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.	)	

JOINT MOTION TO DISMISS WITHOUT PREJUDICE OR FOR ALTERNATIVE RELIEF AND BRIEF IN SUPPORT

COME NOW, the Utility Division Staff of the New Mexico Public Regulation Commission ("Staff"), the New Mexico Department of Justice ("NMDOJ"), New Energy Economy ("NEE"), Western Resource Advocates ("WRA"), the Coalition for Clean Affordable Energy ("CCAE") and the New Mexico Affordable Reliable Energy Alliance ("NM AREA") (hereafter "Joint Movants") and pursuant to New Mexico Public Regulation Commission's ("Commission") Rules of Procedure, codified as 1.2.2.12.B and 1.2.2.35.N NMAC, hereby move the Hearing Examiners to dismiss, without prejudice, the October 28, 2024 Application filed by New Mexico Gas Company, Inc. ("NMGC"), Bernhard Capital Partners Management ("BCP"), Emera, Inc. ("Emera"), TECO Holdings, Inc. ("TECO") and all the other affiliates and subsidiaries of these entities (together the "Joint Applicants"). In the alternative, the Joint Movants request the Hearing Examiners either (i) to put the current procedural schedule in abeyance and require a refiling of the Application, or (ii) to strike the portions of the Joint Applicants' rebuttal testimony that violate 1.2.2.35.N NMAC and proceed to hearing on the October 28, 2024 Application, as currently scheduled. In support of this Motion, Joint Movants state as follows:

I. BACKGROUND

On October 28, 2024, NMGC, Emera, TECO, BCP, and a host of these parties' subsidiaries and affiliated interests, filed an application with the Commission seeking approval of the acquisition of NMGC by BCP and its management entities and equity funds. Since the

date the Application was filed, the Joint Applicants have not sought to officially amend their Application to change the terms of the proposed transaction. Instead, on May 16, 2025, the Joint Applicants, under the guise of filing rebuttal testimony, sought to make substantive changes to their initial Application. This attempt to amend the Application one month before the scheduled hearing is contrary to the Commission Rules of Procedure and the November 27, 2024 Procedural Order. The Procedural Order established a schedule that was specifically designed to allow adequate time for Staff and intervenors to conduct discovery, analyze the Joint Applicants' proposals and file responsive testimony. As set forth herein, the Joint Movants maintain that the Joint Applicants' use of their Rebuttal Testimonies to amend their Application is a deliberate attempt to deprive the Staff and the parties of their fundamental due process rights in this case. *Pub. Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012, ¶ 63, 444 P.3d 460.

Staff and the intervening parties have already conducted multiple rounds of extensive discovery, scheduled and attended a number of depositions, hired experts and filed testimony on the proposed transaction as was presented in the initial Application and the supporting testimonies of four witnesses on October 28, 2024. Going forward with a hearing in one month on a substantially different proposal deprives the Staff and the parties the opportunity to conduct adequate discovery and prepare testimony that is responsive to these new proposals. *Albuquerque Water Authority v. NMPRC*, 2010-NMSC-013 ¶ 21, 148 N.M. 21, 229 P.3d 494 ("It is well settled that the fundamental requirements of due process in an administrative context are reasonable notice and opportunity to be heard and present any claim or defense."). The Joint Applicants' tactics violate the fundamental principle embodied in the Commission's discovery rules, i.e. the policy that promotes the "use of discovery as a means toward effective presentations at public hearing and avoidance of the use of cross-examination . . . for discovery

purposes." 1.2.2.25.A NMAC. To prevent the denial of their due process rights, the Joint Movants respectfully request the Hearing Examiners to grant the relief requested in this Motion.

II. REQUESTED RELIEF

For all the reasons stated in this Motion, the Joint Movants respectfully request the Hearing Examiners to grant one of the following forms of relief, listed in descending order of preference below:

Alternative Request for Relief No. 1:

a. Dismiss the October 28, 2024 Joint Application without prejudice;
b. Revise the current Procedural Order and put the scheduled hearing on hold until a decision is made on this Motion and all interlocutory appeals are exhausted;
c. If the Joint Applicants seek to refile, order them to submit an Application that is, at a minimum, consistent with the precedents set by the Commission in Case Nos. 13-00231-UT, 15-00327-UT, and 19-00234-UT.

Dismissal of this case, without prejudice, is the Joint Movants' preferred outcome. It is warranted given the Joint Applicants' attempt to game the Commission's procedures by filing an initial Application they knew to be grossly deficient and then waiting until just prior to the hearing to make revisions intended to bring the proposed transaction somewhat in line with the Commission's established precedents. This knowing gaming of the Commission's procedures deserves the strong sanction of dismissal.

Alternative Request for Relief No. 2:

a. Place the current case schedule in abeyance;
b. Set a date for the Joint Applicants to refile their October 28, 2024 Application with terms, conditions and customer benefits and protections that are, at minimum, consistent with

the Final Orders in Case Nos. 13-00231-UT, 15-00327-UT, and 19-00234-UT; and

c. After the filing of an amended Application, calendar a prehearing conference to set a schedule for the case going forward.

Alternative Request for Relief No. 3:

Strike the portions of the Joint Applicants' May 16, 2025 rebuttal testimonies the Hearing Examiners determine violate the Commission's rule governing permissible rebuttal testimony, 1.2.2.35.N NMAC, and proceed to hearing on the October 28, 2024 Application without the Joint Applicants' unlawful revisions.

Of the proposed alternative forms of relief, this third proposal is the least preferable because the Joint Applicants' proposed revisions are already public knowledge, are now part of the Commission's electronic record and would be difficult to ignore during the evidentiary hearing.

III. LEGAL STANDARDS

a. Legal Standards for Dismissal of the Application

Commission Rule of Procedure 1.2.2.12.B states that Staff or a party may file a motion to dismiss "at any time" during a proceeding "for lack of jurisdiction, failure to meet the burden of proof, failure to comply with the rules of the commission, or for other good cause shown." Commission Rule of Procedure 1.2.2.35.N sets the standard for the filing of rebuttal testimony. It states that rebuttal evidence "is evidence which tends to explain, counteract, repel, or disprove evidence submitted by another party or by staff. Evidence which is merely cumulative or could have been more properly offered in the case in chief is not proper rebuttal evidence."

Consistent with these standards, dismissal is a proper remedy where a utility has failed to file a complete application at the outset of the case and thereby prejudices the ability of the Staff

and the intervenors to adequately analyze and respond to the applicants' proposals. Case 16-00269-UT, *Final Order*, issued April 19, 2017, pp. 7-9. *See also, Initial Recommended Decision,* 14-00332-UT, recommending dismissal based on completeness of PNM's Filed Application, April 17, 2015, *Final Order Adopting Initial Recommended Decision Completeness of PNM's Filed Application,* May 13, 2015.

As is demonstrated in this Joint Motion, the Joint Applicants' rebuttal testimonies do not comply with the requirements of 1.2.2.35.N NMAC. Instead of filing rebuttal testimony that counteracts or disproves the Staff and parties' criticisms of their Application, they have filed testimony that proposes substantive changes to their initial Application. The Joint Applicants' proposed changes to their Application are discussed in detail below. As can be seen from that discussion, many of these substantive changes are attempts to bring the proposed transaction somewhat in line with the standards the Commission established in its *Final Orders* in the TECO acquisition, Case No. 13-00231-UT, the Emera acquisition, Case No. 15-00327-UT and the JP Morgan acquisition of El Paso Electric Company, Case No. 19-00234-UT,

In their May 16th filing, the Joint Applicants filed the testimony of six new witnesses: John J. Reed, Lisa M. Quilici, Mark S. Miko, Peter I. Tumminello, Eric L. Talley, and Suedeen Kelly. A review of these witnesses' purported rebuttal testimonies reveal that (i) none of these individuals are employees of any of the Joint Applicant companies; (ii) none of them participated in any of the negotiations that led to the proposed transaction, and therefore, have no direct knowledge of that transaction; and (iii) in most instances, these witnesses offer testimony that is merely cumulative to the testimonies of the original four witnesses in this case who have also filed rebuttal testimony.

To be clear, the Joint Movants' objection to the Joint Applicants' proposed amendments

to their Application is a due process objection. Whether some of those new proposals, after careful analysis, turn out to have merit is beside the point. The Joint Applicants' attempt to use their Rebuttal Testimonies to introduce these changes into the record deprives the Staff and intervenors of any meaningful opportunity, in the remaining days before the June 23, 2025 hearing, to propound adequate written discovery, take the depositions of the six new witnesses, or to retake the depositions of the original four witnesses to explore the inconsistences in their rebuttal testimonies. *Albuquerque Water, supra.* The timing of these proposed changes also deprives Staff and intervenors the opportunity to respond with additional testimony once this discovery has been completed. The proper procedure would have been for the Applicants to have voluntarily dismissed their patently deficient Application and refiled it once they had come up with their best and final positions.

Allowing the Applicants to place their Rebuttal Testimonies on the record puts the Hearing Examiners, and ultimately the Commission, in the untenable position of having to make a decision based on a confused, incomplete record. All of the Staff and intervenors' April 18, 2025 Direct Testimonies would be rendered irrelevant as those testimonies only address the proposed transaction as it was described in the October 28, 2024 Application. Staff and intervenors do not have sufficient time under the current schedule to conduct proper discovery and prepare replacement testimony that provides the Commission with a careful, comprehensive analysis of the new proposals. Moreover, the Commission would have no assurance that the changes in the Rebuttal Testimonies are the Joint Applicants' final proposals. The Commission and the Hearing Examiners could easily be faced with a situation in which the Joint Applicants believe that they have been given a license to file yet another round of surprise rebuttal testimony in which they change their proposals yet again to deal with any new criticisms.

For these reasons, the Joint Movants' preferred remedy of dismissal of this case, without prejudice, is the best option for the Commission. The Joint Applicants could restart the process with the opportunity to provide the Commission, and the stakeholders, with a new Application that fully incorporates the precedents established in the TECO and Emera acquisition cases and in which they propose well-thought out, and not *ad hoc*, solutions to the legitimate concerns Staff and the intervenors have raised in this docket.

b. Legal Standards for Approval of Utility Acquisitions

The Public Utility Act sets forth a specific standard for the approval of a proposed acquisition of a regulated utility in Section 62-6-13. That Section states that the Commission shall approve a proposed acquisition unless it finds the transaction "is unlawful or inconsistent with the public interest." In applying this public interest standard, the Commission has historically looked at six factors:

(1) Whether the transaction provides benefits to utility customers;

(2) Whether the NMPRC's jurisdiction will be preserved;

(3) Whether the quality of service will be diminished;

(4) Whether the transaction will result in the improper subsidization of non-utility activities;

(5) A careful verification of the qualifications and financial health of the new owner; and

(6) Whether there are adequate protections against harm to customers. Case No. 11-00085-UT, *Final Order* (12/22/2011), adopting RD, pp. 15-16.

In addition to these general standards, the Commission's decisions in the prior

acquisitions of NMGC by TECO and Emera provide specific guidance as to how these six-factors should be applied to Joint Applicants' proposed acquisition of NMGC. *See, e.g.,* Case No. 13-00231-UT, *Final Order* (8/14/2014), adopting *Certification of Stipulation* (6/30/2014); Case No. 15-00327-UT, *Final Order* (6/22/2016), adopting *Certification of Stipulation* (6/8/2016). As the Commission stated in Case No. 13-00231-UT:

> [T]he NMPRC's affirmative, independent finding, in support of its conclusion that a stipulated proposed acquisition is in the public interest, that a particular feature or commitment (i) benefits ratepayers; (ii) assists in preserving the NMPRC's jurisdiction; (iii) protects against diminishment of service; or (iv) protects against the improper subsidization of non-utility activities, may be cited as precedent. Cert. of Stip., p. 47.

(1) Case No. 13-00231-UT

In Case No. 13-00231-UT, the Commission found that the acquisition of NMGC was in the public interest in large part because of TECO's century-plus experience in owning and operating regulated public utility companies comparable to NMGC. Case No. 13-00231-UT, Cert. of Stip., pp. 71-72. As the Commission noted: "Peoples Gas [a TECO-owned utility] is Florida's leading provider of regulated gas distribution services, with a presence in the majority of Florida's metropolitan areas." *Id.* p. 71. The Commission also cited with approval TECO's high safety ratings, its excellent service quality and reliability, its customer satisfaction metrics, its good relations with its regulators and the fact that it was "well respected in the financial community." *Id*. p 72. The Commission found that TECO's good service record, combined with its focus on, and understanding of, utility operations, provided the assurance that NMGC quality of service would not be diminished under TECO's ownership. *Id.* p. 79. The Commission also cited to TECO's commitment to hold NMGC for at least 10 years as another benefit of the transaction as it helped ensure that the Utility would be effectively managed over a long-term horizon. *Id.* pp. 57, 79.

The Commission also found that the following quantifiable benefits supported its conclusion that the transaction was in the public interest: (i) a rate freeze commitment that was valued by TECO at a cumulative total of $30.4 million, *id.* p. 56; (ii) annual synergy savings from shared services - starting at $4.6 million and growing to $9.1 million in the third year after closing, *id.* pp. 31, 76; and (iii) an annual bill credit to pass on the synergy savings to customers during the rate freeze period, *id.* pp. 28-31. In addition, TECO committed to provide at least $400,000 in community support for charitable causes annually.

(2) Case No. 15-00327-UT

In Case No. 15-00327-UT, the Commission approved Emera's acquisition of TECO. Because of the structure of the transaction, TECO's century-plus expertise of operating regulated public utilities was augmented by Emera's decades-long expertise in running a diverse set of public utilities. Case No. 15-00327-UT, Cert. of Stip., pp. 52. The Commission cited with approval Emera's deep experience with 11 gas and electric utilities in Canada, the United States and the Caribbean. *Id.* pp. 48, 52. Emera also confirmed that it would honor TECO's commitment to own NMGC for at least 10 years. *Id.* pp. 27, 38. The Commission recognized that this 10-year commitment brought stability to both the utility and its customers. *Id.* p. 38.

Emera also committed to continue the shared services agreement with TECO and to continue providing the resultant savings to ratepayers. *Id.* p. 44. Emera also agreed to continue TECO's rate freeze commitment till year-end 2017 and further agreed to extend rate credits to mid-year 2018. *Id.* pp. 16, 53. Emera also committed to use an historic test year in the first rate case following the end of the rate freeze period. *Id.* p. 16. The Commission determined that this commitment alone would provide a ratepayer benefit of between $3 to $5 million. *Id.* pp. 37-38.

Emera added to TECO's prior commitments by pledging to invest $20 million in funding for economic development projects in New Mexico over 5 years. *Id.* pp. 21-23, 36, 52-53. It also committed to increase NMGC's annual charitable contributions from $400,000 to $800,000 for three years after closing. *Id.* pp. 23, 37. Both of these commitments would be funded exclusively by shareholders and have no impact on rates. *Id.* pp. 36-37.

It is clear from this overview of the Commission's *Final Orders* in the TECO and Emera cases that these decisions provided a roadmap that was intended to be precedential for any subsequent proposal to acquire NMGC. Case Nos. 13-00231-UT, Cert. of Stip., p. 47. The Joint Applicants chose to ignore these precedents and file an Application that did not begin to meet these established standards for approval.

(3) Case No. 19-00234-UT

In Case 19-00234, the Commission approved a number of ring-fencing and reporting requirements that were intended to ensure that El Paso Electric Company ("EPE") would remain financially insulated from the special risks associated with its acquisition by an equity fund affiliated with the J.P. Morgan family of funds. Case No. 19-00234-UT (3/11/2020) *Final Order Adopting Amended Certification of Stipulation*. The ring-fencing commitments included maintaining EPE as a separate legal entity, restrictions on cross-default provisions, limitations on inter-company transactions, and requirements for separate books, records, and bank accounts. They also barred EPE from providing credit support to affiliates and required that any transactions with affiliates occur at arm's length and under fair market conditions. The reporting requirements included additional information in EPE's annual report detailing the Utility's efforts to expand renewable energy resources, complying with state renewable standards, and evaluating opportunities regarding joining a regional energy imbalance market. The Commission

clearly believed that these expanded ring-fencing and reporting requirements were necessary given the special risks associated with the acquisition of EPE by a privately held equity fund.

(4) Joint Applicants' Commitments in the Initial Application

In their Application, the Joint Applicants have fallen far short of the standard established in the TECO and Emera acquisitions and in other utility cases. The most glaring deficit is BCP's complete lack of experience owning or operating any publicly regulated utility company comparable to NMGC. The closest that BCP comes to any relevant operational experience is its ownership of a wastewater utility with 20,000 customers in Louisiana and a water and wastewater utility with 1,800 customers in North Carolina. Direct Testimony of Jeffery Baudier, pp. 11-12. Operation of these small utilities in no way prepares BCP to operate NMGC, a utility with approximately 549,000 customer meters, 1.3 million persons receiving service and a service territory that covers a large, diverse geographical area of New Mexico from Clayton, to Silver City, to Farmington and to Taos and includes the largest cities in the State. *See* Direct Testimony of Ryan Shell, p. 1.

In the Application, BCP attempted to address this critical deficiency by referencing its plans to purchase two other gas utilities during the course of this case. Baudier Direct, p. 13. In essence, BCP has argued that the Commission's reliance on the operational expertise of the acquiring entities in the TECO and Emera cases is completely irrelevant to the question of whether it would be a fit owner of NMGC. BCP has maintained that the Commission should focus instead on the expertise of two utility companies BCP did not own, or operate, when the October 28, 2024 Application was filed. *Id.* pp. 12-14. These arguments are meritless. As the Commission has recognized, the track record of the acquiring entity in its operation of similar

public utilities is a critical factor in determining whether the quality of service is likely to be maintained or diminished under the new owners. Case No. 13-00231-UT, Cert. of Stip., pp. 71-72, 79; Case 15-00327-UT, Cert. of Stip., pp. 48-52.

Another glaring deficiency in the current Application is the lack of any synergies, and the resultant lack of any synergy savings for customers. In both the TECO and Emera acquisitions, the Commission favorably listed synergy savings as an important direct benefit to customers. Case No. 13-00231-UT, Cert. of Stip., pp. 31, 76; Case No. 15-00327-UT, Cert. of Stip. p. 44. In their Direct Testimonies, the Joint Applicants pitched the narrative that the lack of any synergies is a public benefit because it would require NMGC to add 51 to 61 new full-time positions. *See generally,* Direct Testimony of Christopher Erickson. The Joint Applicants conveniently gloss over the fact that the loss of synergy savings, combined with the need to hire 51 to 61 new full-time employees, is likely to raise customers' rates.

Other deficiencies in the proposed transaction include a commitment to hold NMGC for only 5 years instead of 10 years, and a 5-year shareholder funded economic development commitment of only $5 million instead of the $20 million pledged by Emera in 2016. *Id.* p. 31. In addition, the Joint Applicants offered no rate freeze as part of their initial Application, and no commitment to use an historical test year in any future rate case. As noted above, these were features of the prior transactions that the Commission found to be direct customer benefits. Another deficiency in the Application, according to at least some of the Joint Movants, is its failure to address emissions of greenhouse gases and other pollutants, and the resulting harm to customers and the broader public interest.

As noted, BCP has proposed to replace the current shared services agreement after a limited transition period by the hiring of 51 to 61 new employees or by procuring these services

from third-party vendors. *Id.* pp. 30. The estimated annual cost for these new employees is between $7.71 and $7.74 million. Erickson Direct, p. 4. BCP has provided no evidence that the loss of shared services and the hiring of new employees would be less expensive for ratepayers. In fact, as noted above, the Joint Applicants have attempted to spin these additional costs as an economic benefit to New Mexico. *Id.* pp. 4-5; Baudier Direct, p. 48. This testimony directly contradicts the testimony NMGC, TECO and Emera provided in the prior acquisition cases.

(4) Substantive Changes Proposed in Joint Applicants' Rebuttal Testimony

In the Rebuttal Testimony of Jeffery Baudier, the Joint Applicants have made the following substantive changes to their initial Application:

- A $15 million rate credit over 12 months after closing, instead of no rate credit, p. 8;
- A rate freeze until the end of 2027, combined with the establishment of a regulatory asset for capital improvements, instead of no rate freeze, pp. 10, 29;
- A commitment to hold NMGC for at least 10 years, instead of 5 years, p. 11;
- An increase of shareholder funded economic development investments to $10 million over 7 years, instead of $5 million over 5 years, pp. 13-14;
- Shareholder funding of educational and apprentice training focused on engineering, management, finance and other workforce skills at an unspecified level, instead of no such funding, p. 14;
- Maintaining current shareholding funding of assistance to low-income customers for payment of heating bills up to a total of $190,000 annually, p. 17;
- Adopting "most of the ring-fencing and corporate governance provisions approved in Case No. 19-00234-UT", exceeding current requirements, pp. 18-19;

- An entirely new shared services plan operated by the recently acquired Delta Utilities, instead of shared services only during a transition period, p. 21-22, (*see also* Tumminello Rebuttal Testimony, JA Exhibit PIT-2 (Rebuttal));
- The extension of the current TECO shared services agreement from 18 months to 2 years; p. 23;
- A reduction in new hires needed to replace shared services with TECO from 51 to 61 to 20 full-time employees, p. 22;
- An agreement to maintain NMGC's current level of employees for 36 months following closing instead of 18 months, p. 22;
- New claims of BCP utility operating expertise based on the purported expertise of a number of employees at the newly acquired (as of March 2025) Delta Utilities, pp. 34-37.

In addition to Baudier's Rebuttal, the Joint Applicants have filed the Rebuttal Testimonies of Mark S. Miko and Peter Tumminello. These testimonies are not proper rebuttal as they both provide the details of the new proposed shared services arrangement between NMGC and Delta Utilities. As noted above, this is an issue that should have been part of the initial Application. The Joint Applicants knew from their participation in prior acquisition cases that the synergies provided by a shared services arrangement were an important customer benefit the Commission would be sure to consider in this case.

Pages 13-17 and JA Exhibit CAE-1 Rebuttal in the Rebuttal Testimony of Christopher Erickson are also improper rebuttal testimony. In this *2025 Addendum*, Mr. Erickson analyzes the collateral impact of the changed hiring numbers in the new shared services proposal. He also analyzes the impact of other proposed changes including the new rate credit and the new economic development commitments. These are issues which should have been addressed in the

October 28, 2024 Application for the reasons stated above.

Moreover, Mr. Erickson's analysis of the economic benefits of 20 new hires instead of 51 to 61 contradicts his Direct Testimony on that same issue. In his Direct, he testified that the higher number of new NMGC employees provided a massive economic boost to New Mexico which the Commission should recognize as a benefit of the BCP acquisition. Erickson Direct, pp. 3-6; *see also* JA-Exhibit CAE-1. In his Rebuttal, he states that lowering that number should now be considered a benefit, not a deficit. In contradicting his earlier testimony, he is clearly not responding to, or counteracting, any testimony filed by Staff or the intervenors.

By any measure, these listed changes propose substantive amendments to the initial Application filed on October 28, 2024. More importantly, the Joint Applicants are belatedly attempting to bring their Application somewhat in line with the precedents established by the Commission in its TECO and Emera decisions. Three of these Joint Applicants, NMGC, TECO and Emera, were parties to those prior applications. Therefore, it is clear that these Joint Applicants, in concert with BCP and its affiliated interests, filed an Application they knew to be deficient on its face when compared to the Commission's public interest findings in both its TECO and Emera decisions. Allowing the Joint Applicants to revise their proposals at this late date violates 1.2.2.35.N NMAC and rewards their attempt to game the Commission's procedures. The Commission's Rules, including 1.2.2.35.N NMAC, are specifically designed to protect the basic due process rights of all parties. Allowing the Applicants' May 16, 2025 Rebuttal Testimonies into the record at this late date would violate the basic procedural rights of Staff and intervening parties. *Albuquerque Water, supra.*

As noted above, the purpose of this Joint Motion is not to argue the merits of the Joint Applicants' numerous proposed amendments to their October 28, 2024 Application. The Joint

Movant's arguments are focused on preserving their due process rights to participate meaningfully in this docket. The Joint Applicants should have made their new substantive proposals in a new application to the Commission. At the very least, they should have requested the Hearing Examiners' approval to file an amended Application in this docket and, at the same time, requested the Hearing Examiners to reset the procedural schedule so that their new proposals could be properly vetted and responded to by the Staff and the intervenors.

In addition to using their rebuttal testimonies to improperly amend their initial Application, the Joint Applicants have filed rebuttal of two other new witnesses that, in many respects, is cumulative and, therefore, improper under 1.2.2.35.N NMAC. The first such witness is Suedeen Kelly. As a preliminary matter, several sections of her testimony are legal arguments about the scope of the Commission's authority, the necessity for regulation of essential utility services and treatment of acquisition premiums. These legal arguments are the proper subjects for briefing and not rebuttal testimony. *See* Rebuttal Testimony of Suedeen Kelly, pp. 9-11, 16-18, 29-35.

Although she purports to respond to several Staff and NMDOJ witnesses, the majority of the rest of Ms. Kelly's testimony is simply a defense of the proposition that ownership of utilities by private equity funds is in the public interest. These arguments have already been made by Mr. Baudier in his Direct Testimony. Ms. Kelly's opinions on this issue are merely a cumulative restatement of that testimony and are not proper rebuttal. *See* 1.2.2.35.N NMAC. Ms. Kelly also responds to Staff and intervenor proposals for a sharing of the acquisition premium with customers. *Id.* pp. 31-33. However, this portion of her testimony is merely cumulative to the Rebuttal Testimony of Lisa Quilici which covers the same issues in more detail.

Similarly, the Rebuttal Testimony of Eric Talley is improper rebuttal. Mr. Talley

addresses the structure of the proposed transaction and offers still another defense of private equity ownership of public utilities. Mr. Baudier has already addressed the structure of the proposed transaction at length, and in more specific detail, in his Direct Testimony, and in his Supplemental Testimonies dated March 4, March 31 and April 8, 2025 in response to the Hearing Examiners' Bench Requests. Mr. Baudier's testimony is based on his first-hand knowledge of BCP's operations and plans. Mr. Talley's testimony is cumulative testimony based on second-hand knowledge, at best, and is unhelpful, improper rebuttal.

The use of these new experts to repeat opinions that are already contained in the testimonies of Mr. Baudier is yet another attempt by the Joint Applicants to game the system. As noted above, there is simply not enough time before the start of the scheduled hearing on June 23, 2025 for Staff and other parties to propound written discovery on the Joint Applicants' new proposals, to depose the new witnesses, to re-depose the original witnesses on their changed positions, and also prepare comprehensive responsive testimony. Many of the Joint Movants have already expended their budgets for expert witnesses to analyze and prepare testimony on the October 28, 2024 Application. Requiring these parties to restart this process at this late date puts them at a fundamental disadvantage against the Joint Applicants.

IV. POSITIONS OF THE PARTIES

The Federal Executive Agencies and the Incorporated County of Los Alamos support the Joint Motion. All the Joint Applicants oppose the Joint Motion.

V. REQUESTED RELIEF

The Joint Movants respectfully request the Hearing Examiners to grant one of the following forms of relief, listed in descending order of preference below:

Alternative Request for Relief No. 1:

a. Dismiss the October 28, 2024 Joint Application without prejudice;
b. Revise the current Procedural Order and put the scheduled hearing on hold until a decision is made on this Motion to Dismiss and all interlocutory appeals are exhausted;
c. If the Joint Applicants seek to refile after dismissal of the case, order them to submit an Application that is, at a minimum, consistent with the precedents set by the Commission in Case Nos. 13-00231-UT, 15-00327-UT, and 19-00234-UT.

Dismissal of this case, without prejudice, is warranted given the Joint Applicants' attempt to game the Commission's procedures by filing an initial Application they knew to be grossly deficient and then waiting until just prior to the hearing to make revisions intended to bring the proposed transaction somewhat in line with the Commission's established precedents. This knowing gaming of the Commission's procedures deserves the strong sanction of dismissal.

Alternative Request for Relief No. 2:

a. Place the current case schedule in abeyance;
b. Set a date for the Joint Applicants to refile their October 28, 2024 Application with terms, conditions and customer benefits and protections that are, at minimum, consistent with the Final Orders in Case Nos. 13-00231-UT, 15-00327-UT, and 19-00234-UT; and
c. After the filing of an amended Application, calendar a prehearing conference to set a schedule for the case going forward.

Alternative Request for Relief No. 3:

Strike the portions of the Joint Applicants' May 16, 2025 rebuttal testimonies the Hearing Examiners determine violate the Commission's rule governing permissible rebuttal testimony,

1.2.2.35.N NMAC, and proceed to hearing on the October 28, 2024 Application without the Joint Applicants' unlawful revisions.

Of these proposed alternative forms of relief, this third proposal is the least preferable because the Joint Applicants' proposed revisions are already public knowledge, are now part of the Commission's electronic record of the case and may be difficult to ignore during the evidentiary hearing.

VI. CONCLUSION

The Joint Movants respectfully request the Hearing Examiners to dismiss the Application, without prejudice, or grant one of the other proposed forms of alternative relief set forth herein and for any further relief they determine to be just and reasonable.

Respectfully submitted this 27th day of May 2025 by

UTILITY DIVISION STAFF

/s/ Electronically signed by

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent via email a true and correct copy of the **Joint Motion to Dismiss Without Prejudice or for Alternative Relief and Brief in Support** to the persons listed below.

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