC’s long-term health. Moreover, even if the
7 BCP Applicants were to attempt to unnecessarily expand NMGC’s rate base by
8 accelerating capital investments, the Commission has ample authority to determine that
9 such investments are imprudent and deny recovery. In my experience, rational investors
10 are unlikely to put their capital at risk in this way and public utility regulators are well-
11 equipped to protect ratepayers from such strategies if they are employed.
12

V. ACQUISITION PREMIUM

13
14 **Q. DO YOU AGREE WITH WRA WITNESS CEBULKO’S ARGUMENT THAT THE**
15 **ACQUISITION PREMIUM CREATES INCENTIVES FOR THE BCP**
16 **APPLICANTS TO EXTRACT VALUE FROM NMGC IN THE SHORT TERM AT**
17 **THE EXPENSE OF CUSTOMERS?**

18 **A.** No. I do not share Mr. Cebulko’s view that the acquisition premium associated with this
19 Transaction will put undue pressure on the BCP Applicants to extract value from NMGC
20 in the short term at the expense of customers. Mr. Cebulko suggests that the BCP

⁴⁹ *Id.* at 31.

⁵⁰ *Id.* at 12; *see id.* at 24 (expressing concern “that the BCP Applicants are intent on forcing significant new investments in rates for the sake of expanding the rate base, rather than in response to customer needs”).

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1 Applicants will need to earn back the entire acquisition premium during the period in which
2 they own NMGC and thus “will have strong incentives to: (1) cut operating costs, potentially
3 at the expense of service quality; (2) seek an increased return on equity or a more favorable
4 capital structure; or (3) accelerate growth of NMGC’s rate base.”⁵¹ Based on my
5 experience, I believe this argument is fundamentally flawed because it overlooks the fact
6 that the BCP Applicants also can recoup their investment by preserving (or increasing) the
7 overall, long-term value of NMGC as a going concern so that they are able to earn a
8 comparable (or larger) acquisition premium if and when they sell their interest in NMGC
9 to a new owner. Additionally, because the Commission will retain its authority to regulate
10 NMGC as a public utility, I believe, based on my experience, that the Commission will be
11 able to guard against any improper efforts to recover the acquisition premium from
12 customers, including by enforcing and overseeing compliance with quality of service
13 standards, rejecting unjustified proposals to increase NMGC’s return on equity or alter
14 NMGC’s capital structure, and denying recovery of any capital investments that are not
15 prudent. The Commission also has authority to enforce the express commitment the BCP
16 Applicants have made that “NMGC will not, directly or indirectly, seek to recover in any
17 future rate case, any increased goodwill or the increase in any other intangible asset
18 resulting from the Transaction and allocated to NMGC (‘Acquisition Premium’).”⁵²

⁵¹ *Id.* at 15; *see id.* at 32 (“The BCP Applicants have a limited amount of time to justify paying the premium and to earn a reasonable return for its investors.”).

⁵² JA Exh. JMB-4 (Revised Application) at ¶ 19; Baudier Direct at 44; Amended GDP at 20; *see* Kelly Direct at 27-28.

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Q. DO YOU AGREE WITH STAFF WITNESS BLANK’S RECOMMENDATION THAT “AN AMOUNT EQUAL TO THE GOODWILL PAID TO THE SELLERS AT CLOSING OF THIS TRANSACTION SHOULD BE BOOKED AS A REGULATORY LIABILITY TO CUSTOMERS”?

A. No. Dr. Blank recommends that “[a]n amount equal to the goodwill paid to the sellers at closing of this transaction should be booked as a regulatory liability to customers,” with use of this regulatory liability account to be “decided by the Commission at a later date.”⁵³ Although Dr. Blank claims he is not recommending “sharing of the acquisition premium,”⁵⁴ that would in fact be the practical effect of his proposal. Indeed, Dr. Blank himself acknowledges that (1) his proposal amounts to a recommendation that the value of the goodwill reflected in the acquisition premium “should be transferred to customers as part of this transaction,”⁵⁵ and (2) the purchase price may “need to be renegotiated for the buyer and seller to share in that amount to customers....”⁵⁶

As I explained in detail in my direct testimony, I do not believe the public interest would be served by requiring NMGC to record the acquisition premium as a regulatory liability or otherwise share the acquisition premium with customers.⁵⁷ Based on my experience, I believe this recommendation is inconsistent with fundamental principles of public utility

⁵³ Blank Direct at 5.

⁵⁴ *Id.* at 9-10.

⁵⁵ *Id.* at 8.

⁵⁶ *Id.* at 10; *see id.* at 10-11.

⁵⁷ Kelly Direct at 29-33.

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1 regulation and well-considered precedent. In particular, I am concerned that adopting Dr.
2 Blank’s recommendation would create confusion about who ultimately bears the risks—
3 *i.e.*, bears the financial responsibility—for a public utility’s success or failure. For
4 privately owned public utilities like NMGC, those risks properly must be borne by the
5 public utility’s *owners*—not by its customers. The Supreme Court of New Mexico has
6 recognized this important principle, explaining that “a utility customer is not a partner or
7 beneficiary of the utility and does not share the profits or risks of the utility or its
8 affiliate.”⁵⁸ I believe Dr. Blank’s recommendation would violate this core principle. Just
9 as customers should not be responsible for any losses an exiting owner may incur when it
10 sells a public utility, it also is not appropriate to require that customers share the gains an
11 exiting owner may realize if it sells a public utility at a purchase price that exceeds the net
12 book value of its assets.

13
14 I believe the Commission correctly applied these core principles of public utility regulation
15 when it rejected similar arguments regarding the 2008 sale of Public Service Company of
16 New Mexico’s (“PNM’s”) gas utility and the formation NMGC. In that decision, the
17 Commission explained “the risks of loss on the sale of an entire utility or utility system
18 falls on the utility’s shareholders, and therefore any gain on the sale of those assets should
19 be allocated entirely to shareholders, absent special circumstances that warrant a different

⁵⁸ *Gas Co. of N.M. v. N.M. Pub. Serv. Comm’n*, 1984-NMSC-002, ¶ 13, 100 N.M. 740, 743, 676 P.2d 817, 820.

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1 allocation.”⁵⁹ Based on my experience, I believe the reasoning in that decision was correct
2 and applies with equal force to the Transaction at issue in this proceeding.

3
4 Dr. Blank has not identified any “special circumstances” that warrant departure from the
5 general principles the Commission recognized in *PNM*. Indeed, the relevant portion of Dr.
6 Blank’s testimony does not engage whatsoever with applicable precedent.⁶⁰ Instead, he
7 relies on a single author, Scott Hempling,⁶¹ whose work on this topic, in my view, does not
8 reflect core principles of economic regulation of public utilities.

9
10 Dr. Blank’s recommendation is based on the premise that the acquisition premium
11 primarily reflects or is derived from the “value in gaining ownership control of a
12 government-created and government-protected monopoly utility company with captive
13 customers.”⁶² Based on my experience, I disagree with this premise. As Lisa Quilici
14 explained in her direct testimony, it is important to recognize the monopoly rights created

⁵⁹ *In Re Pub. Serv. Co. of N.M.*, No. 08-00078-UT, 2008 WL 5744189 (NMPRC Dec. 11, 2008; rehearing denied Jan. 20, 2009) (“*PNM*”); *see also* Kelly Direct at 30-33 (discussing other state public utility commission decisions applying this principle); *In the Matter of the Merger of AltaGas Ltd. And WGL Holdings, Inc.*, No. 9449, 2018 Md. PSC LEXIS 2, *108 (Md. Pub. Serv. Comm’n Apr. 4, 2018) (stating that “the acquisition premium represents a negotiated, private transfer of funds between shareholders and is not properly the source of funds to obtain further customer benefits.”).

⁶⁰ *See* Blank Direct at 6-15.

⁶¹ *See id.* at 7 n.2 & 14 n.3 (citing Scott Hempling, *Inconsistent with the Public Interest: FERC’s Three Decades of Deference to Electricity Consolidation*, 39 Energy L.J. 197, 295-296 (2018); Scott Hempling, *Regulating Mergers and Acquisitions of U.S. Electric Utilities: Industry Concentration and Corporate Complication* at ch. 5 & 131 n.49 (2020)).

⁶² Blank Direct at 6-8 (“The primary intangible asset of NMGC is the captured customers of the government-created and government-protected monopoly held by the regulated utility. ... Any other intangible assets that may be identified were derived from that government protected monopoly.”)

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1 by a public utility franchise are paired with an affirmative obligation to provide service to
2 the public at just and reasonable rates, subject to regulatory oversight.⁶³ The agreement by
3 the owners of the public utility to take on this affirmative obligation—and the attendant
4 risks—provides consideration for the monopoly rights they receive.

5
6 Dr. Blank argues that NMGC’s current owners “have no reasonable expectation for the
7 recovery of any goodwill paid in the last acquisition” because, in his view, “customers did
8 not get a fair share of the acquisition payments in the last acquisition case....”⁶⁴ I disagree
9 with this assessment. Based on my experience, I believe that departing from established
10 precedent and core regulatory principles by adopting Dr. Blank’s recommendation would
11 disrupt investors’ reasonable expectations about the basic framework of public utility
12 regulation in New Mexico.

VI. OTHER ISSUES

14
15 **Q. CERTAIN WITNESSES CRITICIZE EMERA FOR NOT CONSIDERING EACH**
16 **OF THE FACTORS ADDRESSED IN THE COMMISSION’S SIX-FACTOR TEST**

⁶³ Quilici Direct at 6-7.

⁶⁴ Blank Direct at 13.

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1 WHEN EVALUATING POTENTIAL BUYERS FOR NMGC. DO YOU AGREE
2 WITH THIS CRITICISM?

3 A. No. The New Mexico Public Utility Act requires the Commission to evaluate whether a
4 proposed acquisition of a public utility “is unlawful or is inconsistent with the public
5 interest.”⁶⁵ To guide this evaluation, the Commission considers the following factors:

- 6** 1. Whether the transaction provides benefits to utility customers;
- 7** 2. Whether the NMPRC’s jurisdiction will be preserved;
- 8** 3. Whether quality of service will be diminished;
- 9** 4. Whether the transaction will result in the improper subsidization of non-
- 10** utility activities;
- 11** 5. Careful verification of the qualifications and financial health of the new
- 12** owner; and
- 13** 6. Whether there are adequate protections against harm to consumers.⁶⁶

14 Mr. Cebulko references these factors and objects to the Transaction on the grounds that
15 “Emera put its own shareholders’ interests ahead of NMGC customers to such an extent
16 that it did not appear to identify customers’ interests as initial selection criteria.”⁶⁷ Mr.

⁶⁵ N.M.S.A. 1978 § 62-6-13; *see id.* § 62-6-12.

⁶⁶ *See In the Matter of the Joint Application of El Paso Elec. Co., Sun Jupiter Holdings LLC, & IIF US Holding 2 LP, for Approval of the Acquisition of El Paso Elec. Co. by Sun Jupiter Holdings LLC & IIF US Holding 2 LP; Approval of a General Diversification Plan, & All Other Authorizations & Approvals Required to Consummate and Implement this Transaction*, No. 19-00234-UT, 2020 N.M. PUC LEXIS 126 (NMPRC Feb. 12, 2020 unopposed amended certificate of stipulation; adopted March 11, 2020); *In the Matter of the Acquisition by EPCOR Water (USA) Inc. of the Common Stock of N.M.-Am. Water Co., Inc., EPCOR Water (USA) Inc., N.M.-Am. Water Co., Inc. & Am. Water Works Co., Inc.*, No. 11-00085-UT, 2011 WL 11767724 (NMPRC Dec. 2, 2011 recommended decision; adopted Dec. 22, 2011); *In the Matter of the Application of N.M. Gas Co., Inc.; TECO Energy, Inc., Emera Inc.; Emera US Holdings Inc., & Emera US Inc. for Approval of the Merger of Emera US Inc. with TECO Energy Inc. & Emera US Holding Inc.’s Acquisition of TECO Energy Inc., & for All Other Approvals & Authorization Required to Consummate & Implement the Acquisition*, No. 15-00327-UT, 2016 N.M. PUC LEXIS 41 (NMPRC June 8, 2016 certification of stipulation; adopted June 22, 2016).

⁶⁷ Cebulko Direct at 9-10, 51-52.

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1 Sandberg also faults Emera for not emphasizing the six factors in its communications with
2 potential buyers.⁶⁸

3
4 These criticisms reflect a misunderstanding of the respective roles of the Commission and
5 private companies that own public utilities. Economic regulation of public utilities is
6 premised on the understanding that public utilities require significant amounts of capital to
7 build and maintain the infrastructure needed to provide service within a given area. This
8 is one of the key reasons why public utilities tend toward natural monopoly or otherwise
9 imperfect competition. In light of that tendency and because utilities provide essential
10 services to the public, states established public utility regulatory commissions like the
11 NMPRC to protect the public interest, including by ensuring that rates remain just and
12 reasonable.⁶⁹ The public utility regulation framework thus recognizes that the private
13 companies that provide much-needed capital to public utilities are guided by their own
14 financial interests and that it is the responsibility of *regulators* to ensure the public interest
15 is protected.

16
17 The six-factor test discussed above is a tool *the Commission* uses in carrying out its
18 responsibility to ensure that acquisitions of public utilities are not inconsistent with the
19 public interest. There is no general duty for the existing *owner* of a public utility to
20 emphasize or consider these factors when courting or evaluating acquisition offers. Mr.

⁶⁸ Sandberg Direct at 15.

⁶⁹ See *generally*, Janice Beecher, Infrastructure and Land Policies, 87-119 (Gregory K. Ingram and Karin L. Brandt, eds., 2013).

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1 Cebulko criticizes Emera for its focus on financial considerations, but the managers and
2 directors of private companies like Emera, in fact, have fiduciary duties to protect their
3 companies' interests. In my experience, it is appropriate and expected for the managers
4 and directors of a public utility holding company that is considering a sale to focus on
5 satisfaction of their fiduciary duties with an emphasis on the financial impact of the
6 potential transaction—and with the recognition that any proposed transaction will be
7 reviewed by and must secure the approval of regulators who properly will be focused on
8 whether the deal is consistent with the public interest.

9
10 **Q. STAFF WITNESS ZEDALIS RECOMMENDS THAT JOINT APPLICANTS**
11 **SHOULD PROVIDE FUNDING FOR A SEVERE WEATHER FUND IN LIEU OF**
12 **THEIR PROPOSED ECONOMIC DEVELOPMENT AND CHARITABLE**
13 **CONTRIBUTION COMMITMENTS. DO YOU BELIEVE IT WAS**
14 **REASONABLE FOR JOINT APPLICANTS TO MAINTAIN THEIR CUSTOMER**
15 **RATE CREDITS, ECONOMIC DEVELOPMENT, AND CHARITABLE**
16 **CONTRIBUTION COMMITMENTS RATHER THAN VOLUNTARILY**
17 **ADOPTING THIS PROPOSAL?**

18 **A.** Yes. Mr. Zedalis proposes that the Joint Applicants should contribute \$12.5 million of
19 initial funding for a Severe Weather Fund that would “serve as an offsetting relief fund to
20 protect NMGC customers from, primarily, extreme weather-induced natural gas –
21 specifically, swing gas – price surges.”⁷⁰ Mr. Zedalis notes that the Joint Applicants

⁷⁰ Zedalis Direct at 4 (footnote omitted).

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1 committed to provide \$10 million for economic development and \$2.5 million in charitable
2 contributions in connection with this Transaction and argues that “the public interest is
3 better served if the monies committed by the Joint Applicants for economic development
4 and charitable activities are redirected” to the Severe Weather Fund.⁷¹

5
6 In my experience, commitments to provide specific monetary contributions to fund
7 economic development and charitable initiatives are widely recognized as a method of
8 providing public benefits in connection with proposed mergers or acquisitions involving
9 public utilities.⁷² By contrast, Mr. Zedalis does not reference any decisions of this
10 Commission recognizing that a fund or mechanism similar to the proposed Severe Weather
11 Fund necessarily provides public benefits. In light of this record, it is reasonable for the
12 Joint Applicants to believe there is some uncertainty about whether the Commission would
13 view the proposed Severe Weather Fund as providing public interest benefits comparable
14 to or greater than the originally proposed economic development and charitable

⁷¹ *Id.* at 8, 10. Mr. Zedalis further suggests that “additional monies from the offered rate credits” could also be redirected to the Severed Weather Fund. *Id.* at 12.

⁷² *See, e.g., In the Matter of the Joint Application of El Paso Elec. Co., Sun Jupiter Holdings LLC, & IIF US Holding 2 LP, For Approval of the Acquisition of El Paso Elec. Co. by Sun Jupiter Holdings LLC & IIF US Holding 2 LP; Approval of a General Diversification Plan, & All Other Authorizations & Approvals Required to Consummate & Implement this Transaction*, No. 19-00234-UT, 2020 N.M. PUC LEXIS 126, *99, 179 (NMPRC Feb. 12, 2020 amended certification of stipulation; adopted March 11, 2020) (listing \$100 million fund to support economic development in EPE’s service territory, \$20 million of which was to be allocated to EPE’s New Mexico service territory, as a benefit of the transaction); *In the Matter of the Application of N.M. Gas Co., Inc.; TECO Energy, Inc., Emera Inc.; Emera US Holdings, Inc.; & Emera US Inc. for the Approval of the Merger of Emera US, Inc. with TECO Energy Inc. & Emera US Holding Inc.’s Acquisition of TECO Energy, Inc., & for All Other Approvals & Authorizations Required to Consummate & Implement the Acquisition*, No. 15-00327-UT, 2016 N.M. PUC LEXIS, *43-45 (NMPRC June 8, 2016 certification of stipulation; adopted June 22, 2016) (listing establishment of \$10 million fund to extend natural gas infrastructure to existing New Mexico communities that are underserved or unserved as a benefit of the transaction).

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1 contribution commitments. Accordingly, based on my experience I believe it was
2 reasonable for the Joint Applicants to maintain their commitments to customer rate credits,
3 economic development, and charitable contributions rather than shifting course and
4 adopting Mr. Zedalis's proposal voluntarily.

5
6 **Q. SEVERAL WITNESSES MADE ARGUMENTS ABOUT THE APPROPRIATE**
7 **LEVEL OF FUTURE NMGC CAPITAL EXPENDITURES. DO YOU BELIEVE**
8 **THIS PROCEEDING IS THE CORRECT VENUE FOR ADDRESSING THESE**
9 **ARGUMENTS?**

10 **A.** No. I recognize that several witnesses have raised concerns about future NMGC capital
11 investment if the Transaction is approved. Mr. Cebulko of WRA and Mr. Price of CCAE
12 express concern that the BCP Applicants may *overinvest* in NMGC's system.⁷³ On the
13 other hand, Mr. Etheridge, testifying on behalf of the U.S. Department of Energy
14 representing federal executive agencies, expresses concern about *underinvestment* in
15 NMGC's system and recommends an increased capital investment commitment.⁷⁴ The
16 testimony on this topic thus points in opposing directions, but it all is based on projections
17 and speculation about future system conditions and spending patterns. In my experience,
18 arguments about the appropriate and prudent level of capital spending can more properly
19 be addressed in proceedings in which specific, concrete capital investment plans or
20 recovery proposals have been submitted to the Commission for its review. In my

⁷³ Cebulko Direct at 23-32; Price Direct at 6-7, 14-15.

⁷⁴ Etheridge Direct at 15-20.

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1 experience, this approach allows for the development of a more robust record and
2 facilitates regulatory decision-making that is based on substantial evidence and thorough
3 consideration of relevant law and policy priorities. Additionally, I understand that the Joint
4 Applicants are willing to agree to Staff witness Zigich's recommendation that NMGC
5 commit to maintaining its current five-year capital investment plan,⁷⁵ which should further
6 allay concerns on this topic.

7
8 **Q. SEVERAL WITNESSES RAISED ARGUMENTS ABOUT FUTURE TRENDS IN**
9 **GREENHOUSE GAS AND OTHER EMISSIONS, ELECTRIFICATION, AND**
10 **THE USE OF ALTERNATIVE FUELS. DO YOU BELIEVE THIS PROCEEDING**
11 **IS THE CORRECT VENUE FOR ADDRESSING THESE ENVIRONMENTAL**
12 **POLICY ISSUES?**

13 **A.** No. Several witnesses have raised concerns about future trends in greenhouse gas and
14 other emissions, electrification, and the use of alternative fuels in New Mexico.⁷⁶
15 However, the environmental concerns these witnesses raise are driven by broad trends in
16 consumer energy usage as well as by state and federal energy and environmental policy—
17 factors that are outside the control of NMGC and its owners.

18
19 None of the witnesses establish that the proposed Transaction itself—*i.e.*, the change in
20 NMGC's indirect, upstream owners—will directly impact greenhouse gas or other

⁷⁵ See Baudier Rebuttal.

⁷⁶ See George Direct at 9-10; Price Direct at 4, 7; *generally* Vitulli Direct; Kenney Direct; Penn Direct. The alternative fuels discussed by these witnesses include hydrogen, renewable natural gas, and certified low emissions natural gas.

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1 emissions, electrification, or the use of alternative fuels or otherwise impair New Mexico’s
2 ability to meet its environmental goals. For instance, Ms. Vitulli frames her testimony as
3 addressing the environmental “impacts of the proposed transaction.”⁷⁷ However, her
4 analysis is premised on the assumption that customer demand will be higher if the
5 Transaction proceeds than it otherwise would be—an assumption that rests on Joint
6 Applicants’ forecasts for customer growth and speculation about the BCP Applicants
7 pursuing “more aggressive customer acquisition.”⁷⁸ But Ms. Vitulli acknowledges that
8 Joint Applicants’ customer growth forecasts “are on par with NMGC’s historical rates,” as
9 documented in NMGC’s 2024 Integrated Resource Plan.⁷⁹ Moreover, individual
10 customers are responsible for their energy consumption choices and Ms. Vitulli does not
11 explain how the BCP Applicants’ ownership of NMGC would cause current or potential
12 customers to consume more natural gas than they otherwise would absent this Transaction.
13 And while Ms. Vitulli emphasizes general statements from “BCP leadership” about data
14 center demand for electricity, she identifies no specific proposals for new data centers that
15 hinge on whether this Transaction closes.⁸⁰
16

⁷⁷ Vitulli Direct at 3.

⁷⁸ See *id.* at 4-5, 10-11; *id.* at 17-30 (comparing (1) an “Approved Transaction” scenario with “net customer growth through 2040”; (2) a “Baseline” scenario in which “NMGC’s total residential customers decline somewhat through 2040” and there is “zero growth in NMGC’s customer base”; and (3) a “Meets State Goals” scenario in which “total NMGC customers decline sharply”); see also Penn Direct at 2-3 (using “the same scenarios” as the basis for analysis based on the assumption that “BCP will expand the NMGC distribution network beyond what Emera would do”).

⁷⁹ *Id.* at 10; see Price Direct at 6 (acknowledging that Joint Applicants’ plans “are within the range of annual customer additions for the years 2020 through 2024”).

⁸⁰ See Vitulli Direct at 6-7, 11, 30-31; see also *id.* at 31-41 (analyzing potential *hypothetical* data center additions); see also Penn Direct at 26-33 (same).

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1 Over 549,000 New Mexico customers currently rely on NMGC for natural gas service to
2 meet essential energy needs.⁸¹ Under New Mexico law, NMGC as a public utility has an
3 obligation to serve customers within its service territory and must maintain its system so
4 that it is able to provide customers with “adequate, efficient, and reasonable service.”⁸²
5 That will remain true regardless of whether the Transaction is consummated. Contrary to
6 the suggestions of certain witnesses, neither NMGC nor its owners control the level of
7 customer demand for natural gas—or the resulting level of carbon or other emissions. And
8 neither the overall level of customer demand for natural gas nor the overall level of
9 resulting carbon or other emissions will change as a result of this Transaction.
10 Accordingly, this proceeding—which focuses on whether *the Transaction itself* is
11 inconsistent with the public interest—is not the correct venue for addressing broad
12 environmental policy concerns.⁸³ In my experience, state and federal legislative,

⁸¹ Revised Joint Application at 2.

⁸² See N.M.S.A. § 62-8-2; *id.* § 30-13-2.

⁸³ Other regulators have considered similar broad arguments on environmental policy and have found them not directly related to the transaction at issue. See, e.g., *In the Matter of Application of Duke Energy Corporation and Piedmont Natural Gas, Inc., to Engage in a Business Combination Transaction and Address Regulatory Conditions and Code of Conduct*, Nos. E-2, SUB 1095, E-7, SUB 100 6-9, SUB 682, 2016 N.C. PUC LEXIS 843, *15-18, *155-160 (N.C. Util. Comm’n Sep. 29, 2016) (Stating that “there is no evidence in this proceeding that Duke Energy’s purchase of Piedmont, in and of itself, will result in an increased use of natural gas... [t]hus, the risks of increased methane emissions, potential natural gas supply shortages and possible cost increases are not relevant to the question of whether the merger should be approved by the Commission.” The Commission responded in a similar manner to arguments on the impacts of the merger on climate change more broadly.); *Petition of Noverco Inc. for Approval of an Indirect Acquisition of a Controlling Interest in Vermont Gas Systems, Inc., Green Mountain Power Corporation, and Subsidiaries of Green Mountain Power Corporation*, No. 19-1081-PET, 2019 VT. PUC LEXIS 1051, *4 (Vt. Pub. Serv. Bd. Oct. 1, 2019 order on intervenors’ motion to stay) (Responding to argument that approval of the investment “will deviate from the State’s ability to respond to climate change by increasing the risk of more fossil-fuel infrastructure” by responding that “[t]he Commission remains committed to carbon reduction in the face of climate change, but we are not persuaded that the Transaction is about that issue.”).

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1 executive, and regulatory policymaking processes are more appropriate venues for seeking
2 reforms that directly address energy production and consumption patterns and associated
3 environmental impacts, including emissions. An individual regulatory proceeding about
4 the upstream ownership of a single natural gas local distribution company is not the proper
5 venue for tackling such broad and complex environmental and energy policy questions.⁸⁴

6 To the extent witnesses raise concerns about investments in system upgrades to reduce
7 leaks, NMGC's use of particular alternative fuels, or other specific decarbonization
8 investments, those concerns are best addressed in future proceedings focused on those
9 specific issues; they will not change as a direct result of this Transaction.⁸⁵

VII. CONCLUSION

12 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

13 **A.** Yes.

⁸⁴ Indeed, I note that several of the witnesses essentially take issue with the continued use of natural gas as an energy source. *See, e.g.*, George Direct at 10 (criticizing the potential use of alternative fuels by arguing that "this is NOT a transition to actual renewable solar and wind"); Vitulli Direct at 7 (arguing the Transaction should not be approved because continued "growth in residential gas customers in New Mexico, as well as increased data center development that is reliant on natural gas" would "undermine the State's climate goals"); Kenney Direct (objecting to Transaction as providing insufficient support for electrification and establishment of "thermal energy networks"). This is a fundamental energy policy question that cannot properly be addressed in a proceeding about a single change-in-control transaction.

⁸⁵ *See, e.g.*, Kenney Direct at 7 (premising objection to Transaction on concerns about decarbonization investments, but acknowledging that the Joint Applicants in this proceeding have not proposed to "use ratepayer money for these activities").

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EMPLOYMENT

Jenner & Block, LLP, Washington, DC
Partner and Co-Chair of Energy Practice (2017-Present)

Chambers Global Ranked #1 (2022-2025); Chosen by *Law360* - List of Ten Influential Women in Energy Law (2018); Jenner & Block Energy Practice chosen by *Law360* Five Top Energy Practices (2024 and 2019)

The George Washington University Law School, Washington, DC. Adjunct Faculty. Taught The Future of The Electric Grid, Spring Semesters 2022 through 2025

Akin Gump Strauss Hauer & Feld LLP, Washington, DC Partner, and Chair of Energy Practice (2012-2017)

Chosen by *Metropolitan Corporate Counsel* as its cover story for January 2016; Chambers Global Ranked (2012-2021), energy electricity, regulatory and litigation; Recognized by *The National Law Journal* as 2015 Top 50 Regulatory & Compliance Trailblazers in environment, energy and law; Top Author, JD Supra Readers' Choice Award (2015).

Member, Board of Directors, **UIL Holdings**, New Haven, CT (2011 -2015)

Member, Board of Directors, **Access Midstream Partners**, Oklahoma City, OK (2010 -2015)

Member, Board of Directors, **Tendril**, Boulder, CO (2010-2012)

Patton Boggs LLP, Washington, DC Partner (2010 -2012)
Co-Chair of Energy Industry Practice

Federal Energy Regulatory Commission, Washington, DC Commissioner (2003 -2009)
Responsibilities included (1) making decisions in approximately 1300 cases each year involving electric and natural gas wholesale markets and interstate transmission, hydroelectric licensees and gas pipeline certificates, oil pipeline rates, electricity reliability, and enforcement; (2) maintaining relations with the U.S. Senate Energy and Natural Resources Committee and the U.S. House Commerce and Energy Committee, including testifying before the committees as required and following legislative developments; (3) maintaining relations with industry and market participants; (4) speaking publicly on energy industry developments and maintaining relations with the press; (5) co-chairing the Smart Grid Collaborative between FERC and the

National Association of Regulatory Utility Commissioners; (6) managing the budget and staff of the Office of the Commissioner.

University of New Mexico School of Law, Albuquerque, NM

Professor of Law, 1986 - 2003

Taught Energy Law, Public Utility Regulation, Legislative Process and Administrative Law, and Administrative Practice. Served as Editor-in-Chief, Natural Resources Journal (1995-2000) (responsibilities included managing all aspects of the publication of four volumes of the Journal each year, its budget and administrative staff, and supervising the student editorial staff). Was the Lewis & Clark Law School Distinguished Visitor (1998) and was awarded the Susan and Ronald Friedman Faculty Excellence in Teaching Award (1995-96) and the Keleher & McLeod Professor of Law Award (1997-99).

Staff of **U.S. Senator Jeff Bingaman**, Washington, DC

Detail to the U.S. Senate Energy and Natural Resources Committee, 1999 (on leave from U. of NM)

Contributed to development of energy and hydroelectric licensing legislation.

California Independent System Operator, Folsom, CA Regulatory Counsel, 2000 (on leave from U. of NM)

CAISO operates much of California's transmission grid and dispatches interconnected generation, which was coordinated with the California Power Exchange until 2001. Responsible for learning and understanding the ISO's protocols and tariff provisions so as to be able to answer day-to-day legal questions. Worked on the regulatory proceeding involving the 70 unresolved issues remaining from the FERC's conditional certification of the ISO.

Modrall, Sperling, Roehl, Harris & Sisk, Albuquerque, NM

Attorney, 2001 - 2003 (on leave from U. of NM)

Responsibilities included creating and heading up the firm's public utility practice. Clients included independent power producers, water utilities, a local gas distribution company, and NM State University in its capacity as a large electricity customer.

Suede G. Kelly, Attorney-at-Law, Albuquerque, NM

Attorney, 1986 - 2001

Managed a part-time practice in federal and state energy and public utility law, representing private and publicly-owned clients in transactions, legislation, rulemakings, and litigation concerning electric, gas and water utility certification, rates and service; electricity assets siting, financing, acquisitions and mergers; electric and gas industry restructuring; and doing business with electric and gas utilities.

New Mexico Public Service Commission, Santa Fe, NM

Chairwoman, 1984 - 1986.

Commissioner, 1983 - 1984.

Responsibilities included regulation of the state's electric, gas and water utilities; management of the agency, its budget and staff; and maintaining relations with the State Legislature, the Governor's Office, the industry, and the public.

New Mexico Office of the Attorney General, Santa Fe, NM

Attorney, Public Utilities Division, 1982 - 1983

Managed cases being litigated in New Mexico state courts and cases before the NM Public Service Commission.

Luebben, Hughes & Kelly, Albuquerque, NM

Partner, 1978-1982

Managed a private law practice, representing clients in state and federal litigation and regulatory agency practice in utility, natural resources, energy, and Indian law.

University of New Mexico Graduate School of Public Administration, Albuquerque, NM

Adjunct Faculty, 1979 - 1982

Taught Administrative Law.

Natural Resources Defense Council, Inc., Washington, DC

Attorney, 1977 - 1978

Law Clerk, 1975

Managed a case load involving environmental litigation in the federal courts, federal agency proceedings and federal legislative developments.

Ruckelshaus, Beveridge, Fairbanks & Diamond, Washington, DC

Associate Attorney, 1976 - 1977

Worked on cases in federal litigation, federal and state agency proceedings, and helped to advise clients regarding legislation. Matters involved environmental, commercial, and constitutional law.

U.S. Environmental Protection Agency, Washington, DC

Law Clerk, 1974

Provided research regarding the Federal Water Pollution Control Amendments of 1972 and federal clean water policy.

EDUCATION

Cornell Law School, J.D., *cum laude*, 1976.

Cornell Law Scholarship; Delaware School Foundation Scholarship; International Law Journal Staff; Director, Cornell Legal Aid (responsible for managing the case load of the Family Division and supervising its student attorneys).

University of Rochester, B.A. in Chemistry, *With Distinction*, 1973.

Bausch & Lomb Science Award and Scholarship; President, University Women's Residence Assistants (responsible for managing women's residential assistance program and supervising the residence assistants).

PUBLICATIONS WITHIN THE LAST TEN YEARS

Partnering with American Indian Tribes to Accelerate Transmission Development On or Near Tribal Lands (Prepared for Clean Grid Initiative) (January 19, 2024) (co-authored with Keith Harper).

Episode 1: Understanding U.S. Energy Markets, American Efficient Podcast Series (Feb. 2, 2022), available at <https://www.americanefficient.com/podcasts/episode-1/>.

Escalating Threats to Infrastructure Confirm Our Need to Harden the Electric Grid (The Hill) (Oct. 30, 2017).

Episode 7: Mysterious Frontiers: The New FERC, Grid Geeks Podcast (August 9, 2017) (with host Alison Clements), available at <http://www.goodgrid.net/blog/2017/8/9/grid-geeks-podcast-episode-7>.

Federal/State Jurisdictional Split: Implications for Emerging Electricity Technologies, Lawrence Berkeley National Laboratory - Energy Analysis and Environmental Impacts Division (December 2016) (co-authored with Jeffery S. Dennis, Robert R. Nordhaus, and Douglas W. Smith), available at <https://www.energy.gov/sites/prod/files/2017/01/f34/Federal%20State%20Jurisdictional%20Split--Implications%20for%20Emerging%20Electricity%20Technologies.pdf>.

A FERC Challenge: Opening up electricity markets to advanced energy technologies, UtilityDive.com (June 30, 2016) (co-authored with Arvin Ganesan), available at <https://www.utilitydive.com/news/a-ferc-challenge-opening-up-electricity-markets-to-advanced-energy-technol/421891/>.

SWORN TESTIMONY

In the Matter of the Joint Application for Approval to Acquire New Mexico Gas Company, Inc. by Saturn Utilities Holdco, LLC., et al., No. 24-00266-UT (New Mexico Public Regulation Commission). On behalf of Joint Applicants Bernhard Capital Partners, Emera Inc., and New Mexico Gas Company (2025).

In the Matter of Southwestern Public Service Company's Application For: (1) Revision of its Retail Rates Under Advice Notice No. 312; (2) Authority to Abandon the Plant X Unit 1, Plant X Unit 2, and Cunningham Unit 1 Generating Stations and Amend the Abandonment Date of the Tolk Generating Station; and (3) Other Associated Relief, No. 20-00286-UT (New Mexico Public Regulation Commission). On behalf of Southwestern Public Service Company (2023).

Enable Mississippi River Transmission, LLC v. Linn Energy Holdings, et al., Adversary No. 16-6017, U.S. Bankruptcy Court for the Southern District of Texas, Victoria Division. On behalf of Linn Energy Holdings, et al. (2022)

In the Matter of an Application by New Brunswick Power Corporation pursuant to subsections 113(2) and 113(3) of the Electricity Act, S.N.B. 2013, c. 7., Matter No. 513 (New Brunswick Energy & Utilities Board). On behalf of New Brunswick Power Corporation (2021-2022).

In the Matter of The Electronic Application of East Kentucky Power Cooperative, Inc. For a General Adjustment of Rates, Approval of Depreciation Study, Amortization of Certain Regulatory Assets, and Other General Relief, No. 2021-0010 (Kentucky Public Service Commission). On behalf of AppHarvest Morehead Farm, LLC (2021)

Bandera Master Fund LP, et al. v. Boardwalk Pipeline Partners LP, C.A. No. 2018-0372-JTL, Delaware Court of Chancery. On behalf of Boardwalk Pipeline Partners LP (2020-21).

In the Matter of Southwestern Public Service Company's Application For: (1) Revision of its Retail Rates Under Advice Notice No. 292; (2) Authorization and Approval to Abandon its Plant X Unit 3 Generating Station; and (3) Other Associated Relief, No. 20-00238-UT (New Mexico Public Regulation Commission). On behalf of Southwestern Public Service Company (2021).

In Re: Extraction Oil & Gas, Inc. v. Grand Mesa Pipeline LLC, Case No. 20-11548 (CSS), U.S. Bankruptcy Court for the District of Delaware, Oct. 1, 2020. On behalf of Grand Mesa Pipeline LLC.

In the Matter of Southwestern Public Service Company's Application For: (1) Revision of Its Retail Rates Under Advice Notice No. 282; (2) Authorization and Approval to Shorten the Service Life of and Abandon Its Tolk Generating Station Units; and (3) Other Related Relief, No. 19-00170-UT (New Mexico Public Regulation Commission). On behalf of Southwestern Public Service Company (2019)

In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity, No.EA-2016-0358 (Public Service Commission of the State of Missouri) On behalf of Grain Belt Express Clean Line LLC (2016)

Rockies Express Pipeline LLC v. U.S. Dep't of the Interior, Civilian Board of Contract Appeals, CBCA 3704 (1921)-REM. [REM denotes that the case was on remand from the U.S. Court of Appeals for the Federal Circuit.] On behalf of Rockies Express Pipeline LLC (2015-16)

In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc., No. 9361 (Public Service Commission of the State of Maryland). On behalf of Exelon Corporation (2015)

PROFESSIONAL ACTIVITIES

Member, Expert Advisory Board, Initiative on Climate Risk and Resilience Law, www.icrrl.org (2021-Present).

Member, Board of Directors, Advanced Energy Economy Institute (2020-Present)

Member, Energy Insecurity Steering Committee of the Energy Bar Association (2022-2023)

Member, Advisory Board of Directors, American Wind Energy Association (2019-2020)

Member, Board of Advisors, Duke University Nicholas Institute for Energy, Environment &

Sustainability (2018-Present)

Member, Dean's Advisory Council, Hajim School of Engineering, University of Rochester, Rochester, NY (2012 - 2020).

Rocky Mountain Mineral Law Foundation, Trustee (1988 - 1993, 2015 - 2017).

Member, Environmental Law Institute Leadership Council (2015 -2017).

Member, Advisory Board, The Perfect Power Institute, Chicago, IL (2011 – 2015).

Board Member, Charitable Foundation of the Energy Bar Association (2010 - 2013).

Member, Advisory Board, Gridquant, Columbus, OH (2013).

Member, Smart Grid Advisory Committee, National Institute of Standards and Technology (2010 - 2013).

Council Member, American Bar Association, Section of Administrative Law and Regulatory Practice (2010 - 2012).

Advisory Council, Women's Council on Energy and Environment, Washington, DC (2008 – 2012; Chair 2010 - 2012).

Council Member, American Bar Association, Section of Environment, Energy and Resources (2000 - 2003).

New Mexico Women's Bar Association (1991 - 2003).

Barrister, H. Vearle Payne American Inn of Court (1995 - 2003).

Board Member, Santa Fe Diocese Foundation (1999 - 2003).

Founding Board Member, Albuquerque Open Space Alliance (1996 - 1999).

N.M. Legislative Task Force on Management of the Middle Rio Grande Bosque (1993 - 1994).

American Association of Law Schools, Chair of the Executive Committee of the Legislation Section (1994 - 1995).

Border Research Institute of New Mexico State University, Member of the Advisory Committee on its studies (1992 - 1993).

The National Regulatory Research Institute, Ohio State University, Member of the Research Advisory Committee to the Board (1988 - 1992).

Board Member, New Mexico Bar Association, Natural Resources Section (1987 - 1992)

U.S. Consumer Product Safety Commission, Chair of its Advisory Council (1980 - 1981); Member (1979-1981).

U.S. National Air Quality Commission-Four Corners Region Study, Member of Advisory Committee (1979 - 1981).

N.M. Legislative Task Force, Federal Lands Action Group, (1979 - 1981).

Washington D.C. Council of Lawyers, Executive Board Member (1977 - 1978).

Member of the Bars of New Mexico and the District of Columbia; of the U.S. Courts of Appeal for the District of Columbia, 9th and 10th Circuits; and of the U.S. District Courts for the District of Columbia and New Mexico

**IN THE MATTER OF THE JOINT APPLICATION
FOR APPROVAL TO ACQUIRE
NEW MEXICO GAS COMPANY, INC.
BY SATURN UTILITIES HOLDCO, LLC.**

)
)
)
)
)
)
)
)

JOINT APPLICANTS

In accordance with 1.2.2.35(A)(3) NMAC and Rule 1-011(B) NMRA, Suede G. Kelly, Attorney and Former Commissioner on the NMPRC and on the Federal Energy Regulatory Commission, 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 and Exhibit. I further affirmatively state that I know the contents of my Revised Application Rebuttal Testimony and Exhibit and they are true and accurate based on my personal knowledge and belief.

/s/Suede G. Kelly
Suede G. Kelly

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,	)	Case No. 24-00266-UT
LLC.	)	
<u>JOINT APPLICANTS</u>	)	

CERTIFICATE OF SERVICE

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

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Revised Application Rebuttal Testimony
and Exhibit of Suede Kelly

Case No. 24-00266-UT

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Revised Application Rebuttal Testimony
and Exhibit of Suede Kelly

Case No. 24-00266-UT

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DATED October 10, 2025

/s/Lisa Trujillo

Lisa Trujillo

Project Manager, Regulatory Affairs

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