

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

CONFIDENTIAL DIRECT TESTIMONY AND EXHIBITS

OF

CHRISTOPHER K. SANDBERG

ON BEHALF OF

NEW ENERGY ECONOMY

April 18, 2025

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1 **I. Background and Experience**

2 **Q. Please state your name and business address.**

3 A. My name is Christopher Sandberg, and my business address is 2324 14th St. SE, Rio
4 Rancho, NM 87124.

5 **Q. On whose behalf are you testifying in this proceeding?**

6 A. I am testifying on behalf of New Energy Economy (“NEE”).

7 **Q. Please summarize your educational background.**

8 I have a Juris Doctor degree from the University of Minnesota School of Law.

9 I also attended the annual Regulatory Studies Program taught at the College of Social
10 Science at Michigan State University under the auspices of the Institute of Public Utilities
11 and the National Association of Regulatory Utility Commissioners. I subsequently completed
12 a multi-day program focused on utility ratemaking and rate design.

13 As an attorney licensed in Minnesota, I took a minimum of 45 hours of Continuing Legal
14 Education courses each three-year period.

15 For over 20 years, I taught at the undergraduate, graduate, and law school levels,
16 presenting classes on telecommunications legal and policy issues, online privacy issues,
17 intellectual property law, alternative dispute resolution, non-incorporated business entities,
18 and contract drafting. I have also taught accredited Continuing Legal Education courses on
19 regulatory policy.

20 **Q. What background do you have related to regulatory issues?**

21 From 1974 through 1977, I worked in Metro Marketing for what was then Northwestern Bell
22 Telephone Company in Minneapolis. In the course of my work consulting with business
23 clients on their communication needs, I worked on several occasions with the NWB staff

1 responsible for interfacing with the state utility regulator, (then known as the Minnesota
2 Public Service Commission or MPSC) on developing special pricing for business services
3 which departed from the approved tariffs on file with the MPSC. That was my initial
4 education on the rate-setting process and the practices of regulators and the regulated.

5 **Q. What did you do after working at NWB?**

6 I started law school in 1977, and at the beginning of second year in the Fall of 1978, took a
7 position as a law clerk for the MPSC. At that time, the MPSC was transitioning from having
8 five elected commissioners to have five Governor-appointed commissioners. Three new
9 commissioners had joined the body that year, none of whom had prior experience in utility
10 regulation. In addition, the MPSC at that point had no dedicated professional support staff,
11 but only had the services of staff members delegated to the MPSC by the Minnesota
12 Department of Public Service (the general public advocate in utility matters) on a case-by-
13 case basis. That meant there was extremely limited institutional memory of what the MPSC
14 had done in prior cases, forcing the body to rely on the representations of the parties
15 appearing before it.

16 The MPSC had been regulating telephone companies since 1915, but had been given
17 oversight of gas and electric utilities in 1974. The new members of the MPSC wanted to have
18 a better and more organized understanding of that body's decisions and the bases for those
19 decisions. They tasked me and my fellow law clerk, Terry Karkela, with creating a reference
20 work containing accurate summaries of Commission rulings on all the key issues in
21 preceding rate cases as well as analyses of the underpinnings of those issue decisions. We
22 spent the next nine months reviewing all the general rate cases that had been decided since
23 1974 for gas and electric utilities and further back for telephone companies. We deliberately

1 created a work that resembled legal treatises such as Corpus Juris Secundum or a West
2 Digest, that included the general components of rate case decisions, specific rulings on the
3 pieces that were assembled into rate case decisions, and summaries of the reasons expressed
4 by the Commission in its orders for those decisions.

5 To create that document, in addition to reading Commission decisions, we read Hearing
6 Examiner reports and the testimony of witnesses which were used in those decisions. We
7 also consulted with the professional staff who had advised the Commission on those cases
8 where we needed a more complete understanding of how a particular decision was reached.
9 After we had created the historical document, the Commission tasked Mr. Karkela and me
10 with building summaries of witness testimony in current cases which were used for briefing
11 commissioners, and with updating the document as new cases were decided. I continued in
12 that role until I graduated in 1979 and passed the bar.

13 **Q. What did you do after finishing law school?**

14 In 1980, the Commission succeeded in getting legislative authority to hire its own
15 professional staff. Once admitted to practice, I accepted a full-time position with the MPSC
16 as its first-ever staff attorney. In that role, I worked with the technical staff on analyzing
17 witness testimony, organizing briefing materials, and managing the production of written
18 orders. I also managed the rule making activities of the Commission.

19 In 1983, I left the Commission to become a member of the Minnesota Attorney General's
20 staff, first as an attorney in the Utility Division and subsequently as the manager of that
21 Division. My responsibilities included:

- 1 • analyzing utility rate filings for the technical staff at my client, the Minnesota
2 Department of Public Service (later renamed the Minnesota Department of
3 Commerce),
- 4 • working with Department management to develop Department policies and
5 approaches for rate matters,
- 6 • assisting technical staff in identifying issues on which their testimony would be
7 needed,
- 8 • working with technical staff as they created and served discovery, assisting with the
9 drafting and editing of their profiled direct testimony and rebuttal testimony,
- 10 • preparing technical staff for their on-the-stand testimony,
- 11 • defending staff during their cross-examination,
- 12 • cross-examining other parties' witnesses,
- 13 • drafting the Department's briefs to the Commission,
- 14 • presenting oral argument to the Commission, and
- 15 • handling appeals of Commission decisions.

16 I also supported a dedicated group within the Department which intervened in natural
17 gas-related matters at the Federal Energy Regulatory Commission and prepared the
18 Department's positions and arguments to that agency and on appeal, including an
19 investigation Northern Natural Gas Company for mis-clarifying "old" gas as "new gas", and
20 in *Northern Natural Gas Company v. Federal Energy Regulatory Commission*, 827 F.2d 779
21 (D.C. Cir. 1987.)

22 I also led the state's opposition in a case before the Kansas Corporation Commission in
23 1986 related to infill gas well drilling and its impact on natural gas prices in Minnesota.

1 I continued as an attorney for the State of Minnesota through 1989.

2 **Q. What further relevant experience do you have?**

3 After leaving State service, I was an associate and partner in a top-25 Minnesota law firm,
4 where I led the firm's Utilities and Technology Law practice area, emphasizing regulatory
5 issues, business development, administrative law, and civil litigation. I represented regulated
6 entities seeking operating authority from a majority of state utility commissions, utility
7 companies and telecom carriers seeking authority to merge and acquire other regulated
8 entities, business and public-sector clients with disputes of rates, terms of service, and choice
9 of providers, applicants for new transmission facilities for wind power development and
10 system capacity/reliability upgrades, and proper pricing of customer-generated electricity.

11 I advised private-sector clients on a range of investment and finance-related issues,
12 including private issuances of securities, business acquisitions and valuation, bankruptcy, and
13 franchising.

14 I also served as a member of two state-wide task forces developing public policy on key
15 issues: the Minnesota Information Policy Task Force and the Minnesota Government
16 Information Access Council.

17 **Q. Why are you qualified to present your testimony in this matter?**

18 My educational background includes course work in administrative law and policy, and my
19 subsequent training has focused on utility issues including utility ratemaking and rate design.
20 My 38 years of practice in legal and policy matters at the state and Federal level has given
21 me a broad and deep understanding of the issues surrounding NMGC's filing in this matter.
22 Working with witnesses in all aspects of utility ratemaking—revenues, expenses, rate of
23 return, rate base, rate design, and merger issues—has provided me with the substantive basis

1 for the issues I will address in this testimony. Finally, working as lead counsel for the state
2 agency charged with advancing the public interest in utility matters at both the state and
3 Federal levels gave me a deep understanding of often-complex process of developing and
4 implementing public policy related to utilities.

5 **Q. Have you appeared before the New Mexico Public Regulation Commission**
6 **(“Commission” or “NM PRC”) before?**

7 A. Yes.

8 1. Case No. 20-00121-UT, I submitted direct testimony in response to PNM’s Petition
9 proposal for a decoupling rate mechanism.

10 2. Case No. 20-00222-UT, I submitted direct testimony, rebuttal testimony, and
11 testimony in opposition to the PNM/Avangrid/Iberdrola merger Stipulation.

12 3. Case No. 21-00017-UT, in that PNM Four Corners Power Plant abandonment and
13 securitization case, I provided direct and rebuttal testimony.

14 4. Case No. 22-00270-UT, in that PNM general rate case I provided direct, rebuttal, and
15 surrebuttal testimony.

16 5. Case No. 23-00255-UT, in that NMGC general rate case, I provided direct testimony
17 and testimony in support of the Stipulation.

18 6. Case No. 24-00089-UT, in that PNM general rate case I provided testimony in support
19 of the Stipulation.

20 I’ve attached my resume as Exhibit CKS-1.

21 **Q. Have you participated in other cases involving mergers and acquisitions of regulated**
22 **utilities?**

1 A. Yes. I advised and represented energy and telecommunications utilities when they were
2 acquiring or being acquired by other regulated entities in Minnesota. In each instance, I
3 analyzed the governing law and regulatory policy involved, worked with witnesses to
4 develop appropriate testimony, and created the necessary pleadings to support the client's
5 position in that matter.

6
7 I was involved in the following cases before the Minnesota Public Utilities Commission:

8 • In the Matter of the Proposed Merger of Minnegasco, Inc. with and into Arkla, Inc.,
9 MPUC Docket No. G-008/PA-90-604.

10 • Joint Application of AT&T Inc. and BellSouth Corp., MPUC Docket No. P-442,
11 5458/PA-06-509.

12 • Joint Application of Brooks Fiber Properties, Inc. and ALD Communications, Inc.,
13 MPUC Docket No. P-3145/PA-96-917.

14 • Joint Application of Hickory Tech Corporation and Allete, Minnesota Power
15 Enterprises, Inc. for Approval of a Change of Ownership of Enventis Telecom, Inc.,
16 MPUC Docket No. P-5596/PA-05-1839.

17 • Joint Application of Origix Corporation, Lighthouse Acquisitions, LLC, and Lightedge
18 Solutions, Inc., MPUC Docket No. P-5822/PA-05-930.

19 • Application of Minnesota Fiber Exchange LLC for Approval of a Change of
20 Ownership, MPUC Docket No. P-6640/PA-15-86.

1 • Joint Application of Central Telephone Company and Rochester Telephone Company
2 for Approval of an Asset Purchase Agreement and for Transfer of Certificates and
3 Authority, MPUC Docket No. H-2028, P-405/PA-91-130.

4 • Joint Petition of Journal Communications, Inc., NorLight, Inc., Telephone Associates
5 Long Distance, Inc., and Bemidji Long Distance, Inc. for Approval of a Corporate
6 Reorganization and Change of Ownership, MPUC Docket No. P-5041/PA-96-156.

7 • Joint Petition of Norstan Network Services, Inc. and Hawkeye Acquisitions, Inc. for
8 Approval of a Change of Ownership, MPUC Docket No. P-3083/PA-02-193.

9 • Joint Petition of Rochester Telephone Corporation, WCT Communications, Inc., and
10 West Coast Telecommunications, Inc., for Approval of a Merger and for Transfer of
11 Certificates and Authority, MPUC Docket No. P-2028, 3136/PA-94-1128.

12 • Joint Petition of Nextera Communications, LLC and OneNet USA, Inc. for Approval of
13 Acquisition of Assets, MPUC Docket No. P-6387,6514/PA-11-1117.

14 • Joint Petition of Jaffray Communications, LLC., Vitesse Networks Inc., and Origix
15 Corp. for Approval of a Corporate Reorganization and Change of Ownership, and for a
16 Transfer of Operating Authority, MPUC Docket No. P-5822/PA-01-1088.

17 • Joint Petition of FTTH Communications, L.L.C., Contractor Property Developers
18 Company and Rudder Capital Corporation for Approval of a Change of Ownership,
19 MPUC Docket No. P-6014/PA-07-1066.

20 As stated above, I was involved in the following case before the New Mexico Public
21 Regulation Commission:

1 • Case No. 20-00222-UT, I submitted direct testimony, rebuttal testimony, and testimony
2 in opposition to the PNM/Avangrid/Iberdrola merger Stipulation. My testimony both
3 written and oral were relied upon in part when then Chief Hearing Examiner Schannauer
4 issued his recommendation to deny the proposed acquisition in his *Certification of*
5 *Stipulation* November 1, 2021. The Commission adopted the Certification of Stipulation’s
6 recommendation to the deny the proposed transaction in its *Order on Certification of*
7 *Stipulation*, December 8, 2021.

8 **Q. Are you appearing here as counsel for NEE?**

9 A. No. Upon retiring from my law firm in 2017, I took non-practicing status with the
10 Minnesota Supreme Court, and in 2020 the Minnesota Supreme Court granted my Petition to
11 Resign as a practicing attorney. I have not sought attorney registration in New Mexico. My
12 appearance here is as a regulatory policy witness, and I will refer to controlling legal
13 precedents where appropriate to support my opinions.

14
15 A. **Executive Summary**

16 I have reviewed the proposals that the Joint Applicants have made in this case.
17 Based on my review, I believe that the proposed acquisition should not be approved as filed.

18 The key parts of my opinion are as follows:

19 First and foremost, the acquisition as proposed and viewed in its entirety does not provide
20 net benefits to the public. It is not just, fair, reasonable or in the public interest and therefore
21 should be rejected.

22 Second, the proposed transaction violates regulatory principles, practices and precedent.
23 The benefits provided by the Joint Applicants are not significant and they are outweighed by

1 the lack of consumer protections. Emera is selling because it will make their shareholders
2 money and their testimony and the evidence is strikingly lacking in any benefit to customers.
3 BCP Applicants have not offered concessions or benefits that are consistent with past PRC
4 precedent.

5 Third, the “benefits” to NMGC customers seem attenuated at best. \$5 million over 5
6 years in economic benefit to the state and “the annual charitable contributions of cash or in-
7 kind donations valued at a minimum of \$500,000 for a total of five years to qualified, tax-
8 exempt organizations”, which is amorphous and not specific at all, may or may not be a
9 benefit to NMGC customers – there are no plans for either – but more importantly, are
10 insignificant compared to the potential harms of the acquisition. Lastly, the 50-60 new jobs
11 may or may not be a benefit to NMGC customers because there has been no financial
12 analysis to show the change of shared services is cost effective and there is no evidence that
13 this transition will result in an improvement in services for NMGC customers.

14 Fourth, I am particularly concerned by the legal games Joint Applicants are playing,
15 especially regarding transparency and accountability. Already Joint Applicants have shown a
16 penchant for over-designating material as “confidential” and claiming material as “trade
17 secrets” when they are clearly not. BCP witness, Jeffrey Baudier testified that is how they
18 “typically” operate, but that is not how this Commission operates, and is contrary to law.

19 Fifth, the Joint Applicants have made clear that this acquisition produces no “synergies”
20 (cost savings or qualitative improvements) for ratepayers, and as stated plainly by Emera,

21 

22 

23 

1 [REDACTED]

2 [REDACTED] **CONFIDENTIAL** JA Exhibit

3 NMDOJ 1-37, pdf p. 54-55 of 70; *See also*, pdf pp. 59-60 of 70, attached hereto as Exhibit
4 CKS-2. (There is no mention of a net benefit for NMGC customers or the public interest
5 whatsoever in the memorialization of the six-month decision-making process.) Joint
6 Applicants see the proposed acquisition “opportunistically” as an “attractive” stable
7 investment opportunity without market competition. Since the transaction itself promises no
8 “improvement” to quality of service or cost savings, the risks, especially given BCP
9 Management’s lack of regulated utility experience, outweigh the benefits for NMGC
10 customers.

11
12 **III. Applicable Standards for Review Of The Proposed Transaction**

13 **Q. Are there standards which guide the Commission’s review of this filing?**

14 A. It is my understanding that the governing provisions of New Mexico law are found in the
15 state’s Public Utility Act. First, Section 62-6-12 requires prior authorization by the
16 Commission of a transaction of the nature of the acquisition proposed here. Second, Section
17 62-6-13 permits the NMPRC to reject proposed acquisitions when it finds that the proposed
18 transaction is unlawful or is “inconsistent with the public interest.”

19 **Q. What do you understand are the factors the Commission should use in reviewing the**
20 **Joint Applicants’ request?**

21 A. According to the Chief Hearing Examiner in the *Certification of Stipulation* in the last
22 merger case before the Commission (the attempt by Avangrid, Inc. and its affiliates to take

1 over PNM, Case No. 20-00222-UT), the Commission identified the following four factors as
2 bearing on whether a transaction satisfies the § 62-6-13 standard for approval:

- 3 1) Whether the transaction provides benefits to utility customers;
- 4 2) Whether the NMPRC’s jurisdiction will be preserved;
- 5 3) Whether the quality of service will be diminished; and:
- 6 4) Whether the acquisition will result in the improper subsidization of non-utility
7 activities.

8 I also understand that the Commission has considered two additional and important factors:

- 9 5) Careful verification of the qualifications and financial health of the new owner; and
- 10 6) Adequate protections against harm to customers.

11 I’d like to point out there was no mention of these six factors or the public interest standard
12 in the Emera/NMGC “teasers,” “Fireside Chats,” or the NMGC Management presentations
13 to potential buyers. *See*, JA Exhibits NEE 2-43a (Project Saturn February 2024); 2-43b
14 (Informational Memorandum March 2024); 2-43d (Fireside Chat March 2024); and 2-43e
15 (Management Presentation May 2024) attached hereto as Group Exhibit CKS-3.

16 **Q. Have these standards been used in other cases before the Commission?**

17 A. Yes. In addressing the statutory requirements for approval of mergers in 1997, the
18 Commission considered the standard for determining whether a merger is “inconsistent with
19 the public interest.” The Commission approved the declaration in the Recommended
20 Decision that “the test is whether the public interest is served by approving the merger as
21 determined by the facts and circumstances of each case. Generally, the complexities of

1 mergers **should require a positive benefit to ratepayers** if they are to be approved.” Case
2 No. 2678, *Recommended Decision* at 22, adopted by *Final Order Approving Recommended*
3 *Decision* (Jan. 28, 1997) (emphasis added.)

4 In Case No. 15-00327-UT, the TECO Energy-New Mexico Gas Company-Continental
5 Energy Systems acquisition case, Commission Staff explained that commitments made by
6 the Joint Applicants should be considered “benefits” that would result from approval of the
7 transaction proposed in that matter. Staff did not consider proposals that just continued the
8 *status quo* to be benefits. Rather, benefits are improvements over the *status quo*, while hold
9 “harmless provisions” are protections that just ensure the *status quo*. The Attorney General in
10 that case viewed some commitments, not as benefits to ratepayers, but as “hold-harmless
11 provisions,” meaning that ratepayers are no worse off than they would be in the absence of
12 the transaction. Case No. 13-00231-UT, *Certification of Stipulation* at 54-55.

13 In Case No. 15-00327-UT, the New Mexico Gas Company-TECO Energy-Emera merger
14 request, the Hearing Examiner found, “In summary, the analysis shows that approval of the
15 Proposed Transaction will generate **both quantifiable and unquantifiable benefits to**
16 **NMGC customers.** ...The Proposed Transaction, as reflected in the Stipulation, provides
17 customers with **substantially greater benefits and protections** than those originally
18 proposed in the Joint Application.” *Certification of Stipulation* at 52-53 (emphasis added.)

19 Most recently, in Case No. 19-00234-UT, the El Paso-Sun Jupiter-IIF acquisition matter,
20 the Hearing Examiner found that approval of the parties’ Unopposed Stipulation “will
21 generate **a quantifiable benefit – the bill credit – and an unquantifiable benefit** – IIF’s
22 commitment to not sell its interest in EPE for at least 10 years after closing – to EPE

1 customers.” *Amended Certification of Stipulation* at 62-63. The Commission subsequently
 2 adopted all the findings and conclusions of the Hearing Examiner and accepted the Amended
 3 Certification in its entirety. *Final Order Adopting Amended Certification of Stipulation*,
 4 March 11, 2020 (emphasis added.)

5 **Q. What do you see as the import of those cases?**

6 That there is a clear necessity for the Joint Applicants to demonstrate actual positive benefits,
 7 not just a continuation of the *status quo*. I also see those cases demonstrating that it is not
 8 difficult for the moving parties in an acquisition case to provide substantial benefits through
 9 aspects of their proposal.

10 **Q. Did you create a table that address the quantifiable and unquantifiable benefits**
 11 **necessary for Commission approval in acquisition cases?**

12 Yes.

13 **Commission Articulated Conditions in Acquisition Cases**
 14

NM PRC Case #	Utility & Customers	Rate Credit	Rate Freeze	Board Structure	Economic Development	Other Advantages & Disadvantages
13-00231-UT	NMGC Gas utility 509,000 customers ¹	\$11 million ²	Rate freeze ³	Continuance of the same board members ⁴	NMGC agrees to engage in economic development opportunities, including the exploration of an economic	Hold for ten years ⁶ ; TECO will maintain or increase the amount of NMGC’s community support provided

¹ 13-00231-UT, *Certification of Stipulation*, June 30, 2014, p. 3.

² *Id.*, pp. 28-31, ¶ D, 54-55, 79 pdf p. 109 of 111.

³ *Id.*, pp. 28, ¶ C, 55-57, pdf p. 109 of 111.

⁴ *Id.*, p. 22.

⁶ *Id.*, p. 42.

					development rate. ⁵	during 2013 for at least three years after closing ⁷ ; maintain employees for three years ⁸ ; qualifications and financial health of the acquiring entity ⁹
15-00327-UT	NMGC Gas utility 513,000 customers ¹⁰	\$6M Through 6/30/2018 ¹¹	18 months. ¹²	Local Board of Directors with diversity. ¹³	\$20 million ¹⁴	Hold for 10 years ¹⁵ ; Next rate case: Historic not future test year – worth \$3-\$5 million ¹⁶ ; maintain employees for three years. ¹⁷
19-00234-UT	EPE Electric utility 90,000 customers ¹⁸	\$8.7 million ¹⁹	18 months ²⁰	A Majority Disinterested Independent Board of Directors ²¹	\$100 million to promote economic development in EPE's service territory. ²²	Hold for 10 years ²³ ; economic development fund; ²⁴ qualifications and financial health of the

⁵ *Id.*, pp. 7, 37.

⁷ *Id.*, p. 37, ¶ Q

⁸ *Id.*, p. 16.

⁹ *Id.*, pp. 70-75.

¹⁰ 15-00327-UT, *Certification of Stipulation*, June 8, 2016, p. 3. In comparison, NMGC now has “over 549,000 customers.” 24-00266-UT, *Joint Application*, p. 2.

¹¹ 15-00327-UT, *Certification of Stipulation*, June 8, 2016, p. 16, ¶ D. and p. 37, ¶ C.

¹² *Id.*, p. 16, ¶ C.

¹³ *Id.*, pp. 38-39, ¶ F.

¹⁴ *Id.*, p. 36, ¶ B.

¹⁵ *Id.*, p. 38, ¶ E.

¹⁶ *Id.*, pp. 37-38, ¶ D.

¹⁷ *Id.*, ¶ G.

¹⁸ 19-00234-UT, *Amended Certification of Stipulation*, February 12, 2020, p. 13.

¹⁹ *Id.*, p. 27.

²⁰ *Id.*, p. 62.

²¹ *Id.*, pp. 10, 34, 35, 53.

²² *Id.*, pp. 8, 24, 40, 41.

²³ *Id.*, pp. 10, 41.

²⁴ *Id.*, p. 41.

						acquiring entity. ²⁵
20-00222-UT ²⁶	PNM Electric utility 530,000 customers ²⁷	\$73 million in rate credits; \$10 million for residential arrearage forgiveness; \$2 million in funds for assisting in providing electricity to new customers in remote Areas; \$15 million for low-income energy efficiency. ²⁸	12 months ²⁹	Board of Directors will be comprised of seven directors, all of whom shall be New Mexico residents. At least four of the directors shall be independent and disinterested ³⁰	\$15 million ³¹ ; \$12.5 million to indigenous community groups in the Four Corners region ³² ; \$1 million to create a supplemental scholarship program and \$1 million for apprenticeships in local high schools and colleges ³³ ; streetlighting. ³⁴	Creation of 150 jobs held for at least 5 years ³⁵ ; qualifications and health of Avangrid/Iberdrola ³⁶ ; and many more small and large benefits. ³⁷
24-00266-UT	NMGC Gas utility over 549,000	0	0	The two Emera members of the NMGC	\$5 million over 5-year period ⁴⁰ (no plan in place; while	Hold for 5 years; ⁴¹ maintain employees for 18 months; ⁴² adding

²⁵ *Id.*, pp. 11-12, ¶5.

²⁶ 20-00222-UT, *Certification of Stipulation*, November 1, 2021, p. 36. (“The potential harms of the Proposed Transaction outweigh the benefits. The changes negotiated by the Joint Applicants to satisfy the narrow interests of individual parties have not produced a result that is in the public interest.”); *Order on Certification of Stipulation*, December 8, 2021. The Hearing Examiner recommended rejection of the merger and the Commission denied the merger as filed.

²⁷ *Id.*, p. 4.

²⁸ 20-00222-UT, *Certification of Stipulation*, November 1, 2021, *Stipulated Regulatory Commitments*, pdf p. 352 of 446.

²⁹ 20-00222-UT, *Certification of Stipulation*, November 1, 2021, *Stipulated Regulatory Commitments*, pdf p. 352 of 446.

³⁰ *Id.*, pdf pp. 363-364 of 446.

³¹ *Id.*, pdf p. 354 of 446.

³² *Id.*, pdf p. 354 of 446.

³³ *Id.*, pdf pp. 355-356 of 446.

³⁴ *Id.*, pdf p. 356 of 446.

³⁵ *Id.*, pdf pp. 352-353 of 446.

³⁶ 20-00222-UT, *Certification of Stipulation*, November 1, 2021, pp. 45-50.

³⁷ *Id.*, pp. 39-42.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

	customers ³⁸			Board will be replaced by senior executives designated by the BCP Applicants; the BCP Applicants will seek to retain the other board members ³⁹ (no requirement to remain local and disinterested)	this is known and quantifiable it is unclear if this commitment benefits NMGC customers)	approximately 51 to 61 new employees as necessary to replace certain of the current shared services functions. ⁴³ (no transition plan in place; unclear if any of these commitments benefits NMGC customers)
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1

2 **Q. How do you interpret that principle—that there must be positive ratepayer benefits—in**
3 **practice?**

4 A. I see the practical application as requiring the Joint Applicants to demonstrate by
5 substantial evidence that NMGC customers will see an overall positive benefit from the
6 proposed acquisition. In other words, it is not sufficient for NMGC customers to be “no
7 worse off” as a result of the proposed acquisition, but rather there must be a showing of
8 actual improvements realized by customers. The conditions listed above set out by the
9 Hearing Examiner all relate to insuring that there is an overall positive benefit to a proposed
10 acquisition of a New Mexico utility, so that it would be “fair, just, and reasonable and in the
11 public interest.”

12

³⁸ 24-00266-UT, *Joint Application*, p. 2.

³⁹ 24-00266-UT, *Baudier Direct*, p. 15.

⁴³ *Id.*

1 **Q. Why is that an appropriate burden for the Joint Applicants here?**

2 It is sound regulatory policy. “Regulation must replicate the pressures of competition.
3 Successful competitors do not rest on their *status quo* performance. They say ‘How do I out-
4 do my competitors (both actual and potential), so I can keep my current customers and attract
5 new ones?’ To deny customers the benefits of that sentiment, to accept the status quo as the
6 definition of ‘no harm,’ is to do customers harm.” “*No Harm*” vs. “*Positive Benefits*”: *The*
7 *Wrong Conversation about Merger Standards*, Hempling, S, at p. 2,
8 [https://scotthemplinglaw.com/wp-content/uploads/2021/10/No-Harm-Vs.-Positive-Benefits-](https://scotthemplinglaw.com/wp-content/uploads/2021/10/No-Harm-Vs.-Positive-Benefits-May-2014.pdf)
9 [May-2014.pdf](https://scotthemplinglaw.com/wp-content/uploads/2021/10/No-Harm-Vs.-Positive-Benefits-May-2014.pdf), retrieved April 17, 2025, attached as Exhibit CKS-4.

10 **Q. Have the Joint Applicants met the burden of demonstrating a net benefit from the**
11 **proposed acquisition?**

12 A. No. I will go into the factual details underlying my conclusion, but I need to start with a
13 fundamental and deeply troubling issue.

14 **Q. What is that?**

15 A. The Joint Applicants have spun a story that there was a “competitive bidding process” by
16 Emera leading to the proposed transaction. Executive Summary of initial filing at 1. Yet the
17 facts belie that rosy picture: 

18 

19 

1 [REDACTED] After BCP increased its price three
2 times, Emera accepted BCP's offer. **CONFIDENTIAL** JA Exhibit NMDOJ 1-37, pdf pp. 2,
3 3, 41, 46-47, 50-52 of 70, attached hereto as Exhibit CKS-5.

4 There could not have been a competitive bidding process with only one actual offer! That
5 characterization of the process by which Emera has arrived at a purchase price and other
6 terms was clearly designed to mislead and obscure the fact that there was only one actual
7 proposed purchase.

8 The Joint Applicants' willingness to make a misleading statement about the proposed
9 transaction within the first page of their introduction of this proceeding to the Commission is
10 concerning.

11 **IV. Customer Benefits Have Not Been Established**

12 **Q. Focusing on the necessary proof of ratepayer benefits for possible Commission**
13 **approval of the proposed transaction, what do you see as the most important factor?**

14 A. I believe the main and most important factor in the Commission's standard is whether the
15 Joint Applicants have shown by substantial evidence that the proposed transaction will
16 provide positive benefits to NMGC's body of ratepayers. In my opinion, the Commission
17 cannot base an approval of the proposed acquisition of NMGC on a record which only shows
18 that ratepayers will be no worse off if the proposed acquisition is approved. To the contrary,
19 there must be a substantial record demonstrating actual benefits to NMGCs' ratepayers from
20 that proposed acquisition.

1 A significant flaw throughout the Joint Applicants’ presentation of the alleged benefits of
2 the proposed acquisition is their attempt to rewrite this factor, and to conflate alleged benefits
3 flowing to New Mexico in general with the actual benefits flowing to NMGC’s ratepayers.
4 Only the latter analysis is of benefits is relevant and probative; the former is simply a
5 smokescreen which the Joint Applicants hope will obscure the lack of real ratepayer benefits.

6 Indeed, the Joint Applicants have not shown any specific benefits to NMGC ratepayers
7 which would arise **solely** as a result of the proposed acquisition. To the contrary, all the
8 alleged benefits are available now, and could be provided by NMGC, without any need for
9 the proposed acquisition.

10 **Q. Has this need for transaction-generated benefits been required elsewhere?**

11 A. Yes. The Federal Communications Commission has explained. “[T]he claimed benefit
12 must be transaction- or merger-specific. This means the benefit “must be likely to be realized
13 as a result of the merger but unlikely to be by other means...” *AT&T-Bellsouth Merger*, 22
14 FCC Rcd. At ¶ 5761 (2007.) And in the case *EchoStar Communications-Hughes Electronics*
15 *Merger*, the FCC held, “Public interest benefits include any cost saving efficiencies arising
16 from the merger if such efficiencies are achievable only as a result of the merger.” 17 FCC
17 Rcd. 20,5559, 20,630 (2002.)

18 In *York et al. v. Pa. PUC*, 449 Pa. 136, 143, 295 A. 2d 825 (1972), the Pennsylvania
19 Supreme Court upheld the Commission’s approval of a merger of three telephone companies,
20 “In light of the Commission’s explicit finding that the merger will affirmatively benefit the
21 public, a finding fully supported by the record...” That holding was further explained in a
22 subsequent decision as, “[T]he appropriate legal framework requires a reviewing court to

1 determine whether substantial evidence supports the Commission’s finding that a merger will
2 affirmatively promote the service, accommodation, convenience, or safety of the public in
3 some substantial way.” *Popowsky v. Pennsylvania Public Util. Com’n*, 937 A. 2d 1040, 1057
4 (2007.)

5 That same demonstration through substantial record evidence of substantial benefit to
6 NMGC’s ratepayers should be required here.

7 **Q. Can you explain why you conclude there has not been a demonstration of ratepayer**
8 **benefit?**

9 Yes. The Joint Applicants have advanced several supposed benefits of the proposed
10 acquisition. These are listed in the Summary of Benefits and Protections of the Transaction,
11 at page 2:

12 ... [T]his Transaction will not impact NMGC’s existing assets, operations, or business.
13 NMGC will continue to be a locally operated New Mexico natural gas distribution utility
14 with experienced local leadership and workforce and will retain the name New Mexico Gas
15 Company. The local focus will be reinforced by the move of NMGC back-office support
16 services to New Mexico. NMGC and Saturn Holdco anticipate adding approximately 51 to
17 61 new NMGC employees to provide these services. An independent economic analysis
18 has determined that these new jobs will result in approximately \$40 million or more in
19 annual additional economic activity in New Mexico, a boost of over \$22 million to New
20 Mexico’s gross domestic product, and over \$2.2 million annually in new state and local tax
21 revenues.

22 Saturn Holdco is committed to making investments in NMGC for the purpose of ensuring
23 continued safe and reliable gas utility service and meeting the long-term needs of NMGC’s
24 customers. To this end, Saturn Holdco is well funded and, along with NMGC, commits to
25 continuing to invest in NMGC’s system and operations at levels consistent with NMGC’s
26 previous investments.

27 Significant additional commitments in the Joint Application include continuation in
28 substantially similar form the local NMGC Board of Directors to continue to provide
29 governance oversight and guidance of the strategy and business plans of the NMGC
30 management team. This board will continue to have a majority of New Mexico business

1 and community leaders, but with new members designated by Saturn Holdco to replace the
2 existing members associated with Emera.

3 The Commission will continue to regulate MGC after the Transaction. NMGC will
4 continue with all current rates, tariffs, and rules, and customers will not see any changes in
5 rates until new rates are approved by the Commission. Approval of the Transaction will
6 not diminish the level of customer service or reliability NMGC provides to its customers,
7 but rather NMGC and Saturn Holdco believe that service can be enhanced with the return
8 of support services to New Mexico.

9 As part of this Transaction, Saturn Holdco and NMGC commit to evaluate opportunities
10 for the development of and investment in renewable natural gas, certified low emission
11 natural gas, and/or other lower-carbon energy sources including low-carbon hydrogen
12 development; commit to contribute \$5 million over a period of five years to economic
13 development projects or programs in NMGC's service territory designed to attract new
14 business and to retain and grow existing businesses; and commit to make annual charitable
15 contributions of cash or in-kind donations valued at a minimum of \$500,000 for a total of
16 five years to qualified, tax-exempt organizations that are engaged in the development and
17 improvement of communities and citizens in NMGC's service territory. It is anticipated
18 that these initiatives will result in significant annual additional economic activity in the
19 State which will be beneficial to NMGC customers and the State in general. The \$5 million
20 economic development grants are anticipated to result in at least 54 additional jobs in other
21 industries in New Mexico and more than \$8.6 million of annual additional economic
22 activity in New Mexico.

23 The Transaction will benefit NMGC customers and the New Mexico community.

24
25 **Q. Does that recitation actually provide a basis for concluding that the proposed**
26 **transaction will create benefits for NMGC ratepayers?**

27 A. No. Let me go through them one by one.

28 **Q. What about continuation of local leadership, workforce, and name?**

29 A. Joint Applicants have stated that NMGC's current level of employees will be maintained
30 for eighteen (18) months post-closing, and in that eighteen-month period, NMGC will
31 maintain its current level of customer-facing positions. This is nothing more than a statement
32 that Joint Applicants intend to continue the *status quo*. It says nothing about any

1 improvement or benefits to customers. And it falls short of prior Commission-required
2 commitments for acquiring companies to retain employees for three years.

3 All Joint Applicants have advanced as a benefit is the possible addition of approximately
4 51 to 61 new employees as necessary to replace certain of the current shared services
5 functions. However, there is no guarantee that these will ever turn into NMGC employees, as
6 those positions may actually be in the ranks of other companies and may be outside of New
7 Mexico. “NMCG will replace the shared service functions by hiring new employees in New
8 Mexico or **procuring such services from third-party vendors.**” JA Exhibit JMB-3 at 13-14
9 (Emphasis added.) This purported benefit is illusory.

10 Or in the alternative, it might be more cost effective and productive to hire 20 new New
11 Mexican (properly trained) employees and take advantage of shared services elsewhere,
12 where synergies could actually *improve* services.

13 **Q. What about investments in NMGC and customer-serving plant?**

14 A. This is another example to Joint Applicants’ attempt to masquerade a continuing of the
15 *status quo* as a customer improvement. This alleged benefit is really just a continuation of
16 present operations of NMGC doing what it is legally obligated to do: providing safe and
17 reliable gas utility service and meeting the needs of NMGC’s customers. As the Joint
18 Applicants said, “Saturn Holdco ... and ... NMGC, commit[] to continuing to invest in
19 NMGC’s system and operations **at levels consistent with NMGC’s previous investments.**”
20 (Emphasis added.) That is not an improvement, just a continuation of historic patterns. This
21 alleged benefit is an example of how the proposed transaction would simply maintain the
22 *status quo* for NMGC ratepayers, not provide improvement which could be construed as

1 benefits. There is no gain for NMGC ratepayers in this claim – it is merely an allegation that
2 safety and reliability will not get worse post-acquisition.

3 There is also the extremely modest assertion that, “[Joint Applicants] expect that the
4 regulated nature of the business, which structurally supports a fair return of and on capital,
5 will continue to attract both debt and equity capital to the business sufficient to
6 **accommodate the NMPRC’s needs.**” Direct Testimony of Jeffrey Baudier at 41. (Emphasis
7 added.) What is missing from that feeble forecast is any consideration of investing at a level
8 which will meet and exceed NMGC’s customers’ needs.

9 **Q. What about benefits in management of NMGC?**

10 A. This is another area where the alleged benefit is really just a continuation of present
11 operations of NMGC. The Joint Applicants say they will “continu[e] in substantially similar
12 form the local NMGC Board of Directors” and retain the current NMGC management team.
13 This does not even rise to the level of rearranging the deck chairs on the Titanic; it is at best
14 an assertion that the *status quo* will be continued. If NMGC is going to be run on a day-to-
15 day basis by the same individuals running it now, and if there are no structural changes
16 contemplated at the Board level, there is no likelihood of any positive benefit to ratepayers.

17 That conclusion is bolstered by the fact that the Joint Applicants have not shown that they
18 have any experience operating a natural gas local distribution and pipeline company. Joint
19 Applicants assert that within their convoluted ownership structure that one entity – *BCP*
20 Management – has “extensive experience **investing in** infrastructure and utility investments.”
21 Executive Summary at 1 (emphasis added.) That neat turn of phrase tries to obscure the
22 essential fact that no BCP Management – and indeed none of the other entities denominated

1 in the filing – has any experience actually running a local distribution/pipeline regulated
2 public utility. BCP Management may know how to place investment dollars into specific
3 firms, but that is not the same as having experience in operating a critical utility such as
4 NMGC.

5 Joint Applicants try to evade this lack of relevant experience by asserting they will rely
6 on “local management’s unique first-hand knowledge” of NMGC’s operations. That again
7 begs the question: if it will be the same individuals running NMGC on a day-to-day basis,
8 where is the benefit to ratepayers? Maintaining the *status quo* of NMGC’s business does not
9 provide any improvements or new benefits to NMGC’s ratepayers.

10 **Q. What about Commission oversight?**

11 A. This is yet another area of non-benefit. Joint Applicants state the obvious – that the
12 Commission will continue to regulate NMGC if the proposed transaction is approved – and
13 that NMGC’s current rates, tariffs, and rules will continue as they are. This is just business as
14 usual, not any sort of improvement for NMGC customers. Similarity, the Joint Applicants
15 boast the customers will not face higher rates “until new rates are approved by the
16 Commission.” That is an empty promise and is simply a restatement of the law governing
17 NMGC; rates cannot go up until the Commission approves such higher rates. The assertion is
18 in no way a guarantee that NMGC will not apply for an increase in rates the day after
19 approval!

20 However, there is a serious omission in the Joint Applicants’ assertion that the
21 Commission will be able to continue to regulate NMGC: a material loss of public data.

1 As a Foreign Private Issuer, Emera is required to make certain recurring reports with the
2 Securities and Exchange Commission (“SEC.”) These include Form 20-F, which is generally
3 used by foreign private issuers that wish to register their securities under Section 12(b) of the
4 Exchange Act and list on a national securities exchange. The disclosure requirements of
5 Form 20-F are, in large part, very similar to those required of domestic issuers.

6 Foreign private issuers file annual reports on Form 40-F, and meet their other reporting
7 obligations under the Exchange Act by filing reports on Form 6-K. Emera filed its most
8 recent Form 40-F on February 21, 2025, for its fiscal year ended December 31, 2024. Data in
9 that filing included Consolidated Financial Statements (Exhibit 99.3) and Management’s
10 Discussion & Analysis (Exhibit 99.2). Data regarding NMGC is contained within the Form
11 40-F disclosures.

12 Those reports must be certified by a principal executive and principal financial officer of
13 the foreign issuer. The data in those reports provide a cross-check to whatever information
14 regarding NMGC may be filed with the Commission. If absorbed within the layers of private
15 equity entities contemplated here, NMGC will no longer appear in publicly-available data,
16 and there will no longer be any required enforcement related to non-reporting or mis-
17 reporting of extremely specific financial data. For example, see the inch-thick filing of
18 Emera, by NMGC on March 4, 2025 in Case No. 15-00327-UT, consisting of 164 pages,
19 regarding Emera’s 4th Quarter 2024 Financials required under Canadian Securities
20 Administrators SEDAR, similar to our Securities and Exchange Commission (“SEC”) filings.
21 Rather than a customer benefit, it will be a significant detriment to NMGC ratepayers to lose
22 the public data related to the operations and financial working of NMGC were the acquisition
23 to be approved as proposed.

1 **Q. What about customer service and reliability?**

2 A. I regret that I am repeating myself here, but that is another example of Joint Applicants
3 trying to substitute mere continuation for improvement. Saying that “[a]pproval of the
4 Transaction will not diminish the level of customer service or reliability NMGC provides to
5 its customers” is an admission that there is no factual support for any improvement in service
6 or reliability.

7 All Joint Applicants have put forward as a potential for improvement is that they “**believe**
8 **that service can be enhanced** with the return of support services to New Mexico.”

9 (Emphasis added.) Those services include accounting, information technology, human
10 resources and other corporate services, which are supposed to be ultimately transitioned to be
11 provided by NMGC through its personnel in New Mexico or third-party service providers.
12 JA Exhibit JMB-3 at 13-14. As I noted earlier, there is not even a guarantee that those
13 services will eventually be provided by NMGC employees, will be performed in New
14 Mexico, are cost-effective, or will produce meaningful improvements by qualified personnel.
15 What happens if customer service is reduced? There are no customer protection guardrails
16 offered if the transition from Emera to Joint Applicants produces service quality
17 diminishments or fails significantly.

18 **Q. Does the proposed move of back-office support provide a ratepayer benefit?**

19 No. The Joint Applicants allege that moving certain back-office support services, currently
20 provided by Emera and TECO, to be physically in New Mexico is a benefit of the proposed
21 transaction. Apparently, this would require adding 51 to 61 new NMGC employees in order
22 to provide those services. That allegation is diminished by the admission that those jobs may

1 never come to New Mexico and NMGC, but may be provided by unidentified third parties.
2 There is no transition plan in place – at most there is a “framework.”

3 Assuming those jobs would come to NMGC, Joint Applicants rely upon “an independent
4 economic analysis” that concludes those new jobs would result in annual additional
5 economic activity in New Mexico, a boost in New Mexico’s gross domestic product, and
6 increased state and local tax revenues.

7 None of those alleged benefits redound to the favor of NMGC ratepayers. To the extent
8 any of the alleged benefits would come to pass, they would be in favor of the state of New
9 Mexico generally, and would not be directed at NMGC ratepayers. This “benefit” as alleged
10 is illusory.

11 Most probative is the fact that the Joint Applicants have failed to provide substantial
12 evidence that any improvements in customer service will result from this change. NEE asked
13 the Joint Applicants to “identify the measures [of service quality] which will show
14 improvement as a result of the proposed acquisition of NMGC.” Their response was “It is
15 unknown how these performance measures will improve in the future.” JA Response to NEE
16 Interrogatory 5-19, attached as Exhibit CKS-6. The contrast between the broad assertions
17 made in Joint Applicants’ filing with the verified discovery response is telling: puffery was
18 replaced with the cold fact that Joint Applicants do not know how NMGC’s performance
19 would improve as a result of the proposed transaction.

20

21

1 **Q. Were you surprised by that admission?**

2 A. No. The complete lack of Joint Applicants' relevant experience running an LDC/pipeline
3 company made that response likely.

4 **Q. What about the costs of that change?**

5 A. Clearly, the 51 to 61 new NMGC employees will expect to be paid by NMGC customers.
6 At the depositions of Mr. Baudier and Mr. Shell, there was an acknowledgement that the
7 direct cost of jobs might be about \$7.5 million plus another \$30 million in capital
8 expenditures, but the exact amount is unknown. There was also a frank admission by Emera,
9 BCP Management/Saturn Holdco, and NMGC that no financial analysis has been conducted
10 which the Commission can review that compares Emera/TECO shared services versus
11 NMGC in-house performed services regarding cost or an improvement in customer service
12 quality and efficiency. This is a gaping omission, especially when past Commission decisions
13 viewed "shared services" as a benefit in Case Nos. 13-00231-UT and 15-00327-UT. The
14 applicant has the burden to show that the resource it proposes is the most cost-effective
15 resource among feasible alternatives. (I am referring to Case No. 19-00195-UT,
16 *Recommendation on Replacement Resources, Part II*, at 60, (06/24/2020), *Order on*
17 *Recommendation on Replacement Resources, Part II* (NM PRC 07/29/2020) and *Public Serv.*
18 *Co. of N.M. v. NMPRC*, ("PNM v. PRC") 2019-NMSC-012, ¶¶ 22-32, 444 P.3d 460;
19 *Corrected Recommended Decision*, Case No. 15-00261-UT (Aug. 15, 2016) at 89, 96-99,
20 approved in *Final Order Partially Adopting Corrected Recommended Decision* (Sept. 28,
21 2016); *Final Order*, Case No. 13-00390-UT (Dec. 16, 2015) at 5-11; *Order Partially*
22 *Granting PNM Motion to Vacate and Addressing Joint Motion to Dismiss*, Case No. 15-

1 00205-UT (Dec. 22, 2015) at 10-11; In *Re Public Service Company of New Mexico*, Case No.
2 2382, 166 P.U.R. 4th 318, 337, 355-356 (1995).)

3 **Q. Have Joint Applicants identified any synergies for the proposed transaction which**
4 **could result in long-term benefits to NMGC customers?**

5 A. No. Joint applicants' witness Jeff Baudier stated that there are no synergies (cost savings
6 or otherwise) that are intended with the Proposed Transaction. In Joint Applicants' discovery
7 responses they provided this admission:

8 What operational cost reductions or efficiencies does Bernhard Capital expect to realize
9 post-acquisition? If the Company has quantified these cost reductions, please provide all
10 analysis in an Excel workbook with all formulas intact.

11 RESPONSE:

12 Jeffrey M. Baudier

13 The BCP Applicants **have not quantified any operational cost reductions or**
14 **efficiencies** that may be realized post-acquisition. The BCP Applicants will work with
15 NMGC management to identify appropriate cost reductions or efficiencies.

16 JA Response to WRA Interrogatory 2-10, attached hereto as Exhibit CKS-7. (Emphasis
17 added.)

18 The absence of what is usually a significant driver of acquisitions is troubling and
19 portends future rate increases for NMGC ratepayers.

20 **Q. What about economic development?**

21 A. This is perhaps the most stunning example of misconstruing the actual standard of review.
22 Joint Applicants claim they will make \$5 million of economic development grants
23 "throughout New Mexico." JA Exhibit CAE-1 at 12 (emphasis added.) That claim simply
24 does not have any meaningful correlation to NMGC ratepayer benefits: the grants will not be
25 limited to NMGC's service territory, or based on any New Mexico-identified goals, targets,

1 laws (for instance New Mexico’s Renewable Energy Act, NMSA 1978, § 62-16-4) and thus
2 are not targeted in a manner designed to provide customer benefits, and are not even intended
3 to be awarded in energy-related businesses. The grants, “are anticipated to result in at least
4 54 additional jobs **in other industries in New Mexico...**” Initial Filing Executive Summary
5 at 2. (Emphasis added.)

6 There is also the claim that as part of the proposed transaction, Saturn Holdco and
7 NMGC will “evaluate opportunities for the development of and investment in renewable
8 natural gas, certified low emission natural gas, and/or other lower-carbon energy sources
9 including low-carbon hydrogen development.” Those “opportunities” may be of interest to
10 Joint Applicants and their investors, but are not aligned with NMGC or its customers’
11 interests. No customer benefit can be connected to those uncertain “evaluations.”

12 **Q. What about charitable donations?**

13 A. Joint Applicants state they will commit to make annual charitable contributions of cash or
14 *in-kind* donations valued at a minimum of \$500,000 for a total of five years to qualified, tax-
15 exempt organizations that are engaged in the development and improvement of communities
16 and citizens in NMGC’s service territory. While it is admirable that Joint Applicants intend
17 that modest level of community support, there is no connection between potential donations
18 to 501I(3) entities and any improvement in service or financial benefit to NMGC’s
19 customers.

20

1 **Q. Can you summarize your conclusions regarding any demonstration of NMGC**
2 **ratepayer benefits?**

3 A. Yes. Joint Applicants have failed to provide probative evidence of ratepayer net benefits
4 from the transaction as proposed.

5
6 **A. The Transaction as Proposed Imposes Additional Risk on NMGC Due to the**
7 **Nature of Private Equity**

8 **Q. How does a private equity takeover of NMGC impact risk?**

9 A. The ultimate owner of NMGC post-acquisition would be Bernhard Capital
10 Partners Management, LP (“BCP.”) In the August 5, 2024, press release entitled “Emera
11 Announces Sale of New Mexico Gas Company to Bernhard Capital Partners”, Emera stated
12 that it had entered into an agreement to sell NMGC to Bernhard Capital Partners, a “private
13 equity management firm.” Bernhard Capital Partners stated in that press release that it has a
14 strategy to “invest in infrastructure assets and utilities that are critical...” BCP identifies
15 itself as “a middle-market services and infrastructure-focused private equity management
16 firm...” That press release is attached hereto as Exhibit CKS-8.

17 I agree that NMGC’s assets and operation are critical to its customers, particularly its
18 residential and small business customers who rely on consistent and high-quality reliable
19 NMGC service for heating and fundamental business operations. Anything which reduces the
20 reliability and quality of NMGC’s services is a clear detriment to NMGC ratepayers.

21

1 **Q. What are the overall issues related to private equity takeovers of businesses?**

2 A. The detrimental effects of acquisitions of critical areas of the U.S. economy by private
3 equity firms is well understood.

4 Private equity firms are investment companies that raise money from wealthy individuals
5 and institutional investors to create funds with which they use to purchase companies. Funds
6 have a typical life span of five to 10 years. During the first three to five years, the fund makes
7 investments and during the balance, the investments are realized and returns are distributed to
8 investors.

9 Brendan Ballou, a federal prosecutor who served as Special Counsel for Private Equity in
10 the Justice Department’s Antitrust Division, outlined the dangers of private equity in an
11 interview in 2023:

12 “Private equity” is a term that people might be embarrassed to say they don’t really have a
13 clear idea abI...The basic business model is actually very simple. A private equity firm uses
14 a little bit of its own money, a little bit of investors’ money, and a whole lot of borrowed
15 money to buy companies. Then it tries to impose operational or financial changes with the
16 ambition of selling them for a profit a few years later.

17 It’s a simple idea but it has three basic problems. One is that private equity firms tend to
18 invest in the short term to get a return on their investment in just a few years. The second
19 is that they tend to load up the companies that they buy with a lot of debt and extract a lot
20 of fees from them. The third is that private equity firms tend not to be held legally
21 responsible for the actions of their portfolio companies.

22 All this means you’re on a very short timeline with a very risky leverage model and you’re
23 not necessarily going to be held responsible if things go bad, leading to business strategies
24 that can be very extractive and hurt consumers and employees.

25 *“Private Equity is Out of Control and Looting America. This Prosecutor Says We Can Fix*
26 *It”*, Institute for New Economic Thinking, May 2, 2023, retrieved April 10, 2025 at

1 <https://www.ineteconomics.org/perspectives/blog/private-equity-is-out-of-control-and->
2 [looting-america-this-prosecutor-says-we-can-fix-it](https://www.ineteconomics.org/perspectives/blog/private-equity-is-out-of-control-and-). It is attached hereto as Exhibit CKS-9.

3 “Private equity (PE) firms use money raised from wealthy individuals and institutional
4 investors like pension funds, university endowments, and sovereign wealth funds to take
5 over and manage companies. Once they take control, PE firms pursue aggressive financial-
6 engineering strategies— such as severe cost-cutting, charging excessive management fees,
7 paying themselves debt-funded dividends, and selling off valuable assets—that prioritize
8 extracting short-term value over the long-term stability of the companies they control.
9 These practices can severely undermine the financial viability of the targeted businesses,
10 with workers, consumers, communities, and other stakeholders bearing the brunt of such
11 cost-cutting and revenue extraction.”

12 *PRIVATE EQUITY, PUBLIC DAMAGE*, Americans for Tax Fairness, The Private Equity
13 Stakeholder Project, and Americans for Financial Reform, Feb. 2025, retrieved April 3, 2025
14 from <https://pestakeholder.org/reports/private-equity-public-damage/> It is attached hereto as
15 Exhibit CKS-10.

16 **Q. Beyond those general detriments of private equity, are there demonstrated harms to**
17 **private equity’s entrance into areas of critical operations?**

18 A. Definitely. In the area of critical operations, an original investigation reported in the
19 Journal of the American Medical Association entitled, “Changes in Hospital Adverse Events
20 and Patient Outcomes Associated With Private Equity Acquisition” (attached hereto as
21 Exhibit CKS-11) “examined hospital-acquired adverse events or conditions over 10,091
22 hospitalizations. After private equity acquisition, Medicare beneficiaries admitted to private
23 equity hospitals experienced a 25.4% increase in hospital-acquired conditions compared with
24 those treated at control hospitals, with a 27.3% increase in falls and a 37.7% increase in
25 central line–associated bloodstream infections, while surgical site infections doubled at
26 private equity hospitals despite a reduction in surgical volume. That JAMA investigation

1 concluded that private equity acquisition “was associated with increased hospital-acquired
2 adverse events, including falls and central line–associated bloodstream infections, along with
3 a larger but less statistically precise increase in surgical site infections....These findings
4 heighten concerns about the implications of private equity on health care delivery.” Report at
5 p. 2366.

6 Similarly, a University of Chicago study entitled, “Does Private Equity Investment in
7 Healthcare Benefit Patients? Evidence from Nursing Homes”, found:

8 P[ri]vate E[quity] ownership increases the short-term mortality of Medicare patients by
9 10%, implying 20,150 lives lost due to PE ownership over our twelve-year sample period.
10 This is accompanied by declines in other measures of patient well-being, such as lower
11 mobility, while taxpayer spending per patient episode increases by 11%. We observe
12 operational changes that help to explain these effects, including declines in nursing staff
13 and compliance with standards. Finally, we document a systematic shift in operating costs
14 post-acquisition toward non-patient care items such as monitoring fees, interest, and lease
15 payments.” And that study concluded, “[G]oing to a PE-owned facility increases 90-day
16 mortality by about 10% for short-stay Medicare patients, while taxpayer spending over the
17 90 days increases by 11%.

18 Those harms were accompanied by declines in nurse availability per patient and in
19 measures of compliance with Medicare’s standards of care, while operating costs increased
20 to drive profits for PE funds. RepoIt at i; 35. A copy of that study is attached at Exhibit CKS-
21 12.

22 And just last month, the U.S. Senate Budget Committee released its Bipartisan Staff
23 Report entitled “PROFITS OVER PATIENTS: The Harmful Effects Of Private Equity On
24 The U.S. Health Care System”, attached hereto as Exhibit CKS-13. That study examined
25 two private equity firms that have invested in hospital operators, and found hospital
26 underinvestment, declining conditions and quality of care, inadequate staffing and failure to
27 maintain hospital facility and equipment, while earning millions in fees. Report at v.

1 Closer to home, concerns about the negative effects on health care from a partnership
2 between Christus St. Vincent Regional Medical Center and a private equity medical staffing
3 company, CS Partners, to provide clinical staffing services, and a proposed merger between
4 Albuquerque’s Presbyterian Healthcare Services and Iowa-based UnityPoint Health, led to
5 the introduction of Senate Bill 15, the Health Care Consolidation Oversight Act, which gives
6 the Office of Superintendent of Insurance oversight of changes in hospital ownership. That
7 Bill was signed into law by the Governor on March 1. She noted, “Without proper oversight,
8 transactions such as mergers and acquisitions may lead to reduced competition, higher prices
9 for patients, and potential declines in service quality. Implementing a regulatory framework
10 ensures that any changes in the health care landscape prioritizes patient care, maintains health
11 care standards, and promotes transparency in operations.”

12 https://www.santafenewmexican.com/opinion/my_view/private-equity-firms-put-profit-before-patients/article_bad8d0b0-2999-11ef-865f-a74294628ea1.html;

14 https://www.santafenewmexican.com/news/local_news/concerns-about-private-equity-ownership-drove-states-hospital-oversight-bill/article_a835ea84-d588-11ee-8da4-0f4dcae00e11.html;

17 <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=15&year=24>

19 Article, opinion editorial and Governor Lujan Grisham advisory are attached hereto as Group
20 Exhibit CKS-14.

21 **Q. Why are those observed negative effects of private equity relevant here?**

22 A. Because on top of the usual negatives of private equity capture, the same deleterious
23 impacts that are being felt in health care due to private equity capturing swaths of that market
24 can be expected to be felt here if the proposed transaction were to be approved. There will be
25 the same incentives to cut costs through reduced staffing, to moving expenses away from
26 operations into areas which pad other Joint Applicants’ affiliates bottom lines. Any of those

1 changes would directly and negatively impact the costs, safety, reliability, and longevity of
2 NMGC’s operations. Given the severity of winter weather across NMGC’s service territory,
3 access to adequate supplied of natural gas at reasonable rates is just as important for the
4 health and safety of New Mexicans as is health care.

5 **Q. Are similar concerns about the negative effects of private equity taking over public**
6 **utilities being raised in other settings?**

7 A. Yes. In his 2020 text, “Regulating Mergers and Acquisitions of U.S. Electric Companies”,
8 at 457. Former FERC ALJ Scott Hempling noted “at least four unique issues” raised by
9 private equity buyouts: heavy debt financing, short investor time horizon, limited utility
10 experience, and loss of public disclosure. Quoted pages are attached hereto as Exhibit CKS-
11 15. Those same issues arise here, and I have discussed them in my testimony about absence
12 of benefits.

13 There is a pending case before the Minnesota Public Utilities Commission involving the
14 proposed acquisition of the parent company of Minnesota Power—Allete—where there
15 general claims of “benefit” paralleling those made here were advanced by the applicants:
16 “According to Applicants, the ‘primary goal of transitioning to a private company is to
17 enable Minnesota Power to obtain the significant additional capital it needs to continue and
18 expand its investment in clean energy technology and systems’...[and] the acquisition “is
19 expected to benefit customers by offering ALLETE better alternatives to the volatility and
20 inflexible demands of the capital marketplace when financing is needed.” The Minnesota
21 Attorney General has raised numerous objections to that proposed takeover:

- 22 • investments in other energy and nonenergy industries

- 1 • investment goals and strategies of the new owners likely differ from those of
2 ALLETE's current owners
- 3 • buyers will be expecting to recover their initial investment along with significant
4 returns, presumably much of that investment and return from Minnesota Power
- 5 • loss of transparency and changed dynamics due to taking ALLETE private
- 6 • Minnesota Power will also go from being the largest component of ALLETE's
7 operations to a minor part of the vast investment portfolios of Global and Canadian
8 Pension
- 9 • the proposed contractual commitments are generally limited to maintaining
10 conditions as they exist today, and maintaining the *status quo* is not a "benefit."

11 *In the Matter of the Petition of Minnesota Power for the Acquisition of ALLETE by Canada*
12 *Pension Plan Investment Board and Global Infrastructure Partners*, Docket No. E-015/PA-
13 24-198, Comments of the Office of the Attorney General, Aug 19, 2024, at 3; 6-7, attached
14 hereto as Exhibit CKS-16.

15 **Q. Do you see the same concerns about risk in the proposed acquisition of NMGC?**

16 A. I do.

17 **Q. As a starting point, what is the stated purpose of the acquisition of NMGC?**

18 A. As explained by Joint Applicants, "The purpose of this Transaction is the transfer of the
19 ownership of TECO Energy directly, and NMGI and NMGC indirectly, from Emera US
20 Holdings Inc. to Saturn Hold Co. ... [T]he dominant purpose of the transaction is to align
21 the present investor base for NMGC with financially capable entities with an interest in
22 providing ongoing support for NMGC's ability to maintain and improve service." JA
23 Response to NEE Interrogatory 1-4, attached hereto as Exhibit CKS-17. (Emphasis added.)

1 Stripped of its hyperbole, this proposed transaction is driven by the goal of financial success
2 for the Joint Applicants and their investors, not by the public interest in providing benefits for
3 NMGC ratepayers. Joint Applicants’ suggestion that “A direct consequence of the dominant
4 purpose of the transaction is to maintain and improve service” rings hollow for two reasons.
5 First, merely maintaining current levels of customer service is not a customer benefit arising
6 from the proposed transaction. Second, mere assertions of service improvement—which are
7 not supported by any evidence, let alone substantial evidence that those improvements will
8 take place—cannot form a basis for approval of the proposed transaction, and no such factual
9 demonstration has been made.

10 The best that Joint Applicants have been able to muster about customer benefit was this
11 vague and generic statement, “In my opinion, NMGC will judge the success of the proposed
12 transaction by evaluating whether the transaction has met the public interest, i.e. whether
13 NMGC is providing **reasonable and proper utility service at fair, just and reasonable**
14 **rates** and that capital and investment may be encouraged and attracted.” Response to NEE
15 Interrogatory 1-5, attached hereto as Exhibit CKS-18. (Emphasis added.) That says nothing
16 about providing actual benefits to ratepayers as a result of the proposed transaction, but just
17 regurgitates the minimum legal standard to which NMGC has always been held.

18 **Q. What evidence is there of Joint Applicants’ real goals?**

19 A. In a sponsored report entitled “Opportunistically acquiring regulated natural gas
20 assets to power community resilience,” 2024, attached and incorporated herein as Exhibit
21 CKS-19, BCP reveals much about its “blueprint”.

22 **Q. What are the key points of that blueprint?**

- 1 A. These:
- 2 1. Natural gas distribution companies are “attractive” assets that are free from competition,
- 3 and include regulated rate bases that will “cover a 9 percent to 10 percent return on
- 4 equity, interest coverage on debt, and construction costs to modernize assets and meet
- 5 strict safety, operating and environmental requirements.”
- 6 2. BCP has landed many “remarkable deals with major utilit[ies]” at or around the same
- 7 time and is “poised for more growth.”

8 **Q. Do customer benefits appear in that blueprint?**

9 A. No.

10 **Q. What do Joint Applicants’ commitments reveal about its plans?**

11 A. That Joint Applicants’ focus is purely on the short term. For example, they have only said

12 they will hold NMGC for five years; when Emera acquired NMGC, it committed to hold its

13 interests for at least 10 years. Case No. 15-00327-UT, *Unopposed Stipulation* at ¶37.

14 Similarly, Joint Applicants have only committed to maintaining NMGC’s current level of

15 employees for 18 months post-closing. Direct Testimony of Jeffrey Baudier at 31. Emera

16 committed to employee retention for three years. Case No. 15-00327-UT, *Unopposed*

17 *Stipulation* at ¶6.

18 Another issue that we learned about during the Avangrid/Iberdrola proposed acquisition

19 of Public Service Company of New Mexico is that when the Commission in Maine had a

20 third party conduct an audit of Avangrid/Iberdrola it found, among many problems, that the

21 companies had acquired so many utilities in such a short period of time that it was unable to

22 focus on and respond to the specific needs of the different utilities and, as a result, customers

23 in multiple venues experienced declining utility service. BCP Applicants closed on the

1 Entergy deal a month ago and expect to close on the CenterPoint acquisition in July of this
2 year. Entergy is the first gas distribution company that BCP Applicants will own. The only
3 experience that BCP Applicants have with a regulated entity, is with National Water
4 Infrastructure, that provides wastewater services to 20,000 customers. *See, Baudier Direct at*
5 *12 and Exhibit CKS-19.*

6
7 **Q. What other instances are there of Joint Applicants making only the most minimal**
8 **levels of commitments?**

9 A. Emera committed to a matching fund of \$10 million for “the express purpose of extending
10 NMGC’s nature gas infrastructure, which had potential benefits of up to \$20 million. Case
11 No. 15-00327-UT, *Certification of Stipulation* at 36. Joint Applicants have proposed only
12 their \$5 million “development” fund which has no connection to actual customer-serving
13 infrastructure.

14 Emera agreed to continue an annual \$4 million bill credit for NMGC customers, returning
15 up to an additional \$2 million to ratepayers. No. 15-00327-UT, *Certification of Stipulation at*
16 *37.* Joint Applicants have proposed no bill credit in any amount.

17 Emera agreed to use an historic test year in its next general rate case, which had a value
18 of between \$3 and \$5 million to ratepayers. No. 15-00327-UT, *Certification of Stipulation at*
19 *37-38.* Joint Applicants have made no such commitment.

20
21 **Q. Are there risks on the operational side?**
22

23 A. Fundamentally, Joint Applicants have had no experience running a local distribution
24 utility or an intraregional natural gas pipeline. Just one example of the potential deleterious
25 effects of that absence of experience is that there is no back-end transition plan.

1 Equally relevant, according to discovery documents, BCP Management, Saturn Holdco
2 and their Infrastructure Funds have \$4 billion in assets and recently acquired one regulated
3 gas utility (and another is expected by 7/31/2025), compared to Emera with \$30 billion in
4 assets, 2.6 customers, is the parent for 6 regulated utilities. JA Exhibit NEE 2-43b, p. 9-10 of
5 90, attached hereto as Exhibit CKS-20.

6
7 **V. Over-Designation of confidentiality and redacted material – contrary to law and**
8 **public interest**

9 **Q. Have Joint Applicants been forthright in disclosing important facts about the**
10 **proposed transaction?**

11 A. No. To the contrary, the Commission must be concerned by the over-designation of
12 confidentiality by Joint Applicants. Ownership status is important. Private capital,
13 particularly difficult-to-track private equity investment is not required to file regular financial
14 reports, including with the Securities and Exchange Commission (or SEDAR in Canada);
15 regulators will have to make an extra effort to compensate for the fact that private firms are
16 shielded from disclosure requirements thereby from public pressure, as well as regulatory
17 and financial oversight.

18 **Q. What have you seen so far?**

19 A. Repeated attempts to claim confidentiality, obfuscating answers to discovery, and over-
20 redaction of documents based on preference and not legally justified is what the Joint
21 Applicants have demonstrated. In my opinion, Joint Applicants are at the high point of their
22 cooperation with the Commission, and Joint Applicants are never going to behave better than
23 they have to date.

1 When New Energy Economy propounded its fifth set of discovery, Joint Applicants
2 responded as follows: *Joint Applicant’s (sic) Response to New Energy Economy’s Fifth Set*
3 *of Interrogatories and Requests for Production of Documents*. Therein, the Joint Applicants
4 refer to “Exhibits BR8(D) Confidential Redacted and Exhibit BR8(D) Confidential
5 Unredacted” three times in JA Response to NEE 5-7, 5-9, 5-10 and “Exhibit BR-16(D)
6 Confidential Redacted and Confidential Unredacted” in NEE 5-10; attached hereto as Exhibit
7 CKS-21. These interrogatories pursued legitimate areas of inquiry.

8 The Joint Applicants have chosen to finance this proposed transaction with \$448,900,000
9 in equity, \$250,000,000 of private debt and \$550,000,000 of “portable debt.” See, Exhibit
10 CKS-21, NEE 5-1 and 5-2. With so much debt at stake, intervenors, the public and the
11 Commission have a right to understand the financial structures that undergird this potential
12 transaction. After the Hearing Examiners issued their *Order Denying BCP Applicants’*
13 *Motion for Confidentiality and Denying NMGC’s Motion for Confidentiality*, on April 3,
14 2025, the Joint Applicants filed Exhibit BR-12 on April 7, 2025, without a self-affirmation,
15 and as is obvious, there is nothing in the statements contained in Exhibit BR-12 that could be
16 considered “trade secrets” despite their original “confidential” designation. When asked
17 about BCP Applicants’ overbroad BR-12 confidentiality claim at Mr. Baudier’s deposition,
18 he could not defend the initial over-broad claim and demurred.

19 An additional example of a “confidential” designation, references an agreement between
20 BCP and a consultant lobbyist. Joint Applicants marked the documents confidential and
21 redacted them. Only on April 10, 2025, did Joint Applicants provide their fourth
22 supplemental response to NEE 1-65, propounded on Dec. 4, 2024, and produced the
23 document publicly and without redaction (less than 24 hours from the commencement of Mr.

1 Baudier’s deposition). At that deposition, BCP expert Jeffrey M. Baudier testified that it was
2 his belief that it was “typical” for BCP to deem this material a “trade secret” and hence
3 “confidential” because the fees and scope of contracts are “not typically share[d].” *See*
4 Transcript pages from the deposition attached hereto as Exhibit CKS-22.

5 These examples of over-designation are not consistent with law or Commission practice.
6 In NM PRC Case No. 20-00222-UT, the Hearing Examiner and the Commission sanctioned
7 Avangrid for its over-designation of documents as “confidential”. NM PRC Case No. 20-
8 00222-UT, *Certification of Stipulation*, at 167, Nov.1, 2021; *Order on Certification of*
9 *Stipulation* at 11, ¶ 29, Dec. 8, 2021. As the Hearing Examiners rightfully stated in
10 their *Order Denying BCP Applicants’ Motion for Confidentiality and Denying NMGC’s*
11 *Motion for Confidentiality*, at 12, quoting *State ex rel. Newsome v. Alarid*, 1977-NMSC-076,
12 ¶ 34, 90 N.M. 790, 568 P.2d 1236, “The citizen’s right know is the rule and secrecy is the
13 exception.”

14 **Q. Why does this matter?**

15 A. Several reasons.

- 16 • Over-designating information as confidential undermines public access to crucial details,
17 violating the principles of transparency required by law.
- 18 • Overuse of confidentiality protections shields private firms from regulatory scrutiny,
19 making it difficult for the Commission to ensure compliance with public interest
20 regulations.

- 1 • Shielding ownership status and financial details from public and regulatory bodies
2 prevents effective oversight, reducing the ability of stakeholders to assess risks associated
3 with public investments in broadband infrastructure.
- 4 • If confidentiality is overused, firms may hide relevant financial or ownership information
5 that could impact regulatory decisions, increasing risks of non-compliance or misuse of
6 public funds.

7 **Q. What laws are implicated by Joint Applicants’ attempts to hide information?**

8 A. The Public Utility Act (“PUA”), the Commission’s Rules of Procedure, the Open
9 Meetings Act, the Inspection of Public Records Act (“IPRA”), and the Uniform Trade
10 Secrets Act (“UTSA”).

11 The Commission must also consider how these duties, obligations, and responsibilities
12 interact with each other and how New Mexico Courts have interpreted these principles in
13 favor of public access. Those include *City of Las Cruces v. Public Employee Labor Relations*
14 *Board*, 1996-NMSC-024, ¶ 8, 121 N.M. 688, 917 P.2d 451. (“[T]here is strong public policy
15 favoring access to public records.”); *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 34,
16 90 N.M. 790, 568 P.2d 1236. (“[A] citizen has a fundamental right to have access to public
17 records. The citizen’s right to know is the rule and secrecy is the exception. Where there is
18 no contrary statute or countervailing public policy, the right to inspect public records must be
19 freely allowed.”); *Board of County Commissioners of Doña Ana County v. Las Cruces Sun-*
20 *News*, 2003-NMCA-012, ¶ 11, 134 N.M. 283, 76 P.3d 36 (citing *Newsome*, 1977-NMSC-
21 076, ¶ 35). (“[E]ach inquiry starts with the presumption that public policy favors the right of
22 inspection. To overcome this presumption, a public entity seeking to withhold public records
23 bears the burden of proving why their disclosure would be prejudicial to the public interest.”)

1 **Q. What does this tell us about the ability of the Commission to properly oversee a BCP**
2 **management-owned NMGC post-transaction?**

3 A. That the Commission can expect to be stymied at every turn. When the Hearing
4 Examiners asked to receive the financials of Bernhard Capital Partners (“BCP”), the Joint
5 Applicants (which are a “variety of stacked, integrated, and financially interwoven limited
6 partnerships (‘LPs’) and limited liability companies (‘LLCs), the BCP Infrastructure Funds
7 and the Saturn Companies,” they were stymied. NM PRC 24-00266-UT, *Order Denying*
8 *BCP Applicants’ Motion for Confidentiality and Denying NMGC’s Motion for*
9 *Confidentiality*, 4/3/2025, at 3. The Commission was told there are “no balance sheets,
10 income statements, cash flow statements, debt-to-equity ratios, or long-term or short-term
11 debt obligations.” *Supplemental Testimony and Exhibits of Jeffrey M. Baudier in Response to*
12 *February 19, 2025 Hearing Examiners’ Bench Request* (March 4, 2025) p. 13. BCP
13 Applicants’ financials are effectively shielded from public pressure and regulatory oversight,
14 further evidencing the unsuitability of private equity to control regulated utilities.

15
16 **VI. Corrective Conditions**

17 **Q. Are there additional conditions which could be placed on the proposed transaction**
18 **to align it with the need for customer benefits and reduce risk?**

19
20 A. Yes. There are a number of corrective conditions which, if added to the terms, would
21 advance actual customer benefits and reduce risk.

22 **Q. What are those corrective conditions?**

23 A. Here are the conditions I believe are necessary:

- 24 1. **A rate credit** of between 40-90 million dollars distributed over two years to NMGC
25 customers.

- 1 2. **A rate freeze.** An enforceable commitment that NMGC will not file a rate case
2 seeking higher rates until after 18 months post Commission decision.
- 3 3. **An economic development fund of not less than \$40 million,** to be targeted at
4 solarizing NM non-profits (senior centers, domestic violence shelters, etc.) and/or
5 educational scholarships for people of color or those living at or below the poverty
6 level located within NMGC service area, to be disbursed over a period of not more
7 than 36 months by a decision-making paid grant committee with a majority of
8 members not affiliated with NMGC or any of the Joint Applicants.
- 9 4. An enforceable commitment that Joint Applicants will **hold NMGC for a period of**
10 **not less than 10 years.**
- 11 5. An enforceable commitment that NMGC’s current **staffing levels will be maintained**
12 for a period of at least **36 months post-closing.**
- 13 6. An enforceable commitment that NMGC’s **current financial level of community**
14 **support, \$500,000, will be maintained or increased each year for the ten years**
15 **post-closing,** and will not include any fossil-fuel or fossil-fuel related activities – and
16 will focus on renewable energy, and/or educational investments that focus on people
17 of color or low-income persons.
- 18 7. An enforceable commitment that NMGC will use an **historic test year in its next**
19 **general rate case.**
- 20 8. Submit a **detailed transition plan** evaluating the economics and qualitative benefits
21 of transitioning each category of back-end shared services away from Emera/TECO
22 either to NMGC or a more efficient third-party provider, and the labor costs, capital
23 expenditure costs, and the specific associated qualitative advantages.

1 9. An NMGC Board composed entirely of diverse New Mexico residents, with the
2 majority being **independent and disinterested**.

3 10. All **ring-fencing commitments** contained in Case No. 19-00234-UT.

4 11. An enforceable commitment that NMGC will not engage in any further research or
5 development of any form of hydrogen (green, blue, grey, pink, etc.).

6 **12. Reliability/performance metrics with automatic penalties for violations paid for**
7 **by shareholders.** NMGC should be required to provide updated reports on its
8 reliability, service levels, and customer satisfaction on a semi-annual basis.

9 Degradation from pre-acquisition levels in any of those areas should trigger an
10 automatic financial penalty, to be paid by BCP investors and not recovered in rates.

11 While this won't make up for BCP's lack of regulated public utility gas experience,
12 having strict guardrails will help provide confidence for customers that the BCP
13 Applicants will take reliability and customer service quality seriously.

14 **13. Quarterly financial documents filed with the Commission** by BCP Applicants
15 including Saturn Holdco, and the various Infrastructure Funds, with data comparable
16 to the financial information contained in SEC Form 10-Qs.

17 **Q. If those conditions were added, could the proposed transaction be found to be in the**
18 **public interest?**

19 A. In my opinion, yes.

20

Conclusion

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The Commission should reject the proposed acquisition as not in the public interest, unless the corrective conditions I have provided are implemented.

Q. Does this conclude your direct testimony?

A. Yes, it does.

