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**

DIRECT TESTIMONY OF BRADLEY T. CEBULKO

ON BEHALF OF WESTERN RESOURCE ADVOCATES

April 18, 2025

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WESTERN RESOURCE ADVOCATES
DIRECT TESTIMONY OF BRADLEY T. CEBULKO

I. INTRODUCTION

Q. Please state your name, business address and position.

A. My name is Bradley Cebulko. My business address is 2900 E Broadway Blvd, Ste 100 #780 Tucson, AZ 85716. I am a Partner at Current Energy Group.

Q. Please summarize your professional experience and educational background.

A. I co-founded Current Energy Group ("CEG") in May 2024. CEG provides consumer advocates, public utility commissions, and public interest organizations technical, economic, and policy advisory services on electric and gas regulatory issues. At CEG, I work on a wide array of gas and electric issues including long-term planning, cost-of-service modeling, capital expenditure prudency, and new regulatory business models, amongst other issues. Prior to founding CEG, I briefly worked for my own sole proprietorship and, prior to that, was a Senior Manager at Strategen Consulting from 2021 to 2024. Before Strategen, I worked at the Washington Utilities and Transportation Commission ("UTC") for eight years. From 2013-2016, I was an analyst with the UTC Commission Staff focused on electric and natural gas integrated resource planning ("IRP"), electric and natural gas energy efficiency programs, and new program design and implementation. From 2016-2021, I was an advisor to the UTC Commissioners where I led or worked on the commissioners' review of general rate cases, rulemakings, and a proposed utility acquisition.

I have a master's in public administration from the University of Washington Evans School of Public Policy and Governance, and a Bachelor of Arts in Political Science from Colorado State University. My curriculum vitae is attached as Exhibit BTC-1.

Q. Have you previously testified before the New Mexico Public Regulation Commission ("Commission" or "PRC")?

A. No.

Q. Have you testified as an expert witness before other public utility commissions?

A. Yes. I have testified on a range of electric and gas issues before public utility commissions in Washington, Oregon, Arizona, North Dakota, Colorado, Illinois, Minnesota, Michigan, Ohio, Massachusetts, Maryland, Connecticut, and New Hampshire.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of Western Resource Advocates.

Q. What is the purpose of your direct testimony?

A. The purpose of my testimony is to provide the Commission a recommendation on the Joint Application for the sale of New Mexico Gas Company ("NMGC") from Emera to Bernhard Capital Partners ("BCP").[1]

Q. Please summarize your recommendations to the Commission.

A. I recommend the Commission reject the Joint Application as not being in the public interest. The Joint Applicants have not demonstrated that the acquisition will result in net

[1] As shown in the Joint Application, the sale involves no fewer than 17 corporations, limited partnerships, and holding companies. However, to simplify the matter, I describe the sale of the New Mexico Gas Company as a transfer from Emera to BCP.

benefits to customers. Rather, should this acquisition be approved, customers will be at greater risk in the short- and long-term than they are today.

In the alternative, should the Commission consider approving the acquisition, I recommend the following:

1. Prior to approving the Joint Application, the Commission should require the Joint Applicants to file a non-consolidation opinion which concludes that the ring-fencing provisions are sufficient and that a bankruptcy court would not order the substantive consolidation of the assets, and liabilities of NMGC with those of Saturn Holdco, Saturn Utilities, BCP Infrastructure Funds or its affiliates or subsidiaries. In the event that the ring-fencing provisions are insufficient to obtain a non-consolidation opinion, the Joint Applicants must 1. notify the Commission of their inability to obtain a non-consolidation opinion, and 2. propose additional ring-fencing provisions around NMGC as are sufficient to obtain a non-consolidation opinion.
2. Impose conditions that attempt to reduce the potential harm to ratepayers and the public interest as recommended in Section VII of my testimony.

II. SUMMARY OF THE TRANSACTION

Q. Please summarize the relationships of the Joint Applicants.

A. Emera, a publicly traded Canadian energy and services company that owns and invests in electric and gas utilities and services, through several holding companies, is currently the ultimate parent company of New Mexico Gas Company (NMGC).[2] Legally, NMGC is owned by New Mexico Gas Intermediate ("NMGI"), whose sole purpose is to own 100%

[2] Joint Application, pp. 2 – 4.

of NMGC's outstanding stock. NMGI, in turn, is 100% owned by TECO Energy, a holding company, which owns no other assets than NMGI. TECO Energy is owned by Emera U.S. Holdings ("EUSHI") and TECO Holdings. Emera wholly and directly owns EUSHI and indirectly owns TECO Holdings.

Emera is proposing to sell NMGC to newly created BCP Infrastructure Funds, which were created by Bernhard Capital Partners Management ("BCP Applicants") and will be managed by BCP Applicants going forward.[3] Legally, NMGC will be 100% owned by Saturn Holdco, which was created in August 2024 for the sole purpose of acquiring 100% of the equity interests of TECO Energy, and thus NMGI and NGMC. Saturn Holdco's sole member is Saturn Utilities, which is an indirect wholly owned subsidiary of the BCP Infrastructure Funds.

Q. Please describe the BCP Infrastructure Funds.

A. Should the Commission approve the application, the Joint Applicants stated that three Infrastructure Funds will be the parent entities of Saturn Holdco, which will in turn own NMGI, which will own NMGC. The three BCP Infrastructure Funds are BCP Infrastructure Fund II, BCP Infrastructure Fund II-A, and BCP Infrastructure Fund II GP. Joint Applicants witness Jeffrey M. Baudier, President of Saturn Utilities Holdco, LLC, and Senior Managing Director at BCP, testifies that BCP does not and will not directly or indirectly own NMGC.[4] Rather, BCP created a contractual right for itself to manage BCP Infrastructure Funds, which own Saturn HoldCo, which owns TECO Energy, which owns NMGI, which owns NMGC.

[3] Joint Application, pp. 2 – 4.
[4] Direct Testimony Jeffrey Baudier, p. 4, lines 11 – 18.

Q. What rulings are the Joint Applicants seeking from the Commission?

A. The Joint Applicants are seeking:[5]

1. Approval of the acquisition of TECO Energy, NMGI, and NMGC (collectively, the "NMGC Group") by Saturn Holdco;
2. Approval of the Transition Services Agreement ("TSA") whereby Emera and its affiliates will provide a variety of support services to the NMGC Group for 18 months after closing the Transaction;
3. Approval of the divestiture of the NMGC Group by Emera, EUSHI and TECO Holdings;
4. Approval of NMGC's Amended General Diversification Plan ("Amended GDP"); and
5. Any other approvals or authorizations necessary to consummate and implement the Transaction.

The Joint Applicants are seeking to close the transaction on September 30, 2025, or if feasible, in advance of the target date.[6]

Q. What is the price of the sale and how does BCP Management propose to fund the purchase of the sale?

A. The purchase price is $1.252 billion. The Joint Applicants testify that Saturn Holdco intends to fund the purchase using $448.9 million of equity from the BCP Infrastructure Funds, $250 million of private debt, which is non-recourse to NMGC, and to assume approximately $550 million of debt currently held by NMGC.[7]

[5] *Id.* at p. 8, lines 4 – 8.
[6] *Id.* at p. 5, lines 10 – 15.
[7] *Id.* at p. 22, lines 1 - 4.

Q. Will you please explain the $250 million in private debt?

A. Yes. The net book value of NMGC is approximately $1 billion.[8] The BCP Applicants,[9] through Saturn Holdco, propose to purchase NMGC for $1.252 billion. The difference, approximately $250 million, represents the premium, or goodwill, that BCP Applicants' would pay above the net book value to Emera for NMGC. The BCP Applicants testify that the $250 million in private debt to fund the premium is non-recourse to NMGC, which the Joint Applicants testify that BCP will not seek to directly recover those costs from ratepayers.[10] Later in this testimony, I will discuss why, although the Joint Applicants testify that the $250 million premium is non-recourse to NMGC customers, the BCP Applicants' will likely seek to recoup these costs indirectly from NMGC customers.

Q. Has the Commission identified a standard for approving acquisitions and consolidations?

A. New Mexico statute § 62-6-12 states that any sale of stock of a public utility or public utility holding company must seek approval from the Commission. New Mexico statute § 62-6-13 continues that the PRC shall approve proposed acquisitions and consolidations that require "unless the commission shall find that the proposed transaction is unlawful or is inconsistent with the public interest."

In its Certificate of Stipulation approving Emera's acquisition of NMGC in 2015, the Commission clarified that the test under § 62-6-13 is whether the public interest is

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[8] *Id.* at p. 23, lines 1 – 4.
[9] The "BCP Applicants" consist of Saturn Utilities, LLC; Saturn Utilities Holdco, LLC; Saturn Utilities Aggregator, LP; Saturn Utilities Aggregator GP, LLC; Saturn Utilities Topco, LP; Saturn Utilities Topco GP, LLC; BCP Infrastructure Fund II, LP; BCP Infrastructure Fund II-A, LP; and BCP Infrastructure Fund II GP, LP.
[10] Direct Testimony of Jeffrey M. Baudier at p. 23, lines 1 – 4.

served by approving the proposed transaction, and that the proposed transaction results in positive benefits to customers.[11] In other words, the PRC uses a net benefits standard. Through a series of cases, the Commission has identified six factors it considers during acquisitions and consolidations. The six factors are:[12]

1. Whether the transaction provides benefits to utility customers;
2. Whether the NMPRC's jurisdiction will be preserved;
3. Whether quality of service will be diminished;
4. Whether the transaction will result in the improper subsidization of non-utility activities;
5. Careful verification of the qualifications and financial health of the new owner; and
6. Whether there are adequate protections against harm to customers.

In its approval of the Emera acquisition, the Commission also stated that it will consider conditions the PRC has attached to its past acquisition approvals.[13]

III. THE PROPOSED ACQUISITION IS NOT IN THE PUBLIC INTEREST BECAUSE IT FAILS TO SATISFY THREE OF THE SIX CONDITIONS

Q. You identified six factors that the Commission considers during an acquisition or consolidation. Does the proposed acquisition satisfy all six factors?

A. No. Based on my review of the record, I conclude that the acquisition fails to satisfy two, possibly three, of the six factors. Specifically, the acquisition:

1. Does not include adequate protections against harm to customers; and

[11] NMPRC Case No. 15-00327-UT, Certificate of Stipulation, at 30.
[12] *Id.* at 30 – 31.
[13] *Id.* at 32 – 33.

2. Does not provide positive, or net, benefits to customers

Further, I am concerned that the proposed sale did not include careful verification of the qualifications and financial health of the new owners.

IV. THE PROPOSED ACQUISITION DOES NOT SUFFICIENTLY PROTECT AGAINST HARM TO CUSTOMERS

Q. Please provide an overview of this section of your testimony

A. In this section of my testimony, I demonstrate that the proposed acquisition will increase the risk to customers of short- and long-term rate increases. I demonstrate that the BCP Applicants' interests are not aligned with NMGC customers' interests, which will likely lead to harm to the public interest.

Q. Please explain why the BCP Applicants'[14] interests are not aligned with customers' interests.

A. New Mexico law states that it is in the public interest, including the interest of consumers and the interest of investors, for the Commission to regulate public utilities to ensure services are available at fair, just and reasonable rates.[15] The Commission's role is to balance the interests and demands, which are often competing. To that end, it is helpful, where possible, to align the utility investors' incentives with those of the utility customers. Although full alignment may not be obtainable, the Commission should be cognizant of and work to mitigate instances in which investors' interests and ratepayers' interests are strongly misaligned.

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[14] The "BCP Applicants" consist of Saturn Utilities, LLC; Saturn Utilities Holdco, LLC; Saturn Utilities Aggregator, LP; Saturn Utilities Aggregator GP, LLC; Saturn Utilities Topco, LP; Saturn Utilities Topco GP, LLC; BCP Infrastructure Fund II, LP; BCP Infrastructure Fund II-A, LP; and BCP Infrastructure Fund II GP, LP.

[15] NMSA 1978 § 62-3-1.

In this instant case, I am concerned that BCP Applicants' incentives are so misaligned with NMGC ratepayers that no set of conditions the Commission imposes upon the acquisition can rectify the probable harm to the public interest. While some misalignment between utility ownership and ratepayer interests may be inherent to monopoly regulation, in this instance, the misalignment is exaggerated by facts of this case for two principal reasons:

(1) The BCP Applicants' interest in NMGC is short-term while ratepayers' interests in NMGC are long-term, and

(2) The pressure on the BCP Applicants' to earn a return for its investors in a short-period of time after agreeing to pay a premium of $250 million over book value, is not financially rational unless the Company intends to achieve operational efficiencies from the acquisition, intends to grow its rate base, or increase its rate of return through a higher ROE or a change to its capital structure. The BCP Applicants do not have a plan to achieve operational efficiencies and therefore will likely try to expand rate base and earn a higher rate of return.

Q. What is BCP Applicants' commitment for holding NMGC?

A. The BCP Applicants testify that they will not sell their interest in NMGC for at least 5 years.[16]

[16] Direct Testimony of Jeffrey M. Baudier at 33: 9 – 10.

Q. Did the BCP Applicants identify a targeted exit date?

A. No. In a discovery response, the BCP Applicants stated that they do not have a targeted exit date.[17] However, it is reasonable to be concerned that the BCP Applicants' do not intend to hold the Company for more than a short-period of time.

Q. What leads you to believe that the BCP Applicants' do not intend to hold NMGC for the long-run?

A. Two reasons. First, the term of the BCP Infrastructure Funds is 12 years, with the option for three subsequent one-year extensions.[18] [redacted]

Second, the Commission can reasonably deduce the BCP Applicant's intentions through a comparison with its proposed investment condition as compared to the commitment Emera made in 2015. In its Certificate of Stipulation, Emera committed to holding NMGC for a minimum of 10 years. Should the Commission approve this

[17] Joint Applicants' ("JA") Response to WRA Interrogatory 2-1, attached as Exhibit BTC-2.
[18] JA Exhibit BR-12, (filed April 8, 2025).
[19] JA Exhibit BR-4 (confidential treatment pending).
[20] JA Confidential Response to WRA 3-1, attached as Exhibit BTC-3.

transaction, Emera will have held NMGC for just over its 10-year commitment. It is clear through a comparison of the commitments made by the BCP Applicants in this Joint Application to the commitments agreed to by Emera in 2015, that the BCP Applicants closely followed Emera's example. For example, in each case the parties agreed that NMGC will:

- Invest a minimum of the rolling (3) year average for depreciation and amortization on an average annual basis[21]
- Not move gas control operations outside of New Mexico without prior express Commission approval"[22]
- Participate in annual JD Power Residential Gas Utility Customer Satisfaction Surveys and provide the Commission with the results,[23] and
- "Maintain a post-closing equity ratio of at least fifty percent (50%) at NMGC until the final order in the next general rate case using a capital structure that includes equity and the par amount of long-term debt only. If the twelve (12) month average equity ratio falls below fifty percent (50%) for more than two (2) consecutive quarters, capital will be invested in NMGC to achieve the fifty percent (50%) equity ratio."[24]

In several instances, the BCP Applicants used the exact same language as the Emera agreement. Yet, with respect to the length of commitment the BCP Applicants will make to not sell their interest in NMGC, the BCP Applicants only proposed a 5-year commitment, while Emera agreed to a 10-year commitment. That the BCP Applicants'

[21] Joint Application at 11.
[22] Joint Application at 11.
[23] Joint Application at 12.
[24] Joint Application at 12.

reduced the commitment by half is a pertinent and a significant departure from Emera's commitment.

Q. Why is it problematic that the BCP Applicants are likely to only hold onto NMGC for a short period of time?

A. Utility service is capital intensive with long lives – the vast majority of NMGC's distribution pipelines have service lives greater than 50 years.[25] NMGC's transmission lines have estimated service lives that exceed 100 years.[26] This means that assets placed into service today most likely will not be paid off for many decades, far beyond when the BCP Applicants will have sold their stake in NMGC. Ratepayers are, for the most part, captive customers who expect that their service will remain reliable, safe, and affordable in perpetuity. Generally speaking, utilities and commissions set depreciation schedules for assets put into service with their useful lives, such that the customers who are using the system are paying for the system. NMGC ratepayers will be paying for the decisions that BCP makes over the next five to 15years into the year 2100 and beyond.

It is in the public interest for the utility and its customers to have similar long-term visions about the programs and investments that the utility makes. An ownership group with a short-term vision, like the BCP Applicants, can be problematic because their interests are not as well aligned with their customers. Because the BCP Applicants are paying a $250 million premium for NMGC, and they only intend to hold NMGC for a short period of time, the BCP Applicants' will feel pressure on NMGC to maximize its

[25] JA Response to WRA 4-16, attached as Exhibit BTC-4.
[26] *Id.*

rate of return ("ROR") and expand its rate base to earn comparable peer utility market rate returns.

Mergers and acquisitions also introduce uncertainty and, to some extent, instability. For the utility employees, changes in ownership can lead to organizational changes, layoffs, modifications to wages and benefits. For customers, a change in ownership can lead to changes in customer service and utility priorities. From a PUC administrative standpoint, a merger or acquisition takes a considerable amount of state, utility, and stakeholder resources (time and money) that are not being dedicated elsewhere. Regularly occurring ownership changes introduce uncertainty, instability, and the use of significant resources.

In summary, a short-term commitment is not aligned with customers' interests nor a more encompassing view of the public interest.

Q. The BCP Applicants state in the Joint Application that the $250 million premium is non-recourse, which means they will not seek to recover the costs from customers.[27] Please explain why this commitment does not sufficiently protect customers.

A. The premium the BCP Applicants have agreed to pay cannot be directly passed through to customers. However, the BCP Applicants, reasonably, expect to earn a return on their investment for their investors. The investors will likely expect, at a minimum, returns comparable with NMGC industry peers. Keep in mind that the BCP Applicants only intend to hold NMGC for at most 15 years,[28] and their initial starting point is a $250 million deficit. To earn a reasonable return – either through distributions to the parent

[27] Joint Application, at 12.
[28] JA Exhibit BR-12, (filed April 8, 2025).

company or through an increase in the value of the Company through a future sale - the BCP Applicants will need to do one of the following: reduce operational costs, increase its rate of return through a higher return on equity or gain a more favorable equity ratio, or expand rate base.

Q. Could the BCP Applicants realize synergy and operational benefits to reduce NMGC's costs to recoup some of the $250 million premium?

A. Perhaps, but the BCP Applicants are not claiming that they will achieve operational benefits and therefore the Commission should not expect that they will. The BCP Applicants "have not quantified any operational cost reductions or efficiencies that may be realized post-acquisition."[29] Consequently, we cannot make any positive assumptions that NMGC will become more efficient, while maintaining reasonable customer service and service quality, under new ownership.

Q. Is it concerning that the BCP Applicants have not identified operational benefit post-acquisition?

A. Yes. Typically, one of the principal customer benefits of a merger or acquisition is the potential for operational cost reductions or efficiencies. For example, two companies joining together may need only one accounting department, one customer service department, and one legal department. The BCP Applicants have not identified any potential benefits or savings to customers from increased operational efficiencies as a result of the acquisition.[30] In fact, the BCP Applicants are proposing to remove current shared services offered by TECO and Emera and create new positions in New Mexico for

[29] JA Response to WRA 2-10, attached as Exhibit BTC-5.
[30] *Id.*

Information Technology, Finance, and Human Resources.[31] One of the most common public interest benefits during a utility merger or acquisition is the likelihood of achieving operational efficiencies that reduce customer costs. To demonstrate benefit to customers, the acquiring entity typically offers a bill credit or some other renumeration to customers as a way to share the benefit of the increased operational efficiencies with customers. Here, the BCP Applicants neither project operational efficiencies nor offer bill credits to customers.

Q. Because the BCP Applicants do not plan to achieve operational efficiencies, the BCP Applicants are likely to either seek to accelerate the expansion of NMGC's rate base or seek to increase its authorized rate of return. Is it in interest ratepayers to increase NMGC's authorized rate of return?

A. Whether or not the authorized rate of return should be increased is fact-specific to the utility and present economic conditions. The capital structure and the authorized return on equity must be sufficient to attract capital and provide a fair return to investors, but no higher. I am not opining if the Company's current capital structure or return on equity is correctly calibrated. That said, I am unaware of any evidence that shows NMGC's return on equity has not been reasonably set by this Commission.[32] Nor have I seen any evidence that the current capital structure, as set by the Commission, is unreasonable. Without such a demonstration, increasing the authorized rate of return is an increase of costs to customers without any clear corresponding ratepayer benefit.

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[31] Direct Testimony of Jeffrey M. Baudier at p. 24, lines 18 – 25:5.

[32] In fact, there is an argument that typical industry return on equity is currently set too high. *See* Ellis, Mark. "Rate of Return Equals Cost of Capital: A Simple, Fair Formula to Stop Investor-Owned Utilities from Overcharging the Public." American Economic Liberties Project. January 2025. Available at: https://www.economicliberties.us/wp-content/uploads/2025/01/20250102-aelp-ror-v5.pdf.

Q. Is it in the ratepayers' interests for the BCP Applicants to embark on accelerated investment of rate base?

A. It depends on the underlying reasons for the expansion. There are circumstances in which accelerating the expansion of rate base may be in the interests of customers, such as when there is a consistent notable increase in customer demand. However, I do not see those underlying conditions present here. My concern is that the BCP Applicants will force significant new investments in rates for the sake of expanding the rate base, rather than in response to customer needs. This is underlined by a NMGC presentation to prospective buyers that the Company presents "[c]ompelling line-of-sight growth driven by reliability-focused capex program that balances customer affordability."[33]

Q. Is the Company experiencing significant demand growth?

A. Not particularly, and the growth that is occurring comes from large customers whose demand is more at risk from changing economic and market conditions. From 2016 through 2024, the Company's non-weather adjusted demand grew on average 3.58% annually.[34] From 2020 through 2024, on a weather adjusted basis, demand grew at 1.67% annually. On initial pass, the Company's growth appears to be decent – although still significantly below the Company's annual growth in capital expenditures. However, upon closer examination, it is clear that the growth in demand is being driven by large industrial and commercial customers whose demand tends to be relatively more volatile and secure than residential and small commercial customers. Rate 70 Off-System Transportation customers' demand grew from 45 million therms annually in 2016 to 179

[33] JA Exhibit NEE 2-43(b), at 7, attached as Exhibit BTC-6.
[34] JA Exhibit WRA 4-13, attached as Exhibit BTC-7.

million therms annually in 2024, or an average annual growth of 18%.[35] There are fewer than two dozen Off-System Transportation customers. Large commercial or industrial facilities are typically more susceptible to economic and market conditions than the far more numerous residential customer class.

Residential customers make up 92% of the company's customer base and, according to the BCP Applicant-commissioned Black & Veatch report, approximately 73% of the company's gross margin as of 2023.[36] From 2016 to 2024, residential non-weather adjusted demand grew only 0.62%.[37] Moreover, since 2020, on a weather adjusted basis, residential demand has actually *decreased* by an average of 1.67% annually.[38]

The Joint Applicants agree that New Mexico is not a high-growth area, writing that population growth in New Mexico from 2010 to 2020 was 62% and 80% lower than the national average and neighboring state's growth over the same period.[39]

Q. Has NMGC's level of capital expenditure investment been consistent with its growth in demand?

A. No, NMGC's capital expenditure spending is growing significantly faster than customer demand. From 2016 to 2024, NMGC's annual capital expenditure spending grew at an average annual rate of 9.44%.[40] In other words, from 2016 to 2024, NMGC's rate of spending on capital expenditures was more than 2.5 times greater than its growth in system-wide, non-weather-adjusted demand. From 2020 to 2024, NMGC's rate of

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[35] *Id.*
[36] JA Exhibit Staff 3-4 with Confidential Material Redacted, at 2:26 – 27, attached as Exhibit BTC-8.
[37] JA Exhibit WRA 2-13, attached as Exhibit BTC-9.
[38] JA Exhibit WRA 4-13, attached as Exhibit BTC-7.
[39] JA Response to NEE 2-45, attached as Exhibit BTC-10.
[40] Calculated using JA Response to WRA 2-23 & 2-24, attached as Exhibit BTC-11.

spending on capital expenditures grew more than 5 times faster than NMGC's system-wide, weather-adjusted growth in demand.[41]

Q. Why is it concerning for ratepayers that the rate of NMGC's capital expenditure spending has consistently outpaced growth in demand?

A. All else equal, when spending increases faster than demand, customer rates will increase. The growth mismatch is particularly problematic when customer demand is flat, and alarming when customer demand is declining. This is because the growing fixed costs of the system are spread over the same, or fewer, therms of gas.

Q. Is NMGC forecasting that capital expenditure growth will continue to outpace demand growth?

A. As part of its due diligence into NMGC, the BCP Applicants contracted with PA Consulting to conduct a Commercial Market Expert Report.[42] The report estimated overall total sales volumes to grow only at an average annual growth rate of 0.3%.[43] Meanwhile, the Company forecasts that annual capital expenditure spending will grow at more than 6% annually from 2025 through 2029.[44]

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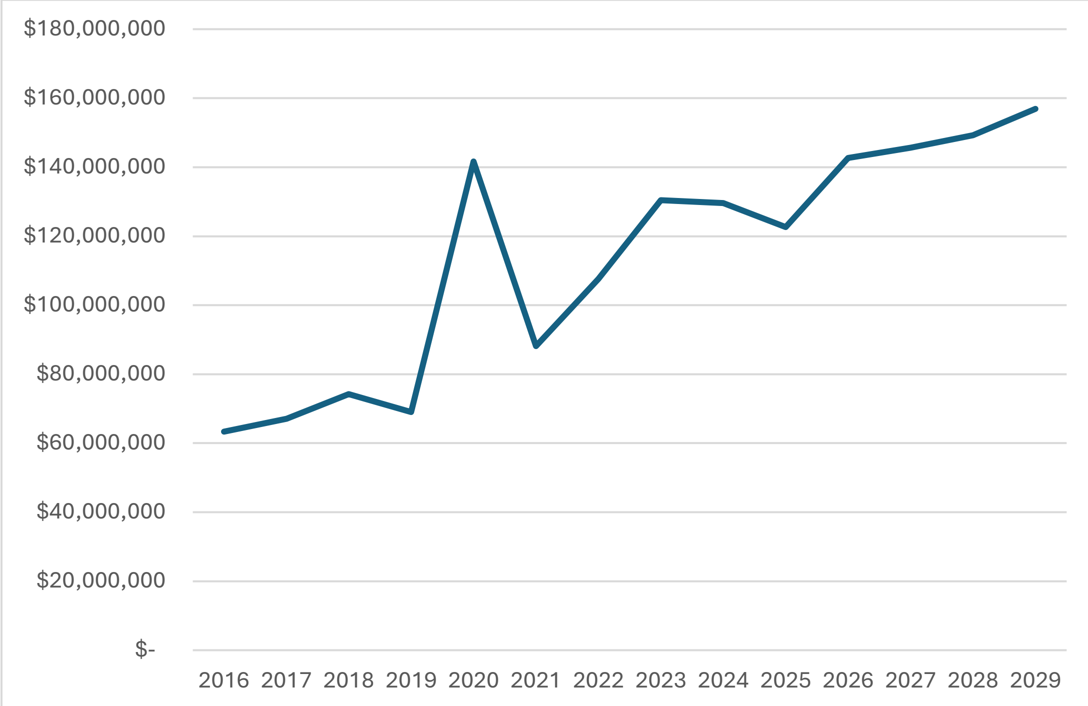
[41] 9.44% as compared to 1.67%.
[42] JA Exhibit NEE 2-43c, attached as Exhibit BTC-12.
[43] *Id.* at 62.
[44] Calculated using JA Response to WRA 2-23 & 2-24, attached as Exhibit BTC-11.

Figure 1: NMGC Historic and Forecasted Annual Capex Spending[45]



Q. You showed that the growth rate of capex spending has outpaced demand even before the Joint Applicants proposed this acquisition and the Company is continuing to forecast annual capital expenditure growth that far exceeds growth in demand. Why is this issue relevant to this case?

A. As I stated earlier, for this acquisition to make financial sense for the BCP Applicants, they need to wring out significant operational efficiencies from the utility, increase the rate of return, accelerate the expansion of rate base, or some combination of the three. As demonstrated, the BCP Applicants have not quantified potential operational efficiency savings. That leaves them only two options: increasing its authorized ROR and expanding its rate base to an even greater degree. Accelerating rate base growth is a particularly risky strategy given the uncertainty of the future. NMGC's demand from its

[45] JA Response to WRA 2-23 & 2-24, attached as Exhibit BTC-11.

existing customers is relatively flat. As WRA witness Michael Kenney discusses, the state has ambitious climate goals, and in order for the state to meet those goals, it will require some level of building electrification, which will further reduce demand for gas. NMGC's future, like the gas utility industry as a whole, is quite uncertain.[46] An aggressive capital investment plan to put into place new assets with service lives of 50 or more years, up to 100 years is highly risky for customers.

Q. Many utilities across the country are replacing their transmission and distribution systems to remove leak-prone-pipe, which has driven growth in gas utility capital expenditure spending since 2009. Does NMGC have significant amounts of leak prone pipe or a relatively leaky system?

A. No. NMGC's system is relatively new and not leaky. This is confirmed through a comparison of NMGC with 40 other investor-owned gas utilities of similar size to NMGC as well as a BCP-commissioned study. NMGC has a relatively small proportion of leak-prone pipe (de minimis bare steel main, 2% bare steel services).[47] The Company has a relatively low reported leak ratio per mile (all grades), at 0.05, compared with an average leak ratio of 0.31 for the 40 IOUs surveyed. The Company also has a hazardous leak ratio (grade 1) significantly below average, at 0.04, compared with an average hazardous leak ratio of 0.14. My findings were sourced using publicly available data from the Pipeline Hazardous Materials Safety Administration (PHMSA). My analysis was confirmed by a report conducted by Black & Veatch on behalf of the BCP Applicants during its due diligence into NMGC.[48]

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[46] *See* "The Future of Gas Utilities Series: Transitioning Gas Utilities to a Decarbonized Future." Brattle. 2021. Available at: https://www.brattle.com/insights-events/publications/the-future-of-gas-utilities-series/.
[47] *See* Cebulko Workpapers Benchmark Analysis, attached as Exhibit BTC-13.
[48] JA Exhibit Staff 3-4, attached as Exhibit BTC-8.

Q. Please discuss Black & Veatch's findings on the state of NMGC's system.

A. The Black and Vetch report confirmed my findings that NMGC's system is relatively new and less leaky than its peers. Black & Veatch found:

- "The material composition of the distribution system is in line with industry standards. NMGC plans to eliminate all bare steel main and all PVC
- pipe by end of year 2024."
- "the average number of leaks and hazardous leaks per thousand mile of distribution mains and services are well below national average and has been gradually decreasing from 2015 to 2023."[49]
- "Leaks per 1,000 main miles is consistently declining from 2015 – 2023. Leaks per service line miles has been flat."[50]
- "Hazardous leaks per 1,000 miles is significantly below national average and has been steady since 2015."
- "…the number of corrosion and hazardous corrosion leaks per thousand miles of steel mains has remained steady and significantly lower than the national average between 2015 and 2023. Average leak backlog has dropped significantly since 2015 and also remains well below the national average. These favorable metrics indicate good operating condition of NMGC's distribution system."[51]
- "The lost and unaccounted for (LAUF) gas record for NMGC for [sic] since 2020 is well below the national average."[52]

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[49]*Id.* at pp. 1-4.
[50]*Id.* at pp. 2-8.
[51]*Id.* at pp. 1-4.
[52]*Id.*

Q. Are you suggesting that NMGC does not need to continue investing in its system to maintain safety?

A. No. It is NMGC's responsibility to ensure that it is operating a safe and reliable system, which means making the necessary investments into repairing leaks. The utility must continue to make investments to maintain a safe and reliable system. My point is that the Company's system is relatively new, not particularly leaky, and there isn't a need to significantly increase the pace of investments in the system to replace existing pipe with a significant amount of undepreciated assets. NMGC is not similarly situated to other states that have significant amounts of leak-prone pipe in their systems that to be repaired, replaced, or decommissioned. Given that NMGC's system is relatively high performing, is forecasting relatively weak demand growth and is likely to experience headwinds associated with meeting state emissions reduction goals, NMGC should take a cautious approach to its capital expenditure plan.

Q. Turn back to the BCP Applicants' willingness to pay a $250 million premium for NMGC. Isn't it possible that the BCP Applicants would be willing to pay the premium even if they did not expect to achieve operational synergies, accelerate investment in rate base, or increase its rate of return?

A. Based on the record of this case, I don't believe so. It is possible a buying entity (private equity, another utility, etc.) that seeks stable and consistent returns and intends to hold NMGC for the long-term would be comfortable paying the premium and taking distributions consistent with NMGC's historic record. The buying entity would need to have a long-term investment strategy (i.e., decades) and sufficient confidence that customer demand for its product will continue more-or-less at current trends. However, the BCP Applicants have a much shorter investment strategy of 5 to, at most, 12 or 15 years. The BCP Applicants have a limited amount of time to justify paying the premium and to earn a reasonable return for its investors.

Q. Can you summarize why you do not think the proposed acquisition does not sufficiently protect customers from harm?

A. Yes. Based on my review, the BCP Applicants have limited ability to increase system operating efficiencies, which leaves two options: accelerating investment in rate base and increasing their rate of return. My primary concern is that BCP has a strong incentive to overinvest in the Company's delivery system to increase the rate base both to extract greater profit, and to increase the value of the Company for a future sale. Overinvesting in the delivery system, particularly when demand is relatively flat, creates a high risk of increasing rates for NMGC's customers.

V. THE PROPOSED ACQUISITION DOES NOT PROVIDE NET BENEFITS TO CUSTOMERS

Q. What do the Joint Applicants testify are the purported benefits of the transaction?

A. The purported benefits of the transaction are minimal, especially as compared to the benefits and commitments made during previous acquisitions, most notably, Emera's takeover of NMGC 10 years ago. Moreover, the benefits identified by the Joint Applicants pale in comparison to the risks, and likely costs, ratepayers will experience as a result of the acquisition. In its application and testimonies, the Joint Applicants have identified four potential benefits.

1. BCP Management anticipates that the transaction will result in approximately 51 to 61 new jobs in New Mexico.

2. NMGC will evaluate opportunities for the development of and investment in renewable natural gas, certified low emission natural gas, and/or other lower-carbon energy sources including low-carbon hydrogen development, without seeking recovery from customers for the costs of those evaluations.

3. NMGC will contribute $5 million over a period of five years to economic development projects or programs in NMGC's service territory designed to attract new business and to retain and grow existing businesses, without seeking recovery from customers for the costs of those economic development projects or programs.

4. NMGC will make annual charitable contributions of cash or in-kind donations valued at a minimum of $500,000 for five years to qualified, tax-exempt organizations that are engaged in the development and improvement of communities and citizens in NMGC's service territory. NMGC will not seek recovery from customers of those contributions or in-kind donations.

The Joint Applicants also testify that NMGC will maintain or strengthen more than two dozen commitments related to customer benefits and protections.[53]

[53] Joint Application, pp. 11 - 12

Q. Let's examine each of the four specific benefits in turn. Do you have any concerns that the transaction may not result in approximately 51 to 61 new jobs in New Mexico?

A. Yes. The Joint Applicants do not make any specific commitment to a certain number of new jobs, and thus the Commission should assign no weight to the Joint Applicants' assertion of a benefit to ratepayers. The Joint Applicants testify that they "anticipate that the Transaction will result in adding approximately 51 to 61 new jobs in New Mexico as support services currently performed for NMGC by Emera and its affiliates out-of-state are moved to New Mexico."[54] The Joint Applicants have not committed to a minimum number of jobs added in New Mexico. None of the jobs are guaranteed.[55] As such, the purported economic benefits of the acquisition are, currently, illusory. Should the Commission approve the acquisition, NMGC could choose not to hire any employees and still remain in compliance with their commitment. The Joint Applicant's commitment stands in contrast to the commitments to maintain a certain level of workforce made by Emera in its acquisition of NMGC in 2015.

Q. What employment commitments did Emera make in its acquisition in 2015?

A. In its 2015 acquisition filing, Emera committed that "there will be no diminution in current levels of quality of customer service or system reliability for as long as Emera, or an affiliated entity, owns NMGC."[56] To ensure that commitment is met, Emera agreed that NMGC would maintain 675 full-time positions in New Mexico for three years after the acquisition, and thereafter would not drop below 675 employees without express prior

[54] Joint Application, at 10.
[55] JA Response to Exhibit WRA 1-7, attached as Exhibit BTC-14.
[56] NMPRC Case No. 15-00327-UT, Certification of Stipulation, at 17.

NMPRC approval.[57] If its workforce dropped below 675 positions for more than three consecutive months, Emera pledged to inform parties and use its best effort to restore the workforce. Finally, Emera pledged not to eliminate any "customer facing" positions for three years after closing except through attrition, voluntary severance, or for cause.[58]

It is notable that the Joint Applicants in this instant case, who reviewed the commitments made by Emera in the prior proceedings, did not make a firm commitment to a specific number of new hires, maintain a certain number of employees, maintain customer facing positions, or agree to make filings before the PRC if the number of employees dropped below a certain threshold.

Q. The Joint Applicants committed to evaluating opportunities for the development of and investment in renewable natural gas ("RNG"), certified low emission natural gas, and/or other lower-carbon energy sources including low-carbon hydrogen development, without seeking recovery from customers for the costs of those evaluations. What is your response?

A. A reasonably managed utility should be regularly analyzing its economic, political, and regulatory landscape to assess opportunities for, and risks to its customers and business. The state has set ambitious emissions reduction goals and I would expect that the utility would examine the potential role of supply-side alternatives, namely RNG and hydrogen. WRA witness Michael Kenney discusses the limitations of these resources in greater detail. In any case, the idea of examining market opportunities is not a benefit to customers but rather an expectation of a reasonably managed utility.

[57] *Id.*
[58] *Id.* at 18.

I appreciate that the Joint Applicants stated that they will not seek cost recovery of these evaluations. However, the commitment is vague and void of details, and it is not clear which costs the Joint Applicants are referencing nor the value of the "evaluations." I conclude that the Commission should not assign any benefit from this commitment.

Q. What is your response to the Joint Applicant's commitment that NMGC will contribute $5 million over a period of five years to economic development projects or programs in NMGC's service territory designed to attract new business and to retain and grow existing businesses, without seeking recovery from customers for the costs of those economic development projects or programs.

A. I appreciate that the BCP Applicants have stated their intention to contribute to economic development in the state. Unfortunately, the BCP Applicants' commitment is vague, lacks detail, and is therefore impossible to determine the benefit to customers with attracting new businesses or "retain and grow." For example, what does it mean to "retain" an existing business and how will NMGC determine if that business would have departed if not but for their "economic project?" Does NMGC intend to use ratepayer money, in addition to shareholder money, on expenditures to attract new businesses or retain/grow existing businesses? If yes, how will they demonstrate that the use of ratepayer money is in the public interest? If no, how will the Company ensure that other customers do not indirectly pay for the incentives to attract, grow, or retain the businesses? What types of businesses does NMGC intend to attract or retain? Are there stranded assets risks associated with attracting new businesses and building out the system to meet their demand? Again, I urge the Commission to assign no benefit to this commitment.

Q. Finally, NMGC committed to making annual charitable contributions of cash or in-kind donations valued at a minimum of $500,000 for five years to qualified, tax-exempt organizations that are engaged in the development and improvement of communities and citizens in NMGC's service territory. NMGC agrees that it will not seek recovery from customers of those contributions or in-kind donations. What is your response?

A. BCP's commitment for NMGC to contribute $500,000 per year cash or in-kind is actually lower than NMGC shareholders have been contributing since at least 2014. According to NMGC, from 2014 to 2015, NMGC shareholders contributed approximately $500,000 per year in cash.[59] Shareholder contributions increased from 2017 – 2020, to $800,000 - $900,000 per year. Since 2021, shareholder cash contributions have averaged approximately $530,000 per year.[60] BCP, on the other hand, is proposing to reduce shareholder contributions to $500,000 per year, set a limit of contributions for only five years, and an indeterminate amount of that value could come from "in-kind" contributions, which are not defined. The Commission should view BCP's commitment not as a net positive but as a net negative to customers.

Q. Did the BCP Applicants conduct an analysis that compares the costs and benefits of the transaction on behalf of the customers?

A. No, they did not.[61]

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[59] JA Response to WRA 5-4, attached as Exhibit BTC-15.
[60] *Id.*
[61] JA Response to NMDOJ 3-4, attached as Exhibit BTC-16.

Q. The Joint Applicants stated that they will maintain or strengthen more than two dozen commitments related to customer benefits and protections. What is your response?

A. I characterize these as "no harm" commitments rather than creating new, positive benefits for customers. For example, the BCP applicants agree that NMPRC will retain jurisdiction over NMGC and will not be diminished or adversely affected in any manner as a result of the Transaction.[62] I agree that it is important for the BCP Applicants to affirm the NMPRC's jurisdiction in writing. I would not, however, consider the BCP Applicants' acceptance of the Commission's authority to be a benefit to customers.

Q. Are there any other specific commitments made by the Joint Applicants that you wish to address?

A. Yes. The Joint Applicants testify that NMGC will not seek a regulatory equity ratio in its next base rate proceeding in excess of fifty-four percent (54%). I would not consider the Company's declaration to be a benefit to ratepayers.

Q. Why do you not consider this commitment to be a benefit for ratepayers?

A. A capital structure with a 54% equity ratio would be outside industry norms and this Commission's recent actions. Despite initially requesting equity ratios of 53% or higher in the past four general rate cases, the Company has agreed to in Stipulation, and the Commission has approved, NMGC's capital structure at 52% equity and 48% debt.[63] Furthermore, a 54% equity ratio would be significantly higher than peer gas utility's

[62] Joint Application, at 16.
[63] NMPRC Case 23-00255-UT, Final Order; NMPRC Case No. 21-00267-UT, Order Adopting and Approving Certification of Stipulation; -NMPRC Case No. 19-00317-UT, Certification of Stipulation; NMPRC Case No. 18-00038-UT, Phase 1 Certification of Stipulation.

equity ratio over the last 5 years. In my review of 165 gas utility rate cases from 42 states since 2021, the average common equity ratio is 51.7%, more than 2% below the BCP's theoretical limit.[64]

In other words, BCP's commitment offers no real benefit to ratepayers because it is based on an equity ratio that is unlikely to be approved and is higher than industry norms.

Q. NMGC commits to investing a minimum of the rolling three-year average for depreciation and amortization expense on an average annual basis in the NMGC system to ensure reliability and safety until the NMGC's next general rate case.[65] Do you agree that this constitutes a reasonable commitment or benefit to customers?

A. No. I find this commitment underwhelming for two reasons. First, the benchmark – a rolling three-year average for depreciation and amortization expense – has no basis in the utility's future capital needs. The Company's plan for future capital expenditure should be based on the system needs and not historic spending. The BCP Applicants made this commitment because it was the exact same commitment Emera made in its 2015 acquisition case.[66] The BCP Applicants' did not consider any other metric.[67] I cannot speak to the reasonableness of Emera's commitment to the Commission in 2015. That said, I am concerned that the BCP Applicants did not assess the needs of the utility, nor its current planning environment, when it made a commitment as meaningful as a certain level of capital investment in a gas utility.

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[64] *See* Cebulko Workpapers S&P ROE and COC, attached as Exhibit BTC-17.
[65] Joint Application, p. 11.
[66] JA Response to Staff 3-1, attached as Exhibit BTC-18.
[67] *Id.*

My sense is that, implicit in this commitment, is an assurance from the BCP Applicants to the Commission that it does not intend to acquire NMGC then starve the utility of the capital it needs to maintain a safe and reliable system. If that is their intention, I believe it would be better captured if the BCP Applicants' and NMGC would make specific commitments to a certain level of service quality and reliability. For example, NMGC could propose metrics regarding average number of leaks and hazardous leaks per thousand miles of distribution mains and services, number of corrosion and hazardous corrosion leaks per thousand miles of steel mains, and average leak backlog, along with penalties for missing the targets. By establishing performance metrics that measure desired outcomes, rather than spending targets, the BCP Applicants and NMGC would make a commitment to customers on achieving certain hold harmless or positive outcomes. And, as I already addressed, my greater concern is not that the BCP Applicants intends to underinvest in NMGC but rather will overinvest in the Company's delivery system to increase the rate base both to extract greater profit, and to increase the value of the Company for a future sale.

Q. The BCP Applicants copied many of the benefits and commitments made by Emera in 2015 in this case. Looking holistically at the 2015 Certification of Stipulation agreed to by Emera, and the commitments made by the BCP Applicants in this instant case, what conclusions can you make?

A. Although the BCP Applicants made many of the same, or substantively the same, commitments as Emera, the BCP Applicants modified several important commitments and omitted several key benefits. Emera's complete list of commitments and benefits to customers was more comprehensive. For example, Emera agreed:

1. Not to sell its interest in NMGI or in NMGC for at least ten years after closing of the transaction approved in the TECO Acquisition Case,
2. To share the proposed cost savings resulting from that transaction in the form of bill credit totaling $4 million per year for three years,
3. Not to seek an increase in base rates that would be effective before December 31, 2017, and use a historic test year in its next rate case for which a final order is issued,
4. No diminution in current levels of quality of customer service or system reliability for as long as Emera, or an affiliated entity, owns NMGC,
5. Maintaining wages, benefits, and other terms and conditions of employment for NMGC employees that are at least substantially comparable to those currently existing for NMGC employees,
6. Report to the NMPRC, on a quarterly basis for three years after closing of the Proposed Transaction, the number of NMGC position reductions, by function,
7. Increase NMGC's commitment to community charitable contributions and enterprises engaged in economic development and business development in New Mexico to $800,000 annually for three years from the closing of the Proposed Transaction. NMGC agrees that none of this $800,000 will be recoverable in rates,
8. Not to invest in businesses not engaged solely in the provision of utility service, and

9. Maintaining 675 full-time positions in New Mexico for three years after the closing of the Proposed Transaction and thereafter will not drop below this level without express prior NMPRC approval.

Q. Let's examine several of the commitments that you have not already addressed. The BCP Applicants did not propose a bill credit for customers. Please discuss why it is important that Emera committed to bill credits for ratepayers.

A. In testimony supporting its application, Emera testified that the purpose of the bill credits was to provide "immediate reductions in customer bills to share savings attributable to labor efficiency resulting from the TECO Acquisition."[68] Based on my review of acquisitions in New Mexico and elsewhere, it is common for the acquiring entity to provide rate credits back to customers. Ratepayers, whose rates provide the revenue for making capital and operational expenditures, should financially share in the benefits BCP Applicants argues that the acquisition will create. One common practice for sharing the benefit is through a bill credit or through a rate freeze. The BCP Applicants neither propose a bill credit or a rate freeze.

Q. Emera committed not to seek an increase in base rates until December 31, 2017 – approximately 18 months after the Commission approved the acquisition. Emera also agreed to use an historic test year in its subsequent rate case. Was the value of these commitments quantified?

A. Yes, to an extent. In the Certification of Stipulation, the Commission noted that the value of using an historic test year rather than a future test year was estimated to be in the range

[68] NMPRC Case No. 15-00327-UT, Nancy Tower Direct, JA Exhibit NT-3, p. 11.

of between $3 and $5 million.[69] It appears that the use of a historic test year was important to Commission Staff who believed its use would be less speculative than a future test year case. The parties did not appear to have estimated the value of Emera and NMGC committing to not seeking a rate increase for 18 months after the conclusion of the proceeding.

Q. Did the BCP Applicants make a similar commitment to freeze rates for a period of time after the acquisition, or to use a historic test year in its next rate case?

A. No, they did not. NMGC has the opportunity to determine when it will come in for a rate case, and how it will present its case, so the BCP Applicants could make this commitment. The BCP Applicants chose not to.

Q. Please discuss the relevance of Emera's commitment that there would be no diminution in current levels of quality of customer service or system reliability for as long as Emera, or an affiliated entity, owns NMGC.

A. In my experience, it is common for public utility commissions to impose customer service and reliability standards to guard against the new ownership from reducing operational, and to a lesser extent capital, costs to increase shareholder profits. Emera agreed that there would be no diminution in the current levels of quality of customer service or system reliability. To effectuate this commitment, Emera agreed to maintain a certain number of full-time positions.

While I appreciate Emera's recognition that the number of employees is likely correlated with positive customer service and reliability, I have a preference for measuring customer service and reliability outcomes, rather than utility inputs. That said,

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[69] NMPRC Case No. 15-00327-UT, Certification of Stipulation, p. 38.

Emera's commitment that "there would be no diminution in current levels of quality of customer service or system reliability" is a meaningful statement that the Commission can reference when assessing NMGC's performance.

The BCP Applicants, unfortunately, did not make a similar commitment. Like Emera, BCP Management proposed to continue filing the customer service reports. Committing to filing already required reports, however, is a no harm commitment rather than an additional benefit.

Q. Emera agreed to provide $800,000 per year, for three years, to community charitable contributions and enterprises engaged in economic development and business development. How does Emera's commitment compare to BCP Management's commitment to provide $500,000 in cash or in-kind donations per year for five years?

A. Emera's commitment over the three-year period, beginning in 2016, was $2.4 million in cash. BCP Applicants' commitment is $2.5 million in cash or in-kind contributions. It is not clear what BCP Management intends by "in-kind contributions" nor what percentage of the $2.5 million will be cash and what will be considered "in-kind." The BCP Applicants have not committed to specifying the amount that will cash as opposed to "in-kind."[70] In my experience, most charitable organizations would prefer cash rather than "in-kind contributions" because cash gives them more flexibility. It is also worth mentioning that the BCP Applicant's commitment is only $100,000 greater than Emera's, the latter of which was made eight years ago. Since 2016, there has been significant

[70] JA Response to WRA 4-19, attached as Exhibit BTC-19.

inflation, which means the BCP Applicants' total cash and in-kind commitment is worth slightly less than Emera's cash commitment was at the time.[71]

VI. IT IS NOT CLEAR THAT THE BCP APPLICANTS HAVE SUFFICIENT QUALIFICATIONS AND FINANCIAL HEALTH TO SATISFY THE COMMISSION'S CONDITION

Q. Do the BCP Applicants have a demonstrated record of owning regulated natural gas utilities?

A. No. BCP does not currently manage any regulated natural gas or electric utilities. While BCP is acquiring two gas utilities in Louisiana and Mississippi, BCP has only just recently closed on one of acquisitions.[72] BCP has owned and managed a regulated water utility with operations in North Carolina and Indiana since 2021. However, Clear Current is a small utility with about 2,000 customers across the two states. The differences between managing 2,000 customer water company and a 500,000-customer natural gas utility are enormous. Neither intervenors nor the PRC have observable data on how BCP manages regulated gas utilities through even one general rate case, much less through an entire investment life cycle, from acquisition through its subsequent sale. This is a significant uncertainty and risk for customers and the state.

I am also concerned that BCP does not have a sufficiently robust team with experience managing regulated gas utilities. Although it appears that one BCP

[71] Calculated using Federal Reserve Bank of Minneapolis Inflation Calculation. *See* https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator.
[72] https://www.bernhardcapital.com/portfolio-items/delta-utilities/

individual[73] has significant experience managing an electric utility and working in the energy regulatory space, the BCP Applicants have not put forth any evidence that there is sufficient depth of expertise in energy regulation within BCP. There is a risk to NMGC and its ratepayers, should the one experienced person leave BCP, while its Infrastructure Funds continue to own NMGC and BCP provides management. Moreover, this individual has a finite amount of time and undoubtedly will have other responsibilities managing the other Infrastructure Fund companies. Of course, NMGC and not BCP will be managing the day-to-day affairs of the gas utility. However, it is important for the parent companies of NMGC to have experienced persons who understand regulated utilities.

NMGC's current parent company Emera, on the other hand, owns and operates seven regulated utilities, which make up all but one of Emera's portfolio of companies. Emera has deep familiarity with operating regulated energy utilities and a depth of experience to draw upon.

Q. Is there a risk to ratepayers due to the types of businesses BCP invests in outside of the regulated utility space?

A. Yes. BCP is a private equity firm that invests in companies in several sectors of the economy, many of which are less financially secure industries than regulated utilities. The BCP Infrastructure Funds may house companies other than regulated utilities. This exposes captive ratepayers to another layer of risk.

Q. The BCP Applicants' have made several ring-fencing commitments, such as operating NMGC as a standalone LDC.[74] What other steps has BCP taken to ring-

[73] Witness Jeffrey M. Baudier

[74] Direct testimony of Jeffrey. M Baudier, beginning on page 37.

fence NMGC from the parent companies that would prevent recourse to NMGC for any debt by BCP Infrastructure Funds and Saturn Companies?[75]

A. The BCP Applicants testify that BCP has taken several steps to insulate NMGC, such as imposing multiple steps of corporate separation from the Saturn companies, and asserting that Saturn Utilities will not engage in any business except for serving as the sole member of Saturn Holdco.[76] The witness testifies that this structure ensures that, in the event of a default by an upstream parent entity, the only asset of the defaulting entity would be its immediate subsidiary and that NMGC would have multiple levels of remoteness from any defaulting entity.[77] Witness Baudier notes that the Joint Application stated that NMGC will seek Commission approval for loans or transfers of assets to affiliated interests, and maintain separate books and records from NMGC's affiliates. BCP makes several other commitments related to the timing of dividends payments which appear to be similar to the commitments made by Emera in its acquisition.[78]

Q. When it acquired NMGC, Emera committed that NMGC would not invest in businesses not engaged solely in the provision of utility service. Did BCP Management make this commitment as well?

A. No. Emera's commitment is more restrictive and reduces ratepayer exposure to investments relative to the BCP Applicants' commitment. Emera's commitment is clear – NMGC would only invest in businesses providing utility services, which are likely to be regulated.[79] BCP Management, on the other hand, only proposes that NMGC will not

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[75] Supplemental Testimony and Exhibits of Jeffrey M. Baudier in Response to February 19, 2025 Hearing Examiners' Bench Request, p. 14.
[76] *Id.*
[77] *Id.*
[78] Joint Application at 13 – 15.
[79] NMPRC Case No. 15-00327-UT, Certification of Stipulation, at 13.

invest in businesses that do not have a "significant relationship to regulated services NMGC provides."[80] It is not at all clear what the BCP Applicants mean by "significant relationship to regulated services NMGC provides." Under a plain reading of the BCP Applicants' commitment, they could still use NMGC to invest in adjacent industries to utility services, some of which may be unregulated, and are likelier to be riskier than NMGC's regulated service.

Q. Do you agree that the BCP Applicants have sufficiently ring-fenced NMGC to avoid potential recourse to NMGC should any parent company, or affiliated companies, default?

A. I do not know for certain. I'd recommend that the Commission require the Joint Applicants to file a non-consolidation opinion as soon as possible, which concludes that the ring-fencing provisions are sufficient and that a bankruptcy court would not order the substantive consolidation of the assets, and liabilities of NMGC with those of Saturn Holdco, Saturn Utilities, BCP Infrastructures or its affiliates or subsidiaries. In the event that the ring-fencing provisions are insufficient to obtain a non-consolidation opinion, the Joint Applicants must 1. Notify the Commission of their inability to obtain a non-consolidation opinion, and 2. Propose additional ring-fencing provisions around NMGC as are sufficient to obtain a non-consolidation opinion.

[80] Joint Application at 15.

Q. BCP Infrastructure Funds, not BCP Management, will own NMGC. Does BCP Management have equity commitments for the BCP Infrastructure Funds from its investors?

A. No, it appears they do not. In response to the Bench Request 16(H), the Joint Applicants testify that the entities who provided the preliminary equity commitment will not be participating in the acquisition of NMGC, but rather their commitments will be replaced by equity commitments from BCP Infrastructure Fund investors. The BCP Applicants witness Baudier testifies that "[t]he BCP Infrastructure Funds did not yet contain the capital necessary to complete the acquisition of NMGC" at the time the Joint Applicants submitted their acquisition filing to the Commission.[81] The witness continues that he remains confident that the BCP Infrastructure Funds will meet the capital requirements to close the purchase, but in the event it does not, other BCP Infrastructure Funds can satisfy the requirement. The witness closes that once the Infrastructure Funds are "of such a size they can fully satisfy the equity commitments reflected in the Equity Commitment Letters, the current participants in the Equity Commitment Letters will assign the Equity Commitment Letters to the BCP Infrastructure Funds."

On April 8, 2025, nearly 7 weeks after the Commission first asked the Joint Applicants to identify the names of general limited partners, or members of the BCP Infrastructure Funds, the BCP Applicants filed supplemental testimony identifying several limited partners.[82] Confidential Exhibit BR-5 names several limited partners,

[81] Second Supplemental Testimony of Jeffrey M. Baudier in Response to March 24, 2025 Hearing Examiners' Bench Request, p. 5, lines 5-6.
[82] Supplemental Testimony and Exhibits of Jeffrey M. Baudier in Response to April 11, 2025 Bench Request, at 2.

however, the response does not provide other relevant information, such as each entity's overall commitment. The status of each limited partner's commitment is also not clear.

Q. Is it concerning the BCP Applicants have not provided a clear demonstration that they have sufficient financial commitments from investors to fund the acquisition at this time?

A. Yes, it is startling that the BCP Applicants did not line up investors for its acquisition of NMGC prior to submitting its application. Furthermore, it is worrisome that Emera entered into an agreement with the BCP Applicants without confirmation that BCP had lined up its investors. The Joint Applicants are exposing customers – and the state – to unnecessary risk.

Q. What are the risks to customers and the state that the BCP Applicants have not identified and secured investors for BCP Infrastructure Funds, the parent company of NMGC, prior to submitting its application for approval before the Commission?

A. There are at least two risks. First, there is a potential that BCP may need to turn to debt financing or investors that expect higher returns rather than investors who are seeking the lower risk investments of a regulated utility. From the public interest perspective, NMGC investors would hold the Company for the long-run and expect a return on its equity that is in line with the regulated natural gas utility sector as a whole. As I earlier mentioned, the BCP Applicants have not committed to holding NMGC for the long-run.

Second, it should go without saying, but it is in the public interest of the Commission, stakeholders, and the public to know who is purchasing their regulated utility prior to an application submitted to the Commission. There could be hidden risks associated with certain buyers or potential conflicts of interest, and these issues should reasonably be expected to be vetted during an acquisition process.

Q. Are you concerned about the relative size of BCP to NMGC and its ability to access capital reserves?

A. Yes. Emera is a large, publicly traded company that owns 6 regulated utilities in addition to NMGC. It has a market capitalization of approximately $12.6 billion. Emera had an operating cash flow of $2.3 billion in 2023.[83] Emera is a publicly traded company and can issue equity and debt to raise capital. Emera has both the experience managing regulated utilities and the known access to capital to weather unexpected financial challenges that require capital infusions.

On the other hand, we know much less about BCP Infrastructure Funds, which would be the ultimate parent company of NMGC. At the time of this filing, BCP had not yet even identified all of its investors. BCP Infrastructure Funds were formed less than 12 months ago and do not yet have balance sheets, income statements, cash flow statements, debt-to-equity ratios, or short- or long-term debt obligations or any of the other relevant information a lender would consider in its determination.[84] BCP should have presented a clear record in its application to the Commission that it has sufficient capital and investor backing to demonstrate long-term financial stability.

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[83] https://investors.emera.com/news/news-details/2024/Emera-Reports-2023-Fourth-Quarter-and-Annual-Financial-Results/

[84] Supplemental Testimony and Exhibits of Jeffrey M. Baudier in Response to February 19, 2025 Hearing Examiners' Bench Request, p. 13, lines 5 – 8.

Q. What criteria did Emera consider when reviewing applicants to acquire NMGC?

A. According to the Company, it considered 13 criteria which were related to reviewing the potential buyers' proposals as well as operating and ownership experience.[85] However, based on NMGC's Project Saturn Round 1 Bid Summary, Emera's initial screening appears to have focused entirely on the interested buyer's purchase price, financial and administrative capacity, and timing of the acquisition.[86] Based on the Bid Summary and associated documents, it appears that Emera began earnest discussions with BCP after it submitted a revised bid that set the enterprise value at $1.252 billion, which met Emera's threshold value.[87]

Q. Did Emera consider customers' interest in its initial screening?

A. No. It does not appear that Emera considered potential buyer's operating and ownership experience, particularly as it related to the customer experience, until after BCP sent its revised bid. I find it concerning that Emera did not consider customers' interests at all in its initial screening.

Q. Why is it concerning that Emera did not consider customer interest in initial potential buyer screening?

A. Customers do not choose their gas service provider. They are, for the most part, captive. The state empowers the NMPRC to regulate in the public interest, which means that they must consider the interests of both customers and the shareholders when it makes decisions. To that end, the Commission should be considering the alignment of the shareholders' interests with that of the customers. In its initial screening, Emera appears

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[85] JA response to WRA 5-5, attached as Exhibit BTC-20.
[86] JA Exhibit NMDOJ 1-37 (Revised) with Confidential Material Redacted, attached as Exhibit BTC-21.
[87] *Id.*

to have only considered the purchase price a buyer was willing to pay, and if the buyer had sufficient resources to follow through on that price. It does not appear that Emera considered if a buyer had a demonstrated record of providing high quality customer service, reliability, and affordable rates. Emera put its own shareholders' interests ahead of NMGC customers to such an extent that it did appear to identify customers' interests as initial selection criteria.

VII. RECOMMENDATIONS AND CONDITIONS

Q. What is your primary recommendation to the Commission?

A. For the reasons discussed in my testimony, I recommend that the Commission reject the proposed acquisition. As I have demonstrated, the Joint Applicants have not demonstrated that the acquisition will result in net benefits to customers. Rather, should this acquisition be approved, customers will be at greater risk in the short- and long-term than they are today.

Q. If the Commission were to consider approving this acquisition, are there conditions that you would recommend?

A. Yes. First, I recommend the Commission order the BCP Applicants to immediately file a non-consolidation opinion with the Commission which concludes that the proposed ring-fencing provisions are sufficient that a bankruptcy court would not order the substantive consolidation of the assets and liabilities of NMGC with those of Saturn Holdco, Saturn Utilities, BCP Infrastructures or its affiliates or subsidiaries. If the ring-fencing provisions are insufficient to obtain a non-consolidation opinion, Saturn Utilities and NMGC must propose additional ring-fencing provisions around NMGC so as to be able to obtain a non-consolidation opinion.

Q. Are there financial and governance transparency requirements that you recommend?

A. Yes. BCP is a private equity firm, which means that it is not subject to many of the same public disclosure requirements as publicly held companies. A private equity firm is not required to make the same Securities and Exchange Commission filings such as 10-Ks and 10-Qs that provide important information regarding the financial health and governance of the utility. Ratepayers and the state have a vested interest in the financial stability and health of its monopoly utilities, and it can only obtain confidence in the utility if it has the necessary information. The PRC should require NMGC, NMGI, Saturn Utilities, and Saturn HoldCo to provide equivalent public disclosures to the regulator and the public on the same cadence as publicly held companies.

Similarly, I recommend the Commission hold NMGC to the same rules applicable to New York Stock Exchange Corporate Governance Standards and several sections of the Sarbanes-Oxley Act.

Q. What are your specific recommendations for good governance and transparency?

A. First, I recommend that the Commission require NMGC, to the extent practical, to comply with the rules applicable to a registrant under New York Stock Exchange Corporate Governance Standards. The Company should submit a filing to the Commission that identifies the applicable NYSE rules, describes the current requirement, describes the post-closing requirement, and sets forth NMGC's post-closing commitment with respect to each requirement in the event a current requirement is not a continuing obligation. The filing should detail the requirements of the NYSE with respect to the following:

(a) annual report availability,
(b) interim financial statements,
(c) independent directors,
(d) director executive sessions,
(e) communication with non-management directors,
(f) nominating and governance committee matters,
(g) compensation committee matters,
(h) the audit committee and committee membership,
(i) the internal audit function,
(j) corporate governance guidelines,
(k) disclosure of corporate governance guidelines,
(l) code of business conduct and ethics, and
(m) officer certification.

Second, I recommend that NMGC and Saturn Utilities should be required to make filings to the Commission that mirror relevant SEC financial reporting requirements with respect to the following:

(a) Section 13(a) disclosure requirements,
(b) Section 15(d) disclosure requirements, and
(c) indenture covenants disclosure requirements.

Third, I recommend that NMGC and Saturn Utilities be required to commit to key sections of the Sarbanes-Oxley Act, regarding Auditor Independence (Title II), Corporate Responsibility (Title III), Enhanced Financial Disclosures (Title IV), and Section 906 related to corporate responsibility for financial reports:

(a) Section 201 guidance on the use of outside auditors,
(b) Section 202 pre-approval requirements with respect to the engagement and compensation of auditors,
(c) Section 203 requirements with respect to audit partner rotation,
(d) Section 204 guidance with respect to the requirements of auditor reports to audit committees,
(e) Section 206 guidance with respect to auditor conflicts of interest,
(f) Section 301 requirements with respect to audit committee requirements,
(g) Section 302 requirements with respect to corporate responsibility for financial reports,

(h) Section 401 requirements with respect to the form and content of periodic and annual reports,

(i) Section 403 requirements with respect to disclosures of certain transactions involving management and shareholders,

(j) Section 404 requirements with respect to management assessment of internal controls,

(k) Section 406 requirements with respect to the code of ethics for senior financial officers

(l) Section 407 requirements with respect to disclosure of audit committee financial expert, and

(m) Section 906 requirements with respect to corporate responsibility for financial statements.

Q. You discussed your concern with the pace and growth of the utility's historic capital expenditure spending, as well as its forecasted growth, particularly in comparison to the Company's customer demand. Do you have any recommendations to improve the transparency of the Company's forecasts?

A. Yes. When examining the Company's most recent Integrated Resource Plan ("IRP"), I was surprised by its lack of critical information. An IRP is a long-term forecast of customer demand and the resources and investments it will use to meet demand at the lowest cost, lowest risk to customers. I was unable to identify an actual annual demand forecast. I have reviewed dozens of IRPs in my career, and this is the first time I have seen a plan without an annual demand forecast for the length of the planning period. Although the Company identified a design day demand, that is only one element of a demand forecast. The IRP was also missing several other important elements of an IRP, such as scenario and sensitivity analysis. The only certainty of a long-term forecast is that it is wrong. It is important to use scenario and sensitivity analysis to bound that uncertainty to inform decision making to identify the least cost, least risk resources and investments.

I recommend the Commission require, within 150 days of the approval of the transaction, NMGC to make a filing detailing how the Company will revise its approach to Integrated Resource Planning with the intention of adopting best practices in gas utility planning. Prior to making the filing, NMGC would hold no fewer than 4 work sessions with interested parties to discuss gas utility planning best practices and improvements to the Company's Integrated Resource Plans. Within 14 days of the conclusion of the 4th workshop, NMGC will present interested parties with an updated framework for developing its integrated resource plans. Interested parties will have 28 business days to provide feedback to NMGC. In its filing to the Commission, NMGC will include a matrix detailing interested party comments on its draft framework and provide responses on whether NMGC accepted or rejected the recommendation. The Commission should require that the updated IRP include projected capital and O&M expenditures, and that the Company develop a non-pipeline alternative framework for evaluating the opportunities to avoid capital expenditures with less expensive demand- and supply-side resources and investments.

Q. Do you have a recommendation regarding NMGC's obligation to meet state greenhouse gas emissions reduction goals?

A. Yes. I recommend that the Commission require NMGC, through its Integrated Resource Plan, demonstrate how it will meet the New Mexico's greenhouse gas emission reductions goals identified in Executive Order 2019-003. The IRP must include analyses of the greenhouse gas emissions associated with NMGC's Scope 1, 2and 3 emissions,[88] and explore resource and investment options for NMGC's to meet its pro rata share of

[88] Scope 3 emissions include the end-use combustion of natural gas by NMGC's customers.

state emissions reductions. This requirement ensures the Company's plans are aligned with state policy and guards against the risk and cost of overbuilding the system.

Q. Do you have recommendations for mitigating customer risks from the merger?

A. A primary public interest concern during an acquisition is the utility will make cuts to operations that diminish customer service and reliability. To minimize degradation to the customer experience, the Commission should require NMGC to meet or exceed its service quality and customer service metrics. To the best of my understanding, NMGC only has a target for one metric (percentage of calls answered with 60 seconds).[89] While it may be most appropriate to set metric targets in a different commission proceeding, for now, I recommend the Commission set the target at the average score for each metric for the three year-period from 2022 – 2024. I do not recommend that this target is a rolling average but rather a fixed target set before the BCP Applicants acquisition of NMGC.

Q. If the Commission were to adopt each of the conditions that you identified, would you change your position and support the acquisition as in the best interest of customers?

A. No. The acquisition remains contrary to the public interest for the reasons I identified in my testimony. I offer these conditions to mitigate the risk to customers of the acquisition should the Commission determine to move forward with the acquisition.

IV. CONCLUSION

Q. Does this conclude your testimony?

A. Yes.

[89] JA Exhibit WRA 5-1, attached as Exhibit BTC-22.