

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

PREPARED DIRECT TESTIMONY

OF

DAREN K. ZIGICH

NEW MEXICO PUBLIC REGULATION COMMISSION

UTILITY DIVISION STAFF

April 18, 2025

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1 INTRODUCTION

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

3 **A.** My name is Daren K. Zigich. I am a Licensed Professional Engineer employed by the New
4 Mexico Public Regulation Commission (“NMPRC” or “Commission”) in the Utility
5 Division. My business address is P.O. Box 1269, Santa Fe, NM 87504.

6

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

8 **A.** I have a Bachelor of Aerospace Engineering and Mechanics from the University of
9 Minnesota, in Minneapolis, MN and a Master of Science in Mechanical Engineering from
10 New Mexico State University, in Las Cruces, NM. I am also a Licensed Professional
11 Engineer in New Mexico, Minnesota, Idaho, and California, and have for over 27 years
12 maintained or exceeded the professional development (continuing education) requirements
13 of each licensing jurisdiction.

14

15 **Q. Please summarize your professional experience.**

16 **A.** In my over 35 year career, I have had the pleasure to work in both the public and private
17 sectors spanning disciplines such as being a guidance, navigation and control engineer in
18 the manned space program, to an engineer tasked with developing and operating a large
19 percentage of the nation’s fuel ethanol production industry, to providing engineering design
20 and construction services in the commercial nuclear power sector, to serving as a state air
21 quality regulator in both New Mexico and Minnesota, to recently serving 8 years at the
22 New Mexico State Energy Office (Energy Minerals and Natural Resource Department,

1 Energy Conservation and Management Division). For the last 1.5 years I have served as an
2 Engineer in the Utility Division of the New Mexico Public Regulation Commission.

3

4 **Q. Have you previously testified before this Commission?**

5 **A.** Yes, to date I have provided written and oral testimony in Case No. 23-00255-UT, Case
6 No. 23-00353-UT, Case No. 24-00089-UT and Case No. 24-00271-UT.

7

8 **Q. Have you prepared any exhibits?**

9 **A.** No.

10 **BACKGROUND**

11 **Q. What is New Mexico Gas Company and the other Joint Applicants requesting in this**
12 **current Application?**

13 **A.** The Joint Applicants, Emera Inc (“Emera”), New Mexico Gas Company (“NMGC”),
14 Saturn Utilities Holdco, LLC (“Saturn Holdco”), and affiliated applicants, seek approval
15 of the acquisition by Saturn Holdco of NMGC and the divestiture by Emera, Emera U.S.
16 Holdings, Inc., and TECO Holdings, Inc. of their current ownership of NMGC (the
17 “Transaction”). Saturn Holdco is part of a managed portfolio of companies under the
18 support of Bernhard Capital Partners Management, LP (“BCP Management”). BCP
19 Management supports funds investing in businesses that provide critical services to the
20 government, infrastructure, industrial, utility, and energy sectors. In short, the application
21 requests Commission approval of the sale of NMGC, thus transferring ownership of
22 NMGC from Emera to a private equity fund managed by BCP Management.

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Specifically, the Joint Applicants seek that the Commission find and approve the following:

A. The Transaction pursuant to NMSA 1978, Sections 62-6-12 and -13.

B. The Transition Services Agreement (“TSA”) to permit the NMGC Group to receive a variety of support services from Emera and its affiliates for a period of time after closing the Transaction.

C. Pursuant to Rule 450.10, NMGC’s Amended General Diversification Plan (“Amended GDP”) to engage in the Class II transaction in which NMGC will be acquired and wholly owned indirectly by Saturn Holdco.

D. Pursuant to Rule 450.15, the divestiture of the NMGC Group by Emera, EUSHI and TECO Holdings.

STAFF WITNESS INTRODUCTIONS

Q. Please identify all other Staff witnesses filing testimony in this case, including a general description of the issues they address.

A. Staff witness Larry Blank’s testimony includes a review of and recommendations regarding the transaction Goodwill or Acquisition Premium, the commitments proposed applicable to Ring Fencing and Economic Impacts and Economic Development resulting from the transaction.

Staff witness Marc Tupler provides Staff’s review of, and recommendations where appropriate, certain aspects of the JA’s Application in the instant case. Including mostly

1 financial health, credit parameters, dividend plan and capital structure parameters and a
2 review of the proposed Board of Directors construction, duties and limitations.

3 Staff witness Naomi Velasquez's Direct Testimony provides Staff's position on the
4 proposed Transition in Shared Services, General Diversification Plan and Capital
5 Investment Plan, thereby covering many of Commission requirements in rule 17.6.450.10
6 NMAC.

7 Lastly, Staff Witness Felicia Jojola testifies to Staff's analysis of the transaction for the
8 Purchase and Sale Agreement and its potential impact on future NMGC operations.

9 **Q. Can you summarize Staff's findings and positions?**

10 **A.** Yes, see Table 1 for a compressed summary of Staff's findings and positions regarding the
11 four primary factors and two additional considerations, in stock purchase cases, that the
12 Commission has previously identified as bearing on whether a transaction satisfies the
13 NMSA 1978, Section 62-6-12 and -13 standard for approval.¹ Additional detail on these
14 issues can be found in individual Staff direct testimony.

15
16
17 **Table 1 PRC Advocacy Staff Findings and Positions on Six Primary Factors**

Factor	Staff Findings/Positions
Whether the transaction provides benefits to utility customers	Staff find the, as proposed, acquisition provides no tangible direct benefit to NMGC's customers. Staff do not support the acquisition, based on this Factor, without commitments that directly benefit customers. See testimony of Larry Blank.

¹ See Certification of Stipulation in Case No. 20-00222-UT, p31-32 and 37

Whether the Commission’s jurisdiction will be preserved	Based on applicant commitments ² , Staff confirm applicant’s commitment to this Factor. However, the complex layering of ownership entities may obstruct Commission oversight. Staff marginally do not support, based on this Factor. See testimony of Naomi Velasquez.
Whether the quality of service will be diminished	Applicant will maintain local control, which Staff believe is meant to assure quality of service. However, no commitment to address current safety issues or field staffing, causes Staff to marginally not support the acquisition without further commitments. See testimony of Daren Zigich.
Whether the transaction will result in the improper subsidization of non-utility activities	Based on applicant commitments ³ , Staff confirms applicant commitment to this Factor. Staff support acquisition based on this Factor.
Careful verification of the qualifications and financial health of the new owner	Based on Staff review, the qualifications and financial health of the proposed new owner is reasonable. Staff support acquisition based on this Factor. See testimony of Marc Tupler.
Adequacy of protections against harm to customers	Due to the undetermined rate impact of returning support services back to New Mexico ⁴ . Staff do not support the acquisition without further rate impact clarity or a commitment to mitigate rate increases. See testimony of Naomi Velasquez.

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Q. What is the purpose of your testimony in this case?

A. My assignment in this case is to review the application with regard to the acquisition and its compliance with regulations and its effect on quality of service, Commission jurisdiction and benefits to customers. In addition, my testimony identifies other Utility Division Staff members testifying in this case and provides a summary of their testimonies and joint Staff positions in the case.

² Joint Applicants’ Response to Request for Supplemental Information, 12/19/2024, commitments 2-5 and 43-46
³ Joint Applicants’ Response to Request for Supplemental Information, 12/19/2024, Ring Fencing Commitments 21-34
⁴ Joint Applicants’ Response to Request for Supplemental Information, 12/19/2024, commitment 39

1 STAFF ANALYSIS OF ACQUISITION AND ITS COMPLIANCE WITH
2 REGULATIONS

3 Q. What are the primary regulations applicable to Class II Transactions?

4 A. NMSA 1978, Section 62-6-12 and Section 62-6-13 are the primary statutes that govern this
5 case with Section 62-6-13 having a negative finding threshold for approval of a proposed
6 transaction, “unless the Commission shall find that the proposed transaction is unlawful or
7 is inconsistent with the public interest, it shall give its consent and approval.” To a novice
8 observer this language may imply that the burden of proof lies with other parties, or the
9 Commission, to find that a proposed transaction is either illegal or is not consistent with
10 the public interest. Thus, shifting the burden from the applicant to the intervening parties
11 and ultimately the Commission.

12
13 However, NMPRC rule 17.6.450.10 NMAC, Class II Transactions, appears to flip much of
14 that burden back to the applicant by specifying twelve requirements for a General
15 Diversification Plan (GDP), which the Commission must approve prior to any
16 commencement of a Class II transaction.

17
18 In addition to the codified statutes and rules, Commission precedence is also important in
19 determining whether an acquisition transaction, like that presented in this case, is in the
20 public interest. As highlighted in the Certification of Stipulation in Case No. 20-00222-UT,
21 pages 31-33, these transaction cases largely come down to a six Factors test, with some
22 additional conditions, depending on the case specifics, to ensure the transaction is in the
23 public interest. The six Factors include four questions and two assessments.

24 “1. Will the transaction provide benefits to utility customers?”

- 1 2. Will the Commission’s jurisdiction be preserved?
- 2 3. Will the quality of service be diminished?
- 3 4. Will the transaction result in the improper subsidization of non-utility activities?
- 4 5. Careful verification of the qualifications and financial health of the new owner;
- 5 and
- 6 6. Adequacy of protections against harm to customers.”⁵

7

8 As a whole, Staff testimonies reflect a review of the application, using these six Factors as

9 a guide, to determine if the transaction is in the public interest.

10

11 **Q. Does the application or the proposed acquisition transaction not comply with**

12 **regulations, or as stated in NMSA 1978, Section 62-6-13, is the proposed transaction**

13 **unlawful?**

14 **A.** In the context of NMSA 1978, Section 62-6-12 and Section 62-6-13 and NMPRC rule

15 17.6.450.10 NMAC, the application or the proposed transaction is not unlawful. The

16 application, on its face, is a request for Commission approval of the acquisition transaction

17 and the associated GDP, so even if the application or GDP is found to be deficient the fact

18 that the transaction is not proceeding without Commission approval demonstrates

19 rudimentary compliance with the regulations and therefore, the Joint Applicants are not

20 acting unlawfully. Staff view this as the transaction not being unlawful on a process basis

21 and that only the public interest question is open for further review.

22

⁵ Certification of Stipulation in Case No. 20-00222-UT, p32-33

1 **Q. What part of the public interest review will you be discussing?**

2 **A.** My testimony will review portions of how the application addresses Factors 1, 2 and 3,
3 starting with 2 and 3 and ending with Factor 1.

4

5 **Q. Will the Commission’s jurisdiction be preserved following the proposed transaction**
6 **(Factor 2)?**

7 **A.** Based on a review of the application including supporting testimony and supplemental
8 testimony and supporting documentation, Commission jurisdiction over NMGC will be
9 preserved following the proposed transaction. The Joint Applicants (JAs) present a
10 commitment that “NMPRC jurisdiction over NMGC will remain in place and will not be
11 diminished or adversely affected in any manner as a result of the Transaction.”⁶ The JAs
12 further reinforce and further detail this commitment with additional commitments⁷ and
13 representations made in the JAs’ Amended GDP.⁸ These along with the JAs’ commitment
14 that NMGC will be managed the way it is today, with “the current employees, including
15 the NMGC senior management team, will be retained and will continue to have day-to-day
16 control over NMGC’s operations.”⁹, provides additional assurance that not only will
17 NMGC remain under the jurisdiction of the NMPRC but that the NMGC team, charged
18 with assuring NMPRC regulatory compliance, will continue in that role.

19

⁶ See 12-19-2024 JA Response to Request for Supplemental Information, JA Exhibit Supplemental Information 4, Commitment 43.

⁷ See 12-19-2024 JA Response to Request for Supplemental Information, JA Exhibit Supplemental Information 4, Commitments 44-47,50, 53, 56, and 58. 59 is a duplicate of 53.

⁸ See JA Exhibit JMB-3 (Amended GDP), pages 26-27: XIII, 2, 3, 6, 9 and 10

⁹ See JA Exhibit JMB-3, page 13

1 However, see testimony of Staff witness Jojola and Velasquez for concerns regarding
2 potential impediments to Commission oversight.

3
4 **Q. Will the proposed transaction diminish the quality of service (Factor 3)?**

5 **A.** Based on thirteen commitments¹⁰ presented by the JAs and a further understanding of
6 Emera’s limited or even zero impact on NMGC’s current operations¹¹, outside of the
7 largely administrative shared services, Staff does not believe the transaction will result in
8 diminished quality of service. However, Staff is concerned about some inconsistencies in
9 two commitments and the limited scale of another commitment.

10 Commitment 3 in the JA Exhibit Supplemental Information 4 states:

11 “The current employees of NMGC, including NMGC management, will be retained
12 and they will be responsible for running the daily operation of NMGC.”¹²

13 This seemingly non-time-constrained commitment contrasts with Commitment 40, in the
14 same document, that commits to maintaining the current level of employees for eighteen-
15 months following closing of the acquisition transaction. In the previous NMGC
16 acquisition, Case No. 15-00327-UT, the current owner committed to maintaining staff
17 levels for a three-year period.

18
19 While Staff understands that NMGC will be solely responsible for maintaining safe and
20 reliable gas operations, Staff is also aware of the PRC Pipeline Safety Bureau’s ongoing

¹⁰ See 12-19-2024 JA Response to Request for Supplemental Information, JA Exhibit Supplemental Information 4, Commitments 2, 3, 12, 22, 25, 35-38, 40, 48, 49, and 51.

¹¹From 4/9/2025 deposition of Karen Hutt, Emera, and 4/14/2025 deposition of Ryan Shell, NMGC

¹² JA Exhibit Supplemental Information 4, p2 of 10, Commitment 3.

1 concerns¹³ about NMGC’s field operations staffing levels and how it may impact ongoing
2 pipeline safety efforts. Therefore, Staff recommends that a longer staffing time
3 commitment by the JAs, especially regarding staff responsible for gas operations and
4 safety, may be warranted to avoid any immediate downward pressure by the new owners
5 to reduce operating and maintenance costs.

6
7 Staff also, see Commitment 12, “NMGC will invest a minimum of the rolling three (3) year
8 average for depreciation and amortization expense on an average annual basis in the
9 NMGC system as needed to ensure reliability and safety...”¹⁴, to be largely out of touch
10 with the current capital investment plans of NMGC. According to the cost-of-service model
11 submitted in the latest NMGC rate case 23-00255-UT and discovery responses in NMGC
12 Case No. 25-00002-UT, the current and planned annual capital investment is roughly three
13 times greater than the average annual depreciation and amortization expense. Since higher
14 capital expenditures result in higher return on equity and thus higher costs to rate payers,
15 an investment maximum may be better protection for customer’s rates if the understanding
16 is that NMGC will continue to maintain the system to be safe and reliable.

17
18 Lastly, while the Project Saturn Due Diligence Technical Report¹⁵ relays a largely positive
19 portrayal of NMGC’s current operations, it does mention that “There are a considerable
20 percentage of reported “Unknown” installation decades for NMGC distribution services
21 piping. Black & Veatch recommends that a records digitization project be undertaken to

¹³ Utility Division Staff oral communication with PRC Pipeline Safety Bureau, 4-3-2025.

¹⁴ JA Exhibit Supplemental Information 4, p3 of 10, Commitment 12.

¹⁵ JA Exhibit Staff 3-4 WITH CONFIDENTIAL MATERIAL REDACTED

1 digitize associated records and reduce the mileage of Unknown pipe and continue to update
2 GIS databases.”¹⁶

3
4 Staff understand that NMGC is already conducting a digitization project and do not believe
5 that the transaction will interfere with the progress of that project, but Staff does suggest
6 that an acknowledgement of the issue, by the JAs, and a commitment to complete the
7 project in a timely manner is warranted.

8
9 See testimony of Staff witnesses Jojola and Velasquez for discussion of potential service
10 impacts related to the current shared services.

11
12 **Q. Will the transaction provide benefits to utility customers (Factor 1)?**

13 **A.** Staff have struggled with this question since it is not entirely clear how Factor 1 should
14 be determined, minus a clear financial benefit, as discussed by Staff witness Blank.
15 Should benefits include broader economic issues or focus solely on direct customer
16 benefits in the form of reduced costs and improved services? For instance, does the
17 positive economic benefit of repatriating workforce back to New Mexico outweigh the
18 potential negative impact of increasing customer rates? While other Staff witnesses
19 discuss specific commitments of the JAs, this testimony will briefly discuss some of the
20 difficulties in answering this fundamental question from a gas operations standpoint.

21

¹⁶ JA Exhibit Staff 3-4 WITH CONFIDENTIAL MATERIAL REDACTED, page 9, first bullet item

1 Some parties may argue that the proposed BCP ownership provides no customer benefit
2 over the existing Emera ownership structure. However, if the question is flipped to, does
3 Emera, a firm that has expressed interest in divesting from NMGC, provide any benefit
4 over BCP, a firm that has expressed interest in purchasing NMGC? From strictly a gas
5 operations standpoint the answer is no. Given that neither the incumbent nor the new
6 owners have, or plan to have any direct managerial control of day-to-day gas operations,
7 NMGC should operate and evolve under the direction of local NMGC management
8 which will, according to Commitment 3¹⁷, remain the same before and after the proposed
9 acquisition. This commitment to not change the day-to-day operations, other than the
10 shared services, provides no benefit and also no detriment. Therefore, the benefit
11 question is best answered with the financial issues.

12
13 While bringing the current shared services operations back under NMGC control may
14 create some early missteps, Staff believe local control of those operations may provide
15 the Commission and the public greater visibility and offer greater accountability for those
16 operations, which may balance the impact of initial hiccups. Thus, again turning the
17 decisive issue regarding benefit to customers on whether the local services add cost to
18 rate payers and whether the broader economic impact of the additional local jobs
19 outweigh the cost impact. Those issues are discussed in the testimony of Staff witnesses
20 Blank, and Velasquez.

¹⁷ See 12-19-2024 JA Response to Request for Supplemental Information, JA Exhibit Supplemental Information 4, Commitment 3.

1 From an operational standpoint, the acquisition transaction appears to offer no net
2 positive benefit and may be susceptible to early shared services integration issues that
3 may have a limited negative impact on NMGC customers.

4 **CONCLUSION**

5 **Q. What is Staffs' final position to the acquisition transaction proposed in this case?**

6 **A.** After completing a thorough review of the case record, PRC Staff have developed the
7 combined Staff positions presented in Table 1, regarding the Six Factors recognized by the
8 Commission. Based on those positions, Staff cannot recommend approval of the
9 transaction.

10

11 **Q. Does this conclude your testimony?**

12 **A.** Yes.

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. 25-00266-UT

AFFIRMATION OF DAREN ZIGICH

Pursuant to 1.2.2.10(E) and 1.2.2.35(A)(3) NMAC of the Public Regulation Commission Rules of Procedure, Daren Zigich files this unsworn affirmation and states as follows:

I hereby affirm in writing under penalty of perjury under the laws of the State of New Mexico that the statements contained in the foregoing *Prepared Direct Testimony of Daren K. Zigich* are true and correct to the best of my knowledge, information, and belief.

FURTHER, AFFIRMANT SAYETH NAUGHT.

Executed on April 18, 2025.

/s/ Daren Zigich
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1.2.2.7(E)(2) and 1.2.2.10(E)(4) NMAC electronic signature
Engineer
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New Mexico Public Regulation Commission

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

Case No. 24-00266-UT

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent via email a true and correct copy of the **Prepared Direct Testimony of Daren K. Zigich** to the parties listed here.

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DATED this April 18, 2025

NEW MEXICO PUBLIC REGULATION COMMISSION

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