

**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

**RECOMMENDED DECISION**

**Elizabeth C. Hurst**

**Patrick C. Schaefer**

Hearing Examiners

May 21, 2026

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## ABBREVIATIONS

AFUDC	Allowance For Funds Used During Construction
AMA	Asset Management Agreements
BCP	Bernhard Capital Partners
CDP	Carbon Disclosure Project
CNG	Certified Natural Gas
CCAE	Coalition For Clean Affordable Energy
CAM	Cost Allocation Manual
DOE	U.S. Department of Energy
EPE	El Paso Electric Company
EUSHI	Emera U.S. Holdings, Inc.
ERP	Enterprise Resource Planning
EDF	Environmental Defense Fund
EPA	Environmental Protection Agency
ESG	Environmental, Social, And Governance
FERC	Federal Energy Regulatory Commission
FEA	Federal Executive Agencies
GDP	General Diversification Plan
GP	General Partner
GIS	Geographic Information System
GHG	Greenhouse Gas
HR	Human Resources
HRIS	Human Resources Information System
IT	Information Technology
IIF	Infrastructure Investments Fund
IRP	Integrated Resource Plan
IOU	Investor-Owned Utility
JD Power	J.D. Power

JA	Joint Applicants
LLC	Limited Liability Company
LP	Limited Partnership
LDC	Local Distribution Company
LAUF	Lost And Unaccounted-For Gas
MW	Megawatt
NEE	New Energy Economy
NMAC	New Mexico Administrative Code
NM AREA	New Mexico Affordable Reliable Energy Alliance
NMDOJ	New Mexico Department of Justice
NMGC	New Mexico Gas Company
NMGI	New Mexico Gas Intermediate, Inc.
NMPRC	New Mexico Public Regulation Commission
NMSA	New Mexico Statutes Annotated
NMAW	New Mexico-American Water Company
NYSE	New York Stock Exchange
NO <sub>x</sub>	Nitrogen Oxide
N <sub>2</sub> O	Nitrous Oxide
O&M	Operations And Maintenance
WACS	Oracle Work and Asset Cloud Service
PHMSA	Pipeline And Hazardous Materials Safety Administration
PW	Prosperity Works
PNM	Public Service Company of New Mexico
PUA	Public Utility Act
PUCT	Public Utility Commission of Texas
PUC	Public Utility Company
PSA	Purchase and Sale Agreement
PGAC	Purchased Gas Adjustment Clause

ROR	Rate of Return
RNG	Renewable Natural Gas
RFP	Request for Proposals
ROE	Return on Equity
SAP ERP	SAP Enterprise Resource Planning
SEC	Securities and Exchange Commission
SWF	Severe Weather Fund
SPS	Southwestern Public Service Company
SPE	Special Purpose Entity
TECO	Teco Energy, LLC
TSI	Teco Services, Inc.
TNPE	TNP Enterprises
TSA	Transition Services Agreement
UGP	Ultimate General Partner
VOC	Volatile Organic Compounds
WRA	Western Resource Advocates

(1) Elizabeth C. Hurst and Patrick C. Schaefer, Hearing Examiners for the New Mexico Public Regulation Commission (“Commission”), submit this recommended decision pursuant to NMSA 1978 § 62-19-20 (2020) and 1.2.2.29(D)(4) and 1.2.2.37(B) New Mexico Administrative Code (“NMAC”). The Hearing Examiners recommend that the Commission adopt the following executive summary, discussion, findings of fact, conclusions of law, and decretal provisions in a final order.

## **I. EXECUTIVE SUMMARY**

(2) The proposed transaction is, at its core, a change in upstream ownership of New Mexico Gas Company, Inc. (“NMGC”), rather than a sale of NMGC’s operating utility assets or a merger of NMGC into another utility. Saturn Utilities Holdco, LLC would acquire TECO Energy, Inc., the upstream owner of New Mexico Gas Intermediate, Inc. and NMGC, from the current Emerald side ownership structure. After closing, NMGC would remain the same New Mexico-regulated local distribution company, with the same utility assets, service territory, legal obligations, and direct Commission regulation.

(3) The Joint Applicants present the transaction as a case of continuity plus benefits. Their principal theme is that NMGC’s existing management, employees, headquarters, local operations, and Board structure will remain substantially in place, while the new upstream owners will provide access to private infrastructure capital, utility-sector experience through BCP Management and Delta Utilities, and a package of monetary and non-monetary commitments. Those commitments include rate credits, low-income assistance, economic development funding, local employment commitments, capital-investment commitments, a rate-case stay-out period, and a series of ring-fencing provisions designed to separate NMGC from upstream debt and affiliate risk.

(4) The proposed post-acquisition structure is vertically layered. The BCP Infrastructure Funds would indirectly own Saturn Holdco through a chain of Saturn intermediate companies, while BCP Management would not itself own NMGC but would provide investment-management services to the relevant fund entities. The Joint Applicants characterize this structure as familiar, financeable, and protective because acquisition debt would be placed above NMGC and would be non-recourse to NMGC, with no pledge of NMGC assets or revenues for upstream debt. Intervenors, by contrast, treat the same structure as a source of concern because it introduces private-equity ownership, newly formed entities, upstream leverage, and reduced public-company transparency.

(5) Operationally, the transaction depends on a transition plan. The Transition Services Agreement (“TSA”) would allow Emera and its affiliates to continue providing specified corporate, back-office, and IT services for a defined post-closing period while NMGC transitions away from Emera support. Over time, NMGC would bring certain functions back to New Mexico and rely on Delta Utilities for shared IT services. The practical significance of this arrangement is that the TSA is not an ownership or financing document; it is the bridge meant to preserve continuity of service while NMGC moves from its current Emera-supported model to the proposed post-acquisition support model.

(6) One central public-interest question is whether NMGC will remain a regulated New Mexico utility. The more difficult question is whether the proposed ownership structure, commitments, ring-fencing, financing, governance, shared-services transition, and enforceable regulatory conditions are sufficient to ensure that NMGC customers receive a net public benefit and are protected from the risks of the transaction. The Commission will make it its determination on these questions and the Joint Applicants’ requests through the application of the Commission’s legally established six factor test, where benefits of the proposed transaction are considered and

weighed against the potential harms of the transaction, as well as consideration of the applicable commitments and agreements from similar past cases, and other regulatory and rule requirements. The record presents that question through competing narratives. Joint Applicants emphasize continuity, capital access, and added commitments. Staff generally seek conditions to make benefits more durable and protections more enforceable. Intervenors question whether the proposed private-equity structure provides enough operational experience, transparency, financial depth, and long-term alignment with utility customers. After a thorough review of the record, the Hearing Examiners determine that the Joint Applicants have satisfied their burden and that, with conditions, the proposed transaction would yield a net public benefit. Therefore, the Hearing Examiners recommend approval.

## **II. LEGAL STANDARDS**

(7) The legal standards applicable to the present Application include a series of New Mexico statutes, rules, and Commission precedent that govern a merger with or acquisition of a public utility.

### **A. Substantive Standards**

(8) The foundational, statutory standards for governing public utilities are set forth in the New Mexico Public Utility Act (“PUA”).<sup>1</sup> Under the PUA, the Commission has “general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulation and in respect to its securities.”<sup>2</sup> In particular, the Commission must give prior

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<sup>1</sup> NMSA 1978, §§ 62-1 through 62-6 and 62-8 through 62-13, and cases decided under that Act.

<sup>2</sup> NMSA 1978, § 62-6-4(A).

express authorization for utility acquisitions.<sup>3</sup> In doing so, an applicant must file a written petition containing a concise statement of the proposed transaction, its reason, and such other information as may reasonably be required by the Commission.<sup>4</sup> The Commission is required then to promptly investigate the application, with hearings and upon such notices as the Commission prescribes.<sup>5</sup> After investigation, the Commission is required to give its consent and approval of the acquisition “unless it finds that the proposed transaction is unlawful or is inconsistent with the public interest.”<sup>6</sup> If the foregoing and related statutory, regulatory, and precedential requirements are met, the Commission is required to approve a proposed utility acquisition.

(9) Within the acquisition of a utility, a Class II transaction may arise. A Class II transaction includes the formation of a public utility holding company by a public utility or its affiliated interest.<sup>7</sup> This formation and ownership dynamic can have an effect on standards of service and rates. Consequently, New Mexico law grants the Commission the authority to investigate “Class II transactions or the resulting effect of such Class II transactions on the financial performance of the public utility to determine whether such transactions or such performance have an adverse and material effect” on the provision of utility service at “fair, just and reasonable rates.”<sup>8</sup> The Commission promulgated 17.6.450 NMAC (“Rule 450”)<sup>9</sup> precisely in order to:

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<sup>3</sup> NMSA 1978, § 62-6-12(A).

<sup>4</sup> NMSA 1978, § 62-6-13.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> NMSA 1978, § 62-3-3(L)(1).

<sup>8</sup> NMSA 1978, § 62-6-19(B)(2),

<sup>9</sup> NMSA 1978, § 62-6-19(E), stating that [t]he [C]ommission shall, by November 30, 1982, promulgate rules and may amend such rules thereafter, to implement the provisions of Subsections B, C and D of this section, including the manner of conducting such investigations and making such determinations, and the specification of such reporting requirements as may be reasonably necessary and as are consistent with the provisions of this 1982 act.

assure reasonable and proper utility service at fair, just, and reasonable rates; to require reasonable access to the books and records of a utility and its affiliates so that such an assurance can be made; to assure that appropriate cost allocations are made; and to assure that no cross-subsidization occurs between the utility and an affiliated interest.<sup>10</sup>

According to this rule, the Commission requires the submission and approval of a General Diversification Plan (“GDP”) before the utility engages in a Class II transaction.<sup>11</sup>

(10) The GDP must include a series of representations, warranties, commitments, and explanations surrounding the goals, structure, ownership, governance, financing, capital structure, investments, risks, protections, and others. The approval of the GDP depends on two conditions. The first condition requires that the Commission find that the information in the GDP is detailed, acceptable to the Commission, and that the approval is in the public interest.<sup>12</sup> The second condition requires that the utility represent and the Commission, based upon such representations, finds that the GDP includes commitments to maintain separate books and records, preserve Commission and Staff access and regulatory authority, protect the utility from adverse holding-company or affiliate financial actions, comply with applicable law, and submit to Commission-directed allocation studies or management audits at shareholder expense when required.<sup>13</sup> Upon the conclusion of a review, the Commission may amend the GDP. Rule 450 grants the Commission the authority to require the modification of a GDP and may attach conditions to its approval in order to make it consistent with the public interest, or to avoid material and adverse effects on the utility’s ability to provide reasonable and proper service at fair, just, and reasonable rates.

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<sup>10</sup> 17.6.450.3 NMAC.

<sup>11</sup> 17.6.450.10(A) NMAC.

<sup>12</sup> 17.6.450.10(C) NMAC.

<sup>13</sup> *Id.*

(11) The Commission's determination to approve or deny a Class II transaction is governed by a specific standard of review. A public utility engaging in any Class II transaction shall have the burden to produce such evidence and information as is sufficient to demonstrate that such Class II transactions or the resulting effect of such Class II transactions on the financial performance of the public utility has not materially and adversely affected the utility's ability to provide reasonable and proper utility service at fair, just and reasonable rates.<sup>14</sup> If the Commission finds that the utility has failed to meet its burden, it may issue orders consistent with the authority granted to the Commission under the PUA to assure the provision of such service at such rates.<sup>15</sup> In Class II transaction review, the Commission may issue, as it may with respect to any evidentiary proceeding involving a public utility, such orders in connection with an evidentiary proceeding involving a public utility as it finds appropriate and necessary to assure that appropriate cost allocations are made and that no cross-subsidization occurs between the utility and an affiliated interest.<sup>16</sup>

(12) In addition to these statutes and rules, the Commission also relies on the application of precedential standards of substantive review arising out of a series of determinations over the course of the last twenty years when presented with an application for a utility merger or acquisition. From the certifications of stipulation, recommended decisions, and final orders in these cases, a Six-Factor test has emerged that serves as a framework to determine the benefits and risks to New Mexico customers.

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<sup>14</sup> NMSA 1978, § 62-6-19(C)(2).

<sup>15</sup> NMSA 1978, § 62-6-19(C)(2), requiring also that any such order that explicitly and directly requires the production of information shall be in accordance with NMSA 1978, § 62-6-17.

<sup>16</sup> NMSA 1978, § 62-6-19(D).

(13) Beginning in Case No. 2678, in 1996, the Commission considered the standard for determining whether a merger is “inconsistent with the public interest.”<sup>17</sup> In its Final Order, the Commission approved the declaration in the Recommended Decision that “the test is whether the public interest is served by approving the merger as determined by the facts and circumstances of each case,” and that “[g]enerally, the complexities of mergers should require a positive benefit to ratepayers if they are to be approved.”<sup>18</sup>

(14) In a later case, Case No. 04-00315-UT, the Commission applied a four-factor test when determining whether a transaction satisfies the public interest standard in NMSA 1978, § 62-6-13.

It asked:

1. Whether the transaction provides benefits to utility customers;
2. Whether the NMPRC’s jurisdiction will be preserved;
3. Whether the quality of service will be diminished; and
4. Whether the transaction will result in the improper subsidization of non-utility activities.<sup>19</sup>

In establishing this test, the Commission determined that both quantifiable and unquantifiable benefits should be considered.<sup>20</sup>

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<sup>17</sup> Case No. 2678, Recommended Decision of the Hearing Examiner (Corrected) (Nov. 15, 1996), at 19, adopted by Final Order Approving Recommended Decision (Jan. 28, 1997).

<sup>18</sup> Case No. 2678, Recommended Decision of the Hearing Examiner at 22; *see also*, Case No. 3116, Recommended Decision of the Hearing Examiner (May 4, 2000) at 12, adopted by Final Order (May 9, 2000); Case No 04-00315-UT, Certification of Stipulation (May 26, 2005) at 17, 39, adopted by Final Order Approving Certification of Stipulation (June 7, 2005); Case No. 11-00085-UT, Recommended Decision, at 15-16; and Case No. 13-00231-UT, Certification of Stipulation (June 30, 2014), at 43-44.

<sup>19</sup> Case No. 04-00315-UT, Certification of Stipulation, at 16-17.

<sup>20</sup> Case No 04-00315-UT, Certification of Stipulation, at; Case No. 2678, Recommended Decision of the Hearing Examiner (Corrected), at 22.

(15) Then, in Case No. 11-00085-UT from 2011, the Commission, when reviewing the application of EPCOR Water to acquire the common stock of New Mexico-American Water Company from American Water Works Company, the Hearing Examiner there not only applied these four pre-existing factors, but also determined that two additional factors were important in a stock purchase case, namely,

5. Careful verification of the qualifications, and financial health of the new owner;  
and
6. Adequate protections against harm to customers.<sup>21</sup>

(16) In Case No. 13-00231-UT, the Commission applied these standards to consider the proposed purchase by TECO Energy of all of the stock of New Mexico Gas Intermediate, Inc. (“NMGI”), which owned all of the stock of NMGC.<sup>22</sup> The Commission approved the transaction in light of the quantifiable benefits provided, including rate credits totaling \$11 million; the unquantifiable benefits provided, such as TECO Energy’s overall track record and commitment to own NMGC for ten years; the agreement to conditions designed to ensure that approval did not cause a deterioration in NMGC’s quality of service; and commitments to ensure no loss of NMPRC jurisdiction and to protect customers against harm.<sup>23</sup> For these reasons, the Commission found that the transaction was fair, just and reasonable and in the public interest and neither inconsistent with the public interest nor unlawful.

(17) In both prior cases, the Commission only approved the acquisitions after requiring TECO and Emera to commit to a comprehensive package of verifiable customer benefits and protections,

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<sup>21</sup> Case No. 11-00085-UT, Recommended Decision of the Hearing Examiner (Dec. 2, 2011) at 15-16, approved by Final Order (Dec. 22, 2011).

<sup>22</sup> Case No. 13-00231-UT, Certification of Stipulation at 43-45.

<sup>23</sup> *Id.* at 29, 79.

including a multi-year rate freeze, annual rate credits, service-quality benchmarks, local-operations and staffing commitments, strict affiliate-transaction safeguards and economic development funding.<sup>24</sup> However, as the Commission held, promises and commitments are only as reliable as the company standing behind them.<sup>25</sup>

(18) The Commission similarly applied these standards in Case No. 15-00327-UT to consider the merger of Emera with and into TECO Energy, changing the holding company ownership of NMGC, and giving Emera, an energy company headquartered outside of the United States, indirect control over NMGC.<sup>26</sup> The Commission found the applicable standards were met because the transaction provided quantifiable benefits in the form of economic development contributions of up to \$20 million and \$2 million in extended bill credits, and unquantifiable benefits such as a board of directors with local representation, the extension of timeframes and protections of employees and functions, and the commitment to at least ten years of ownership of NMGC.<sup>27</sup>

(19) These six factors have been applied subsequently, particularly in Case Nos. 19-00234-UT and 22-00222-UT. In Case No. 19-00234-UT, the Commission approved the merger transaction that turned El Paso Electric Company (“EPE”) from a publicly owned company into a privately held entity owned by Sun Jupiter, LLC, and its parent IIF US.<sup>28</sup> As in the prior cases, the Commission relied on quantifiable benefits (i.e., \$8.7 million in bill credits and \$1 million per year for 20 years to promote economic development) and an unquantifiable ten-year ownership

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<sup>24</sup> See Case No. 13-00231-UT, at 23-25, 44-47, 53-79; Case No. 15-00327-UT, at 11-28, 31-34.

<sup>25</sup> Case No. 13-00231-UT, at 70-72 and Case No. 15-00327-UT, at 47-49.

<sup>26</sup> Case No. 15-00327-UT, Certification of Stipulation (June 8, 2016) at 28-32, approved by Order Adopting Certification of Stipulation (June 22, 2016).

<sup>27</sup> Case No. 15-00327-UT, Certification of Stipulation at 38, 52-53.

<sup>28</sup> Case No. 19-00234-UT, Amended Certification of Stipulation (Feb. 12, 2020) at 27, 63, approved by Final Order Adopting Amended Certification of Stipulation (Mar. 11, 2020).

commitment benefit, a general commitment to quality of service, and the presence of certain financial commitments to ensure no loss of Commission jurisdiction and protection against consumer harm.<sup>29</sup> The Commission also relied upon the commitment for a majority independent EPE board of directors and a delegation of authority to the EPE board to ensure the satisfaction of the commitments.<sup>30</sup>

(20) The Certification of Stipulation in the most recent case to address the elements necessary for approval of a major utility merger or acquisition, Case No. 20-00222-UT, reaffirmed the Six-Factor Test.<sup>31</sup> In that case, known as the Avangrid case, the Hearing Examiner stated that the Commission, following from the voluntary agreements in the El Paso-Sun Jupiter case that became part of the Commission's approval, should consider a series of representative conditions that the Commission has attached to its approvals to ensure that an acquisition is in the public interest.<sup>32</sup>

Those conditions to be considered are the following:

1. Rate credits;
2. Rate freezes;
3. No adverse impact on utility's existing rates;
4. Economic development contributions;
5. Maintain current offices for period of time;
6. Maintain employee wages and benefits;
7. Not recover transaction costs from ratepayers;
8. Hold customers harmless from negative impacts of transaction;

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<sup>29</sup> *Id.* at 7-8, 12, 63.

<sup>30</sup> *Id.* at 12, 34-36, 63.

<sup>31</sup> Case No. 20-00222-UT, Certification of Stipulation at 33.

<sup>32</sup> *Id.* at 32.

9. Require utility to give Commission notice of its intent to pay dividends to the holding company;
10. Agreement by utility to not recover acquisition adjustment from ratepayers;
11. Require utility to waive any claims of preemption as a basis for challenging the Commission's disallowance of costs;
12. Prohibit utility from recovering increased costs of capital that may result from the transaction;
13. File Cost Allocation Manual;
14. Hold ratepayers harmless from increases in cost of replacement debt;
15. Agreement by acquiring company to not sell for period of time;
16. Agreement by acquiring company to invest certain amount in utility for [a] period of time;
17. Majority independent board of directors; and
18. Delegation of authority to utility board of directors from upstream holding company.<sup>33</sup>

(21) This Six-Factor test has come to apply an overall standard of net public benefit while also emphasizing a flexible approach based on “facts and circumstances,” while also allowing for the review of historically representative conditions that the Commission determined to be in the public interest. Because the application of these six factors is so fact and circumstance dependent, each will be presented and applied in detail in the respective discussion of each factor that applies to this transaction below.

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<sup>33</sup> Case No. 20-00222-UT, Certification of Stipulation at 33, referencing in fn. 41, the ‘Amended Certification of Stipulation; Case No. 19-00234-UT, at 23-24 plus additional conditions agreed to in that case.’

## B. Evidentiary Standards

(22) In this administrative proceeding, in the review of the Joint Applicants' application and requests, it must satisfy its general and specific burden of proof. Generally, the burden of proof in an administrative proceeding is established as a matter of law.<sup>34</sup> The rule in administrative proceedings and adjudications before this Commission is that unless a statute provides otherwise, the proponent of an order or moving party has the burden of proof.<sup>35</sup> The burden of proof is two-pronged: it includes both the prima facie burden of adducing sufficient evidence to go forward with a claim and the burden of ultimate persuasion. The quantum of proof in administrative adjudications is, unless expressly provided otherwise, a preponderance of record evidence.<sup>36</sup> But specifically, the Joint Applicants must also satisfy their burden in the proposed Class II transaction. They are required to produce such evidence and information as is sufficient to demonstrate that such Class II transaction or the resulting effect of such Class II transaction on the financial

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<sup>34</sup> See, e.g., Case No. 15-00119-UT, Certification of Stipulation, at 16 (Dec. 18, 2015) (citing *Gray v. State ex rel. Wyoming Workers' Safety and Compensation Div.*, 193 P.3d 246, 251 (Wyo. 2008)). See also NMSA 1978 § 62-8-7(A) ('At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.').

<sup>35</sup> Davis, Kenneth Culp, *Administrative Law Treatise* § 16.9 at 255-57 (2d ed. 1980). See *Int'l Minerals and Chemical Corp. v. N.M. Pub. Serv. Comm'n*, 81 N.M. 280, 283, 466 P.2d 557, 560 (1970) ('Although the statute does not specifically place any burden of proof on [complainant] International, the courts have uniformly imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof.').

<sup>36</sup> See, Davis, *supra*, § 16.9 at 256 ('One can never prove a fact by something less than a preponderance of the evidence') (emphasis in original). See *El Paso Electric Co. et al. v. N.M. Pub. Serv. Comm'n*, 1985-NMSC085, ¶ 12 ('This Court, however, does express its deep concern regarding the reasonableness of this heightened standard of proof ['clear and convincing evidence'], especially since a 'preponderance of evidence' standard is customary in administrative and other civil proceedings.') (emphasis added); *Re: Southwestern Public Service Co.*, Case No. 2678, Recommended Decision (Nov. 15, 1996) ('No matter how the Commission describes its standard of review, SPS bears the burden of proof in this case. SPS must demonstrate that a preponderance of evidence exists in the record on which to base approval of the requested authorizations surrounding the merger.').

performance of the public utility has not materially and adversely affected the utility's ability to provide reasonable and proper utility service at fair, just and reasonable rates.<sup>37</sup>

### III. DISCUSSION

#### A. Overview of Application and Proposed Transaction

(23) The Joint Applicants petition the Commission to authorize the divestiture and sale of NMGC. They request that the Commission allow Emera, EUSHI, and TECO Holdings ("Emera Group") to sell TECO Energy, the owner of NMGI, and NMGC (collectively, the "NMGC Group"), to Saturn Holdco.<sup>38</sup> In conjunction with this transaction, Joint Applicants seek the approval of an Amended GDP ("Amended GDP"), prepared as a requirement of the transaction, and of a Transition Services Agreement ("TSA") whereby Emera and its affiliates will provide a variety of support services to the NMGC Group for up to twenty-four (24) months after the closing of the Transaction.<sup>39</sup> Finally, they petition the Commission for any other approvals or authorizations necessary to consummate and implement the transaction.<sup>40</sup>

(24) At the heart of the Transaction is the Purchase and Sale Agreement ("PSA"). The parties to the agreement are EUSHI and TECEO Holdings as sellers, and Saturn Holdco as buyer.<sup>41</sup> This agreement establishes the terms and conditions under which Saturn Holdco would purchase the

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<sup>37</sup> NMSA 1978, § 62-6-19(C)(2).

<sup>38</sup> Joint Applicants' Exhibit 1, Revised Application Direct Testimony and Exhibits of Jeffrey M. Baudier ("Baudier Dir.") at 4:20-24 – 5:1-6.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* Initially, the Revised Application presented an additional request, namely, that the Commission authorize the accrual of a regulatory asset for potential recovery of significant capital investment in connection with the shared services transition. *Id.* During the course of the proceeding, in the rebuttal testimony of Joint Applicant Witness Baudier, that request was withdrawn. Joint Applicants' Exhibit 3, Revised Application Rebuttal of Jeffrey M. Baudier ("Baudier Rebuttal") at 37.

<sup>41</sup> Baudier Dir., JA Exhibit JMB-2 (Redacted), Purchase and Sale Agreement ("PSA"), at 6.

NMGC Group from Emera Group, including the base purchase price of \$1,252,000,000<sup>42</sup>. Of that amount, and according to the PSA, Saturn Holdco will receive from third party entities, \$448.9 million in equity and \$250 million in debt, for the purchase of NMGC Group.<sup>43</sup>

(25) At the same time, Saturn Holdco is owned by a series of six intermediate and upstream entities, Saturn Utilities, LLC. These Joint Applicant entities, in the form of either a Limited Partnership (“LP”), a General Partner (“GP”), or an LLC, possess various proprietary and financial relationships to one another. The internal mechanisms of how these entities relate to one another has a determinative impact on whether the proposed transaction is in the public interest.

(26) A strong component of influence from external entities on Joint Applicants is also present in the transaction. At a downstream level, [REDACTED]. Also at that level, the Joint Applicants propose both a TSA contract with Emera and to pay Delta Utilities (“Delta Utilities”), a natural gas LDC that is owned by two funds managed by BCP Management, for IT services. At the ultimate upstream level, BCP Management manages the BCP Infrastructure Funds. The BCP Infrastructure Funds, in turn, have entered into a contract with BCP Infrastructure Management, LLC, (“BCP Infrastructure”), to receive management services. Also, one of the BCP Infrastructure Funds, BCP Infrastructure Fund II GP—also an LP itself—has a non-participating entity as its GP, namely, BCP Fund UGP, LLC.<sup>44</sup>

(27) Faced with these multiple entities and relationships, a description of each Joint Applicant and non-participating entity and their proprietary, financial, and contractual relationship follows.

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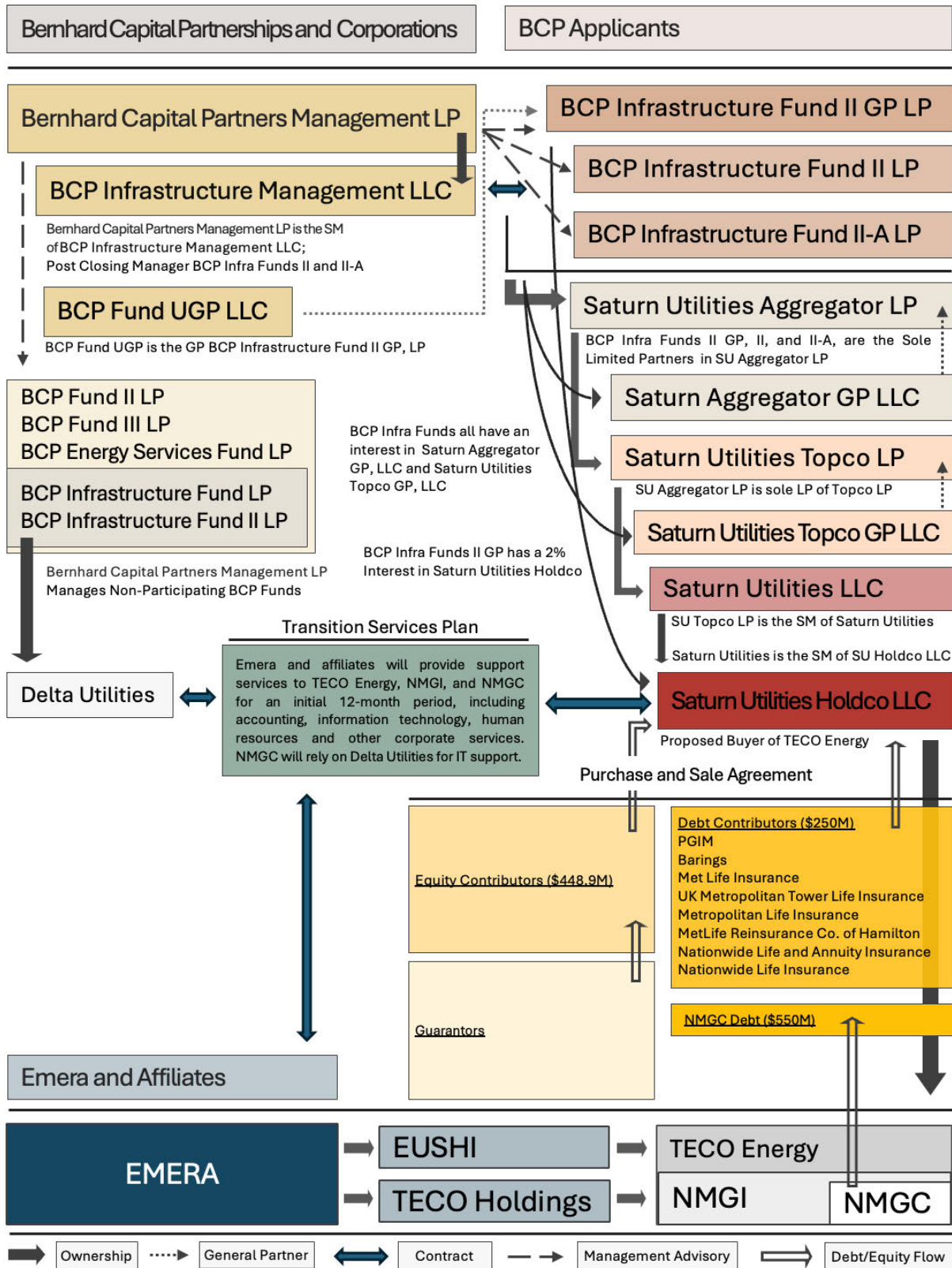
<sup>42</sup> PSA at 2.2(b)(i), 23.

<sup>43</sup> Baudier Dir. at 33:3-6.

<sup>44</sup> *Id.* at 108:9-10.

Establishing base-line descriptions here establishes clear and common frames of reference for the Commission to evaluate the application fully. The following discussion examines and co-locates the factual evidence present in the record with respect to the terms and mechanics of the PSA, the proposed post-acquisition corporate, financial, and proprietary structures, the terms and mechanics of the TSA, and the necessary and voluntary Joint Applicant commitments. See Figure 1., below.

Figure 1. Overview of the Proposed Transaction



## 1. The Purchase and Sale Agreement and Transaction Financing

(28) The debt financing is primarily documented by the Debt Commitment Letter. This letter is the committed debt-financing instrument for the transaction.<sup>45</sup> In that letter, eight creditors, agree to purchase, jointly and severally, fixed-rate senior secured notes from Saturn Holdco, in an aggregate principal amount of up to \$250 million.<sup>46</sup> Saturn Utilities Holdco would then use the proceeds from these notes, together with the anticipated sponsor-side equity contribution, to fund the acquisition purchase price and related expenses, subject to the limited conditions and mechanics stated in the letter and Term Sheet.<sup>47</sup>

(29) This use of debt securities is distinct from an asset-backed securitization of NMGC assets or customer receivables. The letter does not contemplate Saturn Holdco as a securitization vehicle issuing asset-backed securities against a pool of utility receivables. The relevant security package is therefore collateralization, not a utility-asset securitization. Instead, it describes a holding-company note issuance secured primarily by the holding company's ownership interest in the acquired TECO Shares and proceeds of that equity collateral.<sup>48</sup>

(30) The Debt Commitment Letter, addressed to Saturn Holdco in the care of BCP Management, demonstrates a close relationship between the two entities. At the start of the letter, it states that ,

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<sup>45</sup> Joint Applicants' Response to February 2025 Bench Request, Debt Commitment Letter, Exhibit BR-16B(1) (Redacted) ("Debt Commitment Letter"). The Debt Commitment Letter is described in the PSA as a fully executed letter by and between Saturn Utilities Holdco, LLC and each of the financial institutions party thereto for the purpose of funding the transactions contemplated by this Agreement. PSA 5.8(b).

<sup>46</sup> These creditors are PGIM, Inc., Barings, LLC, Met Life Insurance UK, Metropolitan Tower Life Insurance Company, Metropolitan Life Insurance Company, MetLife Reinsurance Company of Hamilton, Nationwide Life and Annuity Insurance Company, and Nationwide Life Insurance Company. *See*, Debt Commitment Letter.

<sup>47</sup> Debt Commitment Letter, Exhibit BR-16B(1), at § 1(a), at 1-2.

<sup>48</sup> The Senior Obligations are to be secured by a first-priority lien and security interest in the Issuer's right, title, and interest in the TECO Shares, together with proceeds of that collateral, and the Term Sheet expressly states that the Senior Obligations will be non-recourse to OpCo. Debt Commitment Letter, Term Sheet at §§ D.3-D.4, Exhibit BR-16B(1), at 35-36.

Saturn Holdco was formed at the direction of, and to be controlled directly or indirectly by, BCP Management.<sup>49</sup> Additionally, it states that BCP Management, as the sponsor of Saturn Holdco, has the obligation, to fund “or cause to be funded, an aggregate cash equity contribution to the Saturn Utilities Holdco in respect of the Purchase Price of NMGC Group.”<sup>50</sup>

(31) The terms and conditions of this equity contribution to Saturn Holdco are governed by the Equity Commitment Letter, and the associated Limited Guarantee.<sup>51</sup> The equity contribution is only to provide sufficient capital to Saturn Holdco to purchase NMGC Group.<sup>52</sup> The Equity Commitment Letter outlines the obligations of the equity sponsors and supports the contract performance of Saturn Utilities Holdco under the PSA by supplying the equity portion of its acquisition financing.<sup>53</sup> The letter identifies the equity sponsors, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]).<sup>54</sup> that commit, severally and not jointly, to purchase, directly or indirectly, certain equity interests of Saturn Holdco.<sup>55</sup> In exchange for this equity contribution, the sponsors do

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<sup>49</sup> Debt Commitment Letter at 1.

<sup>50</sup> Debt Commitment Letter, Term Sheet at § C.1, 11. This obligation is a condition precedent to the obligation to purchase notes outlined in the Debt Commitment Letter. The letter’s Term Sheet requires that the equity contribution be funded in cash in an amount satisfying the Minimum Equity Condition, or that arrangements reasonably satisfactory to the Note Purchasers for that funding have been made

<sup>51</sup> Debt Commitment Letter, Term Sheet at § E.1(m), 40.

<sup>52</sup> Joint Applicants’ Response to February 2025 Bench Request, Equity Commitment Letter, Exhibit BR-16H (Redacted) (“Equity Commitment Letter”), at § 1, 1-2. Funds, are committed solely to provide sufficient cash to Buyer to fund the Closing Date Purchase Price and Buyer’s transaction fees and expenses to the extent those amounts are not otherwise funded through the Debt Commitment Letter.

<sup>53</sup> Equity Commitment Letter at § 1; PSA at § 5.8(a)-(b).

<sup>54</sup> PSA (Unredacted) at 1, and Definitions at 3; Equity Commitment Letter (Unredacted) at 1.

<sup>55</sup> Equity Commitment Letter (Redacted) at 1.

receive “certain equity interests of Saturn Holdco” equal that sponsor’s commitment amount, or allocable share.<sup>56</sup>

(32) The allocated shares of the sponsors’ equity commitments are as detailed below, [REDACTED]  
 [REDACTED]  
 [REDACTED].<sup>57</sup>

Table 1: Equity Sponsor Commitment - Allocable Share<sup>58</sup>

Equity Sponsor	Allocation Value	Percentage Share
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Total	\$448,900,000	100.0000%

(33) The Equity Commitment Letter does not characterize the sponsors’ consideration as a fee, interest payment, loan repayment right, or guarantee reimbursement right. It identifies the consideration as the purchase of equity interests in Saturn Utilities Holdco.<sup>59</sup> While the Equity Commitment Letter does not define equity interests, the PSA states that equity interests mean any

1. Capital stock, partnership or membership interests or units (whether general or limited), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity[;]

<sup>56</sup> Equity Commitment Letter (Redacted) at 1.

<sup>57</sup> Equity Commitment Letter (Unredacted) Exhibit A.

<sup>58</sup> *Id.*

<sup>59</sup> Equity Commitment Letter (Redacted) at 1.

2. Subscriptions, calls, warrants, options or commitments of any kind or character relating to, or entitling any Person to acquire, any security described in clause (a) [1, above];]
3. Other security containing equity features or profit participation features (including any stock appreciation, phantom stock, equity participation, stock-based performance units, profits interests or similar rights);]
4. Securities convertible into or exercisable or exchangeable, directly or indirectly, with or without consideration, into or for any security described in the foregoing clauses (a) [1, above] through (c) [3, above] or another similar security (including convertible notes); and
5. Any security carrying any warrant or right to subscribe for or purchase any security described in clauses (a) through (d) above [1 - 4, above] or any similar security.<sup>60</sup>

Under the Equity Commitment Letter, the sponsors are not receiving a lender's repayment right or a guarantor's reimbursement right under the Equity Commitment Letter. They are receiving direct or indirect equity interests of Saturn Holdco, with whatever specific economic, governance, or transfer rights the relevant organizational documents and transaction structure determined.

(34) Importantly, the obligations to sponsor the equity contribution to Saturn Holdco can be assigned, as set out by Section 15 of the Equity Commitment Letter. As a general rule, the Equity Commitment Letter and the rights, benefits, and obligations under it may not be assigned without the prior written consent of the other party and the Sellers, EUSHI and TECO Holdings.<sup>61</sup> With consent, a sponsor may assign or transfer all or part of its rights and obligations to one or more persons that agree to assume that sponsor's obligations, but the assigning sponsor remains obligated to perform to the extent the assignee does not perform unless Sellers consent to release the sponsor.<sup>62</sup> The assignment language is permissive but also protective. It allows sponsors to

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<sup>60</sup> PSA (Redacted), Definitions, Equity Interests, at 7.

<sup>61</sup> Equity Commitment Letter (Redacted) § 15.

<sup>62</sup> *Id.*

find internal or substitute funding arrangements, but it does not appear to allow a sponsor to escape its commitment simply by assigning it. The assignment also may not prevent, impair, or delay the consummation of the closing in any material respect, which preserves the letter’s central function as closing-support financing.<sup>63</sup>

(35) Joint Applicant Witness Baudier, though, explains that the Equity Commitment Letter is “preliminary in nature because the entities that provided the commitments will not participate in the acquisition of NMGC.”<sup>64</sup> In response to the March 2025 Bench Request, Baudier clarified that the Equity Commitment Letter is preliminary only insofar as it will be assigned to BCP Infrastructure Funds, namely, BCP Infrastructure Fund II GP, BCP Infrastructure Fund II-A, and BCP Infrastructure Fund II GP.<sup>65</sup> He states there that the equity commitment obligations of the current sponsors will be transferred and assigned to the BCP Infrastructure Funds upon the first close of equity in those funds.<sup>66</sup> Baudier states that no commitments contained in the Equity Commitment Letter have been withdrawn, terminated, or rescinded.<sup>67</sup> Baudier also explains that the BCP Infrastructure Funds are providing the equity for the transaction, while contribution percentages will be determined soon before closing.<sup>68</sup>

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<sup>63</sup> Equity Commitment Letter (Redacted) at § 15.

<sup>64</sup> Baudier Dir. at 101:19-20; 102:1-4.

<sup>65</sup> *Id.* at 105:1-19.

<sup>66</sup> *Id.* 101:19-20; 102:1-4.

<sup>67</sup> *Id.* at 106:14-21.

<sup>68</sup> *Id.* at 107:10-14. The hearing transcript also shows that Baudier acknowledged that the [BCP Funds] were not fully funded at the time of the hearing and that fundraising was expected to continue until the second quarter of the following year. Transcript of Evidentiary Hearing, Vol. 1 at 68:14-70:12. He nevertheless testified that the equity commitment is a specific undertaking to effectuate closing if Fund II did not deliver the required equity. Transcript of Evidentiary Hearing, Vol. 1 at 72:24-73:4.

(36) Finally, and in support of the equity sponsors' commitments, the PSA also depends on the Limited Guarantee. Under this guarantee, the Guarantors [REDACTED]

[REDACTED].<sup>69</sup> Its basic purpose is to give the Sellers, EUSHI and TECO Holdings, a limited, defined source of monetary recourse against the Guarantors for specified Buyer obligations under the PSA, while also preserving a carefully drafted no-recourse structure around the sponsor-side entities and their affiliates.<sup>70</sup> The Guarantors of the Limited Guarantee are [REDACTED]

[REDACTED].<sup>71</sup> The letter is a sponsor-side contractual support obligation in the interest of the Sellers for specified Buyer payment obligations.<sup>72</sup>

(37) The debt and equity financing framework as set by the terms of the PSA and commitment letters places the sponsors at the financial and causal center of the acquisition financing structure. The equity contribution commitments of the sponsors not only provide a condition precedent for debt financing but are also themselves guaranteed on behalf of the sellers.

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<sup>69</sup> Limited Guarantee (Unredacted) at 1.

<sup>70</sup> Limited Guarantee (Redacted) at 1.

<sup>71</sup> Limited Guarantee (Unredacted) at 1.

<sup>72</sup> Limited Guarantee (Redacted) at 1.

## 2. Proposed Post-Acquisition Corporate Structure

(38) Beyond the direct buyers and sellers of the NMGC Group that are party to the PSA (i.e., EUSHI, TECO Holdings, and Saturn Holdco), the Joint Applicants also consist of a series of eight (8) other upstream entities that either own Saturn Holdco or are GPs to such owner entities.

(39) The proposed structure of the Joint Applicants and their internal orientation to one another reveals a vertical ownership structure upwards from Saturn Holdco. Saturn Holdco is owned by another LLC (Saturn Utilities), which is then in turn owned by an LP (Saturn Utilities Topco), that is solely formed of another LP (Saturn Utilities Aggregator), whose sole three LPs are the BCP Infrastructure Funds (i.e., BCP Infrastructure Fund II GP, BCP Infrastructure Fund II, and BCP Infrastructure Fund II-A).

(40) Meanwhile, as mentioned previously, the BCP Infrastructure Fund II GP, itself an LP, is also the GP for BCP Infrastructure Fund II and Fund II-A. The GP for the BCP Infrastructure Fund II GP is not a Joint Applicant, but is BCP Fund UGP, an LLC.<sup>73</sup> Further, the Joint Applicants consist of two upstream LLCs, Saturn Utilities Topco GP, LLC, and Saturn Utilities Aggregator, LP, that serve as GPs to their corresponding namesake LP. Externally, these funds are connected to multiple other BCP Management related entities that are not Joint Applicants in a variety of contractual and managerial ways, up and downstream.

### BCP Management Partnerships and Corporations

(41) Several non-participating entities related to BCP Management and BCP Infrastructure Management have close ties to the Joint Applicants. BCP Management, a Delaware LP established in 2013, is an investment fund manager with a contractual right to manage certain fund entities

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<sup>73</sup> Baudier Dir. at 108.

that own portfolio investments.<sup>74</sup> Joint Applicant Witness Baudier describes BCP Management as an independent services-and infrastructure-focused private equity management firm. According to Joint Applicants “BCP” is not a separate corporate entity, but a collective reference to BCP Management and the investment funds it supports, including the BCP Applicants.<sup>75</sup>

(42) The management-company component is implemented through BCP Infrastructure Management. Pursuant to a management agreement entered into on March 18, 2025, BCP Infrastructure Fund II GP, as general partner of BCP Infrastructure Funds II and II-A, delegated day-to-day management of the BCP Infrastructure Funds to BCP Infrastructure Management.<sup>76</sup>

(43) Other non-participating BCP Funds also have contact with Joint Applicants at the upstream level, as has been described above. This contact specifically includes a company that is owned by funds that are managed by BCP Management.<sup>77</sup> These two, BCP Infrastructure Fund, LP, and BCP Infrastructure Fund II, LP, own Delta Utilities, a natural gas LDC that intends to share post-acquisition transition costs.<sup>78</sup> Joint Applicants intend to rely on Delta Utilities to provide IT support services to NMGC post-closing, as well as appoint executives from this company to the NMGC board.

(44) Non-participating entities also share connections with the Joint Applicants at the executive and managerial level. Joint Applicant Witness Baudier identifies himself as both a Senior Managing Director of BCP Management, but also the President of Saturn Holdco.<sup>79</sup> Baudier then

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<sup>74</sup> *Id.* at 9:11-13.

<sup>75</sup> *Id.* at 8:12-26.

<sup>76</sup> *Id.* at 93:13-20 – 94:1-6.

<sup>77</sup> *Id.* at 95:7-15.

<sup>78</sup> *Id.* at 96.

<sup>79</sup> *Id.* at 1.

affirms later in his testimony that Saturn Holdco plans to replace the two Emera representatives on the board of NMGC with Peter Tumminello, Executive Chairman of Delta Utilities, and R. Foster Duncan, an Operating Partner of BCP Management.<sup>80</sup>

#### BCP Infrastructure Funds

(45) Functionally, the BCP Infrastructure Funds are the point at which private investment capital enters the post-acquisition ownership chain. The BCP Infrastructure Funds will be Saturn Holdco's ultimate indirect owners.<sup>81</sup> The BCP Infrastructure Funds operate according to LP agreements and a Private Placement Memorandum ("PPM"). LPs are bound by the terms of a Partnership Agreement.<sup>82</sup> The Partnership Agreement governs a variety of matters, including the Partnership Interests, the GP's or Limited Partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.<sup>83</sup> Joint Applicants provided the LP agreements for BCP Infrastructure II and BCP Infrastructure II-A.<sup>84</sup>

(46) While the PPM is not a governing document (the applicable partnership agreement is the governing document for each entity), it does have a determinative influence on the way that the fund is organized, managed, and capitalized. Joint Applicants describe the PPM as a disclosure document that provides information about the investment opportunity, including the structure and risks of the investment opportunity. Joint Applicants provided the PPM for BCP Infrastructure

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<sup>80</sup> *Id.* at 22:17-21.

<sup>81</sup> *Id.* at 28:10-14.

<sup>82</sup> Del. Code Ann. tit. 6, § 17-101(14).

<sup>83</sup> Del. Code Ann. tit. 6, § 17-101(15).

<sup>84</sup> Baudier Dir. at 83:19-23 – 84:1-7; *see*, Exhibit BR-3(1) (Redacted).

Fund II and BCP Infrastructure Fund II-A.<sup>85</sup> There is no separate PPM for BCP Infrastructure Fund II GP.<sup>86</sup>

(47) As discussed above, Joint Applicants intend that BCP Infrastructure Funds will indirectly invest in the NMGC Group through their ultimate ownership of Saturn Holdco. Third-party investment, Joint Applicants explain, will be made at the BCP Infrastructure Funds level rather than at the level of Saturn Utilities Aggregator, LP or Saturn Utilities Topco, LP.<sup>87</sup> Saturn Utilities Aggregator and Saturn Utilities Topco do not have PPMs either because their sole investors will be their respective parent entities leading up to the BCP Infrastructure Funds.<sup>88</sup>

(48) Baudier adds that several limited partners have now been determined, that there is no deadline to close additional limited partners into the BCP Infrastructure Funds before the transaction closing date, and that no GPs will be added to BCP Infrastructure Fund II or II-A.<sup>89</sup> BCP Infrastructure Fund II GP will have approximately a 2% participation in the equity contribution to Saturn Holdco, although the precise percentage will not be determined until just before closing.<sup>90</sup>

### The Saturn Companies

(49) The Saturn Companies are the intermediate holding-company layer that connects the fund layer to Saturn Holdco. Joint Applicants collectively describe these entities as the “intermediate

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<sup>85</sup> *Id.* at 84:9-18.

<sup>86</sup> *Id.* at 84:13-16.

<sup>87</sup> *Id.* at 85:4-7.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 108:1-10.

<sup>90</sup> *Id.* at 107:16-22.

companies.”<sup>91</sup> These intermediate companies are flow-through entities established for the transaction with no employees<sup>92</sup> but are included as Joint Applicants because they are technically affiliated interests that control a public utility through direct or indirect ownership of voting securities.<sup>93</sup> The intermediate companies concern the various Saturn Companies. The Amended GDP states that Saturn Holdco and the Intermediate Companies recently created these entities solely to enter into the PSA, complete the Transaction, and hold the Equity Interests of TECO Energy.<sup>94</sup>

(50) While investor solicitation and investor risk disclosure occur at the BCP Infrastructure Funds level, the Saturn entities function as downstream acquisition vehicles.<sup>95</sup> Baudier explains that the BCP Infrastructure Funds own 100% of the limited partnership interests in Saturn Utilities Aggregator (LP), which is managed by Saturn Utilities Aggregator GP (LLC). Saturn Aggregator is a Delaware LP formed in July of 2024.<sup>96</sup> Saturn Utilities Aggregator GP, also formed in July of 2024, is a Delaware LLC and the GP of Saturn Utilities Aggregator.<sup>97</sup> Joint Applicants have provided the LP agreement for Saturn Utilities Aggregator.<sup>98</sup>

(51) In turn, Saturn Utilities Aggregator owns 100% of the limited partnership interests as the sole LP in Saturn Utilities Topco (LP), a Delaware limited partnership formed in July of 2024.<sup>99</sup>

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<sup>91</sup> *Id.* at 28:19-23.

<sup>92</sup> *Id.* at 29:3-8.

<sup>93</sup> *Id.* at 28:20-23 – 29:1-4.

<sup>94</sup> *Id.* JA Exhibit JMB-3, Amended General Diversification Plan (“Amended GDP”), at 28.

<sup>95</sup> *Id.* at 84:9-18 – 85:1-7.

<sup>96</sup> Baudier Dir., Response to February 2025 Bench Request, Response 1(5).

<sup>97</sup> *Id.*, Bench Request, 1(4).

<sup>98</sup> *Id.* at 83:19-23 – 84:1-7; Exhibit BR-3(2) (Redacted).

<sup>99</sup> *Id.*, Response to February 2025 Bench Request, Response 1(8).

Saturn Topco LP is managed by Saturn Utilities Topco GP (LLC),<sup>100</sup> and is a Delaware LLC formed in July of 2024.<sup>101</sup> Finally, Saturn Utilities Topco owns 100% of the membership interests in Saturn Utilities, the corporate entity that owns 100% of the membership interests in Saturn Utilities Holdco. To summarize, Saturn Aggregator is the sole Limited Partner of Saturn Utilities Topco, Saturn Topco is the sole member of Saturn Utilities, and Saturn Utilities is the sole member of Saturn Holdco.<sup>102</sup> Joint Applicants have provided the LP agreement for Saturn Utilities Topco.<sup>103</sup>

(52) Finally, Saturn Holdco is also the point where the proprietary chain meets the acquisition financing as it is the immediate acquisition vehicle. Baudier describes Saturn Holdco as a newly created Delaware limited liability company formed solely to enter into the PSA, complete the transaction, and own 100% of the equity interests of TECO Energy.

(53) Saturn Holdco has not engaged in any business except activities necessary and incidental to those purposes.<sup>104</sup> The proprietary form of Saturn Holdco consists of a single class of uncertificated and non-unitized limited liability company interests, and Saturn Utilities, as the sole member, holds 100% of those interests and is entitled to all distributions from Saturn Holdco.<sup>105</sup> After closing, Saturn Holdco would own TECO Energy. Baudier states that TECO Energy's limited liability company agreement is expected to be amended and restated so that TECO Energy

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<sup>100</sup> *Id.* at 28:16-20.

<sup>101</sup> *Id.*, Response to February 2025 Bench Request, Response 1(7).

<sup>102</sup> *Id.* at 86:1-17.

<sup>103</sup> *Id.* at 83:19-23 – 84:1-7; Response to February 2025 Bench Request, Response BR-3(3) (Redacted).

<sup>104</sup> *Id.* at 27:4-28:3.

<sup>105</sup> *Id.* at 111:1-5.

has a single class of uncertificated and non-unitized limited liability company interests, with Saturn Holdco holding 100% of those interests and entitled to all distributions from TECO Energy.<sup>106</sup>

### 3. Transition Services Agreement

(54) Upon closing, NMGC Group would transition to the new owner, Saturn Holdco. To facilitate a safe and orderly transition of services, the Joint Applicants propose a shared services plan. That plan includes a TSA and a plan for Saturn Holdco (and NMGC) to rely on IT services provided by Delta Utilities. The TSA serves as an operational bridge by providing service continuity between the PSA closing and NMGC's post-closing stand-alone service support model. It is not an ownership or financing instrument but rather the contract under which Emera and its service-providing affiliates continue to provide specified back-office, corporate, information technology, and related services to NMGC, TECO Energy, NMGI, and their respective subsidiaries after Saturn Utilities Holdco acquires TECO Energy.<sup>107</sup> Baudier describes the TSA as the mechanism that allows Emera and its affiliates to continue providing support services to the NMGC Group after closing while NMGC transitions those functions to replacement arrangements.<sup>108</sup>

(55) The service-provider side consists of Emera, EUSHI, and TECO Holdings that provide services under the agreement. The recipient side consists of NMGC, TECO Energy, NMGI, and their respective subsidiaries.<sup>109</sup> The TSA's continuing performance obligations run between the service providers and the recipients.<sup>110</sup> The TSA's core obligation is that, following the closing of

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<sup>106</sup> *Id.* at 111:7-16.

<sup>107</sup> *Id.*, JMB-2, Transition Services Agreement ("TSA") at 116-17.

<sup>108</sup> *Id.* at 69:4-12; *see also, id.* at 70:1-8.

<sup>109</sup> *Id.* TSA at 116-17.

<sup>110</sup> *Id.* TSA, at 116-17.

the transaction and until the expiration of a twelve-month time period (which can be extended for another six (6) months), the service providers must perform for the benefit of the recipients the services identified in Schedule A of the agreement. Those services must be provided in substantially the same manner as during the twelve-month period immediately preceding the closing.<sup>111</sup>

(56) Schedule A defines the substantive service package. It includes non-IT services such as accounts payable, claims support, corporate tax, compliance, emergency management, HRIS, payroll, procurement, safety, recruitment, and treasury, as well as IT services such as SAP ERP and corporate applications, desktop support, cybersecurity, network connectivity, IT compliance, IT service desk, remote access, PowerPlan licensing, and time-and-materials support for stand-up or other initiatives.<sup>112</sup> The service providers must perform the services in a professional and workmanlike manner, with appropriate and qualified personnel, in compliance with applicable law, and with a standard of care substantially consistent with the lookback-period service level.<sup>113</sup>

(57) The TSA also preserves employment and entity separateness.<sup>114</sup> The agreement also disclaims any joint venture, partnership, employment, or agency relationship between the Recipients and Service Providers, and the Service Providers act as independent contractors rather than agents of the Recipients.<sup>115</sup> The payment obligation runs from each Recipient to the applicable Service Provider. During the Term, each Recipient must pay the compensation set forth

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<sup>111</sup> *Id.* at 119; TSA at § 2.1(a).

<sup>112</sup> TSA, Schedule A, at 136-42.

<sup>113</sup> *Id.* at § 2.3

<sup>114</sup> *Id.* at § 3.1

<sup>115</sup> *Id.* at § 3.2

on Schedule A for each Transitional Service it receives, unless that service is earlier cancelled.<sup>116</sup> Service Providers must issue detailed monthly invoices within thirty days after the end of the month in which the services were provided, and Recipients must pay undisputed invoices within thirty days after receipt.<sup>117</sup>

(58) The Schedule A service package has known estimated annual service fees totaling approximately \$7.862 million, excluding time-and-materials items listed as to-be-determined, which is consistent with Joint Applicant Witness Baudier's observation that TSA shared-service costs are approximately \$8 million per year.<sup>118</sup> The TSA separately requires the Recipients to pay applicable sales, use, value-added, goods-and-services, or similar taxes imposed with respect to the provided services, while requiring the Parties to cooperate in good faith to minimize such taxes where legally permissible.<sup>119</sup>

(59) In practical terms, the TSA requires Emera and its service-providing affiliates to keep specified corporate and IT functions operating for the NMGC Group immediately after closing, requires the NMGC Group and its subsidiaries to pay the stated Schedule A charges and taxes when invoiced, allows the Recipients to migrate away from those services by cancellation or extension on defined notice, and preserves legal separateness through independent-contractor, personnel-control, confidentiality, systems-access, indemnity, and Delaware-law enforcement provisions.<sup>120</sup> The TSA therefore functions as a post-closing continuity instrument. It does not fund the acquisition or define the ownership chain, but it allocates transitional service duties, costs,

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<sup>116</sup> *Id.* at § 4.1

<sup>117</sup> *Id.* at § 4.1

<sup>118</sup> *Id.*, Schedule A; Baudier Dir. at 70:4-8.

<sup>119</sup> TSA at § 4.5.

<sup>120</sup> *Id.* at §§ 7.8-7.15, at 130-32.

timing, and risk while NMGC replaces Emera-affiliate support with its post-acquisition operating model.

#### 4. Requisite and Voluntary Commitments

(60) In their Revised Application, Joint Applicants initially made a broad range of eighty-eight (88) voluntary commitments submitted as part of its Amended GDP.<sup>121</sup> Those Commitments the Joint Applicants grouped into several categories. The first, Duration of Regulatory Commitments, states that they last indefinitely, unless altered by the Commission. The Governance Limits and Documentation category provides commitments related to NMGC board constitution and governance. In the Economic Development and Community Commitments, Joint Applicants express their commitments to rate credits, low-income assistance, charitable giving, as well as contributions to economic and workforce development. The commitments in Rate and Capital Expenditure Commitments concern the rate case stay out, capital investment, equity levels, cost-allocation principles, subsidization, the acquisition premium, and the TSA. The Ring-Fencing Commitments generally deal with corporate and credit separateness, restrictions on dividends, affiliate lending, purchases, securitization, obligations to create, maintain, and report on books and accounting, as well as upstream holding company oversight. Local Control and Management Commitments concern corporate location and operations, while Employment Commitments address the retention and investment in local employees. The Additional Capital Commitments and Other Commitments contain a varied set of commitments.

(61) Over the course of the proceedings, Joint Applicants made further voluntary commitments in the rebuttal testimony of Witnesses Baudier and Shell and at the evidentiary hearing. During the

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<sup>121</sup> See, Baudier Dir., Amended GDP, at 1-17.

evidentiary hearing, the Hearing Examiners requested that the Joint Applicants present a complete list of additional and modified commitments made in rebuttal testimony and examination.<sup>122</sup> The Joint Applicants provided those additions and modifications in responses to both requests. The following list of Commitments represents a consolidated, amended, and final list of all voluntary commitments made by Joint Applicants in the Revised Application, through rebuttal testimony, and at public hearing. Unless otherwise noted, the commitment originates from the Joint Applicants' Amended GDP.<sup>123</sup>

### **Duration of Regulatory Commitments**

1. Except to the extent that any of the following conditions explicitly state otherwise, the following commitments will apply as of closing of the Transaction and continue to apply thereafter, unless and until altered by the Commission. **[Voluntary Commitment]**

### **Governance Limits and Documentation**

2. The BCP Applicants will continue, in substantially similar form, the separate local subsidiary Board of Directors for NMGC ("NMGC Board") which will continue to provide governance oversight and guidance of the strategy and business plans of the NMGC management team. For the avoidance of doubt, this requires that six members of the NMGC Board will be independent directors (as independence is defined by the New York Stock Exchange) who are New Mexico residents and are business or community leaders.<sup>124</sup> The NMGC Board and the BCP Applicants will encourage (but do not have authority to require) the retention of the existing six independent board members. At any point in time, if there are not three or more Disinterested Directors among the then-existing six independent board members, board members shall be replaced by Disinterested Directors until the requirement to have three Disinterested Directors is satisfied.<sup>125</sup> **[Voluntary Commitment]**

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<sup>122</sup> See Evidentiary Hearing, First Bench Request (Nov. 3, 2025) and Joint Applicants' Response to First Bench Request (Nov. 4, 2025).

<sup>123</sup> See Amended GDP.

<sup>124</sup> Joint Applicants' Response to Third Bench Request at 2.

<sup>125</sup> *Id.*

3. The current employees of NMGC, including NMGC management, will be retained and they will be responsible for running the daily operations of NMGC. **[Voluntary Commitment]**
4. The governance of Saturn Holdco and the NMGC Group will not be impacted in any way by the existence of the Intermediate Companies post-closing. **[Voluntary Commitment]**
5. The subsidiary structure of the NMGC Group will not change as a result of the Transaction. **[Voluntary Commitment]**
6. NMGC will maintain an NMGC board of directors (the “Board”) charter that documents the Board’s responsibilities, authorities, and function, including specific Board committees and committee membership, in each case, consistent with this Delegation of Authority. **[Voluntary Commitment]**
7. Of the independent members of the Board, at least three will be Disinterested Directors. “Disinterested Directors” will be independent from the BCP Infrastructure Funds and their subsidiaries and affiliated entities (other than NMGC and NMGI) and BCP Management, and will have no material financial relationship with any such entities currently or within the previous five years. The terms of the Disinterested Directors will be staggered so no more than two are up for renewal each year. The initial Disinterested Directors must be identified by the shareholder within 30 days of closing the Transaction. The Disinterested Directors must be New Mexico residents. **[Voluntary Commitment]**
8. The Board will set the compensation and benefits of NMGC officers, in the form and manner the Board directs, subject to shareholder approval. **[Voluntary Commitment]**
9. Compensation of NMGC directors will not be tied to, reflective of, or related to the financial, operational, or other performance of any entity or interest other than NMGC. **[Voluntary Commitment]**
10. NMGC’s President and other senior management who report directly to the President will (1) hold no positions with the BCP Infrastructure Funds or any of their affiliates or subsidiaries while employed by NMGC and (2) not (a) serve as an officer, employee, or other representative of any entity owned or controlled by BCP Management (excluding NMGC and NMGI), or (b) have served within one-year prior as an officer, employee, or other representative of any entity owned or controlled in whole or in part by BCP Management or any of its affiliates; provided, for the avoidance of doubt, that the foregoing section (2)(b) does not include the BCP Infrastructure Funds and its affiliates (including NMGC and NMGI). **[Voluntary Commitment]**

11. Saturn Holdco will make or cause NMGC to make annual reports to the Commission regarding NMGC's compliance with the terms of the Commission order approving the Transaction for a period of five (5) years after the closing of the Transaction; provided, however, Saturn Holdco will make or cause NMGC to make annual reports to the Commission regarding NMGC's commitment to contribute to economic development investments in NMGC's service territory for a period of seven (7) years after the closing of the Transaction.<sup>126</sup> **[Voluntary Commitment]**
12. Board meetings will be held in New Mexico. **[Voluntary Commitment]**

### **Economic Development and Community Commitments**

13. NMGC will contribute \$10 million to total economic development investments in NMGC's service territory, consisting of the following: **[Voluntary Commitment]**
  - a. NMGC will contribute \$5 million over a period of seven years to economic development projects or programs in NMGC's service territory designed to attract new business and to retain and grow existing businesses, without seeking recovery from customers for the costs of those economic development projects or programs. **[Voluntary Commitment]**
  - b. NMGC will contribute \$5 million over a period of seven years to advance or develop renewable energy projects designed to align with the environmental goals of New Mexico. NMGC will not seek recovery from customers for these contributions. **[Voluntary Commitment]**

NMGC will provide at least 15 days' advance notice to the Commission and Commission Staff prior to any disbursement of economic development funds, during which time they may comment or object. If there is an objection, NMGC will meet with the objecting party or parties to discuss their concerns.<sup>127</sup> **[Voluntary Commitment]**

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

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<sup>126</sup> *Id.* at 3.

<sup>127</sup> *Id.* at 2-3.

15. The Joint Applicants will ensure a detailed methodology is in place for identifying charitable giving and economic development investment opportunities. The Joint Applicants will consider establishing a non-profit foundation, similar to the foundations operated by utilities in the region, to fund and administer its commitments to charitable giving, economic development, and workforce training made herein.<sup>128</sup> **[Voluntary Commitment]**
16. NMGC will maintain its existing low-income assistance bill assistance program while evaluating potential methods to improve it. **[Voluntary Commitment]**
17. The Joint Applicants commit that NMGC will contribute \$5.1 million over a ten-year period as additional support for low-income customers.<sup>129</sup> NMGC will report annually to the NMPRC on the recipients and funding under this commitment. These funds are at shareholder expense and will not be recovered from customers.<sup>130</sup> **[Voluntary Commitment]**
18. The Joint Applicants propose an additional \$22.4 million in rate credits to be paid on a per capita basis to customers over twelve months.<sup>131</sup> These funds are at shareholder expense and will not be recovered from customers. **[Voluntary Commitment]**
19. NMGC will commit in its procurement policies to give a preference to New Mexico suppliers for its NMGC's supply chain goods and services. **[Voluntary Commitment]**
20. Joint Applicants commit that NMGC will invest \$5 million over ten years for **[Voluntary Commitment]**
  - a. entry-level training focused on engineering, management, finance, and other relevant skills for the local labor force in collaboration with New Mexico educational institutions; and **[Voluntary Commitment]**
  - b. apprenticeship programs for trade, technical, and professional positions for students in high schools and colleges.<sup>132</sup> NMGC will report annually to the

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<sup>128</sup> *Id.* at 2-3.

<sup>129</sup> Baudier Dir. at 18.

<sup>130</sup> *Id.* at 18-19.

<sup>131</sup> *Id.* at 9, and Joint Applicant Response to First Bench Request at 2. This total of \$12.4 million results from an initial \$15 million credit plus the additional \$7.4 million in the rebuttal. The BCP Applicants commit that NMGC will pay a \$15 million rate credit to its customers over twelve months to begin within ninety days after closing on the Transaction. This rate credit will be at the sole expense of NMGC shareholders and will not be recovered from customers.

<sup>132</sup> *Id.* at 18.

NMPRC on the recipients and funding under this commitment. These funds are at shareholder expense and will not be recovered from customers.<sup>133</sup>  
**[Voluntary Commitment]**

### **Rate and Capital Expenditure Commitments**

21. All of NMGC's existing rates, rules, and forms as currently approved will remain in force and unchanged until such time as any changes are approved by the Commission. **[Voluntary Commitment]**
22. Any changes in NMGC's riders, charges or tariffs before NMGC's next base rate case will only be made in the ordinary course of business and not as a result of the Transaction. **[Voluntary Commitment]**
23. BCP agrees that there will be no future rate impact of any kind, through any means due to the Acquisition Premium (as defined below). This commitment includes but is not limited to: **[Voluntary Commitment]**
  - a. NMGC agrees not to seek recovery from customers, in this or in future NMPRC proceedings, of the acquisition adjustment (resulting from either the sale of gas utility assets by Public Service Company of New Mexico to NMGC/Continental Energy Systems, LLC; the sale of all of the stock of New Mexico Gas Intermediate Inc. ("NMGI") to TECO; or the instant acquisition by Emera of TECO) (collectively, the "Acquisition Premium") and any other costs associated with goodwill or the costs of the Transaction or intangible assets resulting from the Transaction. **[Voluntary Commitment]**
  - b. NMGC agrees to remove the Acquisition Premium from the Operating Assets factor used in the Modified Massachusetts Methodology indirect cost allocation formula or in any other cost allocation methodology. **[Voluntary Commitment]**
  - c. When calculating its Allowance for Funds Used During Construction ("AFUDC"), NMGC agrees to use the capital structure from the most recent NMGC rate case thereby effectively removing the Acquisition Premium resulting from the Transaction from AFUDC calculations. **[Voluntary Commitment]**
  - d. NMGC agrees not to revalue its assets that are a part of NMPRC regulatory rate base to reflect the Acquisition Premium. It will continue to value such assets for all NMPRC regulatory purposes based on the original cost less

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<sup>133</sup> *Id.* at 18-19.

accumulated depreciation valuation methodology. **[Voluntary Commitment]**

- e. As with the prior transactions listed in subparagraph (a.) above, NMGC agrees to book all of its direct costs of the Transaction including, but not limited to, costs such as legal fees, investment banking fees, accounting fees, consulting fees, costs of this NMPRC proceeding, Hart-Scott-Rodino filing fees, Committee on Foreign Investment in the United States filing fees, Federal Regulatory Commission filing fees, bridge loan fees and employee travel expenses (the “Transaction Costs”) to a separate O&M work order in NMGC’s books in accordance with the NMPRC’s prescribed Uniform System of Accounts based on the nature of the costs incurred. None of the Transaction Costs accrued by Joint Applicants will be recovered directly or indirectly from NMGC customers. NMGC may seek recovery of capital expenditures made in the course of completing the Transaction or as part of the integration if the capital assets are used and useful after the closing of the Transaction (the “Closing”) except as explicitly excluded by the provisions of this Stipulation. Any such claim for rate recovery will be subject to review by the NMPRC in the next NMGC base rate proceeding prior to any recovery.<sup>134</sup> **[Voluntary Commitment]**
24. NMGC will invest a minimum of the rolling three (3) year average for depreciation and amortization expense on an average annual basis in the NMGC system as needed to ensure reliability and safety until the issuance of the final order in NMGC’s next general rate case. NMGC agrees that all investments will be subject to prudence review in NMGC’s next general rate case. **[Voluntary Commitment]**
25. The BCP Applicants and the NMGC Group affirmatively commit to take all actions necessary to ensure that NMGC’s customers do not subsidize the activities of other utilities, or non-utility activities. NMGC will be operated as a standalone natural gas local distribution company and it is not anticipated that affiliates will provide goods or services to NMGC. **[Voluntary Commitment]**
26. For the interim period during which Emera and its affiliates continue to provide support services to NMGC, such support services will be provided to NMGC by Emera and its affiliates in an economically efficient manner that avoid cross subsidization and are consistent with the cost allocation manual (“CAM”) that was developed in collaboration between NMGC and the Staff and filed with the Commission in 2015, and subsequently amended. **[Voluntary Commitment]**

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<sup>134</sup> Baudier Rebuttal at 33, in response to Staff Exhibit 6, Prepared Direct Testimony of Felicia Jojola (Corrected) (“Jojola Dir.”) at 11-13.

27. The BCP Applicants and NMGC agree to collaborate with Staff to develop a cost allocation manual (“CAM”) to simplify review of cost allocations in NMGC’s rates. A draft CAM will be provided to Staff within 90 days after Closing. NMGC agrees to file the CAM with the NMPRC within six months after Closing. The BCP Applicants and NMGC will review the CAM once the Transition Services Agreement (“TSA”) terminates and work with Staff on any changes that may be necessary at that time. A revised CAM, if needed, will be filed within 120 days after the conclusion of the TSA.<sup>135</sup> **[Voluntary Commitment]**
28. During the term the Transition Services Agreement is in place or in the event that NMGC begins to receive services from another investment fund company supported by BCP Management, NMGC will provide annual public submissions to the Commission of allocation information by the Federal Energy Regulatory Commission (“FERC”) account and subaccounts, including total amounts allocated for the prior year, total amounts directly assigned to NMGC, with description of the cost, the amount and nature of cost allocated to each affiliate and utility and non-utility operations, the methodology used, including work papers for the allocations. **[Voluntary Commitment]**
29. NMGC will meet its obligation to report any Class I transactions, and understands that in any future rate case, or upon the Commission’s initiative, the Commission can inquire into any concerns regarding subsidization between other businesses and NMGC. **[Voluntary Commitment]**
30. NMGC will not seek a regulatory equity ratio in its next base rate proceeding in excess of fifty-four percent (54%). NMGC agrees that the Commission is not bound to accept this as the equity ratio and acknowledges that other parties may propose different equity ratios in the next rate proceeding. **[Voluntary Commitment]**
31. If required by the Commission, NMGC will have an allocation study (which will not be charged to ratepayers) performed by a consulting firm chosen by and under the direction of the Commission. **[GDP Commitment (C)(7)]**
32. There will be no tax implications for NMGC. NMGC’s income taxes will continue to be calculated on a stand-alone basis for regulatory financial reporting and ratemaking purposes. The Transaction will have no impact on the Commission’s authority to determine NMGC’s income tax expense for ratemaking purposes. **[Voluntary Commitment]**
33. NMGC will not file a rate case before September 30, 2026, and, in conjunction with that commitment, NMGC will record a regulatory asset to capture capital

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<sup>135</sup> Joint Applicants’ Response to Third Bench Request at 3-4.

expenditures made in the course of completing the transition of shared service functions from Emera to NMGC and Delta Utilities. **[Voluntary Commitment]**

34. The BCP Applicants commit that NMGC will pay a \$15 million rate credit to its customers over twelve months to begin within ninety days after closing on the Transaction. This rate credit will be at the sole expense of NMGC shareholders and will not be recovered from customers. **[Voluntary Commitment]**
35. The Joint Applicants commit to, at a minimum, maintaining NMGC's current five-year capital investments plan.<sup>136</sup> This commitment would replace the existing commitment that NMGC will invest a minimum of the rolling three (3) year average for depreciation and amortization expense on an average annual basis in the NMGC system as needed to ensure reliability and safety until the issuance of the final order in NMGC's next general rate case.<sup>137</sup> **[Voluntary Commitment]**

### **Ring Fencing Commitments**

36. Other than the BCP Applicants, none of the other BCP companies, nor any of their respective subsidiaries, will have any ownership interest in or control over NMGC. **[Voluntary Commitment]**
37. The financial health or operations of NMGC will not be adversely impacted by the existence of the Intermediate Companies post-closing. **[Voluntary Commitment]**
38. NMGC will not without prior approval of the Commission: (a) loan its funds or securities or transfer similar assets to any affiliated interest, or (b) purchase debt instruments of any affiliated interests or guarantee or assume liabilities of such affiliated interests. **[GDP Commitment (C)(5)]**
39. NMGC will not pay excessive dividends to its holding company, and the holding company will not take any action which will have an adverse and material effect on the utility's ability to provide reasonable and proper service at fair, just, and reasonable rates. **[GDP Commitment (C)(4)]**
40. NMGC will remain a separate entity, with local management and employees responsible for day-to-day operations. **[Voluntary Commitment]**

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<sup>136</sup> Baudier Rebuttal at 35-36.

<sup>137</sup> *Id.*

41. NMGC will maintain a post-closing equity ratio of at least fifty percent (50%) at NMGC until the final order in the next general rate case using a capital structure that includes equity and the par amount of long-term debt only. If the twelve (12) month average equity ratio falls below fifty percent (50%) for more than two (2) consecutive quarters, capital will be invested in NMGC to achieve the fifty percent (50%) equity ratio. **[Voluntary Commitment]**
42. NMGC will not, without prior Commission approval, pay dividends any time its credit metrics are below investment grade. The restriction on the amount of dividends that may be paid does not apply to equity infused by NMGI into NMGC, which may be transferred out of NMGC without restriction, except that such transfers may not be made if NMGC's credit metrics are below investment grade. Transfers of funds necessary to pay NMGC's tax obligations shall not be construed as dividends. NMGC agrees to continue to have its credit rating performed by one or more nationally recognized credit rating agencies so long as the BCP Applicants own direct or indirect interest in NMGC. **[Voluntary Commitment]**
43. NMGC will not, without prior Commission approval, pay dividends in excess of net income, on a quarterly basis; provided, however, NMGC will be permitted to rollover under-utilized dividend capacity in any quarter to a subsequent period for payment. The restriction on the amount of dividends that may be paid does not apply to equity infused by NMGI into NMGC, which may be transferred out of NMGC without restriction, except that such transfers may not be made if NMGC's credit metrics are below investment grade. Transfers of funds necessary to pay NMGC's tax obligations shall not be construed as dividends. **[Voluntary Commitment]**
44. NMGC will file with the Commission a notice ("Notice") of its intent to pay a dividend at least fifteen (15) days prior to the dividend being paid and will provide NMPRC Utility Division Staff and the New Mexico Department of Justice a copy of the Notice on the same day it files the Notice with the Commission. **[Voluntary Commitment]**
45. The books and records of NMGC will be kept separate from those of nonregulated businesses and NMGC's affiliates in accordance with the Uniform System of Accounts. **[GDP Commitment (C)(1)]**
46. The Commission and its Staff will have access to the books, records, accounts, or documents of NMGC's affiliates, corporate subsidiaries or holding companies pursuant to NMSA 1978, Sections 62-6-17 and 62-6-19. **[GDP Commitment (C)(2)]**
47. NMGC will not invest any funds in any affiliate during the five years following closing of the Transaction. **[GDP Commitment (C)(5)]**

48. NMGC will not finance any affiliates. **[GDP Commitment (C)(5)]**
49. Going forward, both Saturn Holdco and NMGC will have their credit ratings performed by one or more nationally recognized credit rating agencies so their credit metrics will be independently ascertained. **[Voluntary Commitment]**
50. NMGC will not seek to recover from NMGC's customers any costs incurred as a result of any bankruptcy of the BCP Applicants or any of their affiliates (excluding NMGC and its subsidiaries). **[Voluntary Commitment]**
51. The BCP Applicants and NMGC will take the actions necessary to ensure the existence of NMGC's stand-alone credit and debt ratings, as applicable. The Board will ensure that NMGC will, except as otherwise approved by the Commission, be registered with at least one major nationally- and internationally-recognized credit rating agency. The Board will ensure that NMGC takes efforts to ensure that NMGC's credit ratings reflect the ring-fence provisions contemplated herein and in the Commission order approving the Transaction such that the credit rating agency provides NMGC with a stand-alone credit rating. **[Voluntary Commitment]**
52. NMGC will not guarantee the debt or credit instruments of the BCP Applicants or any other affiliate (excluding NMGC). **[GDP Commitment (C)(5)]**
53. Neither NMGC nor Saturn Holdco will enter into any inter-company debt transactions with any of the BCP Applicants or any of their affiliates or subsidiaries (excluding NMGC and its subsidiaries) post-closing of the Transaction, unless approved by the Commission. **[GDP Commitment (C)(5)]**
54. Neither NMGC nor its subsidiaries will borrow money from the BCP Applicants or any of their affiliates or subsidiaries except on an arm's-length basis if approved by a majority of the Board, excluding the BCP Infrastructure Funds' representatives on the Board; provided, that nothing herein shall obligate NMGC's affiliates to lend money to NMGC or any of its subsidiaries at any time. **[Voluntary Commitment]**
55. Neither NMGC nor Saturn Holdco will be borrowers under a common credit facility with one another nor with their affiliates, the BCP Infrastructure Funds, or any of the BCP Infrastructure Funds' affiliates or subsidiaries (excluding NMGC and its subsidiaries). **[Voluntary Commitment]**
56. NMGC will not include in any of its debt or credit agreements cross-default provisions relating to Saturn Holdco or the BCP Infrastructure Funds, or any of their affiliates or subsidiaries (excluding NMGC). Neither NMGC nor Saturn Holdco will include in any of its debt or credit agreements cross-default provisions relating to the securities of the BCP Infrastructure Funds or any of

- their affiliates or subsidiaries (excluding NMGC and its subsidiaries). Under no circumstances will any debt of NMGC become due and payable or otherwise be rendered in default because of any cross-default or similar provisions of any debt or other agreement of the BCP Infrastructure Funds, Saturn Holdco, or any of their affiliates (excluding NMGC and its subsidiaries). **[Voluntary Commitment]**
57. NMGC's debt or credit agreements will not include any financial covenants or rating agency triggers related to Saturn Holdco or the BCP Infrastructure Funds or any of the BCP Infrastructure Funds' affiliates or subsidiaries (excluding NMGC and its subsidiaries), nor will Saturn Holdco's debt or credit agreements include any financial covenants or rating-agency triggers related to the BCP Infrastructure Funds or any of their affiliates or subsidiaries (excluding NMGC and its subsidiaries). **[Voluntary Commitment]**
58. NMGC will not incur, guarantee, or pledge assets for any new incremental debt related to consummating the Transaction. **[GDP Commitment (C)(5)]**
59. Following closing of the Transaction, NMGC's President and other senior management who directly report to the President will hold no positions with the BCP Infrastructure Funds or any of their affiliates or subsidiaries (excluding NMGC and NMGI). **[Voluntary Commitment]**
60. Neither NMGC nor Saturn Holdco will transfer any material assets or facilities to any affiliates, other than a transfer that is on an arm's-length basis consistent with the Commission's affiliate standards as applicable to NMGC. **[Voluntary Commitment]**
61. NMGC will maintain an arm's-length relationship with all affiliates; with Saturn Holdco; with the BCP Infrastructure Funds and its affiliates; and with all persons, entities, and interests directly or indirectly owned or controlled by BCP Management, consistent with the Commission and NMPRC affiliate standards as applicable to NMGC. Nothing in the foregoing is intended to prohibit the BCP Infrastructure Funds' management of Saturn Holdco. **[Voluntary Commitment]**
62. NMGC will provide the Commission and NMPRC access to NMGC's books and records as necessary to facilitate a commission audit or review of any affiliate transactions, if any, as between NMGC and the BCP Infrastructure Funds or the BCP Infrastructure Funds' affiliates. **[GDP Commitment (C)(2)]**
63. Each of NMGC and Saturn Holdco will maintain accurate, appropriate, and detailed books, financial records and accounts, including checking and other bank accounts, and custodial and other securities safekeeping accounts that are separate and distinct from those of any other entity. Charges for goods, assets

- and services exchanged between NMGC and the BCP Infrastructure Funds' subsidiaries or affiliates, if any, will be clearly designated and separately maintained, for easy identification and audit by the Commission Staff, as well as parties in a rate proceeding. Further, the basis for any charge will be identified (i.e., fair market price, fully distributed costs, others as applicable). NMGC and each applicable affiliate will maintain books of accounts and supporting records in sufficient detail to permit verification of compliance with Commission rules or orders regarding affiliate transactions. NMGC will maintain its own accounting system, separate from Saturn Holdco, the BCP Infrastructure Funds, or any other intermediary holding company (excluding NMGI). **[GDP Commitment (C)(1), (C)(2)]**
64. Saturn Holdco will be maintained between NMGC and the BCP Infrastructure Funds for so long as the BCP Infrastructure Funds own NMGC. **[Voluntary Commitment]**
65. NMGC's assets, revenues, or stock shall not be pledged by Saturn Holdco, the BCP Infrastructure Funds, or any of their affiliates or subsidiaries for the direct or indirect benefit of any entity other than NMGC. **[GDP Commitment (C)(5)]**
66. The BCP Infrastructure Funds and Saturn Holdco will provide the Commission access to their books and records, as well as those of its applicable affiliates, to the extent necessary to facilitate audit or review of any affiliate transactions, if any, as between NMGC and the BCP Infrastructure Funds or the BCP Infrastructure Funds' affiliates. **[GDP Commitment (C)(2)]**
67. Saturn Holdco, the BCP Infrastructure Funds, and their affiliates will not represent to the public or creditors that NMGC has any liability for the obligations of Saturn Holdco or the BCP Infrastructure Funds or any of their affiliates (except for NMGC and its subsidiaries). **[GDP Commitment (C)(5)]**
68. The Joint Applicants agree that the BCP Applicants will obtain a customary non-consolidation legal opinion that provides that, in the event of a bankruptcy of the BCP Infrastructure Funds, Saturn Utilities, or any of their expressly named affiliates (including any of the BCP Applicants, but, and for the avoidance of doubt, excluding NMGC), a bankruptcy court would not consolidate the assets and liabilities of NMGC with the BCP Infrastructure Funds, Saturn Utilities, or any of their expressly named affiliates (including any of the BCP Applicants, but, for the avoidance of doubt, excluding NMGC).<sup>138</sup> **[Voluntary Commitment]**
69. The Joint Applicants agree to the following commitment: NMGC, Saturn Holdco, and BCP Infrastructure Funds acknowledge the Commission's

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<sup>138</sup> Baudier Rebuttal at 38.

jurisdiction to initiate a future proceeding to consider modifying the NMGC ring fence, but they reserve their rights to contest any other aspect of the filing.<sup>139</sup> **[Voluntary Commitment]**

### **Local Control and Management Commitments**

70. The headquarters for NMGC's utility operations will remain in Albuquerque, New Mexico, and all regional offices will be maintained in their respective communities. Moreover, NMGC's corporate headquarters will not be moved out of Albuquerque without prior express Commission approval. **[Voluntary Commitment]**
71. NMGC will not close or relocate to outside of New Mexico its call center operations. **[Voluntary Commitment]**
72. NMGC Gas Control Operations will not be moved out of New Mexico without prior express Commission approval. **[Voluntary Commitment]**
73. The NMGC Board shall continue to consist of the President of NMGC, local business and community leaders, and senior executives as designated by the BCP Applicants. As is currently the practice, the majority of the NMGC Board shall be composed of local business and community leaders selected to promote diversity on the NMGC Board consistent with good governance practices. The President of NMGC will report to the NMGC Board. **[Voluntary Commitment]**
74. The Joint Applicants agree that NMGC's existing headquarters will remain unchanged for the duration of ownership of the Joint Applicants.<sup>140</sup> **[Voluntary Commitment]**

### **Employment Commitments**

75. The BCP Applicants and NMGC anticipate that the Transaction will result in adding approximately 20 new jobs in New Mexico as support services currently performed for NMGC by Emera and its affiliates out-of-state are moved to New Mexico. **[Voluntary Commitment]**
76. NMGC's current level of employees will be maintained for thirty six (36) months following closing. More specific to ensuring customer service, during this thirty-six (36) month period, NMGC will maintain its current level of customer-facing positions. **[Voluntary Commitment]**

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<sup>139</sup> Baudier Rebuttal at 33.

<sup>140</sup> Joint Applicants' Exhibit 11, Rebuttal Testimony of Ryan Shell ("Shell Rebuttal") at 5.

77. The Joint Applicants agree to maintain NMGC’s current level of employees (740), as well as the 20 new jobs, for 60 months following closing of the Transaction instead of the 36 months in the Revised Joint Application.<sup>141</sup> Should unplanned vacancies reduce the workforce below 760 positions for more than three consecutive months, NMGC will inform the parties and use their best efforts to restore the workforce to 760.<sup>142</sup> **[Voluntary Commitment]**
78. The Joint Applicants commit that NMGC will include in its next rate case the following information regarding the 20 additional full-time employees NMGC will retain in New Mexico following the closing of the Transaction: **[Voluntary Commitment]**
- a. Stating if all 20 positions have been fully relocated to New Mexico. **[Voluntary Commitment]**
  - b. Including if the 20 positions were filled internally or externally. **[Voluntary Commitment]**
  - c. Position description name (HR services, finance accounting, etc.). **[Voluntary Commitment]**
  - d. The paygrade for each position. **[Voluntary Commitment]**
  - e. The market pay range for each position’s paygrade. **[Voluntary Commitment]**
  - f. Total annual cost for each relocated employee. **[Voluntary Commitment]**
  - g. Providing the start date of employee(s) and current status. **[Voluntary Commitment]**
  - h. Providing reason for vacant positions in testimony and anticipated date positions will be filled.<sup>143</sup> **[Voluntary Commitment]**

### **Additional Capital Commitments**

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

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<sup>141</sup> Baudier Rebuttal at 31.

<sup>142</sup> Shell Rebuttal at 4.

<sup>143</sup> *Id.* at 3-4.

80. The Transaction will not require the issuance or refinancing of any NMGC or NMGI debt. **[Voluntary Commitment; Duplicate of No. 58]**

### **Other Commitments**

81. NMPRC jurisdiction over NMGC will remain in place and will not be diminished or adversely affected in any manner as a result of the Transaction. **[GDP Commitment (C)(3)]**

82. The NMPRC's jurisdiction over NMGC, as well as the NMPRC's jurisdiction over the NMGC Group and the BCP Applicants, as the direct and indirect public utility holding companies of NMGC, will be preserved. **[GDP Commitment (C)(2), (C)(3); Duplicate of No. 81]**

83. The supervision and regulation of NMGC pursuant to the Public Utility Act will not be obstructed, hindered, diminished, impaired, or unduly complicated.<sup>144</sup> **[GDP Commitment (C)(3); Duplicate of No. 81]**

84. The Transaction will not: (1) change NMGC's legal status as a public utility that is regulated by the NMPRC under the PUA, (2) affect NMGC's ability to provide reasonable and proper gas utility service to its New Mexico customers at fair, just, and reasonable rates; nor (3) affect the Commission's authority to supervise and regulate NMGC's rates and service. **[GDP Commitment (C)(3); Duplicate of Nos. 81 and 83]**

85. If required by the Commission, NMGC will have a management audit (which will not be charged to ratepayers) performed by a consulting firm chosen by and under the direction of the Commission to determine whether there are any adverse effects of Class II transactions upon the utility. **[GDP Commitment (C)(8)]**

86. NMGC will continue to participate in the annual JD Power Residential Gas Utility Customer Satisfaction Surveys and provide the Commission with the results. **[Voluntary Commitment]**

87. NMGC agrees to continue filing specific customer service reports as ordered in NMPRC Case No. 09-00163-UT (expired June 2013), and agrees to include in this filing supplemental customer service reports regarding leak response time and damages per 1,000 locate ticket requests. **[Voluntary Commitment]**

88. The BCP Applicants agree to the jurisdiction of the NMPRC for the purpose of providing the books and records of each, and providing access to testimony of

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<sup>144</sup> 17.6.450.10(C)(1-8) NMAC.

- officers and directors for the purposes of NMPRC oversight and regulation of NMGC rates. **[GDP Commitment (C)(2); Duplicate of Nos. 47 and 66]**
89. The Transaction will not result in any disruption or adverse impact to NMGC's gas supply or associated hedging arrangements. **[Voluntary Commitment]**
90. NMGC agrees not to invest in businesses that do not have a significant relationship to regulated services NMGC provides. **[Voluntary Commitment]**
91. NMGC will continue to abide by all applicable NMPRC rules, regulations, and orders, including compliance with all Class I transaction requirements. **[GDP Commitment (C)(6)]**
92. NMGC will continue to do business as New Mexico Gas Company, Inc., although without reference to being an Emera company. In addition, TECO Energy's name will be changed in connection with the closing of the Transaction. **[Voluntary Commitment]**
93. The BCP Applicants and NMGC have filed an Amended GDP containing all the required Rule 450 representations and commitments and will abide by those commitments for as long as the BCP Infrastructure Funds or an affiliated entity own NMGC. **[GDP Commitment (C)(1)-(8); Duplicate of Nos. 38-39, 45-48, 52-53, 58, 62-67, 85, and 91]**
94. NMGC has complied with, or will comply with, all applicable federal and state statutes, rules, or regulations. **[GDP Commitment (C)(6); Duplicate of No. 91]**
95. The BCP Applicants will not sell their interest in NMGC for at least ten (10) years after closing of the Transaction. **[Voluntary Commitment]**
96. NMGC will comply with reporting requirements with respect to any Class I and Class II Transactions. **[Voluntary Commitment; Duplicate of No. 29]**
97. NMGC will continue to abide by all applicable NMPRC rules, regulations, and orders, including compliance with all Class I transaction requirements. **[GDP Commitment (C)(6); Duplicate of No. 91]**
98. The BCP Applicants will cause NMGC to file with the Commission any services agreements between NMGC and Delta Utilities. **[Voluntary Commitment]**

99. The Joint Applicants commit that NMGC will continue the digitalization of records on distribution services piping.<sup>145</sup> **[Voluntary Commitment]**

**B. Customer Benefits**

1. Legal Standards

(62) In order to determine whether the public interest under NMSA Sections 62-6-12 and 62-6-13 is served by the proposed transaction and consequently whether a “net public benefit” would occur, over a series of cases, the Commission developed a six-factor test to consider in merger and acquisition cases. As succinctly summarized by the Hearing Examiner in the Avangrid Case, the Commission weighs the benefits of a proposed transaction in its evaluation of the first factor against the potential harms and the adequacy of protections against the harms in its evaluations of the other five factors.<sup>146</sup> Thus, the Commission’s consideration of whether the transaction benefits utility customers is the beginning of the inquiry in this case but it is also the heart of the inquiry.

2. Discussion

(63) Joint Applicants asserted that the evidence in this case shows that the Joint Application satisfies the six factors the NMPRC evaluates in utility merger and acquisition cases. They averred that approval of the Transaction is in the public interest because it provides both benefits and protections to NMGC customers and will benefit New Mexico as a whole.<sup>147</sup>

(64) Joint Applicants alleged that customers will directly benefit from: \$22.4 million in rate credits and \$7 million in funding for HeatNM to support low-income customers; \$30 million to \$40 million in savings from a rate freeze; financially stable and experienced new owners who wish to own NMGC and make significant investments in its continued success; the return of several

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<sup>145</sup> Shell Rebuttal at 24.

<sup>146</sup> Case No. 20-00222-UT, Certification of Stipulation, at 37.

<sup>147</sup> Joint Applicants’ Post-Evidentiary Hearing Brief (“PH”) at 2.

back-office functions to New Mexico; cost savings from shared state of the art information technology services; and continued local control and operation of NMGC by its current management and employees.<sup>148</sup>

(65) Joint Applicants also claimed that New Mexico will benefit and customers will indirectly benefit from: \$10 million in economic development investments; \$5 million in education and job training investments; \$2.5 million in charitable giving; and twenty new NMGC jobs<sup>149</sup>

(66) Joint Applicants further maintained that NMGC will have experienced, financially capable new owners that are part of a nearly \$6 billion investment portfolio with at least \$2 billion in funding for the BCP infrastructure Funds. NMGC will also have the benefit of sharing industry best practices with Delta Utilities.<sup>150</sup>

#### **FEA**

(67) FEA represents the federal government facilities taking service from NMGC. These facilities include delivery service to Los Alamos National Laboratory and Sandia National Laboratory as well as Kirtland, Holloman, and Canon Air Force Bases. These facilities receive service under Rate No. 58 Large Volume-General Service, or Rate No. 56, Medium Volume General Service. Mr. Dwight D. Etheridge, Principal and Vice President with Exeter Associates, Inc. provided testimony on behalf of FEA from its perspective as a large industrial customer. FEA witness Etheridge's ultimate recommendation was that the Commission deny the Acquisition request.<sup>151</sup> From an economic analysis basis, Mr. Etheridge summarized that the Joint Applicants'

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<sup>148</sup> Baudier Dir. at 111-112; Baudier Rebuttal at 48.

<sup>149</sup> Baudier Dir. at 44-48, 112-113; Baudier Rebuttal at 48.

<sup>150</sup> Baudier Dir. at 17-25, 114.

<sup>151</sup> Federal Executive Agencies ("FEA") Exhibit 1, Direct Testimony of Dwight D. Etheridge ("Etheridge Dir.") at 5.

value proposition for Saturn to acquire NMGC is not compelling because: 1) Joint Applicants' plans for NMGC do not include pursuing maximum potential synergies that would put downward pressure on rates; 2) Joint Applicants' are offering minimal levels of direct benefit to NMGC's customer with their proposed rate credits and rate freeze (compared to higher level of rate credits in prior acquisitions);<sup>152</sup> 3) Joint Applicants' proposed minimum level of ongoing capital investments in NMGC is so low that it represents a de minimis value to NMGC's customers (a triple investment commitment represents a tangible value for NMGC's customers);<sup>153</sup> and 4) Joint Applicants' proposed \$5 million one-time grant is less attractive than rate credits, and represents a difficult to quantify value proposition that lacks direct linages to customers.<sup>154</sup>

(68) If the Commission is inclined to approve the Acquisition, Mr. Etheridge recommended the following improvements to Joint Applicants' value proposition that he believed would create a more equitable between the interests of NMGC customers and Saturn's investors:

1. NMGC is ordered to provide rate credits to customers totaling at least \$22.4 million.<sup>155</sup> Those rate credits will be spread over a 12-month rate credit period beginning with the first day of a month within 90 days of transaction closing. Rate credits will be allocated to the rate classes consistent with the methodology adopted by the Commission in Case No. 13-00231-UT, the TECO acquisition case.
2. NMGC is ordered to maintain capital investments of no less than 2.5 times the rolling three-year average of total depreciation and amortization expenses and no more than 3.5 times that three-year average level of expense for three calendar years following transaction closing. Deviations from this approved range of capital investments are allowable only after an

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<sup>152</sup> *Id.* at 4.

<sup>153</sup> *Id.* at 5.

<sup>154</sup> *Id.*

<sup>155</sup> Mr. Etheridge explains that utilizing a Consumer Price Index for All Urban Consumers change a \$13 million dollar rate credit from the 45-month rate credit period would equate to approximately \$17.4 million in 2025 dollars. Further, after the inclusion of the proposed \$5 million-dollar economic development grant, the recommended rate credit is \$22.4 million dollars. *Id.* at 12.

application by NMGC to the PRC for a deviation request on a forward-looking basis and approval by the PRC.

3. Joint Applicants' proposed \$5 million dollar economic development grant is denied because the value proposed with the grant is implicitly incorporated into the \$22.4 rate credits required after transaction closing.<sup>156</sup>

(69) Mr. Etheridge also testified in opposition to Staff's \$12.5 million dollar Severe Weather Fund (SWF) proposal comprised of monies from other proposed commitments (\$5 million from Economic Development contribution, \$5 million from renewable energy economic development, and \$2.5 million from charitable contribution to tax-exempt organizations) as being discriminatory because it excludes delivery service customers that choose to purchase their natural gas requirements from third party suppliers, including those facilities that FEA represents, from sharing in the benefits of the proposed SWF, while all NMGC customers are exposed to the risks associated with the proposed transaction.<sup>157</sup> Mr. Etheridge further testified that Staff witness Dr. Zedalis' additional recommendation that the Commission consider redirecting the Joint Applicants' proposed \$15 million in rate credits into Staff's SWF should also be rejected as discriminatory to delivery service customers and does not produce an equitable allocation of benefits among all classes of NMGC customers.<sup>158</sup>

## **NM AREA**

(70) Mr. Christopher C. Walters testified for NM AREA, an organization that is comprised of large utility customers. Mr. Walters testified that his review of the Revised Application, testimonies, discovery responses, and witness depositions leads him to conclude that there is not

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<sup>156</sup> *Id. at 6.*

<sup>157</sup> FEA Exhibit 2, Rebuttal Testimony of Dwight D. Etheridge ("Etheridge Rebuttal") at 3.

<sup>158</sup> *Id. at 4-5.* Mr. Etheridge asserted that NMGC's transportation customers account for approximately one-half of NMGC's annual throughput. *Id. at 8.*

sufficient evidence that the proposed Transaction will provide any meaningful benefit to ratepayers or the public that is not currently achieved under the status quo.<sup>159</sup> Mr. Walters testified that the Joint Applicants failed to meet their burden of proof to demonstrate that the proposed Acquisition is consistent with the public interest and satisfies all components of the NMPRC's Six Factor Test.<sup>160</sup>

(71) Mr. Walters summarized his concerns regarding the proposed transaction. Unlike TECO Energy or Emera, BCP and Delta Utilities have no history of operating utilities as large and diverse as NMGC, or a multi-state portfolio of regulated utilities.<sup>161</sup> BCP's lack of operating experience and its ability to meet the Commission's public interest standard was not considered by Emera when selecting BCP as the acquirer.<sup>162</sup> BCP's lack of operating experience, and the risk of harm this presents to the public, is further exacerbated by the fact it is still in the start-up phase both as a company and in its utility operations.<sup>163</sup> There is an increased risk to NMGC and its customers given the BCP Applicants' size relative to Emera. BCP's balance sheet is much smaller in scale relative to Emera's potentially limiting access to external capital at reasonable terms and prices.<sup>164</sup> With the exception of IT savings through an upgraded system, the Revised Application does not even attempt to demonstrate that there are quantifiable system-wide synergies. Even those touted IT synergy savings are based on speculative assumptions. This is the third time NMGC will have

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<sup>159</sup> NM AREA Exhibit 1, Direct Testimony of Christopher C. Walters (Corrected) ("Walters Dir.") at 8.

<sup>160</sup> *Id.* at 9.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

been a party to an acquisition since 2014.<sup>165</sup> The BCP Applicants’ commitment to a ten-year minimum holding period all but guarantees NMGC will be divested at some point in the not-so-distant future.<sup>166</sup>

(72) In his conclusions, Mr. Walters testified that the ring-fencing provisions are standard and useful safeguards, but they are voluntary commitments and do not substitute for demonstrated financial strength and operational expertise.<sup>167</sup> Mr. Walters further testified that taken together, his issues raise serious questions under the Commission’s Six Factor Test—particularly with respect to customer benefits, financial qualifications, and long-term stability, led him to conclude that the proposed Acquisition should not be found to be in the public interest.

### **Staff**

(73) Ms. Velasquez, a Senior Economist for Staff, testified that it was concerning that there is minimal criteria presented on who and how some of the proposed benefits would be distributed. She testified that the lack of essential details are necessary to truly approach providing New Mexicans with a net benefit. Ms. Velasquez also testified that it is paramount to differentiate between a BCP proposal to (indirectly) benefit New Mexicans writ large and one that seeks to directly benefit the public interest (i.e., impacting ratepayers and the utility).<sup>168</sup> Staff’s understanding is that the net benefits of the transaction – relative to the status quo of existing ownership – must be geared towards the latter. Thus, Staff questions whether these grants and charitable contributions are in the public interest given the central goal that the Commission seeks

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<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 44.

<sup>168</sup> Staff Exhibit 5, Direct Testimony of Naomi Velasquez (“Velasquez Dir.”) at 19.

to advance fair, just, and reasonable rates for safe and reliable gas service. Staff believes that this transaction is, at best, one denoted by status quo – relative to the existing relationship with Emera with benefits to NMGC and its ratepayers being nebulous under the most optimistic of scenarios. Potential net costs to ratepayers do, however, exist. New job relocations are posited to bring “economic development” benefits to New Mexicans where NMGC ratepayers will ultimately be the bearers of the one-time estimated costs.<sup>169</sup> Staff believes there are options that provide long-term benefits that better align with the public interest.<sup>170</sup>

(74) Staff found that, as proposed, the Acquisition provides no long-term tangible direct benefit to NMGC’s customers. Staff proposed reallocating monetary benefits from non-ratepayers to a severe weather fund (“SWF”) benefiting NMGC customers. Staff Witness Dr. Bryce Zedalis testified that the SWF would serve as an offsetting relief fund to protect NMGC customers from, primarily, extreme weather-induced natural gas, specifically, swing gas-price surges. The SWF would initially be funded by a capital contribution from the Joint Applicants a \$12.5 million contribution made after the conclusion of the instant case and derived from existing monetary commitments – and would be maintained by additional, variable contributions from certain NMGC business activities (subject to future Commission approval). The SWF would operate as an insurance-like payment tool to cover extraordinary swing gas costs during, again principally, severe/extreme weather events, such as the February 2021 so-called Winter Storm Uri.<sup>171</sup>

(75) Dr. Zedalis testified that the rationale for the creation of the SWF is twofold. First, Staff views the instant case as an opportunity to address a significant issue that NMGC and its customers

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<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 19-20.

<sup>171</sup> Staff Exhibit 4, Direct Testimony of Bryce Zedalis (“Zedalis Dir.”) at 4.

have faced and could potentially continue to face extraordinary gas costs due to extreme weather.<sup>172</sup> Second, Staff has concerns about the limited direct customer benefits of this transaction, particularly, its long-term, durable benefits. While the Joint Applicants have made ninety-nines (99) commitments, it is essential to note here that, in Staff's assessment, the only salient, new monetary benefit of this transaction to NMGC ratepayers is the proposed one-off \$15 million in rate credits (to be paid out within a year).<sup>173</sup> Dr. Zedalis testified that Staff seeks to ensure that the Joint Applicants provide NMGC ratepayers with impactful, long-term and durable benefits and thus proposed the SWF.<sup>174</sup>

(76) Dr. Zedalis also testified that long-term customer benefits are essential to determine the overall benefits of an acquisition, and from Staff's perspective, warrant differentiation in their assessment. This is because with respect to utility acquisitions, typically, the duration of new ownership arrangement will outlast many benefits offered by the acquiring party (e.g., rate credits). Nevertheless, it is Staff's view that a paramount consideration when assessing offered ratepayer benefits is whether they, at least attempt, to match a substantial component of the duration of the new ownership arrangement.<sup>175</sup> Dr. Zedalis further testified that by establishing an instrument that would help customers avoid certain extraordinary costs, the proposed SWF will provide NMGC ratepayers with a new, long-term benefit that is otherwise absent from the Joint Applicant's Application.<sup>176</sup>

(77) Staff requested the following conditions to the Joint Applicants' Acquisition:

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<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 5.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 7.

<sup>176</sup> *Id.* at 7-8.

- (1) The SWF be authorized for establishment by the Commission as a condition to the approval of the Joint Applicants' Application;
- (2) The Joint Applicants be committed to initially funding the SWF – within nine (9) months of this acquisition's completion – with at least a \$12.5 million contribution. This \$12.5 million represents a redirection of the aggregate \$10 million and \$2.5 million from offered economic development and charitable monies, respectively – both of which constitute non-ratepayer monetary benefits;
- (3) The establishment of a SWF working group (the "Working Group") consisting of authorized representatives from NMGC (BCP), Staff, and the New Mexico Department of Justice ("NMDOJ") that will begin meeting within five (5) business days of the final order in this case being issued (assuming the acquisition is approved). The Working Group will be tasked with, among other things, determining the account into which the initial contribution will be deposited as well as the regulatory accounting for the fund, detailing fund disbursement operations and qualifying events, and methods for monetarily maintaining the fund. The principle guiding the Working Group's efforts would be the maximization of benefits to ratepayers from their enjoyment of the fund while ensuring the cost-efficient use of the fund by NMGC. The Working Group will provide its recommendations for Commission approval within six (6) months of the issuance of a final order in the instant case;
- (4) Require a commitment from the Joint Applicants – and NMGC – to, as soon as possible, adjust, pursuant to requisite administrative notice, the customer-NMGC split for benefits flowing from both Asset Management Agreements ("AMA") and storage optimization contracts ("Storage Contracts") from 70%-30% to 85%-15% in favor of ratepayers; and
- (5) In addition to the ultimate recommendations of the Working Group, Staff requests that the following conditions be placed on the SWF:
  - a. NMGC and Staff will have equal authority to petition the Commission for disbursements of the fund;
  - b. The fund will (1) not be eligible for return or recovery from ratepayers and (2) be dedicated exclusively to offsetting customer bill impacts from qualifying events;
  - c. The fund shall be subject to Commission oversight;
  - d. NMGC will file an annual compliance report by April 30 of each year detailing fund balance, interest earned, expenditures, and any pending requests, if any;

- e. No disbursements shall occur without Commission approval; and
- f. The fund shall remain in place unless terminated or modified by the Commission following notice and opportunity for hearing.<sup>177</sup>

(78) Dr. Zedalis testified regarding the redirection of Joint Applicants' contributions, Staff wanted to ensure that, in the first order, any offered monetary inducements associated with the instant transaction available to NMGC customers. Therefore, Staff proposed that the public interest is better served if the monies committed by the Joint Applicants for economic development and charitable activities are redirected to the ratepayer-centric SWF.<sup>178</sup> Staff advocated that at a minimum, the \$12.5 million in non-ratepayer benefits be allocated to funding the SWF, in its assessment, of the public interest, it believes that the greater the SWF initial contribution, the greater long-term benefits for NMGC customers.<sup>179</sup>

(79) As for long term funding, Staff proposes that the splits for AMA and Storage Contracts income, both of which Staff claims are non-rate components operating as beneficial windfall mechanism for NMGC and its ratepayers via Purchased Gas Adjustment Clause (PGAC) credits be updated in favor of customers to 85%-15% with a view of using some portion of this income for future financing of the SWF.<sup>180</sup>

(80) Staff also requested that due to the potential limited parameters of this case, if the Commission cannot fully consider or construct each facet of the SWF, that the Commission

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<sup>177</sup> *Id.* at 8-10.

<sup>178</sup> *Id.* at 10.

<sup>179</sup> *Id.* at 12-13.

<sup>180</sup> *Id.* at 13-14.

establish the Working Group to undertake this work and if necessary, a new SWF specific case docket be opened.<sup>181</sup>

(81) Staff could support the acquisition, based on this Factor, if substantive financial long-term commitments that directly benefit customers are provided. Staff witness Dr. Larry Blank provided testimony analyzing the acquisition premium and goodwill valuations. Dr. Blank testified that the value of the goodwill in this case is the value of the intangible asset created by a government-protected monopoly and the captive customers of NMGC, and it represents the amount that should be transferred to customers as part of this transaction.<sup>182</sup> In order for NMGC customers to benefit from the transaction, Dr. Blank recommended that the Commission order that at the closing of the Transaction, NMGC shall create a regulatory liability account for the benefit of customers in an amount equal in value to the goodwill paid (less any benefit amounts designated by the Commission for specific purposes in this case).<sup>183</sup> Disposition of this regulatory liability could occur in a later case. If the regulatory liability were placed in rate base in the next rate case, customers could benefit from a rate base deduction by the amount of the return plus taxes avoided. If not placed in the rate base, then the regulatory liability should accrue a carrying charge at the weighted cost of capital.<sup>184</sup> Dr. Blank acknowledged that acceptance of this recommendation could trigger the need for renegotiation of the purchase price,<sup>185</sup> or that the Joint Applicants could dissolve the agreement rather than renegotiate.<sup>186</sup>

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<sup>181</sup> *Id.* at 16-17.

<sup>182</sup> Staff Exhibit 3, Direct Testimony of Dr. Larry Blank (“Blank Dir.”) at 8.

<sup>183</sup> *Id.* at 9.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 10-12.

<sup>186</sup> *Id.* at 13.

(82) Dr. Blank also recommended that the ring fencing and other financial and structural commitments should be adopted by the Commission along with a few modifications and additions. First, the 54% equity commitment should be reduced to 52% consistent with Staff's recommendation. Second, Dr. Blank recommended that the following requirement be added: Neither NMGC nor any subsidiary of NMGC will own any non-regulated, non-utility businesses or foreign utility company. This condition will not prohibit BCP Infrastructure Funds, Saturn Holdco, or any other intermediary holding company above the NMGC stand-alone level from holding diversified businesses. No such diversified businesses are contemplated to be owned by Saturn Holdco.<sup>187</sup> Dr. Blank also recommended that NMGC, Saturn Holdco, and BCP Infrastructure Funds acknowledge the Commission's jurisdiction to initiate a future proceeding to consider modifying the NMGC ring fence, but they reserve their rights to contest any other aspect of the filing.<sup>188</sup> Finally, Dr. Blank recommends that NMGC be required to have its credit rating performed by at least one major nationally and internationally recognized credit rating agency.<sup>189</sup>

(83) Staff Witness Felicia S. Jojola, an Economist in the Commission's Accounting Bureau testified that Staff recommended that Joint Applicants increase their commitment to maintain current employees from 36 months to at least 5 years to make it comparable to the EPE acquisition commitment.<sup>190</sup> These positions are said to be filled by "employees in New Mexico or procuring such services from third-party vendors." If approved, Staff recommended that if third-party vendors are utilized, they be in New Mexico, specifically, to maintain the economic benefit of

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<sup>187</sup> *Id.* at 15.

<sup>188</sup> *Id.* at 15-16.

<sup>189</sup> *Id.* at 16.

<sup>190</sup> Jojola Dir. at 7.

approximately \$9.7 million as well as operation benefits. Staff also recommended that the Joint Applicants add to their commitment to maintain the current 740 local positions, plus the additional 20 positions, for a period of 5 years after closing and agree that they will not drop below this level without express prior NMPRC approval.<sup>191</sup> Should unplanned vacancies reduce the workforce below 760 positions for more than three consecutive months, NMGC will inform the parties and use their best efforts to restore the workforce to 760. Lastly, staff is requesting that NMGC's existing headquarters remain unchanged for the duration of ownership of the Joint Applicants, which was also a commitment in the EPE case.<sup>192</sup>

## **WRA**

(84) WRA Witness Michael Kenney testified regarding his concerns with the proposed acquisition, specifically to the strategy of BCP and NMGC to spend an increasing amount of capital on costly and unfavorable decarbonization opportunities considering the need to mitigate rate impacts and reduce greenhouse gas (“GHG”) emissions.<sup>193</sup> He addressed commitments by BCP Applicants for \$5 million for clean energy projects, and NMGC-BCP's proposal to research renewable natural gas (“RNG”), certified natural gas (“CNG”), and hydrogen investments. Mr. Kenney recommended that the Commission reject the proposed acquisition unless NMGC and BCP agree to substantial changes to capital and decarbonization investments.<sup>194</sup> Mr. Kenney testified that because the six elements of BCP's request are connected, he recommended that the Commission deny all six requests.<sup>195</sup> In concluding that BCP has not proposed sufficient benefits

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<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 8.

<sup>193</sup> WRA Exhibit 1, Direct Testimony of Michael Kenney (“Kenney Dir.”) at 2.

<sup>194</sup> *Id.* at 3.

<sup>195</sup> *Id.* at 4.

to NMGC customers, Mr. Kenney testified that the \$5 million commitment for clean energy projects appears to be a solar facility with very limited details as to the purpose it will serve, and while research opportunities can improve the service it provides, he concludes that NMGC and BCP's strategies are more expensive than other investments or unlikely to lead to significant GHG reductions or both.<sup>196</sup> Mr. Kenney further testified as to his belief that there would be higher costs to customers for natural gas service due to capital investments in hydrogen, RNG, and CNG.<sup>197</sup>

(85) WRA witness Bradley T. Cebulko recommended that the Commission reject the Joint Application because he believed that the Joint Applicants had failed to provide adequate protections against harm to customers and had failed to provide positive benefits to customers.<sup>198</sup> Mr. Cebulko also expressed concern that the proposed sale did not include careful verification of the qualifications of the new owners.<sup>199</sup>

(86) Mr. Cebulko testified that BCP's proposed anticipation that the Transaction will result in approximately 20 new jobs in New Mexico as a result of current shared services functions, could not really be considered to be a benefit because there was not a commitment to a minimum level and as such there is no specific guaranty and as such any economic benefit is illusory.<sup>200</sup> Mr. Cebulko also testified that BCP Applicants commitment to maintaining current levels of employees was a "no harm" commitment rather than a benefit because customers already expect the Company to maintain adequate staffing to deliver safe and reliable service, regardless of a

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<sup>196</sup> *Id.* at 7 and 11-12.

<sup>197</sup> *Id.* at 9 and 13-22.

<sup>198</sup> WRA Exhibit 2, Direct Testimony of Bradley T. Cebulko ("Cebulko Dir.") at 10.

<sup>199</sup> *Id.*

<sup>200</sup> Cebulko Dir. at 35-36.

change in ownership.<sup>201</sup> Further, with regard to Joint Applicants' commitments to contribute to economic development and to advance environmental goals, Mr. Cebulko testified that these commitments were too vague and lacked sufficient detail to be credited as tangible benefits to customers. Without specific program designs, metric, or safeguard against cost-shifting, Mr. Cebulko recommended that the Commission assign little to no weight to these promises in assessing whether the Transaction serves the public interest.<sup>202</sup> As to the low income bill assistance program, Mr. Cebulko also found that maintaining the program is another "no harm" commitment rather than a benefit, and he recommended that Joint Applicants commit to a defined increase in shareholder contributions to low income assistance programs each year during their ownership of NMGC.<sup>203</sup>

(87) Mr. Cebulko also testified that commitment to give a preference to New Mexico suppliers for its NMGC's supply chain goods and services might provide some additional economic activity to the state, it must be considered alongside the costs of the commitment. In other words, an in-state supplier might be more expensive than an out-of-state supplier, and if so, this commitment would not be a benefit.<sup>204</sup>

(88) Mr. Cebulko also testified that the rate case stay out provision also appeared not to be a benefit due to its potential short period of time, and possible impossibility to get such a filing together in a short time period, and he further noted in the acquisition of Delta Utilities, the BCP

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<sup>201</sup> *Id.* at 36.

<sup>202</sup> *Id.* at 37-38.

<sup>203</sup> *Id.* at 38.

<sup>204</sup> *Id.* at 39-40.

Applicants committed not to file a rate proceeding within 33 months post-closing of the transaction.<sup>205</sup>

(89) Mr. Cebulko testified on BCP's two dozen commitments (Revised Application beginning at page 16) related to customer benefits and protections that it stated would be maintained or strengthened. Mr. Cebulko also characterized these as "no harm" commitments rather than new, positive benefits for customers. For example, agreeing that existing rules will remain in force, is not a benefit to customers.<sup>206</sup>

### **NEE**

(90) NEE Witness Christopher K. Sandberg testified that the proposed acquisition should not be approved. Mr. Sandberg concluded that the proposed acquisition does not provide net benefits to the public and is not fair, just, or in the public interest. Mr. Sandberg further asserted that the benefits provided by the Joint Applicants are not significant and are outweighed by the lack of consumer protections. Mr. Sandberg further testified that the asserted benefits to NMGC customers are insignificant to potential harms of the acquisition.<sup>207</sup>

(91) Mr. Sanberg also recommended that if the Commission were to approve the acquisition that it be conditioned upon the requirement that BCP put up a multimillion performance bond to be managed by the Commission to ensure that ratepayers will be protected from foreseeable risk.<sup>208</sup> He testified that there is no way to predict how the inexperienced Joint Applicants will actually operate and asserted that given the customer antagonistic practices observed with private

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<sup>205</sup> *Id.* at 41.

<sup>206</sup> *Id.* at 42.

<sup>207</sup> NEE Exhibit 1, Direct Testimony of Chrisopher K. Sandberg ("Sandberg Dir.") at 11.

<sup>208</sup> *Id.* at 13.

equity takeovers, there was a very real risk that NMGC customers would be harmed. Mr. Sandberg concluded that the only way to influence private equity managers is through the threat of financial penalties for bad performance.<sup>209</sup>

(92) Mr. Sandberg also testified as to general detriments of private equity and private equity in areas of critical operations in health care.<sup>210</sup> Mr. Sandberg testified that similar concerns are being raised in other public hearings in other settings and cited that there are four unique issues raised by private equity buyouts: heavy debt financing, short investor time horizon, limited utility experience, and loss of public disclosure.<sup>211</sup> As a local example of activity after private equity acquisition, Mr. Sandberg referred to the two rate cases filed in Texas for EPE requesting an average increase in base rates of 13.55% and 13.65% respectively.<sup>212</sup>

(93) Mr. Sandberg testified that Joint Applicants' asserted benefits fall into three categories: those alleged benefits which simply do not depend on the proposed transaction and could be implemented without any need for change (referencing Revised Executive Summary at 14-18 and 18-27)(numbers 1-4, 5,6, and 8-13); merely restatements of current practices, obligations or requirements on NMGC (numbers 4, 16-19); and band aids to mitigate negative effects of the transaction (numbers 7 and 14).<sup>213</sup>

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<sup>209</sup> *Id.* at 23.

<sup>210</sup> *Id.* at 25-29.

<sup>211</sup> *Id.* at 30.

<sup>212</sup> *Id.* at 31-33.

<sup>213</sup> *Id.* at 20-21.

(94) Mr. Sandberg concluded that customer benefits are not part of Joint Applicants “blueprint” for acquiring NMGC and incorporates this with Joint Applicants lack any meaningful experience in running a local distribution utility or an intraregional natural gas pipeline.<sup>214</sup>

### **Joint Applicant Rebuttal**

(95) In his Rebuttal testimony, Mr. Baudier testified that BCP Management is bullish on the regulated natural gas utility business and its managed funds are investing billions in the industry.<sup>215</sup> According to Mr. Baudier, the BCP Applicants wish to acquire NMGC, in particular, because of its sound track record of providing safe, reliable and cost-effective gas service for customers. Mr. Baudier further testified that BCP management is bullish on New Mexico and its managed funds have already made a significant investment in New Mexico, employing approximately 300 residents, through Strategic Management Solutions, LLC.<sup>216</sup>

(96) In their Post-Evidentiary Hearing Brief,<sup>217</sup> Joint Applicants averred that the NMPRC had also provided examples of conditions that have been imposed in some, but not all, prior merger and acquisition cases including: customer rate credits; rate freezes; no adverse impact on customer rates; economic development contributions; maintenance of current offices in New Mexico for a specified time, maintenance of employee wages and benefits for a specified time; agreement not to recover transaction costs from customers; prior notice to the NMPRC for the payment of dividends to any holding company; agreement not to recover any acquisition adjustment from customers; waiver of federal preemption claims as a basis for challenging the NMPRC’s

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<sup>214</sup> *Id.* at 34-36.

<sup>215</sup> Baudier Rebuttal at 5.

<sup>216</sup> *Id.* at 5.

<sup>217</sup> Joint Applicants’ PH Brief at 9-12.

disallowance of costs; prohibition against recovery of increased costs of capital that may result from the acquisition transaction; filing of a Cost Allocation Manual related to services provided by affiliates; customers held harmless from increase costs of replacement debt; agreement not to sell the acquired utility for a specified time; agreement to invest in utility for a specified time; majority of independent board of directors; and delegation of authority to utility board of directors from upstream holding company.<sup>218</sup>

(97) Joint Applicants asserted that their list of regulatory commitments,<sup>219</sup> as expanded and modified by the Joint Applicants' Responses to the Hearing Examiner bench requests,<sup>220</sup> and as contained in the Joint Application, incorporates nearly all of the foregoing conditions as regulatory commitments.<sup>221</sup>

(98) Mr. Baudier also testified that in terms of monetary benefits under the Revised Application, the Joint Applicants have responded with more than \$17 million in additional benefits including: an additional \$7.4 million in rate credits, \$5 million in education and training benefits, and \$5 million more in HeatNM low income contributions.<sup>222</sup> Mr. Baudier testified that there are quantifiable benefits in the range of \$59,400,000 to \$69,400,000.<sup>223</sup> The total rate credits of \$22.4 million would result in a \$40.78 credit to each of NMGC's 549,284 customers.<sup>224</sup> Joint Applicants

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<sup>218</sup> Case No. 20-00222-UT, Certification of Stipulation at 32-33 (citing Case No. 19-00234-UT, Amended Certification of Stipulation, at 23-24).

<sup>219</sup> See Baudier Dir.

<sup>220</sup> See Baudier Dir., Joint Applicants' Response to First Bench Request and Joint Applicants' Response to Third Bench Request.

<sup>221</sup> Joint Applicants' PH Brief at 9-10.

<sup>222</sup> Baudier Rebuttal at 47-48, providing a comparison of the monetary benefits under the Revised Application and the commitments by the Joint Applicants in response to Staff and the intervenors.

<sup>223</sup> *Id.* 3 at 7. The \$10 million variance appears to be related to the range in the projected value for the delay in a rate case filing.

<sup>224</sup> *Id.* at 9.

oppose FEA's volumetric distribution of the rate credits, and asserted that the per capita distribution would put the money in the hands of individuals and small businesses where it may have greater impact.<sup>225</sup>

(99) Additionally, regarding other specific monetary recommendations made by Staff, Mr. Baudier testified that Joint Applicants are opposed to the use of monetary commitments being shifted to the SWF because of the uncertainties that this benefit might ever be utilized. He also vaguely references that this issue may not be appropriate for consideration in this proceeding.<sup>226</sup> Joint Applicants also opposed Staff's recommendations on revenue percentage changes for asset management agreements (AMA) saying that a portion of the AMA allocated to customers is used to offset the PGAC, and Staff's proposal may eliminate existing customers' benefits.<sup>227</sup> Joint Applicants' also questioned whether this would be appropriate forum to implement a change to the existing approved PGAC.<sup>228</sup>

(100) Regarding criticisms that some of Joint Applicants' commitments are not new benefits, Mr. Baudier testified that preserving previously approved and existing customer protections is important, and not a valid basis for criticism.<sup>229</sup>

(101) Joint Applicants argued that there was an inconsistency and contradiction in some of the intervenor and Staff positions in wanting capital expenditures to be maintained or increased but

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<sup>225</sup> *Id.* at 11.

<sup>226</sup> *Id.* at 15-16.

<sup>227</sup> *Id.* at 16.

<sup>228</sup> *Id.* at 16.

<sup>229</sup> *Id.* at 34.

also, or other parties, wanting rate freezes and credits, because of how rates are determined on capital investment.<sup>230</sup>

(102) Joint Applicants opposed WRA's SEC type filings, while private equity firms are not subject to the same disclosure and filing requirements as publicly traded companies, however, NMGC and BCP Applicants are not insulated from disclosure of their financial conditions. As discussed by Joint Applicant Witness Kelly, Sections 62-6-17 and 62-6-19 of the PUA, Rule 450.4 and the Joint Applicants' regulatory commitments provide that the books, records, and accounts of NMGC and BCP Applicants are subject to inspection by the NMPRC.<sup>231</sup>

(103) Joint Applicants also agreed to a non-consolidation opinion as required in the EPE case but believed that the type of non-consolidation agreement argued for by WRA Witness Cebulko would be difficult to obtain and costly to ratepayers.<sup>232</sup>

(104) In response to Mr. Cebulko's criticism that Delta and Magnolia had a longer rate case stay out provision than the one offered in this case, Mr. Baudier testified that the Delta and Magnolia gas company jurisdictions employ different ratemaking constructs such as formula rate plan and rate stabilization plans which allow utilities to operate for many years without formal rate cases. For example, CenterPoint (Magnolia) had not filed a rate case in 15 years. Additionally, there were no rate credits, economic development investments, charitable contributions or low-income benefits in the Delta Utilities transactions.<sup>233</sup>

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<sup>230</sup> *Id.* at 35-36.

<sup>231</sup> *Id.* at 12.

<sup>232</sup> *Id.* at 37-38.

<sup>233</sup> *Id.* at 13.

(105) Joint Applicants also opposed Staff’s proposal on the acquisition premium by asserting that this proposal has never been offered or considered in any jurisdiction and as discussed by Joint Applicants’ witnesses Hutt, Shell, Kelly, Talley, and Quilici, the premise underlying the claim for sharing the gain from the sale of NMGC is not legally supportable, violates regulatory principles, as well as NMPRC and judicial precedent, and should be rejected.<sup>234</sup>

(106) Joint Applicants also opposed Staff’s proposal to cap Shared Services at \$12 million as being arbitrary as well as the actual shared services were not defined.<sup>235</sup>

(107) Joint Applicants also opposed NEE’s proposal to require Joint Applicants to have a multimillion-dollar performance bond.

### 3. Determination

(108) Initially, the reality of the obvious must be observed. Joint Applicants did not enter into the proposed Transaction for the benefit of NMGC’s customers, the transaction was created to benefit BCP and Emera. Joint Applicants included or later added independent commitments or agreements that they allege benefit NMGC customers, like rate credits or a rate case filing delay, or potential benefits to certain customers like low-income rate considerations, or to the state as a whole, like economic development or job commitments. These purported “benefits” are very similar to those made in NMGC’s two prior acquisitions since 2014, Case No, 13-00231-UT, where TECO Energy acquired NMGC, and Case No. 15-00327-UT, where Emera, a Canadian utility holding company acquired TECO Energy including NMGC. The Commission approved Stipulations in both of those cases that included commitments and agreements. It is only logical to

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<sup>234</sup> *Id.* at 30.

<sup>235</sup> *Id.* at 37-38.

conclude that since some of these purported benefits do not result from the proposed Transaction, Joint Applicants included these commitments as an attempt to get the Commission's approval.

(109) Joint Applicants asserted that the standard of review of the acquisition transaction isn't whether the proposed benefits in this case are a better deal than the prior acquisition but only that there are benefits provided by this proposed acquisition. Then, almost in the same breath, they claimed they had included most of the agreed upon commitments from the other acquisitions. Which is it, the prior benefits should not be considered in this case or they should be considered? These assertions are contradictory and perplexing. While each case must be factually evaluated on its own merits, there is a question of what value or type of value, if any, the Commission should place on maintaining previously agreed upon benefits, and should it make a difference if a prior benefit commitment has now lapsed or would not be continued after an ownership change? Thus, in attempting to view benefits in a holistic manner, one must continually think about what comprises a benefit, how is it quantified or verified, is it direct, or tangible, or indirect or nontangible, and whether lapsed "status quo" commitments made by another company should be considered to be "new" benefits?

(110) There have been criticisms from the parties that that the level of proposed benefits from the Joint Applicants has been non-existent because it only maintains what has been offered before thus only maintaining the status quo and therefore does not meet the net public benefit threshold to be considered to be in the public interest. Others argue that the level of proposed offerings is small or minimal and that there are no synergies to be gained from this transaction, They also argue that there are no long term tangible direct benefits to customers in addition to the 88 commitments which are needed after the expiration of the short term benefits like rate credits and contributions. There are also arguments that the commitments are vague, illusory, and that there is not sufficient

detail to determine a tangible benefit, One party equates the proposed commitments not as positive benefits but as no harm commitments. Finally, another characterizes Joint Applicants' commitments as not benefits from this transaction, that they could be implemented anyway, are restatements of current NMGC practices, and merely band-aids to mitigate any negative impact of the transaction.

(111) Additionally, while most parties argue for denial of the transaction, some of the parties argue in the alternative for the Commission to impose a plethora of conditions on Joint Applicants is the transaction were to be approved. Some of the conditions were accepted in whole or in part, as set forth previously in the Voluntary Commitments section. Generally, some of the proposed conditions included a rate credit of \$22.4 million using a volumetric calculation, creation of a SWF to be funded from the monies offered in other benefits, a change to percentage allocations from AMK and storage contracts, creation of a regulatory asset for ratepayers benefit of the acquisition adjustment, changes to reduce the equity component for a rate case valuation, credit rating requirements, job number requirements, maintaining local headquarters, requiring enhanced reporting, and establishment of a multimillion dollar performance bond.

(112) Although disputed, the evidence supports that the purported benefits offered by the Joint Applicants may provide some relief or value to some of NMGC's current customers, and to the citizenry of the State of New Mexico as a whole. The evidence is unclear as to exactly how much some of the commitments and agreements could be quantified to be worth monetarily. However, not all valuations translate to a monetary value. For example, commitments to maintain local employees or headquarters or even not to sell for a 10 year period, offer values of certainty, knowledge, and stability by retaining the NMGC that is known and relied upon., Some commitments might be valued at tens of millions of dollars, like rate credits and agreements to

maintain capital investment which can potentially directly benefit NMGC customers. However, these benefits do not arise from the transaction itself. Whereas the shared services upgrade to a gas only cloud-based system that has already been developed and implemented could be seen as a benefit arising out of the transaction.

(113) Additionally, some of the proposed benefits might provide some impact on New Mexico or its citizens as a whole, like the \$5 million for economic development or the \$5 million for renewable energy development, but these purported benefits do not appear to directly provide benefits to NMGC customers. The proposal to divert the money from this contribution to the SWF is not well taken. As evidenced by Mr. Shell, severe weather events are very rare, 1 in 16 years, and NMGC uses approved strategies to procure gas and mitigate price increase. Additionally, as argued by FEA, transportation customers would not benefit from this fund, and thus it may be discriminatory to a class of NMGC customers. Further, holding substantial amounts of money in an account for an indeterminate amount of time also appears questionable. Should the Commission wish to consider such a fund in the future, they could require Staff and/or utilities to commence proceedings on this topic. Additionally, the topics of changes to percentage allocations to contracts or equity percentages are beyond the scope of this proceeding and involve consideration of information not presented here, Therefore, these conditions are not supported by the evidence and should be denied.

(114) Further, Staff's recommendation to create a regulatory asset for acquisition adjustment to benefit of ratepayers is a novel suggestion but is not supported by sufficient evidence or legal argument to be considered in this case and should be denied.

(115) Finally, the proposed condition that would require a multimillion-dollar performance bond was not sufficiently developed or supported by a preponderance of evidence in the record and should be denied.

(116) All other proposed conditions not incorporated and accepted by Joint Applicants or ruled upon by this recommended decision, were considered and are disposed of accordingly.

(117) After considering the record as a whole, and in line with the Commission's past precedents in acquisition cases, the Hearing Examiners find that there is credible evidence that there are sufficient benefits to weigh in favor of the public interest, and that Joint Applicants evidence meets the preponderance of evidence standard necessary to support a net public benefit finding as conditioned by the evaluation of the additional factors in the remainder of this recommended decision..

(118) However, should the Commission value the proposed commitments differently, the Hearing Examiners recommend that the Commission use its discretion to require the Joint Applicants to commit to any other commitment or agreement, as a condition to approval of the transaction, that the Commission finds in the public interest.

### **C. Preservation of Commission Jurisdiction**

(119) The Second Factor, the preservation of Commission Jurisdiction, asks whether the Commission will retain regulatory authority over NMGC and its upstream owners after the closing of transaction. Formal jurisdiction constitutes the exercise of statutory authority,<sup>236</sup> Rule 450 GDP requirements and commitments,<sup>237</sup> and Commission precedent.<sup>238</sup> At the same time, the

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<sup>236</sup> NMSA 1978, § 62-6-4, § 62-6-13.

<sup>237</sup> 17.6.450 NMAC.

<sup>238</sup> *See* Case No. 13-00231, Certification of Stipulation at 99-105.

preservation of this jurisdiction must be effective as well as formal, thereby depending as well on the inherent corporate and financial architecture of the proposed transaction, access to books and records, proactive reporting, enforceable utility commitments, and access to affiliates and officers.

(120) In both instances of either the formal or effective application of jurisdiction, the nature of the present application creates difficulty when discerning the contours of affiliated interests. The Commission possesses specific powers to oversee and regulate affiliate interests. Demonstrating the need to disentangle and articulate the proprietary and financial mechanics, New Mexico law and rule grants the Commission broader powers than merely concerning a utility. In light of a Class I or Class II transaction, the necessity to determine that the resulting transaction will be in the public interest is reflected in the Commission's powers.

(121) This section presents these legal standards followed by the Joint Applicants' evidence on preservation of Commission jurisdiction as a thematic record summary, organized by the principal evidentiary themes and then by witness.<sup>239</sup> The organization follows the structure of Joint Applicants' proof: first, the inherent corporate and financing structure of the transaction; second, the affirmative commitments offered to preserve regulatory authority and operational continuity; third, the ring-fencing commitments; and fourth, the related evidence concerning NMGC jurisdiction, local board governance, and local engagement.<sup>240</sup>

(122) Joint Applicants' Witnesses Baudier, Kelly, and Talley provide evidence that the transaction will not diminish the Commission's formal jurisdiction, that NMGC will remain subject to Commission regulation as a New Mexico public utility, and that upstream owners will

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<sup>239</sup> Baudier Dir. at 37:7-11; Joint Applicants' Exhibit, Revised Application Direct Testimony of Suede Kelly ("Kelly Dir.") at 6:4-21.

<sup>240</sup> Baudier Dir. at 39:13-22, at 48:19-22 to 50:20; Kelly Dir. at 16:1-13.

remain subject to Commission authority as public utility holding companies. Their testimony relies on three pillars. First, they reiterated the Commission’s statutory and regulatory access rights under the PUA. Second, they offer voluntary commitments to provide access to books, records, accounts, documents, and testimony. Third, and in light of the proposed post-acquisition ownership structure, the Joint Applicants offer a series of ring-fencing commitments designed to preserve NMGC’s separateness from BCP-related entities.

(123) Staff generally recognize the Joint Applicants’ preservation commitments, but Staff does not treat the commitments as eliminating all oversight concerns. Staff Witnesses Zigich, Jojola, and Velasquez provide evidence affirming the integrity of J Joint Applicants’ preservation of jurisdiction commitments, but do not treat those commitments as eliminating all oversight concerns. The intervenor testimony, offered primarily by WRA and NM AREA, centers on the effective limitations that the nature of the transaction and the proposed commitments will have with respect to preserving Commission jurisdiction. The principal regulatory question raised by the structure is whether the stated ring-fencing, books-and-records access, jurisdictional commitments, and local-board commitments adequately translate the formal ownership chain into practical Commission oversight.

#### 1. Legal Standards

(124) Statutorily, the Commission has primary jurisdiction over NMGC as a company that “own[s], operate[s], lease[s] or control[s] ... any plant, property or facility for the manufacture, storage, distribution, sale or furnishing to or for the public of natural or manufactured gas.”<sup>241</sup> The Commission also “shall have general and exclusive power and jurisdiction to regulate and

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<sup>241</sup> NMSA 1978, § 62-3-3(G)(2).

supervise every public utility in respect to its rates and service regulations and in respect to its securities.”<sup>242</sup>

(125) As part of that general and exclusive power to regulate and supervise, the Commission has the explicit power to require public utilities to provide books, records, accounts, documents, and other information upon request.<sup>243</sup> By order, the Commission may, according to NMSA 1978, § 62-6-17,

require any utility or any officer or agent of any utility to produce within the state or provide access to, at such reasonable time and place as the commission may designate, any books, records, accounts or documents kept in any office or place within or without the state, or certified copies thereof, whenever the production thereof is reasonably required and pertinent to any matter under investigation before the commission.<sup>244</sup>

(126) Yet, in cases where a utility and an affiliated interest are involved in a Class I or Class II transaction, New Mexico law enhances this power. An affiliated interest is a person, i.e., an individual, firm, partnership, company, rural electric corporation or lessee, trustee or receiver, that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a public utility.<sup>245</sup> There, the Commission may require, without order, a utility and its affiliated interest to produce and provide access to books, records, accounts, or documents when pertinent to any matter under investigation and reasonably required by the Commission.<sup>246</sup> The Commission’s jurisdiction over books, accounts, documents, and records,

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<sup>242</sup> NMSA 1978, § 62-6-4(A).

<sup>243</sup> NMSA 1978, §§ 62-6-17 and 62-6-19.

<sup>244</sup> NMSA 1978, §§ 62-6-17(A).

<sup>245</sup> NMSA 1978, §§ 62-3-3(E).

<sup>246</sup> NMSA 1978, §§ 62-6-17(B).

inherently emanates from the utility and flows upstream or downstream from the affiliated interests.

(127) Class I and Class II transactions are further controlled by the purpose, intent, and requirements of Rule 450. The intent of that rule is to assure reasonable and proper utility service at fair, just, and reasonable rates, to require reasonable access to the books and records of a utility and its affiliates so that such an assurance can be made, to assure that appropriate cost allocations are made, and to assure that no cross-subsidization occurs between the utility and an affiliated interest.<sup>247</sup>

(128) Rule 450 further provides that no public utility may engage in a Class II without first obtaining written approval of a GDP from the Commission.<sup>248</sup> The rule then goes on to enumerate all the elements that must be included in the GDP. These are:

1. To the extent known the name, home office address, and chief executive officer of each affiliate, corporate subsidiary, holding company, or person which is the subject of the Class II transaction;
2. A statement of the goals and effects upon the utility operation of the Class II transaction including an analysis of the benefits, risks, and any costs to the public utility which could arise, and including all tax effects on the utility both on a consolidated entity basis and on a stand-alone basis;
3. The type of corporate structure to be used;
4. The means of implementing the corporate structure to be used, including, but not limited to, amendments to corporate articles, any issuances, acquisitions, cancellations, exchanges, transfers, or conversions of securities, and the impact of such on the rights of creditors and security holders;
5. The anticipated capital structure for the utility, its affiliates, and the consolidated entity (utility plus affiliates) for the next five (5) years;
6. The contemplated annual and cumulative investment in each affiliated interest for the next five (5) years in dollars and as a percentage of projected net utility

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<sup>247</sup> NMAC 17.6.450.6.

<sup>248</sup> NMAC 17.6.450.8(A).

- plant and an explanation of why this level of investment is reasonable and will not increase the risks of investment in the public utility;
7. An explanation of how the affiliate(s) will be financed, by whom, and the type and amounts of capital or instruments of indebtedness;
  8. An explanation of how the utility's capital structure, cost of capital, and ability to attract capital at reasonable rates will be impacted;
  9. An explanation of how the utility can assure that adequate capital will still be available for the construction of necessary new utility plants and at no greater cost than if the utility did not engage in this Class II transaction;
  10. To the extent not answered in (9) above, an explanation of how ratepayers will be protected and insulated from any risks, costs, or other adverse and material effects attributable to Class II transactions or their resulting effects;
  11. If the utility intends to divest a corporate subsidiary, an explanation of the reasons for such divestiture, how it will be accomplished, how it will affect utility operations, financial viability, cost of capital, and adequacy of service during the next ten (10) years following divestiture, the anticipated proceeds to the utility, the extent, if any, that the utility intends for ratepayers to share in the proceeds or otherwise benefit from the divestiture, the amount of and reasons why any ratepayer funds have flowed directly or indirectly to the benefit of the corporate subsidiary; and
  12. To the extent not provided above, such information or representations that will allow the Commission to make the findings contained in 17.6.450.10(C) NMAC.<sup>249</sup>

(129) Under this rule, the Commission shall approve the GDP if it contains the above information in detail acceptable to the Commission and if the Commission finds that such approval is in the public interest.<sup>250</sup>

(130) The public interest standard is here two-fold. It first provides, firstly, the approval of the transaction is in the public interest if the Commission finds that the level of investment appears reasonable and that it appears the utility's ability to provide reasonable and proper utility service

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<sup>249</sup> 17.6.450.10(B)(1-12) NMAC.

<sup>250</sup> 17.6.450.10(C) NMAC.

at fair, just, and reasonable rates will not be adversely and materially affected by Class II transactions and their resulting effect.<sup>251</sup> Secondly, the public interest requires a series of representations and commitments made by the utility that the Commission finds to be true.

Specifically, the utility must represent that:

1. The books and records of the utility will be kept separate from those of nonregulated business and in accordance with the Uniform System of Accounts;
2. The Commission and its staff will have access to the books, records, accounts, or documents of the affiliate, corporate subsidiary, or holding company pursuant to NMSA 1978, Sections 62-6-17 and 62-6-19;
3. The supervision and regulation of the public utility pursuant to the Public Utility Act will not be obstructed, hindered, diminished, impaired, or unduly complicated;
4. If a holding company is formed the utility will not pay excessive dividends to such holding company, and the holding company will not take any action which will have an adverse and material effect on the utility's ability to provide reasonable and proper service at fair, just, and reasonable rates;
5. The public utility will not without prior approval of the Commission:
  - a. loan its funds or securities or transfer similar assets to any affiliated interest, or
  - b. purchase debt instruments of any affiliated interests or guarantee or assume liabilities of such affiliated interests;
6. All applicable statutes, rules, or regulations, federal or state, have been or will be complied with;
7. When required by the Commission the utility will have an allocation study (which will not be charged to ratepayers) performed by a consulting firm chosen by and under the direction of the Commission; and
8. When required by the Commission the utility will have a management audit (which will not be charged to ratepayers) performed by a consulting firm chosen by and under the direction of the Commission to determine whether there are any adverse effects of Class II transactions upon the utility.<sup>252</sup>

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<sup>251</sup> 17.6.450.10(C) NMAC.

<sup>252</sup> 17.6.450.10(C)(1-8) NMAC.

Taken together, these representations seek to preserve the financial integrity and oversight of the utility, and, in the present Application, serve as a basis for the voluntary and ring-fencing commitments made by the Joint Applicants.

(131) In addition to these statutory and formal requirements, the Commission must also consider the standards set forth in Commission precedent in prior cases of utility mergers and acquisitions. The origin of the factor analyzing preservation of jurisdiction arises out of Case No. 04-00315-UT which articulated the foundation of the current factor-led review. In Case No. 08-00078-UT, the Commission considered whether to approve a stipulation providing for PNM to sell its gas utility business to NMGC.<sup>253</sup> There, NMGC acknowledged that the Commission would have access to its books but not necessarily the books and records of its parent (Continental Energy Systems LLC) or the private investment firm whose affiliates owned Continental (Lindsay Goldberg LLC).<sup>254</sup> To ensure that it would have access to the books and records of Continental and Lindsay Goldberg, the Commission conditioned its approval of the stipulation on the parties' agreement that the Commission would have access to the books, records, accounts or documents of any NMGC affiliate to the extent the Commission deemed it necessary to investigate any matter before the Commission.<sup>255</sup>

(132) In Case No. 11-00085-UT, the preservation-of-jurisdiction analysis treated EPCOR's acquisition of New Mexico-American Water Company not merely as a stock-transfer transaction, but as a transaction requiring the Commission to retain effective authority over the utility, its

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<sup>253</sup> Case No. 08-00078-UT.

<sup>254</sup> Case No. 08-00078-UT, Final Order Partially Approving Certification of Stipulation, ¶ 59.

<sup>255</sup> *Id.*, ¶ 60.

ownership structure, financing, and affiliate relationships.<sup>256</sup> The Recommended Decision emphasized that EPCOR and NMAW had provided the representations and commitments contemplated by 17.6.450.10(C) NMAC, including assurances that certain loan-related transactions between NMAW and affiliated interests would not occur without prior Commission approval.<sup>257</sup> The Commission also rejected a form-over-substance approach to whether EPCOR USA or its parent corporations had “become” public utility holding companies, construing the requested approvals to include the necessary Class II transaction and holding-company approvals so that Commission jurisdiction would be retained and preserved.<sup>258</sup> The case therefore establishes that preservation of jurisdiction reaches beyond formal authority over the operating utility and includes Commission review of ownership, control, corporate structure, financing, and affiliate interests as integral components of the public-interest determination.<sup>259</sup>

(133) In Case No. 13-00231-UT, the Commission applied the public-interest framework to TECO Energy’s acquisition of NMGC and approved the transaction only after considering customer benefits and conditions designed to preserve Commission jurisdiction, service quality, and protection against customer harm.<sup>260</sup> The stipulation preserved practical jurisdiction through concrete local-control commitments, including maintaining field offices, keeping call-center operations in New Mexico absent NMPRC approval after the first year, retaining Gas Control in New Mexico for at least three years, and reporting workforce reductions to the Commission on a

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<sup>256</sup> Case No. 11-00085-UT, Recommended Decision of the Hearing Examiner at 51-52.

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> Case No. 13-00231-UT, Certification of Stipulation at 43-45, 79.

quarterly basis for three years after closing.<sup>261</sup> Thus, TECO-NMGC treated preservation of jurisdiction as a practical governance and operational question: the Commission's authority was preserved not only because statutory jurisdiction survived, but because management, operations, reporting, and key control functions remained sufficiently visible and reachable to the Commission.<sup>262</sup>

(134) In Case No. 15-00327-UT, the Commission reaffirmed and refined the same preservation-of-jurisdiction approach in Emera's acquisition of TECO and indirect acquisition of NMGC.<sup>263</sup> Most importantly for jurisdictional preservation, Emera and NMGC agreed that the Commission and Staff would have access to the books, accounts, or documents of NMGC, its affiliates, subsidiaries, and holding companies, and Emera and its affiliates submitted to the Commission's jurisdiction for the purpose of providing books, records, and officer and director testimony for Commission oversight and regulation of NMGC rates.<sup>264</sup>

(135) In a more recent case, Case No. 19-00234-UT, Sun Jupiter Holdings, LLC, Sun Merger Sub, Inc., and IIF US Holding 2, LP, sought Commission approval to acquire EPE. In that case, also in a Certification of Stipulation, the Hearing Examiner determined that EPE's GDP in that transaction should be approved subject to modifying it to identify IIF US 2 as a public utility holding company of EPE.<sup>265</sup> The Hearing Examiner there went on to say that this proposed modification will ensure preservation of the Commission's jurisdiction because the Commission has the authority to review the books and records of a public utility holding company, and the

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<sup>261</sup> Case No. 13-00231-UT, Certification of Stipulation at 31-33.

<sup>262</sup> *Id.* at 19-20, 31-33, 43-45, 79.

<sup>263</sup> Case No. 15-00327-UT, Certification of Stipulation at 31-34, 38, 52-53.

<sup>264</sup> *Id.* at 26-27.

<sup>265</sup> Case No. 19-00234-UT, Amended Certification of Stipulation at 45.

Commission has said that a public utility holding company could be regulated as a public utility, citing the Certification of Stipulation in Case No. 08-00078-UT.<sup>266</sup>

(136) Additionally, in that case, the Hearing Examiner recommended the adoption of the seventy (79) regulatory commitments that were developed in the parallel case before the PUCT during stipulation negotiations in response to issues raised there regarding EPE's ability to act as an independent entity after closing.<sup>267</sup> The Final Stipulated Regulatory Commitments required the adoption of a Delegation of Authority by Sun Jupiter, EPE's direct shareholder, declaring the duties of the EPE Board of Directors and Sun Jupiter shall be adopted, as soon as practicable after closing.<sup>268</sup>

(137) In that case, the Delegation of Authority was a post-closing governance instrument that the parties committed to adopt in substantially the form attached to the stipulation; it defined the duties of the EPE Board and Sun Jupiter, bound both Sun Jupiter and EPE, was accepted by IIF US 2, and was to be filed with the Commission.<sup>269</sup> Substantively, it allocated utility-level operational and capital-planning authority to the EPE Board by reserving to that board, without parent-company approval, day-to-day operational control, local regulatory and community engagement, officer appointments, major budget and capital-project approvals, determinations of equity and debt issuance, and a limited preferred-equity mechanism for capital projects when IIF US 2

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<sup>266</sup> Case No. 08-00078-UT, Certification of Stipulation at ¶ 126.

<sup>267</sup> Case No. 19-00234-UT, Amended Certification of Stipulation at 25; WHEREAS, in order to provide for orderly governance and continued local authority of EPE, Sun Jupiter desires to delegate to the EPE Board of Directors ('EPE Board') certain authorities; and WHEREAS, the EPE Board shall consider, subject to applicable Texas law, the best interests of EPE, consistent with the Public Utility Commission of Texas ('PUCT') approved ring fence, Stipulation Exhibit A, Attachment 1, at 1.

<sup>268</sup> *Id.* at 25.

<sup>269</sup> *Id.* at 35-37; *see also*, Stipulation Exhibit A, Attachment 1, at 1-16.

declined to provide equity, while separately reserving specified corporate-control matters to shareholder approval.<sup>270</sup>

(138) In Case No. 20-00222-UT, the major issue regarding preservation of Commission jurisdiction concerns about whether the language in Regulatory Commitment 15 adequately bound the ultimate upstream owner of Avangrid, namely, Iberdrola, S.A. This concern was resolved with the modification of a regulatory agreement to accomplish that purpose.<sup>271</sup>

## 2. Discussion

(139) Joint Applicants provide substantial testimony regarding the financial terms of the proposed transaction as well as the post-acquisition ownership structure. They intend to demonstrate that the inherent nature of both is not contrary to preserving the Commission's jurisdiction. To do so, Joint Applicants offer evidence to support a determination of current and future compliance, according to Rule 450, and as supplemented by numerous other voluntary commitments. In addition to these structural and jurisdictional arguments, the Joint Applicants provide evidence to indicate that the related commitments to continued local and disinterested governance of NMGC further the preservation of the Commission's jurisdiction. The BCP Applicants agree to Commission jurisdiction for providing books and records and access to testimony of officers and directors for NMPRC oversight and regulation of NMGC rates.<sup>272</sup> The transcript also clarified the intended upstream reach of those commitments. When asked how far upstream the books-and-records commitment runs, Baudier testified that the commitments and

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<sup>270</sup> *Id.* at 36-37.

<sup>271</sup> Case No. 20-00222-UT, Certification of Stipulation at 106.

<sup>272</sup> Baudier Dir. at 61:11-14.

GDP go “all the way up” to the Joint Applicants and allow Commission review of books and records up the chain.<sup>273</sup>

(140) Staff conditionally supports the JAs’ position that the Commission’s jurisdiction will be preserved. Staff Witness Zigich recognizes the Joint Applicants’ observations demonstrating the continued formal jurisdiction of the Commission and the benefits of continuing with the NMGC team in charge of regulatory compliance, while also signaling functional and effective jurisdiction concerns. Zigich states that, based on a review of the application including supporting testimony and supplemental testimony and supporting documentation, Commission jurisdiction over NMGC will be preserved following the proposed transaction.<sup>274</sup> This is in part because Joint Applicants present a commitment that “NMPRC jurisdiction over NMGC will remain in place and will not be diminished or adversely affected in any manner as a result of the Transaction.”<sup>275</sup> Nevertheless, Zigich alerts that Staff Witnesses Jojola and Velasquez do have reservations and detail their concerns regarding potential impediments to Commission oversight. The intervenors do not agree with Joint Applicants that the inherent structure will preserve the Commission’s jurisdiction.

*(a) Inherent Financial and Proprietary Structure of the Proposed Transaction*

(141) Joint Applicants also offer testimony from Baudier, Kelly, Talley, and Shell that the inherent post-acquisition structure of the proposed transaction will not create any barriers or obstacles to preserving Commission jurisdiction.

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<sup>273</sup> Transcript of Evidentiary Hearing, Vol. 2 at 550:8-551:13.

<sup>274</sup> Staff Exhibit 1, Prepared Direct Testimony of Darren Zigich (“Zigich Dir.”) at 9:8-10.

<sup>275</sup> *Id.* at 9:9-12.

(142) Baudier presents the transaction as a transfer of the upstream ownership of the NMGC Group, rather than as an operational merger or a transfer of NMGC's utility assets.<sup>276</sup> Baudier seeks to distinguish the change in upstream ownership from any change in NMGC's status as the regulated LDC.<sup>277</sup> He further explains that NMGC will have multiple steps of corporate separation from the Saturn Companies and will not be directly owned by any Saturn Company, so NMGC will not be an asset of any such company; if an upstream parent defaulted, the only asset of the defaulting entity would be its immediate subsidiary, while NMGC would be made remote by the continued existence of NMGI and TECO Energy.<sup>278</sup>

(143) Baudier also states that Saturn Holdco will be maintained between NMGC and the BCP Infrastructure Funds for so long as the BCP Infrastructure Funds own NMGC, that NMGC's assets, revenues, or stock will not be pledged for the benefit of any entity other than NMGC, and that the BCP Infrastructure Funds and Saturn Holdco will provide Commission access to books and records as necessary for affiliate-transaction review.<sup>279</sup> From the perspective of Baudier, the proposed structure does not principally change NMGC's operating identity. Rather, it replaces the existing Emera-side upstream ownership chain with a BCP Infrastructure Funds/Saturn holding-company chain above TECO Energy, NMGI, and NMGC, while preserving NMGC as the regulated New Mexico operating utility and preserving Commission oversight and access to upstream books and records.<sup>280</sup>

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<sup>276</sup> Baudier Dir. at 25:14-22 – 26:5.

<sup>277</sup> *Id.* at 31:18-23 – 32:8; 60:16-23 – 61:18.

<sup>278</sup> *Id.* at 89:4-15.

<sup>279</sup> *Id.* at 58:9-18.

<sup>280</sup> *Id.* at 31:19 – 32:8.

(144) Baudier states that the structure protects NMGC by making the defaulting upstream entity's immediate subsidiary the only asset of that entity in an upstream default scenario.<sup>281</sup> Baudier asserts that NMGC's remoteness is reinforced by the continued existence of NMGI and TECO Energy between NMGC and the Saturn entities.<sup>282</sup> Baudier's explanation of non-recourse financing turns on structural separation. He states that the BCP Infrastructure Funds and Saturn Companies will not have contractual relationships with NMGC, and that the absence of those contractual relationships, the structural separation through intermediate companies, and the applicants' commitments together support ring-fencing against recourse to NMGC for upstream debt.<sup>283</sup> That non-recourse language is central to the regulatory characterization of the debt structure. It places the debt obligation and the security package at the Saturn Utilities Holdco level, with recourse to the pledged TECO Energy equity and proceeds, rather than describing the Notes as direct debt of New Mexico Gas Company or a pledge of NMGC's operating utility assets.<sup>284</sup>

(145) Baudier also states that this structure has advantages for providing access to capital for NMGC post-acquisition. Baudier states that intermediate entities of this type are desirable to implement debt financing that is non-recourse to NMGC and therefore beneficial to customers.<sup>285</sup> The intermediate companies are desirable because they allow debt financing to be implemented on a non-recourse basis to NMGC, without any liability for NMGC and without using NMGC assets as collateral.<sup>286</sup> Baudier here identifies long-term note facilities, a revolving credit facility,

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<sup>281</sup> *Id.* at 89:7-15.

<sup>282</sup> *Id.* Direct at 89:12-15.

<sup>283</sup> *Id.* at 88:17-89:2.

<sup>284</sup> Debt Commitment Letter, Term Sheet at § D.4.

<sup>285</sup> Baudier Dir. at 31:4-12.

<sup>286</sup> *Id.* at 31:3-17.

unrestricted cash reserves, and injections of capital through the ownership structure as available funding sources for NMGC.<sup>287</sup> This treatment of acquisition debt is an important part of Joint Applicants' preservation theory because the debt is placed above NMGC and is not presented as a liability of NMGC or as secured by NMGC assets.<sup>288</sup> He characterized this arrangement as superior ring-fencing because acquisition debt is located farther above NMGC than debt held immediately above the utility in the existing structure.<sup>289</sup>

(146) Joint Applicant Witness Dr. Eric Talley echoes the evidence provided by Baudier to assert that the proposed financing structure is beneficial to NMGC while also preserving Commission jurisdiction. He also states that this is not a highly leveraged buyout structure, that NMGC's equity ratio is not impaired by the transaction, and that the acquisition debt is not a customer risk because it is non-recourse to NMGC.<sup>290</sup> His evidence therefore complements Baudier's testimony by explaining why the placement of debt above NMGC is designed to separate acquisition financing from utility obligations.<sup>291</sup>

(147) Talley supports the same view.<sup>292</sup> He states that the Commission will be able to regulate NMGC as it does today, that the post-transaction structure is straightforward, and that it is no more complicated than the existing ownership structure.<sup>293</sup> Talley compares the current and proposed ownership structures and concludes that, although the post-transaction chain will have one

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<sup>287</sup> *Id.* at 30:16-23 – 31:1-2.

<sup>288</sup> *Id.* at 31:3-17; Joint Applicants' Exhibit 4, Revised Application Direct Testimony and Exhibits of Eric Talley ("Talley Dir.") at 13:4-15 – 15:5.

<sup>289</sup> Evidentiary Hearing Transcript, Vol. 1 at 170:16-25 – 171:11.

<sup>290</sup> Talley Dir. at 14:9-18 to 15:5.

<sup>291</sup> Baudier Dir. at 31:3-17; Talley Dir. at 13:4-15 – 15:5.

<sup>292</sup> Talley Dir. at 6:1-11.

<sup>293</sup> *Id.*

additional upstream level, both structures involve multiple upstream entities and interlocking ownership features.<sup>294</sup> He frames the corporate levels and layering as familiar to utility acquisitions rather than inherently obstructive to regulation.<sup>295</sup>

(148) Talley also explains why acquisition subsidiaries and SPEs are common in public utility mergers and acquisitions.<sup>296</sup> In his testimony, those entities can serve authorization, contractual, tax, liability, and financing functions without changing the operating company's utility obligations.<sup>297</sup> Talley adds that the NMGC structure itself is left intact, that affiliate debt will be non-recourse to NMGC assets, and that there is no integration of NMGC's utility operations into another operating platform.<sup>298</sup>

(149) Joint Applicant Witness Suedeen Kelly's testimony views the corporate structure from a jurisdictional perspective.<sup>299</sup> She states that NMGC is currently regulated as a New Mexico public utility and that its upstream owners are regulated as public utility holding companies.<sup>300</sup> She then states that the transaction will not alter or impair Commission jurisdiction over NMGC, which will remain a New Mexico public utility, or over its upstream owners, which will remain public utility holding companies.<sup>301</sup> Kelly's jurisdictional framing therefore treats the upstream reorganization

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<sup>294</sup> *Id.* at 6:15-18 – 7:18, at 8:3-7.

<sup>295</sup> *Id.* at 8:8-20 – 9:19.

<sup>296</sup> *Id.* at 9:1-19.

<sup>297</sup> *Id.*

<sup>298</sup> *Id.* at 8:8-20.

<sup>299</sup> Kelly Dir. at 6:4-21.

<sup>300</sup> *Id.* at 6:4-9.

<sup>301</sup> *Id.* at 6:11-21.

as a change in who owns the holding-company chain, not as a change in the Commission’s statutory authority over the utility or its holding companies.<sup>302</sup>

(150) Kelly’s testimony is the principal legal exposition of why Joint Applicants contend Commission jurisdiction is preserved.<sup>303</sup> She then grounds the Commission’s authority in the PUA, including the Commission’s general and exclusive power to regulate and supervise every public utility with respect to rates, service regulations, and securities.<sup>304</sup> She also states that, after the transaction, NMGC will remain a public utility and the upstream owners will remain public utility holding companies.<sup>305</sup>

(151) Kelly also addresses the information-access component of preservation of jurisdiction.<sup>306</sup> She states that NMGC will remain subject to the Commission’s authority to access books and records and that the Joint Applicants commit to Commission and Staff access to the books, records, accounts, and documents of NMGC affiliates, corporate subsidiaries, and holding companies under Sections 62-6-17 and 62-6-19.<sup>307</sup> She further states that the BCP Applicants agree to the Commission’s jurisdiction for the purpose of obtaining books and records and the testimony of officers and directors.<sup>308</sup> This evidence responds directly to the concern that private ownership or fewer public securities filings could reduce regulatory visibility.<sup>309</sup>

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<sup>302</sup> *Id.* at 11:3-13 – 12:18.

<sup>303</sup> *Id.* at 8:11-20, 13:9-19 – 14:16.

<sup>304</sup> *Id.* at 9:1-16.

<sup>305</sup> *Id.* at 11:3-13 – 12:18.

<sup>306</sup> *Id.* at 13:9-19 – 14:16.

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> *Id.* at 14:1-16 to 15:16; Joint Applicants’ Exhibit 19, Revised Application Rebuttal Testimony and Exhibit of Suede Kelly (“Kelly Rebuttal”) at 8:1-15 – 10:5.

(152) Kelly states that the organizational structure the BCP Applicants have presented is straightforward and is comparable to organizational structures with which the Commission has experience,<sup>310</sup> and that the fact that the BCP Applicants are private equity investors has no bearing at all on the ability of the Commission to supervise NMGC.<sup>311</sup> Furthermore, she states that NMGC’s direct and indirect upstream owners will continue to be subject to Commission regulation as public utility holding companies, and argues that the post-acquisition ownership structure will “closely resemble its current structure.”<sup>312</sup>

(153) In making her arguments, Kelly takes a very narrow view of the preservation of Commission jurisdiction and does not see any inherent risks to private equity ownership and that the current formal statutory and regulatory authorities of the Commission suffice to preserve its jurisdiction. She states that she does not believe that there are inherent risks to private equity ownership that are additional to publicly traded ownership.<sup>313</sup> Nevertheless, she argues that even if these two ownership structures differ, utility regulation is exactly suited to address such differences.<sup>314</sup> She goes on to add that “to the extent there are concerns about private equity funds becoming the indirect upstream owners of NMGC, the Commission has at its disposal the regulatory authority needed to address such concerns and ensure that ratepayers are not harmed.”<sup>315</sup> If the Commission approves the transaction, she states, NMGC will remain a public

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<sup>310</sup> Kelly Dir. at 16:3-5.

<sup>311</sup> *Id.* at 13:7-8.

<sup>312</sup> *Id.* at 12:9-12.

<sup>313</sup> *Id.* at 24:6-7.

<sup>314</sup> *Id.* at 24:7-9.

<sup>315</sup> *Id.* at 24: 9-12.

utility subject to the Commission’s jurisdiction and that the transaction will not impair or alter the Commission’s ability to oversee and regulate NMGC.<sup>316</sup>

(154) In rebuttal, Kelly agrees with Staff witness Zigich’s overall assessment that Commission jurisdiction over NMGC will be preserved following the transaction.<sup>317</sup> She also rejects the contention that the BCP Applicants’ structure may be used to evade regulatory scrutiny.<sup>318</sup> Her response is that NMGC remains a jurisdictional public utility and that upstream owners remain public utility holding companies regardless of the number of intermediate entities.<sup>319</sup>

(155) WRA Witness Bradley Cebulko disagrees and centers his testimony on books-and-records access and argues that the Joint Applicant proposals are reactive and not equivalent to proactive public disclosure for publicly traded companies. Cebulko provides testimony on the difference between formal access to books and records and functional transparency. His testimony directly challenges the Joint Applicants’ claim that Commission access to books and records is a sufficient substitute for the public reporting obligations associated with Emera’s status as a publicly traded company.

(156) He begins by focusing on the difference between the ownership structure under Emera and the proposed structure under BCP. He states that BCP Management is registered with the SEC as an investment adviser, but that its Form ADV and confidential Form PF obligations do not provide the same detailed, public, ongoing visibility into the financial condition and activity of individual funds that public-company reporting provides.<sup>320</sup> He contrasts that framework with publicly traded

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<sup>316</sup> *Id.* at 24:4-15.

<sup>317</sup> Kelly Rebuttal at 5:6-16.

<sup>318</sup> *Id.* at 5:6-16.

<sup>319</sup> *Id.* at 14:18-20 – 15:13.

<sup>320</sup> Cebulko Dir. at 49:1-10.

companies like Emera, which must file audited annual reports, unaudited quarterly reports, and current reports that are publicly available and subject to market and regulatory scrutiny.<sup>321</sup> He therefore argues that access to books and records is reactive and not a substitute for regular, proactive financial disclosure.<sup>322</sup>

(157) Cebulko recommends that the Commission require the BCP Applicants to provide equivalent public disclosures to the regulator and public on the same cadence as publicly held companies.<sup>323</sup> He also recommends that NMGC, to the extent practical, comply with NYSE Corporate Governance Standards, including standards concerning annual report availability, interim financial statements, independent directors, executive sessions, audit committees, internal audit functions, corporate governance guidelines, codes of business conduct, and officer certification.<sup>324</sup> Finally, he recommends that NMGC and Saturn Utilities make Commission filings that mirror relevant SEC financial reporting requirements and commit to key Sarbanes-Oxley provisions concerning auditor independence, corporate responsibility, enhanced financial disclosures, internal controls, codes of ethics, and financial-statement responsibility.<sup>325</sup>

(158) BCP Applicant's offer, he argues, to make the "books and records" of NMGC and the Applicants available is not a substitute for proactive, public financial disclosure.<sup>326</sup> Such a reactive

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<sup>321</sup> *Id.* at 49:11-14.

<sup>322</sup> *Id.* at 49:14-19.

<sup>323</sup> *Id.* at 53:18-54:9.

<sup>324</sup> *Id.* at 54:10-23 – 55:1-8.

<sup>325</sup> *Id.* at 55:10-36 – 56:1-8.

<sup>326</sup> *Id.* at 49:14-16.

framework, he argues, falls well short of the transparency provided through regular, proactive reporting.<sup>327</sup>

(159) He also recommends that the Commission order the BCP Applicants to immediately file a non-consolidation opinion.<sup>328</sup> A non-consolidation opinion states that if one or more parent entities of the SPE files for bankruptcy, the bankruptcy court would respect the separate legal existence of the SPE and would not order the substantive consolidation of the assets and liabilities of the SPE with those of one or more of its parent entities, guarantors or affiliated managers (such as an affiliated property manager), to which Joint Applicants have agreed.

*(b) Requisite and Voluntary Commitments*

(160) Baudier presents the regulatory commitments as part of the transaction's public-interest proof and as a set of conditions that would operate after closing unless altered by the Commission.<sup>329</sup> He states that Joint Applicants prepared a list of proposed regulatory commitments using categories specified in the EPE acquisition stipulation.<sup>330</sup> He further states that, except where a commitment expressly states otherwise, the commitments will commence at closing and continue thereafter unless and until altered by the Commission.<sup>331</sup> This testimony positions the commitments as ongoing regulatory conditions, not merely as closing representations.<sup>332</sup>

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<sup>327</sup> *Id.* at 49:18-19.

<sup>328</sup> Coalition for a Clean Affordable Economy (“CCAЕ”), Post-Evidentiary Hearing Brief (“PH Br.”) at 14-18.

<sup>329</sup> Baudier Dir. at 39:13-22 – 40:5.

<sup>330</sup> *Id.* at 39:13-22.

<sup>331</sup> *Id.* at 40:1-5.

<sup>332</sup> *Id.* at 40:1-5; Kelly Dir. at 16:1-13.

(161) Within that series of commitments, the GDP-required commitments correspond to the Rule 450 representations concerning separate utility books and records, Commission and Staff access to affiliate, corporate-subsiary, and holding-company records, non-obstruction of Commission supervision and regulation, limits on excessive dividends and adverse holding-company action, restrictions on affiliate loans, asset transfers, debt purchases, guarantees, and assumed affiliate liabilities without prior approval, compliance with applicable law, and Commission-directed allocation studies and management audits at shareholder expense.<sup>333</sup> Joint Applicants then layer voluntary commitments over those GDP-required representations, including rate credits, rate-case timing, employment protections, local governance, economic-development measures, ring-fencing protections, and reporting commitments.<sup>334</sup>

### **Requisite GDP Commitments**

(162) The Joint Applicants from the beginning and routinely express their understanding of how the transaction fits within the Regulatory Compact, the basis of all Commission jurisdiction. With respect to certain and specific laws and rules within that overall compact and framework, the Joint Applicants provide evidence that attempts to demonstrate their compliance and alignment, now and prospectively. They begin with asserting how the statutory access rights under the PUA and Rule 450 will apply to the proposed post-acquisition ownership of NMGC. The Joint Applicants express that the proposed transaction preserves the Commission's jurisdiction because NMGC will remain a public utility subject to the PUA, because its parent companies (the affiliated interests of BCP Funds, the Saturn Intermediary Companies, and the Saturn Holdco) will become public-

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<sup>333</sup> 17.6.450.10(C)(1)-(8) NMAC; Baudier Dir. at 59:1-16 – 61:18.

<sup>334</sup> Baudier Dir. at 39:13-22 – 40:5; 42:14-23 – 48:18; at 52:19-23 – 61:18.

utility holding companies subject to Rule 450, and because it has presented an Amended GDP that contains the required representations, information, and commitments.<sup>335</sup>

(163) Joint Applicant Witness Baudier seeks to establish that this formal jurisdiction will be preserved at the outset in asserting that nothing contained in the PSA or the approval of the Transaction will diminish the Commission’s jurisdiction. In his testimony, he affirms “that the Commission’s jurisdiction over NMGC, as well the Commission’s jurisdiction over TECO Energy, NMGI and the BCP Applicants, as the direct and indirect holding companies of NMGC, will be preserved following closing.”<sup>336</sup> The BCP Applicants agree to NMPRC jurisdiction for providing books and records and access to testimony of officers and directors for NMPRC oversight and regulation of NMGC rates.<sup>337</sup> Baudier states that NMPRC supervision and regulation of NMGC will not be obstructed, hindered, diminished, impaired, or unduly complicated.<sup>338</sup>

(164) The Joint Applicants also present evidence of compliance with Rule 450 and the Amended GDP requirements to demonstrate that the proposed transaction is in the public interest and will preserve the jurisdiction of the Commission. The Commission approves a GDP if it finds that the GDP contains the information required by Rule 450.10(B), and if approval is in the public interest. Approval is in the public interest if the Commission finds that the level of investment appears reasonable, and the utility’s ability to provide reasonable and proper utility service at fair, just and reasonable rates will not be adversely and materially affected as a result of the Class II transaction.

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<sup>335</sup> Joint Applicants’ PH Br. at 39-46.

<sup>336</sup> Baudier Dir. at 60:19-23.

<sup>337</sup> *Id.* at 61:11-14.

<sup>338</sup> *Id.* at 61:7-10.

The Joint Applicants have filed an Amended GDP which contains the Rule 450 information in this application because the Proposed Transaction will create a public utility holding company, which is a Class II transaction.<sup>339</sup>

(165) The Joint Applicants, as discussed and detailed above, in Section III(A)(4), present the following commitments that satisfy Rule 450.

Table 2: Joint Applicants’ Rule 450 Commitments

Subsection	Rule 450 Requirement	Commitment(s) <sup>340</sup>
(C)(1)	Separate books and records of the utility from nonregulated business, maintained in accordance with the Uniform System of Accounts.	45; 63
(C)(2)	Commission and Staff access to books, records, accounts, or documents of affiliates, corporate subsidiaries, or holding companies under NMSA 1978, Sections 62-6-17 and 62-6-19.	46; 62; 63; 66; 82; 88
(C)(3)	Commission supervision and regulation of the public utility under the Public Utility Act will not be obstructed, hindered, diminished, impaired, or unduly complicated.	81; 82; 83; 84
(C)(4)	If a holding company is formed, no excessive dividends to the holding company and no holding-company action with an adverse and material effect on utility service at fair, just, and reasonable rates.	39
(C)(5)	Without prior Commission approval, the public utility will not loan funds or securities, transfer similar assets to affiliates, purchase affiliate debt instruments, or guarantee or assume affiliate liabilities.	38; 47; 48; 52; 53; 58; 65; 67
(C)(6)	Compliance with all applicable federal and state statutes, rules, and regulations.	91; 94; 97
(C)(7)	If required by the Commission, an allocation study at no ratepayer charge, performed by a consulting firm chosen by and under the direction of the Commission.	31
(C)(8)	If required by the Commission, a management audit at no ratepayer charge, performed by a consulting firm chosen by and under the direction of the Commission.	85

<sup>339</sup> See Baudier Dir., Amended GDP..

<sup>340</sup> These commitments are found Attachment A, Joint Applicant Requisite and Voluntary Commitments.

(166) The testimony accompanying the Revised Joint Application and the Amended GDP provides a thorough explanation of how Commission jurisdiction will be preserved, demonstrating that oversight and regulation of NMGC will not be adversely affected.

(167) With respect to satisfying Rule 450, Joint Applicant Witness Kelly also believes that NMGC's Amended GDP satisfies the requirements of the 17.6.450.10(C)(3) NMAC which provides that the Commission, in order to approve the plan, must determine that "the supervision and regulation of the public utility pursuant to the Public Utility Act will not be obstructed, hindered, diminished, impaired, or unduly complicated." She also identified the Commission's continuing authority over rates, service, securities, books, records, and accounts as tools available to ensure that NMGC operates in a just and reasonable way.<sup>341</sup>

(168) Kelly also addresses why additional public-company-style reporting is not necessary to preserve jurisdiction.<sup>342</sup> She states that the Commission already has authority, reinforced by the commitments, to obtain the information it needs from NMGC and its holding companies.<sup>343</sup> She therefore treats the combination of statutory authority, Rule 450 obligations, the Amended GDP, and transaction-specific commitments as the mechanism through which the Commission can preserve oversight.<sup>344</sup>

(169) Staff Witness Jojola offers the perspective that basic reporting obligations under the GDP and Rule 450 are not new benefits. She emphasizes the purpose of Rule 450, Commission access to records, and the mandatory nature of affiliate-transaction reporting. She goes on to state that

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<sup>341</sup> Transcript of Evidentiary Hearing, Vol. 6 at 1469:8-1469:15.

<sup>342</sup> Kelly Rebuttal at 8:1-15 – 10:5.

<sup>343</sup> Kelly Dir. at 13:9-19 – 14:16; Kelly Rebuttal, at 8:1-15 to 10:5.

<sup>344</sup> *Id.*

these obligations exist under current ownership and would remain a requirement regardless of the identity of NMGC's owner.<sup>345</sup> She highlights that these commitments are already in existence, they are only a continuation of existing commitments and do not provide any betterment to the current conditions already in place.<sup>346</sup> Her testimony argues that continued compliance with Rule 450 may preserve existing jurisdictional tools, but it should not be overstated as an affirmative transaction benefit unless the commitments exceed existing law.

(170) Staff Witness Velasquez also addresses the GDP. She states that the GDP requirements provide a guide for which the Commission can, in part, follow to ascertain whether a proposed transaction will be in the best interest of the public.<sup>347</sup> The GDP rule seeks to ensure that the level of investment associated with a proposed transaction is reasonable and offers the utility the ability to provide proper services at fair, just and reasonable rates.<sup>348</sup>

### **Voluntary Ring-Fencing Commitments**

(171) The Joint Applicants proposed ring-fencing commitments are in addition to the arguments that the inherent transactional and post-acquisition corporate structure provides its own jurisdictional benefits. These ring-fencing commitments include prohibitions on NMGC guaranteeing affiliate debt, borrowing under common credit facilities with affiliates, including cross-default provisions tied to upstream entities, pledging NMGC assets for upstream benefit, or incurring debt related to consummating the transaction.<sup>349</sup> The same ring-fencing commitments

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<sup>345</sup> Jojola Dir. at 18:13-16.

<sup>346</sup> *Id.* at 19:1-3.

<sup>347</sup> Velasquez Dir. at 15:14-18.

<sup>348</sup> *Id.* 15:18-19 – 16:1-2.

<sup>349</sup> Baudier Dir. at 55:11-23; 56:1-23; 57:1-23; 58:1-22.

include book-and-record separation, separate accounting systems, separate bank and securities accounts, and Commission access to books and records for affiliate-transaction review.<sup>350</sup>

(172) The proposed ring-fencing commitments reinforce that architecture. Baudier states that NMGC will not guarantee affiliate debt, will not enter into inter-company debt transactions with BCP Applicants or their affiliates without Commission approval, will not be a borrower under a common credit facility with upstream affiliates, and will not include cross-default provisions tying NMGC debt to Saturn Holdco, the BCP Infrastructure Funds, or their affiliates.<sup>351</sup>

(173) Baudier presents the ring-fencing commitments as a way to preserve both NMGC's financial integrity and the Commission's practical ability to regulate NMGC separately from upstream entities.<sup>352</sup> He states that the Joint Applicants' proposed financial ring-fencing commitments are designed to ensure that NMGC remains financially sound and focused on providing reasonable and proper service at fair, just, and reasonable rates.<sup>353</sup> He also states that no BCP companies other than the BCP Applicants will have the ability to control NMGC and that the intermediate companies will not adversely affect NMGC's financial health or operations.<sup>354</sup> Those propositions frame ring-fencing as a structural answer to the concern that upstream entities could use NMGC to support nonutility or affiliate obligations.<sup>355</sup>

(174) Baudier identifies a series of specific ring-fencing commitments directed at dividends, credit, debt, guarantees, asset pledges, affiliate transactions, books and records, and public

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<sup>350</sup> *Id.* at 57:13-23; 58:1-18.

<sup>351</sup> *Id.* at 55:11-12.

<sup>352</sup> *See Id.* at 53-58.

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

<sup>355</sup> *Id.*

representations.<sup>356</sup> The dividend commitments include limits on dividends when NMGC's credit metrics fall below investment-grade levels and restrictions on dividends above net income without prior Commission approval.<sup>357</sup> The debt and credit commitments include commitments that NMGC will not guarantee affiliate debt, will not enter intercompany debt with affiliates without Commission approval, will not participate in a common credit facility with affiliates, and will not have cross-default provisions or rating triggers tied to affiliates.<sup>358</sup> The asset-separateness commitments include restrictions on pledging NMGC assets or stock for affiliate obligations and requirements that affiliate relationships be conducted at arm's length.<sup>359</sup> The accounting and records commitments include separate books, financial accounts, bank accounts, custodial accounts, and accounting systems, as well as access to books and records for the Commission and Staff.<sup>360</sup>

(175) At hearing, Baudier translated the ring-fencing commitments into specific debt and distribution limits. He testified that Saturn Holdco cannot sign a loan agreement requiring NMGC to make upstream distributions and that NMGC cannot sign a loan that references upstream companies.<sup>361</sup> He further testified that NMGC must first remain financially sound and meet its obligations before funds can flow upward, and that the Joint Applicants are obligated to put cash

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<sup>356</sup> *Id.*

<sup>357</sup> *Id.*

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

<sup>360</sup> Baudier Dir. at 56:1-23 – 58:22; 59:1-16 – 60:15.

<sup>361</sup> Transcript of Evidentiary Hearing, Vol. 2 at 472:19-473:15.

down into NMGC if NMGC's equity falls below the committed threshold for the specified period.<sup>362</sup>

(176) Baudier's rebuttal testimony adds a non-consolidation commitment.<sup>363</sup> He states that the Joint Applicants agreed to obtain a customary non-consolidation legal opinion providing that, in a bankruptcy of the BCP Infrastructure Funds, Saturn Utilities, or named affiliates, a bankruptcy court would not consolidate NMGC's assets and liabilities with those entities.<sup>364</sup> He also states that the Joint Applicants accepted Staff's proposal that NMGC, Saturn Holdco, and the BCP Infrastructure Funds acknowledge the Commission's jurisdiction to initiate a future proceeding to consider modifying the NMGC ring fence, while reserving their rights to contest other aspects of such a filing.<sup>365</sup> These additions frame ring-fencing not as a static list, but as a set of commitments subject to future Commission oversight.<sup>366</sup>

(177) Talley gives the ring-fencing evidence a corporate-law explanation.<sup>367</sup> He states that the proposed relationship includes additional ring-fencing and governance assurances above those in the current structure.<sup>368</sup> He identifies independent directors, director compensation keyed to NMGC rather than to BCP entities, restrictions on recovery of upstream insolvency costs, limitations on affiliate loans and transactions, independent credit ratings, and separate financial

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<sup>362</sup> *Id.* at 474:17-476:21.

<sup>363</sup> Baudier Rebuttal at 38:3-24.

<sup>364</sup> *Id.* at 38:3-24.

<sup>365</sup> *Id.* at 33:3-9.

<sup>366</sup> *Id.* at 33:3-9; 38:3-24.

<sup>367</sup> Talley Dir. at 11:1-18 – 13:2.

<sup>368</sup> *Id.* at 11:1-7.

accounts as accepted mechanisms for preserving governance, operational, and financial independence.<sup>369</sup>

(178) Staff Witness Jojola, though acknowledging that the commitments made by Joint Applicants are beneficial to New Mexico customers, observes that many of them are already required by law and rule. She states these required commitments are already in existence and are only a continuation of existing commitments and do not provide any betterment to the current conditions already in place.<sup>370</sup> These conditions, she asserts, would continue to be in place regardless of the proposed transaction, if the requested regulatory approvals were not to be granted by the Commission.<sup>371</sup>

(179) On ring-fencing, Staff Witness Dr. Larry Blank recommends that the Commission adopt the Joint Applicants' provisions with modifications and additions.<sup>372</sup> He recommends that neither NMGC nor any NMGC subsidiary own any non-regulated, non-utility business or foreign utility company, while clarifying that the condition would not bar upstream entities from holding diversified businesses.<sup>373</sup> He also recommends that NMGC, Saturn Holdco, and the BCP Infrastructure Funds acknowledge the Commission's jurisdiction to initiate a future proceeding to consider modifying the NMGC ring fence.<sup>374</sup> These recommendations, Dr. Blank states, identify

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<sup>369</sup> *Id.* at 11:8-18 to 12:2.

<sup>370</sup> Jojola Dir. at 18:19-21 – 19:1-3.

<sup>371</sup> *Id.*

<sup>372</sup> Staff Exhibit 3, Prepared Direct Testimony of Larry Blank (Corrected) (“Blank Dir.”) at 15:7-16.

<sup>373</sup> *Id.* at 15:17-22; 16:10-16.

<sup>374</sup> *Id.* at 16:1-4; 16:17-23.

structural conditions that preserve utility separateness and reduce the risk that non-utility activities or upstream financial stress will affect NMGC customers.<sup>375</sup>

(180) Dr. Blank also recommends ring-fencing modifications designed to prevent non-utility ownership or risk at NMGC. The ring-fencing provisions and other financial and structural commitment should be adopted by the Commission along with a few modifications and additions.<sup>376</sup> Neither NMGC nor any subsidiary of NMGC will own any non-regulated, non-utility businesses or foreign utility company.<sup>377</sup> Regulated utility companies should not have interests in non-utility, non-regulated businesses because this increases risk for the regulated utility, its assets, and its customers.<sup>378</sup> NMGC also should be prohibited from having ownership in utility companies outside of the jurisdiction due to conflicts of interest and increased risk.<sup>379</sup> The Commission should be free to consider revisions to ring fencing rules in a future proceeding.<sup>380</sup>

(181) Cebulko accepts that the BCP Applicants have made ring-fencing commitments, but he does not treat those commitments as sufficient without further verification.<sup>381</sup> He recommends that the Commission require a non-consolidation opinion confirming that a bankruptcy court would not substantively consolidate NMGC's assets and liabilities with those of Saturn Holdco, Saturn Utilities, the BCP Infrastructure Funds, or related affiliates and subsidiaries.<sup>382</sup> He further recommends that, if the current ring-fencing provisions are insufficient to obtain such an opinion,

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<sup>375</sup> *Id.* at 15:17-22; 16:10-23.

<sup>376</sup> *Id.* at 15:12-14.

<sup>377</sup> *Id.* at 15:16-18.

<sup>378</sup> *Id.* at 16:10-14.

<sup>379</sup> *Id.* at 16:14-16.

<sup>380</sup> *Id.* at 16:17-21.

<sup>381</sup> Cebulko Dir. at 47:9-20; 50:4-15.

<sup>382</sup> *Id.* at 3:8-17; 50:4-15; 53:8-17.

the Joint Applicants should be required to notify the Commission and propose additional ring-fencing protections.<sup>383</sup>

(182) Cebulko also contrasts Emera's commitment that NMGC would not invest in businesses not engaged solely in utility service with the BCP Applicants' commitment that NMGC will not invest in businesses lacking a significant relationship to regulated services NMGC provides.<sup>384</sup> He characterizes the BCP formulation as less restrictive because it may permit NMGC investments in adjacent industries related to utility service but not necessarily regulated utility businesses.<sup>385</sup> The point is relevant to corporate integrity because it asks whether the post-acquisition structure protects NMGC from non-utility risk at the utility level, not merely whether upstream affiliates may engage in non-utility activities.<sup>386</sup>

(183) WRA argues that BCP Applicants should provide equivalent public disclosures to the regulator and the public on the same cadence as publicly held companies.<sup>387</sup> In this way, he states, NMGC and Saturn Utilities should be required to make filings to the Commission that mirror relevant SEC financial reporting requirements.<sup>388</sup> Finally, Cebulko recommends that NMGC and Saturn Utilities be required to commit to key sections of the Sarbanes-Oxley Act.<sup>389</sup> Cebulko's testimony distinguishes legal access from regulatory visibility. His view is that the Commission

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<sup>383</sup> *Id.* at 3:13-17; 53:11-17.

<sup>384</sup> *Id.* at 48:1-13.

<sup>385</sup> *Id.* at 48:4-13.

<sup>386</sup> *Id.* at 47:3-8; 48:1-13.

<sup>387</sup> *Id.* at 54:3-5.

<sup>388</sup> *Id.* at 55:10-15.

<sup>389</sup> *Id.* at 55:16-20

may retain legal power to obtain information but lose the routine, proactive, and public information flow that supports timely oversight.

(184) New Mexico AREA Witness Christopher Walters focuses on the enforceability of the ring-fencing provisions under the proposed transactions. NM AREA argues that the jurisdiction is not preserved if all entities that may own, influence, or control NMGC are not fully disclosed or bound by the Commission. It references alleged gaps or blind spots in the presentation of the organizational chart of ownership and BCP Management's role. His testimony focuses on ring-fencing, ownership transparency, and the need for continued Commission vigilance.

(185) Walters also explains ring-fencing as an anti-cross-subsidization and anti-contagion tool. Ring-fencing generally refers to a set of legal, financial, and structural safeguards that are designed to insulate a regulated utility from the financial risks of its parent company and/or affiliates.<sup>390</sup> Walters here proposes common ring-fencing tools such as restrictions on affiliate transactions and loans to ensure the utility's resources are not diverted, maintenance of separate financial accounts and credit facilities, and provisions that prevent parent-level creditors from reaching the utility's assets in the event of a bankruptcy.<sup>391</sup>

(186) The transcript gives additional support to the intervenor concern that ownership and financing changes must be visible to the Commission after closing. Baudier acknowledged that, if an equity commitment by another BCP fund were exercised, that fund could temporarily acquire equity in Saturn Utilities, and he agreed that such potential ownership was not reflected on the organizational chart because the Joint Applicants did not intend those commitments to be carried

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<sup>390</sup> Walters Dir. at 35:11-16.

<sup>391</sup> *Id.* at 36:13-20.

out by those funds.<sup>392</sup> This evidence does not necessarily defeat preservation of jurisdiction, but it supports conditions requiring updated ownership information, organizational charts, and access to upstream financing documents if the funding path changes.<sup>393</sup>

*(c) Local Governance and Board Structure*

(187) Baudier states that NMGC will be managed the way it is today after closing and that the current employees and management will be retained.<sup>394</sup> Baudier states that the local NMGC Board will continue in substantially similar form and will continue to provide local governance oversight and guidance for NMGC management's strategy and business plans.<sup>395</sup>

(188) Baudier and Shell both present local governance as a central part of the preservation-of-jurisdiction evidence.<sup>396</sup> Baudier states that the BCP Applicants will continue the separate local NMGC Board in substantially similar form, with the Board continuing to provide governance oversight and guidance for the strategy and business plans of NMGC management.<sup>397</sup> He states that NMGC will remain a separate entity with local management and employees responsible for day-to-day operations.<sup>398</sup> He also states that the Board will continue to include the President of NMGC, local business and community leaders, and senior executives designated by the BCP Applicants, with the majority composed of local business and community leaders.<sup>399</sup> Shell similarly states that NMGC will continue to operate much like it did before the transaction, with

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<sup>392</sup> Transcript of Evidentiary Hearing, Vol. 1 at 78:3-80:21.

<sup>393</sup> *Id.* at 78:3-80:21.

<sup>394</sup> Baudier Dir. at 34:16-23 – 35:1-5.

<sup>395</sup> *Id.* at 35:7-21.

<sup>396</sup> *Id.* at 48:19-22 – 50:20; Shell Dir. at 9:9-21 – 10:20.

<sup>397</sup> Baudier Dir. at 48:19-22 – 49:9.

<sup>398</sup> *Id.* at 49:6-11.

<sup>399</sup> *Id.* at 49:12-17.

its headquarters, call center, Gas Control operations, field offices, employees, local management, and Commission jurisdiction maintained.<sup>400</sup>

(189) Baudier adds specific governance protections related to disinterested directors and management independence.<sup>401</sup> He states that NMGC will maintain a Board charter documenting responsibilities, authorities, functions, committees, and committee membership.<sup>402</sup> He states that at least three independent Board members will be Disinterested Directors who are independent from the BCP Infrastructure Funds, their subsidiaries and affiliates, and BCP Management, and who have no material financial relationship with those entities currently or within the prior five years.<sup>403</sup> He also states that the Disinterested Directors must be New Mexico residents and that their terms will be staggered.<sup>404</sup> Finally, he states that NMGC's President and senior management reporting to the President will not hold positions with the BCP Infrastructure Funds or their affiliates while employed by NMGC.<sup>405</sup>

(190) The hearing record further contextualized the Board governance commitment.<sup>406</sup> Baudier testified that the local Board will continue in substantially similar form with nine members, six independent local members, and at least three Disinterested Directors.<sup>407</sup> He explained that the disinterested-director requirement is a higher standard than general board independence and that

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<sup>400</sup> Shell Dir. at 9:9-21 – 10:10.

<sup>401</sup> Baudier Dir. at 49:18-22 – 50:20.

<sup>402</sup> *Id.* at 49:18-22.

<sup>403</sup> *Id.* at 49:18-22 – 50:8.

<sup>404</sup> *Id.* at 50:1-8.

<sup>405</sup> *Id.* at 50:14-20.

<sup>406</sup> Hearing Transcript, Vol. 1 at 195:10-21 – 197:9.

<sup>407</sup> *Id.* at 195:10-21 – 197:9.

Joint Applicants guarantee at least three such directors.<sup>408</sup> This testimony makes the Board structure part of the preservation-of-jurisdiction evidence because it locates utility governance in a New Mexico-based board with independent and disinterested representation.<sup>409</sup>

(191) Baudier states that NMGC will be managed the way it is today after closing and that the current employees and management will be retained.<sup>410</sup> Baudier states that the local NMGC Board will continue in substantially similar form and will continue to provide local governance oversight and guidance for NMGC management's strategy and business plans.<sup>411</sup> Baudier states that the current NMGC Board consists of the President of NMGC, two Emera employees, and local business and community leaders, with a majority composed of local business and community leaders.<sup>412</sup> Baudier also states that Saturn Holdco plans to replace the two Emera representatives with Peter Tumminello of Delta Utilities and R. Foster Duncan of BCP Management.<sup>413</sup> Baudier states that at least three NMGC directors will be Disinterested Directors under the regulatory commitments and Amended GDP.<sup>414</sup>

(192) Operationally, Baudier presents the transaction as preserving NMGC's identity as a local regulated gas utility. NMGC will be managed as it is today, current employees and management will be retained, headquarters will remain in Albuquerque, regional offices will remain in their

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<sup>408</sup> *Id.* at 195:10-21 – 197:9.

<sup>409</sup> Baudier Dir. at 48:19-22 – 50:20; Evidentiary Hearing Transcript, Vol. 1 at 195:10-21 – 197:9.

<sup>410</sup> Baudier Dir. at 34:16-23 – 35:1-5.

<sup>411</sup> *Id.* at 35:7-21.

<sup>412</sup> *Id.* at 35:9-17.

<sup>413</sup> *Id.* at 35:16-21.

<sup>414</sup> *Id.* at 35:16-17; 49:20-23; 50:1-8.

communities, and the NMGC Board will continue in substantially similar form to provide local governance oversight and guidance.<sup>415</sup>

(193) Shell's testimony supplies the operational counterpart to Baudier's ownership evidence.<sup>416</sup> He identifies NMGC's current executive leadership as based in New Mexico, including the President, seven vice presidents, and sixteen business directors.<sup>417</sup> He states that NMGC's leadership team has responsibility for all aspects of the company's business and operations, that Emera does not manage or operate NMGC, and that NMGC's management team directs all aspects of the utility's business and operations.<sup>418</sup> Shell therefore presents the transaction as preserving, rather than replacing, the operating-management model through which NMGC is currently regulated.<sup>419</sup>

(194) Shell states that the BCP Applicants place great emphasis on local management and have no plans to change NMGC's existing management model.<sup>420</sup> He explains that, after closing, NMGC will continue to focus on reasonable and proper service at fair, just, and reasonable rates; NMGC management will remain people living and working in New Mexico; headquarters, the call center, Gas Control, and field offices will remain in New Mexico; existing employees will continue to work for NMGC; and NMGC will remain subject to NMPRC jurisdiction.<sup>421</sup> He also states that the NMGC Board will continue to consist of a majority of local New Mexico business and

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<sup>415</sup> *Id.* at 34:16-35:5; 39:7-21.

<sup>416</sup> Shell Dir. at 7:4-18 to 8:14.

<sup>417</sup> *Id.* at 7:4-18.

<sup>418</sup> *Id.* at 7:20-22 to 8:14.

<sup>419</sup> *Id.* at 9:1-8 to 10:10.

<sup>420</sup> *Id.* at 9:1-8.

<sup>421</sup> *Id.* at 9:9-21 to 10:10.

community leaders, with BCP-selected representatives replacing the Emera representatives.<sup>422</sup>

This evidence supports Joint Applicants' claim that day-to-day jurisdictional oversight will continue to attach to the same local operating utility and management team.<sup>423</sup>

(195) In rebuttal, Shell accepted additional employment and headquarters commitments.<sup>424</sup> He agreed that NMGC would include information in its next rate case regarding the twenty new New Mexico employees, while protecting individual salary privacy by identifying paygrades and market pay ranges.<sup>425</sup> He also agreed to maintain the current 740 local positions plus the twenty new positions for five years after closing and to inform the parties and use best efforts to restore staffing if unplanned vacancies reduce the workforce below 760 positions for more than three consecutive months.<sup>426</sup> He further agreed that NMGC's existing headquarters will remain unchanged for the duration of Joint Applicants' ownership.<sup>427</sup>

(196) Shell's testimony presents local operations as the day-to-day means by which Commission jurisdiction remains practical and effective.<sup>428</sup> He states that NMGC's current management and business directors are located and working in New Mexico and are responsible for all aspects of the company's business and operations.<sup>429</sup> He states that he reports to the NMGC Board and that appropriate operational expertise resides at NMGC.<sup>430</sup> At hearing, Shell likewise testified that

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<sup>422</sup> *Id.*

<sup>423</sup> *Id.* at 10:11-20 to 11:8.

<sup>424</sup> Shell Rebuttal at 3:13-22 – 5:4.

<sup>425</sup> *Id.* at 3:13-22 to 4:3.

<sup>426</sup> *Id.* at 4:4-17.

<sup>427</sup> *Id.* at 5:1-4.

<sup>428</sup> *Id.* at 7:4-18 – 10:20.

<sup>429</sup> *Id.* at 7:4-18.

<sup>430</sup> *Id.* at 8:10-14.

local management operates the business today and will continue to do so after the transaction.<sup>431</sup>

That testimony supports Joint Applicants' view that the Commission will continue regulating the same local operating utility rather than a distant affiliate function.<sup>432</sup>

(197) Joint Applicants also presented local engagement commitments as evidence that the post-acquisition structure will maintain NMGC's connection to New Mexico communities.<sup>433</sup> Baudier identifies economic-development, renewable-development, education, apprenticeship, New Mexico supplier preference, charitable-giving, and low-income assistance commitments.<sup>434</sup> Shell accepted additional commitments concerning the maintenance of local employment levels and the continuation of NMGC's headquarters.<sup>435</sup> Baudier also states that shared services currently performed outside New Mexico will be replaced in part by approximately twenty new employees in New Mexico or by third-party vendors, and that those new jobs are expected to provide an annual economic benefit to New Mexico.<sup>436</sup> This evidence does not itself define the Commission's legal jurisdiction, but Joint Applicants use it to contextualize their broader claim that the transaction will leave NMGC locally governed, locally staffed, and subject to local regulatory oversight.<sup>437</sup>

(198) Staff Witness Zigich also states that Joint Applicants' commitment that NMGC will be managed the way it is today provides additional assurance that not only will NMGC remain under

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<sup>431</sup> Evidentiary Hearing Transcript, Vol. 5 at 1280:18-24 – 1281:17.

<sup>432</sup> Shell Dir. at 9:9-21 to 10:20; Evidentiary Hearing Transcript, Vol. 5, at 1280:18-24 – 1281:17.

<sup>433</sup> Baudier Dir. at 44:13-23 – 47:6; Shell Rebuttal at 4:4-17 – 5:4.

<sup>434</sup> Baudier Dir. at 44:13-23 – 47:6.

<sup>435</sup> Shell Rebuttal, at 4:4-17 – 5:4.

<sup>436</sup> Baudier Dir. at 47:18-23 – 48:18.

<sup>437</sup> Baudier Dir. 48:19-22 – 50:20; Shell Direct, at 9:9-21 – 10:20.

the jurisdiction of the NMPRC but that the NMGC team, charged with assuring NMPRC regulatory compliance, will continue in that role.<sup>438</sup>

3. Determination

(199) Factor Two does not ask only whether NMGC will remain formally subject to the Commission’s statutory authority. It also asks whether the Commission’s jurisdiction will remain practical, effective, and capable of supervising the utility, its direct and indirect holding companies, and the affiliate relationships that may affect rates, service, capital structure, books and records, and utility governance.

(200) On that broader view, the record presents both substantial evidence supporting preservation of jurisdiction and real structural reasons for caution. While the proposed transaction does not change NMGC’s legal status as a New Mexico public utility, does not transfer NMGC utility assets, and includes broad commitments that preserve access to books, records, accounts, documents, the proposed ownership and financing structure is not a simple substitution of one transparent upstream public-company owner for another. In addition to a multilevel private equity structure that is wholly distinct from the current owner, the proposed transaction creates significant financial, managerial, and operational exposure to non-participating BCP entities, as described above in Sections III(A) and III(C).

(201) [REDACTED]

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<sup>438</sup> Zigich Dir. at 9:13-18.

[REDACTED]

(203) [REDACTED] the proposed new owners are connected to and surrounded by various non-participating BCP funds. The second structural issue is not ownership alone, but influence. Traditional preservation of jurisdiction review often focuses on the public utility, the direct holding company, and upstream affiliated interests. Here, the record shows a more diffuse pattern. BCP Management manages and supports the BCP Infrastructure Funds; BCP Infrastructure (wholly owned by BCP Management) has an agreement to provide day-to-day management of the BCP Infrastructure Funds; BCP Fund UGP is the general partner of BCP Infrastructure Fund II GP; Delta Utilities is owned by BCP-managed funds; Delta Utilities is

expected to provide information-technology services to NMGC; and BCP Applicants propose to place a Delta Utilities executive and a BCP Management operating partner on the NMGC Board.

(204) Those relationships are not incidental. They are part of how the proposed post-acquisition structure is expected to operate. They may provide expertise, capital access, utility experience, and operational support. They also create a risk that entities not formally presented as participating applicants may exercise practical influence through advisory, management, service, shared-service, executive, or board relationships. The risk is not that every such relationship is improper. The risk is that the Commission's ordinary view of upstream holding companies may not, without additional reporting, capture the full set of formal relationships through which non-participating BCP entities can influence the new owners and NMGC.

(205) The Hearing Examiner does not adopt the intervenor position that these structural features require denial. Joint Applicants have offered broad and detailed ring-fencing, affiliate-transaction, books-and-records, local-governance, credit-rating, dividend, debt, pledge, and non-consolidation commitments. Those commitments materially mitigate the risk that non-participating BCP entities could obstruct, hinder, diminish, impair, or unduly complicate Commission regulation.

(206) The appropriate remedy is therefore not rejection of the transaction, but targeted transparency. The Commission should condition approval on semiannual reporting concerning formal relationships and engagements between NMGC, NMGI, TECO Energy, Saturn Holdco, the BCP Applicants, and non-participating BCP entities. This condition responds to the specific opacity in the record without converting the BCP Applicants into public companies or requiring generalized SEC-equivalent reporting beyond what is needed for utility regulation.

(207) A review of the requirements of Rule 450 is also central to the Factor Two determination. The rule requires more than a statement that jurisdiction will continue. It requires detailed GDP

information, including the corporate structure to be used, the means of implementing that structure, anticipated capital structure, financing of affiliates, effects on the utility's capital structure and ability to attract capital, protection of ratepayers from Class II transaction risks, and representations allowing the Commission to make the findings required by 17.6.450.10(C) NMAC.

(208) The Joint Applicants have supplied an Amended GDP and a consolidated body of voluntary and GDP commitments that correspond to the Rule 450 representations. These include commitments concerning separate books and records, Commission and Staff access to affiliate and holding-company records, non-obstruction of Commission supervision and regulation, restrictions on excessive dividends and adverse holding-company action, prohibitions on utility loans or guarantees for affiliates without Commission approval, compliance with applicable law, and Commission-directed allocation studies and management audits if required. As Baudier testified, the books-and-records commitment and GDP access rights extend "all the way up" to the Joint Applicants and allow Commission review of books and records up the chain.

(209) Staff's evidence properly cautions that many Rule 450 commitments are not new transaction benefits but are continuing obligations that would apply regardless of the identity of NMGC's owner. That point is well taken. The fact that a commitment restates existing law does not, by itself, create a public benefit. But Factor Two is not limited to affirmative benefits. It also requires the Hearing Examiner to determine whether the Commission's jurisdiction will be preserved. Existing statutory authority, Rule 450 obligations, and transaction-specific commitments can together support that determination where the commitments are sufficiently specific, enforceable, and credible.

(210) On this record, the Hearing Examiner finds that Joint Applicants have adequately demonstrated that the Amended GDP commitments are credible and likely to come to fruition.

They have provided sufficient testimony, documentary commitments, and hearing admissions to persuade the Hearing Examiner that the commitments are credible and enforceable, provided that the additional assignment and reporting conditions stated below are included in the approval order.

(211) Finally, the evidence concerning NMGC management and local corporate governance is an important part of the Factor Two determination. Preservation of jurisdiction is not only a matter of formal legal authority over upstream entities. It also depends on whether the regulated utility remains governed and operated in a way that keeps utility decisions visible, reachable, and accountable to the Commission.

(212) Joint Applicants provide persuasive evidence that NMGC's existing management and local operational identity will be retained. Baudier states that NMGC will be managed the way it is today after closing, that current employees and management will be retained, and that the separate local NMGC Board will continue in substantially similar form to provide governance oversight and guidance for NMGC management's strategy and business plans.

(213) The governance commitments also create structural checks on affiliate influence. Joint Applicants commit to a Board charter, independent New Mexico resident directors, at least three Disinterested Directors independent from the BCP Infrastructure Funds, their subsidiaries and affiliates, and BCP Management, staggered terms for Disinterested Directors, Board meetings in New Mexico, officer compensation set by the Board, director compensation not tied to affiliate performance, and restrictions on NMGC senior management holding positions with the BCP Infrastructure Funds or BCP-controlled entities.

(214) For the reasons stated above, the Hearing Examiner determines that Joint Applicants have met their evidentiary burden under Factor Two, conditioned on the following:

[REDACTED]

2. Semiannual reporting on formal relationships with non-participating BCP entities. Beginning six (6) months after closing, and every six (6) months thereafter for five (5) years unless modified by further Commission order, Saturn Holdco and NMGC shall file a semiannual report identifying and describing all formal relationships, contracts, service agreements, management or advisory arrangements, shared-service arrangements, information-technology arrangements, cost-sharing arrangements, board or officer overlaps, personnel secondments, capital-support arrangements, guarantees, commitments, or material operational engagements between NMGC, NMGI, TECO Energy, Saturn Holdco, the BCP Applicants, and any non-participating BCP entity with which any such entity has a formal relationship. The report shall include, at minimum, BCP Management, BCP Infrastructure Management, BCP Fund

UGP, Delta Utilities, Delta Utilities Services, any BCP-managed fund, and any BCP-managed portfolio company that has a formal relationship with NMGC, NMGI, TECO Energy, Saturn Holdco, or the BCP Applicants during the reporting period. The report shall describe the nature of the relationship, services or advice provided, decision rights or approval rights, fees or compensation, cost allocations, affiliate-transaction treatment, changes from the prior report, and compliance with Commission affiliate rules and the applicable cost allocation manual. The report shall be certified by an officer of NMGC and an officer or authorized representative of Saturn Holdco.

Subject to those conditions, the Hearing Examiner determines that the proposed transaction preserves Commission jurisdiction for purposes of Factor Two.

## **D. Whether Quality of Service will be Diminished**

### **1. Legal Standards**

(215) This section considers the third factor of the Six-Part Test and whether the quality of service will be diminished. precedent in establishing ring fencing requirements that tightly control operations coupled with statutory regulations and rules that govern the duties, responsibilities, and reporting requirements of regulated utilities, along with the additional commitments for local control and maintenance of a knowledgeable workforce have been adequate in the past to ensure the current level of quality service by NMGC.

### **2. Discussion**

(216) Joint Applicants' Position is that they have satisfied this factor. Mr. Baudier testified that NMGC's service quality will be maintained and protected through NMGC's continued local control and management and the supporting service quality regulatory commitments.<sup>439</sup> The BCP Applicants and the NMGC Group commit to the following specific protections to ensure that there is no diminution in NMGC's quality of service or reliability:

1. NMGC will invest a minimum of the rolling three (3) year average for depreciation and amortization expense on an average annual basis in the NMGC system as needed to ensure reliability and safety until the issuance of the final order in NMGC's next general rate case. NMGC agrees that all investments will be subject to prudence review in NMGC's next general rate case;
2. NMGC will not close or relocate to outside of New Mexico its call center operations, and all regional or operations offices will remain open in their respective communities, unless otherwise authorized by the Commission;
3. NMGC Gas Control Operations will not be moved out of New Mexico without prior express Commission approval;
4. NMGC will continue to participate in the annual JD Power Residential Gas Utility Customer Satisfaction Surveys and provide the Commission with the results;

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<sup>439</sup> Baudier Dir. at 51-52, 113.

5. NMGC agrees to continue filing specific customer service reports as ordered in Commission Case No. 09-00163-UT (expired June 2013), and agrees to include in this filing supplemental customer service reports regarding leak response time and damages per 1,000 locate ticket requests; and
6. Mr. Baudier claimed that the Transaction will not result in any disruption or adverse impact to NMGC's gas supply or associated hedging arrangements.<sup>440</sup>

(217) Mr. Shell also testified these commitments and protections relating to service and operations and are consistent with NMGC's ongoing commitment to its customers, and will help ensure that NMGC's operations will not be negatively affected by this Transaction.<sup>441</sup> Mr. Shell further testified that the BCP Applicants also agree to the types of financial protections that NMGC is accustomed to operating with and which ensure that NMGC remains financially sound and that its local management continues to be focused on continuing to provide safe and reliable service to customers.<sup>442</sup>

(218) Significantly to Mr. Shell, the BCP Applicants agree to continue, in substantially similar form, the separate local NMGC Board which will continue to provide governance oversight and guidance on the strategy and business plans of the NMGC management team. Mr. Shell concluded that this coupled with the leadership provided by NMGC management and the and the advice provided by the BCP Applicants was enough to assure him operations will not be negatively affected.<sup>443</sup> Mr. Shell also testified that the protections agreed to by the BCP Applicants and the NMGC Group as described above provide benefits to NMGC's customers and to the Company

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<sup>440</sup> *Id.* at 52.

<sup>441</sup> Shell Dir. at 11-12.

<sup>442</sup> *Id.* at 12.

<sup>443</sup> *Id.*

and further the reasonable and safe provision of natural gas to the Company's customers.<sup>444</sup> These protections add to the benefits provided by this Transaction and are in the public interest.<sup>445</sup>

(219) Having been the NMGC President for sixteen years, Mr. Shell, testified that he did not see this Transaction having any negative impact on NMGC's ability to meet its obligations under the PUA.<sup>446</sup> The commitments made by the BCP Applicants and the NMGC Group as detailed in the Revised Application, and in my and Mr. Baudier's testimony, along with the emphasis on local management and its expertise and the continuation of the NMGC Board, will serve to ensure NMGC's continued compliance with its service obligations to its customers under the PUA.<sup>447</sup> Mr. Shell testified that he was confident that his leadership team and the NMGC Board will continue to have operational control over the provision of service to customers, and that he would not endorse the Transaction if he had any concern that NMGC would be harmed or its customers would be faced with the risk of less reliable service and unreasonable rates.<sup>448</sup>

### **Staff and Intervenor Response**

(220) Mr. Zigich testified that Applicant will maintain local control, which Staff believes is meant to assure quality of service. However, Staff can support the acquisition if further commitments addressing current safety issues and field staffing are made. Mr. Zigich recommended that due to how staffing levels may impact ongoing pipeline safety efforts, a longer staffing time (a five-year) commitment by the Joint Applicants, especially regarding staff responsible for gas operations and safety, may be warranted to avoid any immediate downward

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<sup>444</sup> *Id.* at 29.

<sup>445</sup> *Id.*

<sup>446</sup> *Id.*

<sup>447</sup> *Id.*

<sup>448</sup> *Id.* at 30.

pressure by the new owners to reduce operating and maintenance costs.<sup>449</sup> Mr. Zigich also had concerns with the Joint Applicant’s Commitment 21 regarding investment in the NMGC system needed to ensure reliability and safety, and whether this amount would be adequate and comport with the cost of service model in NMGC’s last rate case 23-00255-UT and NMGC’s recent line extension policy case 25-00002-UT. Mr. Zigich testified that the current and planned annual capital investment is roughly three times greater than the amount in Commitment 21., and therefore, he recommended that, at a minimum, the Joint Applicants should commit to maintaining spending consistent with NMGC’s current 5-year capital investment plan.<sup>450</sup> Staff acknowledged that NMGC is conducting a digitization project to digitize records and reduce the mileage of “Unknown” pipe and to update GIS data, and requests that Joint Applicants acknowledge this issue and make a commitment to complete the project in a timely manner.<sup>451</sup>

(221) Mr. Cebulko recommended that to mitigate customer risk, the Commission should require NMGC to meet or exceed its service quality and customer service metrics or set metric targets in another Commission proceeding.<sup>452</sup>

(222) There were also concerns from NEE regarding private equity ownership. As a condition, if the Commission considered approving the transaction, NEE Witness Sandberg recommended a performance bond.<sup>453</sup>

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<sup>449</sup> Zigich Dir. at 11.

<sup>450</sup> *Id.*

<sup>451</sup> *Id.* at 12.

<sup>452</sup> Cebulko Dir. at 58.

<sup>453</sup> Sandberg Dir. at 23.

(223) NM AREA Witness Walters testified that BCP's lack of operating experience presents a risk of harm to the public.<sup>454</sup>

### **Joint Applicant Rebuttal**

(224) Responding to Mr. Cebulko's additional performance commitment, Mr. Shell testified that local control of management will continue as will the commitment to maintaining performance metrics. Further, the Commission will continue to have oversight of the Company's customer service as noted in the regulatory commitments outlined in his Direct Testimony at pages 11 and 12.<sup>455</sup>

(225) As to the performance bond recommendation, there wasn't sufficient information to describe how it would function or be obtained and Mr. Sanberg deferred to Staff and the Commission on how to formulate the specifics of his recommendation.<sup>456</sup>

(226) In response to the criticism regarding the shared services upgrade, Mr. Shell testified that NMGC currently has a combined system, electric and gas, and that it is more complicated and costly than a gas only system. The conversion proposed by BCP, is a gas specific system, would allow NMGC to save substantial amounts of money with an existing design, configuration, and implementation of the system, as well as sharing the costs.<sup>457</sup>

### 3. Determination

(227) This is a difficult factor to measure because you are trying to ascertain what might occur in the future, whether the quality of service would be diminished if the Commission approved this

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<sup>454</sup> WRA Exhibit 1, Revised Direct Testimony of Michael Kenney ("Kenney Dir.") at 9, 21.

<sup>455</sup> Shell Rebuttal at 20-21.

<sup>456</sup> *Id.* at 21.

<sup>457</sup> *Id.* at 12.

transaction. The evidence presented by Joint Applicants is that there are ring fencing commitments as well as local control commitments claimed to be adequate to ensure that the current level of good quality service will be maintained. But can it really be ensured? One can take some comfort in the testimony of Joint Applicant Witness and President of NMGC for 16 years, Mr. Shell that he is confident that his local team will continue the service quality and his pronouncement that he would not endorse this transaction if he had any concern that NMGC or its customers would be harmed or would face the risk of less reliable service and unreasonable rates.

(228) Further, precedent in establishing ring-fencing requirements that tightly control operations coupled with statutory regulations and rules that govern the duties, responsibilities, and reporting requirements of regulated utilities, along with the additional commitments for local control and maintenance of a knowledgeable workforce have been adequate in the past to ensure the current level of quality service by NMGC. While there may be a certain trepidation regarding a new owner for NMGC, who has limited gas utility experience, as well as speculation about what may occur in the future, a review of the record reveals that there is not sufficient evidence to show that Joint Applicants will in any way diminish the current quality of service to NMGC's customers. Therefore, the Hearing Examiners find that a preponderance of evidence supports finding that approval of this transaction will not diminish the quality of NMGC service.

#### **E. Subsidization of Non-Utility Activities**

(229) The Fourth Factor examines whether the transaction will result in the improper subsidization of non-utility activities, specifically, whether NMGC customers may be required to subsidize parent-company, affiliate, investor, acquisition, transaction, integration, shared-services, non-regulated, non-utility, or unrelated business costs that should not be placed in regulated

rates.<sup>458</sup> In this regard, Joint Applicants make direct and affirmative commitments against acquisition premium, goodwill, and transaction-cost recovery, non-utility subsidization, ring-fencing, accounting, debt, dividend, and affiliate protections. The Joint Applicants also state that the proposed TSA and Delta Utilities shared-services model will not create cross-subsidization.

(230) The Factor Four evidence is organized around three recurring themes. First, the Joint Applicants rely on affirmative commitments that acquisition premium, goodwill, direct transaction costs, and non-utility activity costs will not be recovered from customers.<sup>459</sup> Second, the shared-services record focuses on the proposed transition from Emera-provided shared services to a hybrid model under which Delta Utilities will provide shared IT services from New Orleans while certain non-IT functions are brought into NMGC in New Mexico.<sup>460</sup> Third, Staff and intervenor witnesses challenge whether those protections are adequate when the Joint Applicants reserve the ability to seek future rate-case recovery of transition capital costs, Oracle implementation costs, Delta stand-up costs, and ongoing shared-services expenses if they are later shown to be used and useful or otherwise recoverable.

### 1. Legal Standards

(231) The subsidization factor originated as one of the four principal public-interest factors used in merger and acquisition review, asking whether the transaction would result in the improper subsidization of non-utility activities.<sup>461</sup> In the early SPS/PSCo merger precedent, the concern was

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<sup>458</sup> Baudier Dir. at 38:1-11; Zigich Dir. at 5:1-6:6.

<sup>459</sup> Baudier Dir. at 60:3-15; Baudier Rebuttal at 29:1-7.

<sup>460</sup> Baudier Dir. at 62:1-9; Joint Applicants' Exhibit 6, Revised Application Direct Testimony and Exhibits of Peter Tuminello ("Tuminello Dir.") at 5:8-14, Transition Plan, PIT-2 at 1-17.

<sup>461</sup> Case No. 04-00315-UT, Certification of Stipulation at 16-17 (May 26, 2005), citing Case No. 2678, Final Order (Jan. 28, 1997), Case No. 3103, Final Order (Jan. 18, 2000), and Case No. 3116, Final Order (May 9, 2000).

practical and structural: a holding-company organization and shared service company could allocate costs to regulated or non-regulated entities, creating an incentive to shift costs to the regulated utility unless Commission jurisdiction, cost allocation review, and affiliate-transaction controls were preserved.<sup>462</sup> That early precedent therefore framed the standard around separate books and records, Commission and Staff access to affiliate documents, allocation and management audits at shareholder expense when required, limits on excessive dividends, preemption waivers, filing of substantive federal affiliate filings, and prior Commission approval for specified affiliate power purchases.<sup>463</sup>

(232) The Commission, in its June 28, 2001 Order Approving Formation of Holding Company in NMPRC Case No. 3137, ordered PNM to develop and file a cost allocation manual (CAM) to define the manner in which PNMR affiliate costs for shared services are allocated to PNM.<sup>464</sup> The purpose of a CAM is to formalize the collection of allocation methodologies into a book so that interested persons have notice of the methodologies.<sup>465</sup>

(233) The 2005 PNM Resources/TNPE acquisition translated the anti-subsidization concern into operating safeguards for a broader utility holding-company system.<sup>466</sup> The Commission relied on commitments that the service company would provide services at cost, that services would be directly charged where possible or allocated under an appropriate methodology, that administrative

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<sup>462</sup> Case No. 2678, Recommended Decision of the Hearing Examiner, at 79, 84, 93, 97 (Nov. 15, 1996), adopted by Final Order (Jan. 28, 1997).

<sup>463</sup> Case No. 2678, Recommended Decision of the Hearing Examiner, at 93, 97 (Nov. 15, 1996), adopted by Final Order (Jan. 28, 1997).

<sup>464</sup> Recommended Decision, Case 3137, June 11, 2001, at 45 and 60, approved in Order Approving Formation of a Holding Company, June 28, 2001.

<sup>465</sup> Case No. 15-00327-UT, Certification of Stipulation, at 44-45.; Unopposed Stipulation ¶¶ 27-35 (June 8, 2016), approved by Order Adopting Certification of Stipulation (June 22, 2016).

<sup>466</sup> Case No. 04-00315-UT, Certification of Stipulation, at 46-49 (May 26, 2005), approved by Final Order Approving Certification of Stipulation (June 7, 2005).

service agreements would be filed as Class I transactions, and that the Commission would not be bound for ratemaking purposes by federally approved allocation methods.<sup>467</sup> The same order also required a cost allocation manual update, prior Commission approval for certain jurisdictional asset transfers to affiliates, reporting of employee transfers between the utility and affiliates, and access to affiliate books and records relevant to Class I and Class II transaction review.<sup>468</sup>

(234) The 2008 PNM gas utility divestiture to NMGC and Continental shows the standard become more stringent when the transaction creates a new utility under private holding-company ownership.<sup>469</sup> The Commission treated the GDP and Rule 450 concerns as part of the public-interest review even where the applicant disputed whether a Class II transaction technically existed, because the transfer of utility assets could *not be approved if it impaired or limited Commission oversight of the utility or the controlling entities*.<sup>470</sup> It conditioned approval on access to the books and records of affiliates and controlling entities, federal-preemption waivers, *detailed cost-allocation information*, restrictions on dividends, restrictions on loans or guarantees to affiliates, and Commission authority to prohibit dividends that would impair safe and reliable service or otherwise conflict with the public interest.<sup>471</sup>

(235) By the EPCOR, TECO, and Emera cases, the Commission's subsidization inquiry had become a recurring examination of shared services, cost allocation methods, affiliate reporting,

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<sup>467</sup> Case No. 04-00315-UT, Certification of Stipulation, at 10-11, 46-49 (May 26, 2005), approved by Final Order Approving Certification of Stipulation (June 7, 2005).

<sup>468</sup> Case No. 04-00315-UT, Certification of Stipulation, at 48-49, 55-56, 61-62 (May 26, 2005), approved by Final Order Approving Certification of Stipulation (June 7, 2005).

<sup>469</sup> Case No. 08-00078-UT, Final Order Partially Approving Certification of Stipulation, at 25-28 (Dec. 11, 2008).

<sup>470</sup> Case No. 08-00078-UT, Final Order Partially Approving Certification of Stipulation, at 25-28 (Dec. 11, 2008).

<sup>471</sup> Case No. 08-00078-UT, Final Order Partially Approving Certification of Stipulation, at 22, 25-28 (Dec. 11, 2008).

dividend restrictions, and the utility's burden to justify allocations in later rate cases.<sup>472</sup> In the TECO case, the Commission identified the standard method of preventing improper subsidization as proper cost allocations, with the utility bearing the burden to justify the allocation method, allocation factors, and amounts allocated, and it relied on service agreements, Class I reporting, a CAM, and dividend restrictions to conclude that the risk was adequately addressed.<sup>473</sup> The purpose of a CAM is to formalize the collection of allocation methodologies into a book so that interested persons have notice of the methodologies.<sup>474</sup> In that case, Emera agreed to acknowledge its burden of proof in a rate case to justify cost allocation under the CAM, to comply with Class I requirements, including annual reporting of amounts paid to affiliates, and FERC Form 60 reporting, direct charges where possible.<sup>475</sup>

(236) The EPE/IIF precedent broadened the anti-subsidization analysis by expressly identifying the forms of potential abuse that can occur in a private infrastructure-fund structure, including above-market affiliate payments, unnecessary affiliate purchases, use of the utility's lower-risk financing capability to support riskier unregulated affiliates, and unfair assignments or allocations of joint and common costs.<sup>476</sup> That case treated CAM obligations, dividend restrictions, disinterested-director approval rights, arm's-length dealings with J.P. Morgan-related interests,

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<sup>472</sup> Case No. 11-00085-UT, Recommended Decision, at 47-50, 62 (Dec. 2, 2011), approved by Final Order (Dec. 22, 2011); Case No. 13-00231-UT, Certification of Stipulation, at 64-66 (June 30, 2014), approved by Final Order (Aug. 14, 2014); Case No. 15-00327-UT, Certification of Stipulation, at 44-45 (June 8, 2016), approved by Order Adopting Certification of Stipulation (June 22, 2016).

<sup>473</sup> Case No. 13-00231-UT, Certification of Stipulation, at 64-66 (June 30, 2014), approved by Final Order (Aug. 14, 2014).

<sup>474</sup> Case No. 15-00327-UT, Certification of Stipulation, at 44-45; Unopposed Stipulation ¶¶ 27-35 (June 8, 2016), approved by Order Adopting Certification of Stipulation (June 22, 2016).

<sup>475</sup> Case No. 15-00327-UT, Certification of Stipulation, at 40-45; Unopposed Stipulation ¶¶ 27-35 (June 8, 2016), approved by Order Adopting Certification of Stipulation (June 22, 2016).

<sup>476</sup> Case No. 19-00234-UT, Amended Certification of Stipulation, at 49-51 (Feb. 12, 2020), adopted by Final Order Adopting Amended Certification of Stipulation (Mar. 11, 2020).

and other ring-fencing commitments as the operative protections that converted the identified risks into an approvable record.<sup>477</sup> Avangrid then marks the limiting principle: a CAM and affiliate-transaction commitments are not enough by themselves when the post-closing integration plan is incomplete and the acquiring group's non-utility growth strategy presents a continuing risk that later affiliate-service decisions could cause the utility to subsidize non-utility affiliates.<sup>478</sup> The resulting standard for this case therefore requires a concrete showing of which affiliates will provide services or financing, how costs will be priced and allocated, whether utility assets or cash flows can support affiliate obligations, how dividends and intercompany transactions are controlled, and whether the Commission can test and disallow affiliate costs before ratepayers bear them.<sup>479</sup>

(237) To guard against the improper subsidization of non-utility activities, the NMPRC has also in other cases conditioned its approvals on restrictions relating to the payout of dividends. The purpose of dividend-related conditions is to prevent funneling of a utility's cash through a holding company to pay debts related to the holding company's diversified, non-regulated activities, and to ensure that the utility retains sufficient funds to operate a reliable and stable regulated utility operation.<sup>480</sup>

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<sup>477</sup> Case No. 19-00234-UT, Amended Certification of Stipulation, at 49-57 (Feb. 12, 2020), adopted by Final Order Adopting Amended Certification of Stipulation (Mar. 11, 2020).

<sup>478</sup> Case No. 20-00222-UT, Certification of Stipulation, at 45, 127-31 (Nov. 1, 2021), adopted in part by Order on Certification of Stipulation (Dec. 8, 2021).

<sup>479</sup> Case No. 20-00222-UT, Order on Certification of Stipulation, at 15 (Dec. 8, 2021); Case No. 20-00222-UT, Certification of Stipulation, at 127-31, 260-62 (Nov. 1, 2021).

<sup>480</sup> Case No. 15-00327-UT, Certification of Stipulation, at 45.

## 2. Discussion

(238) Joint Applicant Witness Baudier provides the Joint Applicants' general Factor Four structure by tying non-subsidization to separate books and records, Commission access, affiliate-transaction compliance, limits on affiliate financing, and a commitment that NMGC will not invest funds in affiliates during the five years following closing.<sup>481</sup> His testimony states that NMGC's books and records will remain separate from non-regulated businesses and affiliates in accordance with the Uniform System of Accounts, and that the Commission and Staff will have access to the books, records, accounts, and documents of affiliates, corporate subsidiaries, and holding companies under NMSA 1978, Sections 62-6-17 and 62-6-19.<sup>482</sup> He also states that NMGC will not invest in businesses lacking a significant relationship to regulated services, will not invest funds in an affiliate for five years after closing, will not finance affiliates, and will comply with Class I and Class II transaction reporting requirements.<sup>483</sup>

(239) These commitments matter because the proposed transaction will place NMGC within a larger upstream ownership and financing structure, but the Joint Applicants' Factor Four theory is that structural separation, books-and-records access, and affiliate-transaction rules will keep upstream or affiliate costs from being pushed down to the regulated utility.<sup>484</sup> The record therefore distinguishes the existence of upstream owners and affiliated service providers from the separate question whether costs incurred by those entities are allocated to NMGC and recovered from customers.<sup>485</sup>

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<sup>481</sup> Baudier Dir. at 60:3-15.

<sup>482</sup> *Id.* at 60:3-10.

<sup>483</sup> *Id.* at 60:10-15.

<sup>484</sup> *Id.* at 55:11-58:18; 60:3-15; 88:17-89:15.

<sup>485</sup> *Id.* at 60:3-15; 70:13-71:6; Jojola Direct at 12:16 – 13:10.

(240) Staff Witnesses address here the questions regarding the acquisition premium and transaction costs, Rule 450 and its protections against cross-subsidization, shared services and the related regulatory asset request, non-recourse financing, and the recovery of the acquisition premium. Staff Witnesses state that, based on the Applicants' commitments, they confirm the Joint Applicants' commitment to this factor and supports the acquisition on Factor 4. Their support, though, is not without concerns or recommendations.

(241) Most importantly, Staff's support is limited by concerns about the shared-services transition, cost allocation, and possible rate impacts. Mr. Zigich notes that commitments not to recover acquisition premium and transaction cost provide assurance against rate impact, but that the rate impact of the twenty (20) local positions and shared IT services remains undetermined and requires specific cost allocations. In fact, Staff Witness Zigich also cautions that the acquisition may offer no operational net positive benefit and could create early shared-services integration issues. From an operational standpoint, the acquisition transaction appears to offer no net positive benefit and may be susceptible to early shared services integration issues that may have a limited negative impact on NMGC customers.<sup>486</sup>

(242) Staff's transcript testimony supports the existence of meaningful protections while leaving room for additional conditions. Jojola confirmed that the Joint Applicants agreed to her recommendations on acquisition-premium and transition-cost protections and described those commitments as beneficial protections for customers.<sup>487</sup> Hearing Examiner questioning also

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<sup>486</sup> Zigich Dir. at 14:6-9.

<sup>487</sup> Transcript of Evidentiary Hearing, Vol. 9 at 2480:11 – 2481:8.

showed the need for clear reporting mechanics because Jojola did not identify additional reporting requirements beyond those in her testimony.<sup>488</sup>

(243) The Intervenor testimony under Factor Four concentrates on indirect recovery of acquisition-premium value, the risk that IT or shared-services transition costs will be shifted onto ratepayers, and the broader structural risk that regulated customers may end up bearing risks associated with non-utility or affiliate activities.

### **Shared Services Plan**

(244) Joint Applicants are proposing a TSA with Emera, to manage the transition of shared services and share IT services provided by Delta Utilities. The Joint Applicants' shared-services case begins from the fact that NMGC currently receives shared services from Emera and its affiliates, including IT, cybersecurity, finance, and human-resources functions.<sup>489</sup> The proposed transition uses a phased approach in which Emera affiliates continue to provide certain services for up to twenty-four (24) months after closing under the TSA while NMGC and Delta Utilities gradually assume core functions.<sup>490</sup> Mr. Baudier describes this as a hybrid model: Delta Utilities will provide IT services to NMGC from New Orleans, while non-IT services will be performed by new NMGC employees in New Mexico.<sup>491</sup>

(245) Tumminello characterizes the TSA as a phased handoff that allows Emera to continue providing certain services for up to twenty-four months after closing while NMGC and Delta Utilities gradually assume responsibility for core IT and business functions.<sup>492</sup> He states that this

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<sup>488</sup> Transcript of Evidentiary Hearing, Vol. 9 at 2484:7 - 2487:23.

<sup>489</sup> Tumminello Dir. at 6:18-7:4.

<sup>490</sup> Tumminello Dir. at 7:6-12; Baudier Dir. at 62:1-5.

<sup>491</sup> Baudier Dir. at 62:7-9.

<sup>492</sup> Tumminello Dir. at 5:5-12.

phased approach helps avoid disruption and protects service quality during the transition.<sup>493</sup> He further explains that, after the transition, NMGC will operate independently of its current parent company by bringing key shared-service functions in-house and using a new ERP system with shared management and resources with Delta Utilities.<sup>494</sup> This testimony contextualizes the TSA as part of preservation of operational continuity rather than as a permanent displacement of NMGC management.<sup>495</sup>

(246) Tumminello's evidence concerns the transition of shared services, particularly IT, as a practical mechanism for continuity after closing.<sup>496</sup> He states that shared IT services between NMGC and Delta Utilities will provide synergies, cost savings, and technology upgrades for NMGC and its New Mexico retail customers.<sup>497</sup> He explains that IT services are a key part of the transition plan because NMGC must separate from Emera while continuing to operate under new ownership.<sup>498</sup> He states that alignment with Delta Utilities will give NMGC access to a tested and secure technology platform, modern cybersecurity protections, real-time outage detection, and cloud-based tools without requiring NMGC to bear the full cost of building or maintaining them independently.<sup>499</sup>

(247) With respect to the costs of shared services, BCP Witness Mark Miko, the Chief Information Officer for Delta Utilities, states that shared services pricing policies will also be

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<sup>493</sup> *Id.* at 5:5-12.

<sup>494</sup> *Id.* at 5:19-23 to 6:6.

<sup>495</sup> *Id.* at 5:5-12; 10:10-19 to 12:11.

<sup>496</sup> *Id.* at 3:7-14.

<sup>497</sup> *Id.*

<sup>498</sup> *Id.* at 3:15-20 to 4:5.

<sup>499</sup> *Id.*

implemented in accordance with arm's-length principles and documented through formal agreements. These policies will ensure that NMGC bears only the costs associated with the services it receives, with no cross-subsidization or cost shifting between entities. Overall, the introduction of formal SLAs and shared cybersecurity performance monitoring will offer greater visibility, control, and protection for NMGC and its customers—a material improvement over the status quo.<sup>500</sup>

(248) Tumminello also stresses that NMGC management will gain autonomy over the systems and processes that support its operations.<sup>501</sup> Under his description, NMGC will operate its own dedicated instance of Oracle Fusion Cloud ERP and Oracle WACS, allowing NMGC leadership to initiate system changes, adjust workflows, prioritize enhancements, and oversee support levels based on NMGC's own business priorities.<sup>502</sup> He states that key back-office functions previously centralized under Emera will reside within NMGC, strengthening local authority and accountability.<sup>503</sup> In rebuttal, Tumminello adds that Delta Services will provide only shared IT services to NMGC, that NMGC will otherwise continue to own its current systems, and that Delta is not the transitional landing spot for NMGC's systems.<sup>504</sup> He also states that NMGC's existing management, not Delta, will operate NMGC.<sup>505</sup>

(249) The hearing testimony gives support to the Joint Applicants' contention that Delta's proposed IT role is system support rather than transfer of NMGC accounting or utility-

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<sup>500</sup> Miko Direct at 19:14-21.

<sup>501</sup> Tumminello Dir. at 11:1-20 to 12:11.

<sup>502</sup> *Id.* at 11:1-20.

<sup>503</sup> *Id.* at 11:22-23 to 12:11.

<sup>504</sup> Joint Applicants' Exhibit 7, Revised Application Rebuttal Testimony of Peter Tumminello ("Tumminello Rebuttal") at 3:11-20.

<sup>505</sup> *Id.* at 13:7-10.

management responsibility. Miko testified that Delta would provide the Oracle accounting system for NMGC employees to use, while NMGC would retain its own accountants and accounting department.<sup>506</sup> Tumminello similarly testified that NMGC would have its own licenses, its own system, and an asset that would sit within NMGC and could be part of a future transaction.<sup>507</sup>

(250) The transcript also identifies the principal evidentiary weakness in that showing. Tumminello did not identify a cost-savings tracking process comparing the new shared-services arrangement to the prior owner, and he testified that he was not aware of any such process or plan at that stage.<sup>508</sup> Miko testified that service-level agreements and performance metrics would be used to ensure service delivery, but he acknowledged that costs could possibly rise above Staff's proposed cap while expressing confidence that the system could be delivered within the savings range.<sup>509</sup>

(251) Staff Witness Velasquez provides the most detailed Staff testimony on the shared-services transition and cost allocation. Velasquez focuses on the shared-services transition and the TSA, and the need for an updated Cost Allocation Manual, asserting that services and affiliate cost allocations are areas where the Commission's ability to review, audit, and verify costs must be preserved.<sup>510</sup>

(252) Regarding the TSA, Velasquez argues that the TSA will provide Joint Applicants with the period needed to successfully set up services without negatively affecting NMGC services

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<sup>506</sup> Transcript of Evidentiary Hearing, Vol. 4 at 850:20-851:1.

<sup>507</sup> *Id.* at 823:17-824:8.

<sup>508</sup> *Id.* at 824:9-824:22.

<sup>509</sup> *Id.* at 877:17-879:2.

<sup>510</sup> Velasquez at 8:1-12.

provided to customers.<sup>511</sup> Staff's concern, she states, is that NMGC Ratepayers will be paying a premium cost for services provided by Emera, NMGC and/or Delta Utilities.<sup>512</sup> According to Staff's calculations, future Shared Services are estimated to be between \$11.9 and \$12 million.<sup>513</sup> Because Staff is concerned that NMGC Ratepayers will be paying a premium cost for services provided by Emera, NMGC and/or Delta Utilities during the same time-period,<sup>514</sup>

(253) Velasquez therefore recommends a shared-services cost limit during the transition period. Specifically, it is Staff's recommendation with Commission approval of the TSA, in addition to an allowance limit on Shared Services costs of \$12 million until the next future rate case.<sup>515</sup> She also states that an updated CAM, authored by NMGC, Staff and interested parties will be essential ensuring cost savings occur and costs are properly appropriated amongst recipients of the shared services<sup>516</sup> and recommends that the Commission order a working group be established to update the current TECO Energy Cost Allocation Manual within 90 days of closing, and that a final CAM to be filed with the Commission six months after closing.<sup>517</sup>

(254) Cebulko also treats the shared-services and IT transition as part of the financial-health and corporate-integrity.<sup>518</sup> While he acknowledges that the Joint Applicants provided cost and savings

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<sup>511</sup> *Id.* at 9:7-9.

<sup>512</sup> *Id.* at 9:12-17.

<sup>513</sup> *Id.* at 10:1-4.

<sup>514</sup> *Id.* at 9:10-17.

<sup>515</sup> *Id.* at 24:9-11.

<sup>516</sup> *Id.* at 8:1-5.

<sup>517</sup> *Id.* at 8:7-12.

<sup>518</sup> Cebulko Dir.16:14-21; 17:1-9.

estimates<sup>519</sup>, Cebulko still concludes that those estimates do not demonstrate net benefits without enforceable cost caps,<sup>520</sup> binding commitments, and explicit guarantees that claimed savings will be delivered to and shared with customers.<sup>521</sup>

(255) Without conditions, he states, “benefits” remain illusory and customers bear the risk of higher costs, while any efficiencies accrue solely to the Applicants unless the Commission imposes enforceable guarantees.<sup>522</sup> The Joint Applicants have not demonstrated that their proposed IT transition will produce net benefits for customers relative to an alternative, quantified savings or service improvements to offset the significant costs of the transition, nor contextualized the benefits as compared to the overall costs and risks to the customers of the acquisition.<sup>523</sup>

(256) NM AREA Witness Walters, similar to Cebulko, focuses on the risks involved in the IT transition, but by arguing is not established enough to carry it out. He starts by stating that the Joint Applicants have assumed that the start-up company, Delta Utilities, can more efficiently modernize NMGC’s IT system than the experienced technology departments at both TECO Energy and Emera.<sup>524</sup> In TECO Energy and Emera cases, because of their established shared services departments, both TECO Energy and Emera could offer shared services to NMGC at guaranteed savings without the need to recover transition costs for those services.<sup>525</sup> The shared

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<sup>519</sup> This includes projected stand-up costs for Oracle Fusion Cloud ERP and Oracle Work and Asset Cloud Service, claimed avoidance of a future \$56 million capital outlay, projected annual operating cost of \$6.6 million, and TSA-period savings. *Id.* at 17:10-18:6

<sup>520</sup> Cebulko recommends the following cost cap: Recovery of IT and shared services transition costs should be capped at the lower of (a) the Applicants’ projected costs or (b) the prudently incurred costs net of verified savings. *Id.* at 22:19-22.

<sup>521</sup> *Id.* at 17:10-18:20; 19:1-2.

<sup>522</sup> *Id.* at 18:17-20 - 19:1-2.

<sup>523</sup> *Id.* at 20:7-10.

<sup>524</sup> Walters Dir. at 31:1-7.

<sup>525</sup> *Id.* at 31:13-17 - 32:1-2.

services platform itself here, he contends, is still under development and has not yet demonstrated proven cost savings even for Delta Utilities' Louisiana and Mississippi utilities.<sup>526</sup> Walters states that when transition costs are considered, the net benefit to customers could be materially smaller than the \$30 million to \$40 million cited by Mr. Shell, if not eliminated entirely.<sup>527</sup>

(257) FEA Witness Dwight Etheridge provides testimony focusing on the shared-services structure and the risk of upward rate pressure. For Etheridge, he argues that the cost implications of replacing Emera shared services with incremental NMGC staffing and a new structure will shift higher support-service costs into NMGC's cost structure.<sup>528</sup> With this acquisition, he states, Joint Applicants are proposing to increase the NMGC workforce to replace services previously provided by Emera affiliates, a proposal not without its risks.<sup>529</sup>

(258) Joint Applicants' plans for NMGC do not include pursuing the maximum potential synergies that would put downward pressure on NMGC's rates for natural gas delivery service. To the contrary, Joint Applicants' plans to replicate shared services currently provided by Emera subsidiaries with incremental staffing at NMGC would put upward pressure on those rates.<sup>530</sup> Joint Applicants' proposal to perform comparable services as a standalone entity guarantees either an increase in the cost of services to NMGC and its customers or a reduction of service quality levels. Neither is a good outcome for NMGC's customers.<sup>531</sup>

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<sup>526</sup> *Id.* at 32:6-8.

<sup>527</sup> *Id.* at 35:1-3.

<sup>528</sup> Etheridge Dir. at 23:6-12.

<sup>529</sup> *Id.* at 25:13-16.

<sup>530</sup> *Id.* at 4:8-13.

<sup>531</sup> *Id.* at 7:8-15

(259) The Joint Applicants respond in rebuttal that the TSA and Delta shared-services structure should not be treated as evidence of inexperience or improper subsidization. Joint Applicant Witness Talley testifies that transition services agreements are standard protocol in acquisitions and that, given the back-office functions being shifted from Emera to New Mexico employees, it would have shown lack of experience if the BCP Applicants had failed to enter into a TSA.<sup>532</sup>

(260) Joint Applicants also emphasize that the Delta shared-services arrangement will produce assets and services for NMGC, not simply subsidize Delta. In the transcript, Mr. Tumminello testified that Oracle license costs and allocated Delta shared-services IT personnel costs are identifiable cost components, and that NMGC would have its own licenses, its own system, and an asset that would sit within NMGC and could be part of any future transaction.<sup>533</sup> That testimony supports the Joint Applicants' argument that the shared-services proposal can be treated as a utility-service investment for NMGC if costs are demonstrably traceable to NMGC service, properly allocated, and reviewed in a later rate case.<sup>534</sup>

### **Acquisition Premium**

(261) Baudier originally estimated the acquisition premium at approximately \$175 million to \$225 million.<sup>535</sup> In October of 2025, however, that amount was adjusted upward. BCP Applicants filed supplemental testimony stating that they now estimate the acquisition premium as approximately \$130 million - \$185 million.<sup>536</sup> The acquisition premium as distinct from the sales

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<sup>532</sup> Talley Rebuttal at 3:15-4:11.

<sup>533</sup> Transcript of Evidentiary Hearing, Vol. 4 at 823:2-824:8.

<sup>534</sup> *Id.* at 823:2-824:8; Baudier Dir. at 70:13-23.

<sup>535</sup> Baudier Dir. at 109:9-15.

<sup>536</sup> Third Supplemental Testimony of Jeffrey M. Baudier in Response to March 24, 2025, Hearing Examiners' Bench Request at 4.

price does not affect post-close debt.<sup>537</sup> Baudier explains that the acquisition premium itself does not affect profitability, although the sales price could be considered to do so.<sup>538</sup> Baudier further confirms that NMGC will not directly or indirectly seek to recover acquisition premium or increased goodwill in future rates.<sup>539</sup> Baudier states that NMGC will continue to value New Mexico regulatory rate-base assets using original cost less accumulated depreciation rather than revaluing them to reflect the acquisition premium.<sup>540</sup>

(262) Shell further states that NMGC has always made very clear adjustments in its base rate case filings to remove any impact of Goodwill or Acquisition Premium from its revenue requests. NMGC has never collected any amount of Goodwill or Acquisition Premium from its customers. In addition, NMGC does not include goodwill in its calculation of allowance for funds used during construction (“AFUDC”).<sup>541</sup> Shell emphasizes that customers have never paid anything for the goodwill that has existed on NMGC’s books for the last sixteen years, stating that he disagrees “that NMGC should be required to recognize a regulatory liability to be credited to customers for something that customers have never paid for in the first place.”<sup>542</sup>

(263) This point is extended by Joint Applicant Witnesses Kelly and Quilici. Kelly states that the Joint Applicants have committed not to recoup the transaction’s acquisition premium through future rate cases or rate base revaluations, and that sharing it with NMGC customers through a rate

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<sup>537</sup> Baudier Dir. at 109:9-16.

<sup>538</sup> *Id.* Direct at 109:18-21.

<sup>539</sup> *Id.* at 43:13-23; 44:1-11.

<sup>540</sup> *Id.* at 43:5-11.

<sup>541</sup> Shell Dir. at 25:4-8.

<sup>542</sup> Shell Rebuttal at 22:4-12.

credit or recording of a regulatory liability would not be consistent with the public interest.<sup>543</sup> Additionally, establishing a regulatory liability for an item that has never been in customer rates and in which customers have no ownership interest or expectation, would be a significant departure not only from the Commission’s past actions, but from the regulatory norms across the country.<sup>544</sup>

(264) Staff Witness Dr. Larry Blank presents a distinct theory, namely, that the acquisition premium or goodwill reflects the market value of a government-created monopoly and should be booked as a regulatory liability for customers. Dr. Blank states that “the acquisition premium (or “goodwill”) to be paid out of the purchase price of this transaction provides a market valuation of the intangible assets of the acquired firm, which in the case of NMGC, is mostly derived from the government-created monopoly.”<sup>545</sup>

(265) This value was not created by the current owners of NMGC, it was created by the government with customers subjected to a government-protected monopoly. An amount equal to the goodwill paid to the sellers at closing of this transaction should be booked as a regulatory liability to customers.<sup>546</sup>

(266) Blank recommends that the Commission’s condition its approval on the following condition: At closing of this transaction, NMGC shall create a regulatory liability account for the benefit of customers in an amount equal in value to the goodwill paid.<sup>547</sup> If the regulatory liability is placed in the rate base in the next rate case, customers will benefit from that rate base deduction

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<sup>543</sup> Kelly Dir. at 8:3-9.

<sup>544</sup> Joint Applicants’ Exhibit 17, Revised Application Rebuttal Testimony of Lisa Quilici (“Quilici Rebuttal”) at 9:15-18.

<sup>545</sup> Blank Dir. at 5:1-5.

<sup>546</sup> *Id.* at 5:5-9.

<sup>547</sup> *Id.* at 9:1-4.

by the amount of return plus taxes avoided. If not placed in the rate base, then the regulatory liability should accrue a carrying charge at the weighted cost of capital.<sup>548</sup>

(267) WRA Witness Cebulko presents a perspective that the commitment not to recover any acquisition premium directly only addresses direct booking of the premium, but does not necessarily prevent indirect recovery through other regulatory or operational pathways.<sup>549</sup> He identifies three possible indirect pathways, such as cost cutting that could affect service quality, requests for a higher ROE or more favorable capital structure, and accelerated growth of NMGC's rate base.<sup>550</sup> He also states that BCP's decision to pay above net book value creates pressure to recover that premium indirectly because investors will expect a return comparable to NMGC's industry peers.<sup>551</sup>

### **Restrictions on Dividends**

(268) Finally, Staff Witness Marc Tupler observes that Joint Applicants made significant additional commitments in the Revised Application regarding the post-closing governance at NMGC and its treatment of dividends. He states that they committed that NMGC will not, without prior Commission approval, pay dividends in excess of net income, nor any time its credit metrics are below investment grade while also agreeing to continue to have its credit rating performed by one (currently Fitch), or more, nationally recognized credit rating agencies so long as the BCP Applicants own direct or indirect interest in NMGC.<sup>552</sup> With respect to dividends, he states that the Joint Applicants have committed to continuation of NMGC's practice of filing with the

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<sup>548</sup> *Id.* at 9:9-13.

<sup>549</sup> Cebulko Dir. at 15:8-20; 16:1-2.

<sup>550</sup> *Id.* at 15:18-20; 16:1-2.

<sup>551</sup> *Id.* at 15:11-17.

<sup>552</sup> Staff Exhibit 2, Prepared Direct Testimony of Marc Tupler ("Tupler Dir.") at 32:10-14.

Commission, a notice of its intent to pay a dividend at least fifteen (15) days prior to the dividend being paid, as determined by the independent Board of Directors, and provide Commission Utility Division Staff and the New Mexico Department of Justice with a copy of the applicable notice on the same day it files the notice with the Commission.<sup>553</sup>

### 3. Determination

(269) The operative question under Factor Four is not whether the proposed transaction creates any affiliate relationship, shared-service relationship, or upstream financial structure that could theoretically give rise to cost-allocation concerns. It is whether the evidentiary record, including the commitments made by Joint Applicants and the Commission's continuing ratemaking authority, provides sufficient protection against improper subsidization of non-utility activities. On this record, it does.

(270) Joint Applicants made direct commitments that acquisition premium, goodwill, direct transaction costs, and non-utility activity costs will not be recovered from NMGC customers. Baudier tied the non-subsidization showing to separate utility books and records, Commission and Staff access to affiliate, corporate subsidiary, and holding-company records, affiliate-transaction compliance, limits on affiliate financing, a commitment that NMGC will not invest funds in affiliates for five years after closing, and continued compliance with Class I and Class II reporting requirements.

(271) Those commitments are material because the transaction will place NMGC within a private infrastructure-fund ownership chain and because NMGC will receive transitional and future shared services from entities related to the transaction. But the record distinguishes the existence of

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<sup>553</sup> *Id.* at 33:12-16.

upstream owners and affiliated service providers from the separate question whether affiliate or non-utility costs may be allocated to NMGC and then recovered from customers. The Joint Applicants' evidence and commitments preserve that distinction. They do not ask the Commission to preapprove future recovery of shared-services, transition, Delta Utilities, Oracle, or stand-up costs. Those costs, to the extent later requested in rates, remain subject to Commission review, allocation proof, prudence review, and disallowance.

(272) The shared-services record supports the same conclusion. The TSA is presented as a transitional continuity mechanism under which Emera and its affiliates will continue to provide services for a limited period while NMGC and Delta Utilities assume defined functions. Tumminello describes the transition as a phased handoff designed to avoid service disruption and to preserve service quality, and he explains that NMGC will operate independently of Emera by bringing key functions in-house and using a new ERP system with shared management and resources with Delta Utilities.

(273) The most important point for Factor Four is that the Delta Utilities arrangement is not shown to be a transfer of NMGC's utility-management, accounting, or ratemaking responsibilities to an affiliate. Miko testified that Delta would provide the Oracle accounting system for NMGC employees to use, while NMGC would retain its own accountants and accounting department. Tumminello likewise testified that NMGC would have its own licenses, its own system, and an asset that would sit within NMGC and could be part of a future transaction. Tumminello further stated in rebuttal that Delta Services would provide only shared IT services to NMGC, that NMGC would otherwise continue to own its current systems, and that NMGC's existing management, not Delta, would operate NMGC.

(274) Staff's evidence is significant because it supports the existence of meaningful customer protections while recognizing areas that will require later scrutiny. Staff Witness Zigich credited the commitments not to recover acquisition premium and transaction costs as providing assurance against rate impact, while also noting that the rate impact of the local positions and shared IT services remained undetermined and would require specific cost allocations. Staff Witness Jojola confirmed at hearing that Joint Applicants had agreed to her recommendations on acquisition-premium and transition-cost protections and described those commitments as beneficial protections for customers.

(275) The record also contains the accounting, reporting, and governance infrastructure that prior Commission precedent treats as central to preventing improper subsidization: a cost allocation manual, affiliate-transaction reporting, books-and-records access, arm's-length standards, separate books and records, limits on intercompany loans and guarantees, and dividend restrictions. Joint Applicants agreed to collaborate with Staff on a CAM, provide a draft within ninety days after closing, file the CAM within six months after closing, and revisit the CAM after the TSA terminates. They also committed to annual public submissions of allocation information by FERC account and subaccount during the TSA or if NMGC receives services from another investment-fund company supported by BCP Management.

(276) Intervenor concerns about indirect recovery, future shared-services costs, and acquisition-premium pressure are legitimate issues for Commission oversight, but they do not require a finding that Factor Four is unmet. Rather, they confirm why the Commission should preserve ordinary ratemaking scrutiny over all future claimed costs. Because Joint Applicants have accepted non-recovery commitments for the acquisition premium, goodwill, and direct transaction costs; because the shared-services structure is supported by arm's-length, CAM, and reporting commitments;

because NMGC remains the operating utility with retained management; and because later cost recovery remains subject to the Commission's review, the Hearing Examiner determines that Joint Applicants have satisfied their evidentiary burden for Factor Four without additional conditions specific to this factor.

#### **F. Sufficient Financial Health and Qualification of New Owners**

(277) Under the Commission's Six Factor Test, Factor Five requires a careful examination and verification of the qualifications and financial health of the proposed new owners. The analysis here applies Factor Five broadly, covering operational qualifications, gas utility experience, executive and management capacity, financial strength, access to capital, credit metrics, ring-fencing, debt protections, dividend limits, capital structure commitments, ownership structure, and evidence bearing on whether the new owner has sufficiently met their burden to establish BCP Applicants as qualified and financially healthy.

(278) The testimony and record regarding Factor Five center on three principal narratives. First, the Joint Applicants argue that BCP Management, the BCP Infrastructure Funds, Saturn Holdco, Delta Utilities, and NMGC's existing management together provide sufficient qualifications, utility expertise, capital access, and ring-fencing to satisfy the Commission's standard. Second, Staff concludes that the financial health and qualifications of the proposed new owner are reasonable, while relying heavily on proposed commitments, credit-rating requirements, capital structure limits, dividend restrictions, and ring-fencing. Third, intervenors, challenge whether the proposed new owner has a sufficiently tested record as an owner or operator of a natural gas utility comparable to NMGC, and whether the BCP Infrastructure-Saturn Holdco ownership structure provides the same financial depth and ability and long-term support as Emera.

## 1. Legal Standards

(279) The financial-health and qualifications factor developed out of the same public-interest inquiry but became an express fifth consideration only after the Commission began applying the four-factor acquisition test to stock-purchase transactions involving new upstream owners.<sup>554</sup> In the 2005 PNM Resources/TNPE acquisition, financial health was addressed through the benefits analysis: TNMP was expected to move from below-investment-grade status to investment-grade status, PNM Resources expected to maintain its investment-grade ratings, and customers were expected to receive service from a more financially viable utility.<sup>555</sup> That precedent also tied financial health to protection from acquisition-related costs by limiting cost-of-capital consequences, transaction costs, acquisition adjustments, and dividend practices that could shift acquisition burdens to utility customers.<sup>556</sup>

(280) The 2008 NMGC/Continental case made the Commission's financial review more granular because the new utility would be financed through a parent equity contribution, a five-year term loan, and a revolving credit facility secured by NMGC assets.<sup>557</sup> The Commission examined the financing structure, the buyer's proposed capital ratios, the lack of long-term audited operating history for the new utility, the need to convert short-term acquisition debt to longer-term debt, and the possibility that parent financial health could affect the utility's stability.<sup>558</sup> The protective conditions imposed in that case show that financial health is not tested only by the acquiring parent's size, but also by the enforceability of capital-structure, dividend, debt, lien, and affiliate-

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<sup>554</sup> Case No. 11-00085-UT, Recommended Decision at 15-17.

<sup>555</sup> Case No. 04-00315-UT, Certification of Stipulation at 12-16.

<sup>556</sup> *Id.* at 42, 46-51, 57-59.

<sup>557</sup> Case No. 08-00078-UT, Certification of Stipulation at 18, 25-27, 110-14.

<sup>558</sup> *Id.* at 25-29.

funding restrictions that keep the utility capable of providing safe and reliable service.<sup>559</sup> EPCOR then converted financial health and qualifications into a distinct stock-purchase consideration by stating that careful verification of the qualifications and financial health of the new owner and adequate protections against customer harm are important Commission considerations.<sup>560</sup> The Commission credited EPCOR's experience as a water and utility operator, its financial strength and access to Canadian debt and equity-like capital, its local and technical capabilities, and its commitment to hold NMAW and customers harmless from ownership-transition costs.<sup>561</sup> This made the standard operational as well as financial: the new owner must be financially capable, technically qualified, and able to manage transition risks without making customers bear the cost of the acquisition or degraded support services.<sup>562</sup>

(281) The TECO and Emera proceedings refined the factor for utility holding companies with substantial regulated operations by reviewing regulated utility experience, customer base, operating history, credit ratings, capital-market access, assets, risk profile, and the acquiring company's strategic commitment to the acquired utility.<sup>563</sup> TECO was credited as a public utility holding company with regulated electric and gas operations, investment-grade ratings, access to capital markets, and a risk profile superior to the prior Continental/NMGC stand-alone structure.<sup>564</sup> Emera was credited as a financially stable, predominantly regulated utility holding company with access to U.S. and Canadian capital markets, multiple regulated utility subsidiaries, investment-

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<sup>559</sup> *Id.*

<sup>560</sup> Case No. 11-00085-UT, Recommended Decision at 15-17

<sup>561</sup> *Id.* at 17-23, 42-50, 62.

<sup>562</sup> *Id.* at 43, 47-50, 62.

<sup>563</sup> Case No. 13-00231-UT, Certification of Stipulation at 70; Case No. 15-00327-UT, Certification of Stipulation, at 47-49.

<sup>564</sup> *Id.* at 70-75 (June 30, 2014).

grade credit, and an expected post-transaction scale materially larger than TECO's.<sup>565</sup> In both cases, however, the Commission's finding of adequate financial health was linked to commitments that kept acquisition premiums, transaction costs, capital-structure pressures, dividend payments, and debt-refinancing risk from being imposed on utility customers.<sup>566</sup>

(282) The EPE/IIF case extended the financial-health inquiry to infrastructure-fund ownership by examining the size and liquidity of the fund, investor commitments, asset value, leverage, track record of capital deployment into existing portfolio companies, history of utility investments, long-term hold philosophy, and absence of troubled-asset investing.<sup>567</sup> At the same time, the Commission recognized that parent-level debt and the inability to recover a large acquisition premium could create pressure on the utility to extract dividends or other payments, making ring-fencing, board approval of debt and equity issuances, preferred-equity backstops, dividend restrictions, and non-consolidation protections central to the financial-health determination.<sup>568</sup> This precedent therefore makes fund financial strength relevant, but only after tracing how acquisition debt, equity commitments, investor capital, and governance protections operate at the utility and intermediate holding-company levels.<sup>569</sup>

(283) Avangrid establishes the limiting rule that large size, global utility experience, and nominally strong credit metrics do not themselves satisfy the financial-health and qualifications factor.<sup>570</sup> The Commission weighed Avangrid and Iberdrola's size and utility experience against

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<sup>565</sup> Case No. 15-00327-UT, Certification of Stipulation at 47-49.

<sup>566</sup> Case No. 13-00231-UT, Certification of Stipulation at 66, 70-75, 78; Case No. 15-00327-UT, Certification of Stipulation at 46-49; Unopposed Stipulation at ¶¶ 21-27.

<sup>567</sup> Case No. 19-00234-UT, Amended Certification of Stipulation at 57-60.

<sup>568</sup> *Id.* at 55-57.

<sup>569</sup> *Id.* at 55-60.

<sup>570</sup> Case No. 20-00222-UT, Certification of Stipulation at 45-48, 131-47.

a credit downgrade, high-risk non-utility capital projects, management-integration problems, service-quality and penalty history, a Maine management audit, an ongoing Spanish criminal investigation involving senior Iberdrola executives, and discovery violations in the New Mexico proceeding.<sup>571</sup> The Commission accepted the recommendation to reject the stipulation because the proposed benefits were insufficient to overcome ongoing risks tied to demonstrated performance, compliance history, risk of improper subsidization of non-utility activities, and concerns about qualifications.<sup>572</sup> The resulting standard for the current case requires holistic verification of the new owner's capital resources, utility experience, operational capability, compliance history, governance structure, integration plan, debt and equity support, and enforceable protections against pressure on the utility's capital structure or cash flows.<sup>573</sup>

## 2. Discussion

(284) The Joint Applicants' affirmative case to satisfy this factor emphasizes retained NMGC governance and operations, BCP/Delta utility experience, and access to capital. The Joint Applicants do not argue that BCP will replace NMGC management. Rather, their testimony emphasizes that NMGC will continue to operate as a standalone gas utility, that its current board, management, and employees will remain in place, and that BCP Management and Delta Utilities will provide support, shared services, best-practices exchange, and access to capital.

(285) Baudier first emphasizes the experience and corporate governance record of NMGC. He remarks that NMGC is highly experienced in the LDC business and will continue to operate as a gas utility with the same board, same management and approximately 740 experienced

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<sup>571</sup> *Id.* at 45-48, 131-47.

<sup>572</sup> *Id.* at 15.

<sup>573</sup> *Id.* at 32-35, 45-48, 127-31, 260-62.

employees.<sup>574</sup> While BCP Management has no concerns about how NMGC conducts its business, and NMGC is not in need of constant oversight or guidance on how to operate its business in New Mexico, upon the close of this transaction, NMGC will have ready access to expertise and experience from BCP Management and Delta Utilities upon request.<sup>575</sup>

(286) Also, Joint Applicants present BCP Management, a non-participating BCP entity, as an asset to the proposed new owner has extensive utility and utility-related businesses in its portfolio companies so it has a depth of utility experience and financial resources. Baudier states that BCP Management has nearly \$6 billion in assets and its portfolio companies have over 20,000 employees<sup>576</sup> and that its portfolio companies, and their personnel, specifically Delta Utilities, have many years of experience in the utility business in general and the gas utility business in particular.

(287) In connection with the LDCs in its investment portfolios, Baudier states that BCP Management will foster a collaborative environment which will promote best practices among NMGC and Delta Utilities, including the sharing of ideas and the promotion of mutual assistance.<sup>577</sup> But Baudier does not see any risk of undue influence. To be clear, he says, NMGC will still be operated as a separate gas utility and its management team will be responsible for NMGC utility operations in New Mexico, but the utility personnel at each entity will be encouraged to exchange information in pursuit of best practices.<sup>578</sup> While BCP management will

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<sup>574</sup> Baudier Dir. at 20:18–22.

<sup>575</sup> *Id.* at 20:18-26.

<sup>576</sup> *Id.* at 114:8-9.

<sup>577</sup> *Id.* at 24:18-28.

<sup>578</sup> *Id.* at 24:19-20.

not be an owner of NMGC, Baudier sees the benefits for NMGC among the portfolio companies of BCP Management.

(288) BCP Management, through its affiliated investment funds, has consummated several transactions where funds purchased the assets or subsidiaries from publicly traded companies, similar to the situation with Emera and NMGC in this case. Infrastructure investment, particularly natural gas LDC investments, has been a focus of BCP Management. Baudier states that BCP relies upon experienced local management teams to operate the day-to-day activities of its portfolio companies, including himself.<sup>579</sup>

(289) Baudier testified that Delta Utilities Services will serve as a shared-services provider while Delta Gas and Magnolia Gas remain separate rate bases, regulatory jurisdictions, rate constructs, and operating companies.<sup>580</sup> Tumminello testified that operating employees and operating knowledge came over from the acquired utilities, while the new elements are the systems and shared-services organization.<sup>581</sup>

(290) Responding to a statement made by Walters that NMGC could be a capital strain on a poorly capitalized holding company, Joint Applicant Witness Ryan Shell provides evidence that NMGC's access to capital will in no way be negatively impacted by the proposed transaction. He states that NMGC will still have access, post-acquisition, to capital from its upstream holding companies in much the same way that NMGC does now from Emera. NMGC, he says, has essentially operated as a stand-alone entity for years and has not needed to rely on Emera, or its affiliates, for any debt financings, other than enlisting the assistance of affiliate treasury employees

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<sup>579</sup> *Id.* at 17:15-22.

<sup>580</sup> Transcript of Evidentiary Hearing, Vol. 1 at 83:21-84:5.

<sup>581</sup> Transcript of Evidentiary Hearing, Vol. 4 at 829:11-830:16.

as part of our shared services arrangement.<sup>582</sup> Supported by the findings in the Fitch 2025 rating report, which states that no negative impact on NMGC's credit rating as a result of this transaction, Shell asserts that NMGC's ability to obtain debt financing won't change if this acquisition is approved.<sup>583</sup> Additionally, Shell observes that the BCP-managed funds are committed to additional capital contributions over time and are used to raising capital and investments, and subsequently has no reservations that Saturn Holdco will be able to provide equity to NMGC if and as it is needed.<sup>584</sup>

(291) Joint Applicant Witness Kelly testimony also sees the proposed structure as advantageous to financial and corporate governance due to the type of expertise it relies on. In her view, private equity funds can also provide benefits in terms of enhanced accountability and support for public utility management. Also, these funds, like the BCP Infrastructure Funds, are often funded by large, sophisticated institutional investors, offering reliable access to capital for prudent investments and more direct accountability for public utility management.<sup>585</sup> Because a private equity fund is more closely held than a publicly traded company, each investor has a greater incentive to monitor the performance of companies the fund owns. Additionally, infrastructure investment funds often partner with private equity management firms that have considerable industry experience and financial expertise, allowing them to provide valuable strategic support to a public utility's own management.<sup>586</sup>

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<sup>582</sup> Shell Rebuttal at 10:1-3.

<sup>583</sup> Shell Rebuttal at 10:8-11.

<sup>584</sup> Shell Rebuttal at 10:1-19.

<sup>585</sup> Kelly Dir. at 23.

<sup>586</sup> *Id.* at 23:8-19; 24:1-2.

(292) Staff determine that Joint Applicants have established that the proposed new owners in this transaction are of sufficient financial health and qualification. After a review of the record, Staff Witness Marc Tupler states that the qualifications and financial health of the proposed new owner are “reasonable,” and therefore that Staff support the acquisition based on this Factor.

(293) Tupler testified that Staff reviewed financial health, capital-structure limits, debt load, credit metrics, board composition, and dividend restrictions, and that those matters were adequately situated in his review and experience for the approval of the transaction.<sup>587</sup> He first remarks, regarding the financial health, that the proposed post-acquisition ownership structure is common, but also advantageous to NMGC’s access to capital. He states that the use of public holding company SPEs, such as the intermediate Saturn Companies described, is “desirable to implement debt financing that is non-recourse to NMGC, because with this corporate structure, the intermediate entities are able to obtain debt financing for the Transaction without any liability for NMGC or the use of any NMGC assets as collateral.”<sup>588</sup> He states also that this ownership structure allows for higher level debt financing that is non-recourse to NMGC which provides structural flexibility during the BCP Applicant’s time frame and investment horizon in NMGC.”<sup>589</sup>

(294) With respect to the current and specific health of NMGC, Tupler provides evidence that both its debt obligations and credit metrics are sound. Moreover, he states that the outcome of the proposed transaction will not materially impact NMGC’s existing assets, operations, nor business, and thus very little, if any, effect on NMGC’s stand-alone credit rating.<sup>590</sup>

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<sup>587</sup> See generally, Tupler Dir., and Transcript of Evidentiary Hearing, Vol. 9 at 2287:15-2287:24.

<sup>588</sup> Tupler Dir. at 14:13-19.

<sup>589</sup> *Id.* at 20:3-6.

<sup>590</sup> *Id.* at 28:10-12.

(295) Tupler then describes, in his view, the benefit of NMGC’s contractual and financial independence from the BCP Infrastructure Funds under the proposed, post-acquisition corporate structure. He asserts that this is beneficial to NMGC because the “BCP entities intend to ensure that there are appropriate ring-fencing provisions that would avoid potential recourse to NMGC for any debt that were held by the BCP funds (which will not themselves contain debt) or the Saturn Companies.”<sup>591</sup>

(296) Tupler also provides a review of the financial health of TECO Energy, the current owner of the NMGC Group. He notes that as of June 30, 2024, TECO Holdings reported assets of \$17 billion, consisting primarily of gas and electric utility assets of approximately \$14.5 billion in total property, plant and equipment (net of accumulated depreciation of \$4.5 billion), along with current assets of \$849 million, consisting mainly of accounts receivable of \$408 million, materials and supplies reported at \$196 million and cash of \$59 million.<sup>592</sup> Tupler adds that TECO Energy liabilities were \$10 billion, Debt/Equity ratio of 1.43x as of June 30, 2024, with a net income of \$589 million on \$3.7 billion in revenues for 2023, and with reported expenses of \$2.7 billion.<sup>593</sup>

(297) When providing reasons that the Commission can be assured that the Joint Applicants are financially sound and qualified to own NMGC, Tupler provides two. First, he states that Saturn Holdco and NMGC will continue to have their credit ratings performed by nationally recognized credit rating agencies. Second, Tupler finds financial health and qualification evidence in the purported and anticipated capitalization of the BCP Infrastructure Funds by “large, institutional investors, such as public and private pension funds, college endowments, insurance companies,

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<sup>591</sup> *Id.* 15:12-22.

<sup>592</sup> *Id.* at 16:12-16.

<sup>593</sup> *Id.* at 16:12-19 – 17:1-9.

labor union funds and other investment groups with extensive experience investing in infrastructure and utility investment vehicles.”<sup>594</sup> Tupler sees this scenario as facilitating Saturn Holdco and NMGC access to capital and indicative of their inherent financial health.

(298) He comes to the conclusion that the Revised Application, supplemented with Staff’s proposed conditions, is sufficient in scope to meet the minimum threshold for a net public benefit.<sup>595</sup> Staff in its evaluation concludes that the financial health of the proposed transaction is well within business and industry parameters, especially when compared to other private equity type acquisitions of public utilities, some of which have been previously approved by the Commission.<sup>596</sup>

(299) Yet, Tupler expressly notes that certain entities were created within the last twelve months and have no standalone financial history to evaluate. Because each of the BCP Infrastructure Funds and the Saturn Companies were formed within the last twelve months for purposes of the Transaction, those entities have no balance sheets, income statements, cash flow statements, debt-to-equity ratios, or long-term or short-term debt obligations.<sup>597</sup>

(300) With respect to BCP Applicants’ commitments regarding NMGC’s proposed capital structure, Tupler also sees it “well within reasonable industry parameters regarding capital structure.” He notes that they “have committed to maintaining a post-closing equity ratio of at least fifty percent (50%), until a Final Order in the next general rate case, using a capital structure that includes equity and the par amount of long-term debt.”<sup>598</sup> He also observes that they commit to

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<sup>594</sup> *Id.* at 18:8-12.

<sup>595</sup> *Id.* at 5:7-12.

<sup>596</sup> *Id.* at 19:1-3.

<sup>597</sup> *Id.* at 15:4-9.

<sup>598</sup> *Id.* 22:6-8.

invest additional capital in NMGC to achieve the minimum fifty percent (50%) equity ratio if the twelve (12) month average equity ratio falls below fifty percent (50%) for more than two (2) consecutive quarters.<sup>599</sup>

(301) Intervenor testimony does not share the same perspectives as Joint Applicants and Staff. In responding to whether or not the proposed new owners would be of sufficient financial health, they assert that the proposed new owners do not have the requisite experience, the financial size and sophistication, or capital investment plans.

(302) WRA Witness Walters contends that the Joint Applicants fail to satisfy financial health and qualification because the Saturn Holdco-Delta structure is still in a start-up and integration phase, it has no comparable experience operating a natural gas LDC of the size and scope of NMGC, that its own shared-services platform with Delta Utilities remains under development, and that BCP's financial support is materially smaller and less durable than Emera's balance sheet.<sup>600</sup>

(303) FEA Witness Dwight Etheridge also has reservations about Saturn Holdco as the potential acquirer of NMGC. It is preferable he says, for an acquirer of NMGC to have a long history of successfully operating LDCs, the ability to create organizational synergies, demonstrated capabilities in managing capital investments in natural gas systems of LDCs, and a strategic long-term focus of being in the business of owning and operating LDCs.<sup>601</sup> Etheridge concludes that Saturn's ownership poses risks associated with no history of a BCP affiliate operating LDCs, negative changes in NMGC's cost structure given the lost synergies of no longer having NMGC affiliated with Emera; uncertain commitments or strategic focus on making the appropriate level

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<sup>599</sup> *Id.* at 23:1-2.

<sup>600</sup> Walters Dir. at 9:6-15.

<sup>601</sup> Etheridge Dir. at 13:4-8.

of capital investments in NMGC's natural gas system; and an uncertain strategic focus on a long-term commitment to being a natural gas company.<sup>602</sup>

(304) Cebulko separately addresses BCP's utility experience and argues that BCP has only recently entered the regulated natural-gas utility space.<sup>603</sup> He states that BCP closed on gas utility acquisitions in Louisiana and Mississippi on April 1, 2025, and July 1, 2025, respectively, and that it now seeks approval to acquire NMGC while those acquisitions are still recent.<sup>604</sup> He also distinguishes BCP's ownership of a small regulated water utility in North Carolina and Indiana, serving approximately 2,000 customers, from NMGC's much larger and more complex service obligation.<sup>605</sup> Cebulko compares that record to Emera, which he describes as owning and operating seven regulated utilities and having deeper familiarity with regulated energy-utility operations.<sup>606</sup> Cebulko does not deny that NMGC itself is experienced, but he questions whether the new owner has a demonstrated ownership and integration record sufficient for a utility of NMGC's scale.<sup>607</sup>

(305) With respect to the differences in balance sheets between BCP Applicants and Emera, Walters notes that Emera has approximately \$30 billion in total assets and operates a diverse portfolio of regulated utilities across North America and the Caribbean.<sup>608</sup> By contrast, even if BCP's projections materialize, their infrastructure funds will be less than seven percent (7%) of Emera's size. Thus, BCP represents a dramatic reduction in the financial scale and balance sheet

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<sup>602</sup> *Id.* at 13:8-13.

<sup>603</sup> Cebulko Dir. at 46:4-18.

<sup>604</sup> *Id.* at 46:6-12.

<sup>605</sup> *Id.* at 46:12-18.

<sup>606</sup> *Id.* at 46:19-21; 47:1-2.

<sup>607</sup> *Id.* at 46:6-18; 48:14-19.

<sup>608</sup> Walters Dir. at 26:3-8.

strength available to support NMGC.<sup>609</sup> Joint Applicants challenged this evidence during the evidentiary hearing. On cross-examination, Walters maintained that Emera's scale, proven access to capital, and investment-grade profile remain materially different from BCP's projected infrastructure-fund structure, while acknowledging that a higher equity ratio is stronger if viewed in isolation.<sup>610</sup>

(306) Etheridge also states that there is a risk of underinvestment in NMGC post-acquisition. He frames the Joint Applicants' capital investment proposal as unreasonable. He states that the commitment is of *de minimis* value for NMGC's customers because the commitment provides NMGC with the opportunity to substantially underinvest in its natural gas system. Specifically, he notes, NMGC's recent historical capital investments and recently projected capital investments equate to approximately three times the three-year average of NMGC's historical total depreciation and amortization expense.<sup>611</sup> As a consequence, Etheridge believes that this commitment creates the potential for NMGC to materially underinvest in NMGC's system and raises reliability and safety as well as environmental concerns<sup>612</sup>.

(307) Alternatively, Etheridge suggests minimum and maximum capital investment and reporting as a condition for Commission approval of the transaction. He states, in his view, that the Commission can create value for NMGC's customers by conditioning approval of the proposed acquisition of NMGC on a commitment from NMGC to invest no less than 2.5 times the rolling three-year average of NMGC's total depreciation and amortization expenses and no more than 3.5

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<sup>609</sup> *Id.* at 26:3-8.

<sup>610</sup> Transcript of Evidentiary Hearing, Vol. 7 at 1693:5-1696:18 – 1706:5-1706:14.

<sup>611</sup> Etheridge Dir. at 15:16-18.

<sup>612</sup> *Id.* 15:18:21.

times that level for at least a period of three calendar years following transaction closing.<sup>613</sup> The recommendation for a minimum and maximum, for Etheridge, derives from the fact customers can be harmed by both under and over investment of capital in NMGC's natural gas system: inadequate capital investment raises reliability and safety concerns while over investment puts unnecessary upward pressure on rates.<sup>614</sup>

(308) In support of his argument, Etheridge then broadens this analysis and review of capital investment commitments by BCP Applicants to other natural gas utilities (LDCs). He observes that the companies of Atmos, ONE Gas, Spire, and Southwest Gas estimate 2025 capital investments to be in the high hundreds of millions and even billions of dollars, while NMGC projects \$130 million in capital investment.<sup>615</sup> Meanwhile, Etheridge not only notes this lower relative amount, but also that, in contrast to these four companies, BCP affiliated entities “have no experience financing and making large capital investments in any LDCs.”<sup>616</sup>

(309) Cebulko makes a related observation regarding the new owners' decision to facilitate access to investment capital based on how long they intend to own NMGC. In his view, the BCP Applicants' investment horizon is materially shorter than the life of the assets and customer obligations that NMGC will manage.<sup>617</sup> He points to the 12-year term of the BCP Infrastructure Funds, with the possibility of three one-year extensions, and compares that term to NMGC distribution pipeline lives exceeding fifty (50) years and transmission-line lives exceeding on

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<sup>613</sup> *Id.* at 16:13-17.

<sup>614</sup> *Id.* at 17:4-9.

<sup>615</sup> *Id.* at 20:9-15.

<sup>616</sup> *Id.* at 20:16-19.

<sup>617</sup> Cebulko Dir. at 12:13-20; 13:10-21; 14:1-7.

hundred (100) years.<sup>618</sup> From that comparison, he reasons that ratepayers may pay for asset decisions made during BCP ownership long after BCP has exited its investment.<sup>619</sup>

### 3. Determination

(310) The question under this factor is whether the proposed new owners have sufficient financial health, operational capacity, utility experience, management resources, access to capital, and governance protections to own NMGC without impairing NMGC's ability to provide reasonable and proper service at fair, just, and reasonable rates. The record contains meaningful counter-evidence concerning BCP's relative size, recent entry into the regulated gas-utility space, the short operating history of the Saturn entities, and the finite life of the BCP Infrastructure Funds. After weighing that evidence against the Joint Applicants' commitments, Staff's testimony, and the retained NMGC governance and management structure, the Hearing Examiner finds the Joint Applicants' showing sufficient.

(311) Joint Applicants' strongest evidence is that the proposed transaction does not replace NMGC's operating management with an untested platform. Baudier testified that the current NMGC executive team and employees will continue to be responsible for daily operations, and the commitments preserve NMGC as a separate operating company with local management, local offices, and a continuing local Board structure. That matters because Factor Five does not require the upstream owner alone to replicate every operational function of an integrated public utility holding company. It requires a record showing that the new ownership structure, together with the utility's retained management and governance, is qualified to support the regulated utility.

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<sup>618</sup> *Id.* at 12:13-20; 13:10-15.

<sup>619</sup> *Id.* at 13:12-21; 14:1-7.

(312) The financial record also supports approval. The acquisition financing is built around committed debt and equity support, while the debt structure is presented as non-recourse to NMGC. Baudier and Talley explain that acquisition debt is placed above NMGC, that NMGC's assets are not pledged for upstream debt, and that the intermediate-company structure is designed to preserve NMGC's separateness from acquisition financing. Shell further testified that Fitch found no negative impact on NMGC's credit rating as a result of the transaction and that NMGC's ability to obtain debt financing would not change if the acquisition is approved.

(313) Staff's review provides important independent support for the determination. Staff Witness Tupler reviewed financial health, capital-structure limits, debt load, credit metrics, board composition, and dividend restrictions. He testified that the proposed structure is common and advantageous in that it permits higher-level debt financing that is non-recourse to NMGC and does not use NMGC assets as collateral. Tupler also concluded that NMGC's existing assets, operations, and business would not be materially impacted by the transaction and that the transaction should have little, if any, effect on NMGC's stand-alone credit rating.

(314) The Hearing Examiner gives particular weight to the capital-structure and credit-protection commitments. Joint Applicants committed that NMGC and Saturn Holdco will continue to have credit ratings performed by nationally recognized rating agencies; that NMGC will maintain a post-closing equity ratio of at least fifty percent until the final order in the next general rate case; and that capital will be invested in NMGC if the twelve-month average equity ratio falls below fifty percent for more than two consecutive quarters. Tupler found the proposed capital structure well within reasonable industry parameters, and Staff concluded that the financial health of the proposed transaction is within business and industry parameters, including when compared to other private-equity-type acquisitions of public utilities previously approved by the Commission.

(315) The counter-evidence is not ignored. Walters, Etheridge, and Cebulko identify real differences between BCP Applicants and Emera: BCP's regulated gas-utility ownership experience is recent, the Saturn entities and BCP Infrastructure Funds were formed recently and lack standalone operating histories, BCP's projected infrastructure-fund scale is smaller than Emera's balance sheet, and the finite life of the BCP Infrastructure Funds is shorter than the useful lives of many utility assets. Etheridge also raises concerns about underinvestment, while Cebulko questions whether recent Louisiana and Mississippi utility acquisitions establish a sufficient record for a utility of NMGC's size.

(316) Those concerns affect the weight of the evidence, but they do not overcome the record supporting approval. The Commission is not asked to find that BCP Applicants are identical to Emera or that private infrastructure-fund ownership presents no risks. It is asked to determine whether the proposed new owners, as structured and committed in this record, are sufficiently financially healthy and qualified. They are. The retained NMGC management structure, the use of Delta Utilities and BCP-related expertise for defined support functions, the non-recourse acquisition financing, the credit-rating commitments, the minimum equity-ratio commitment, the dividend limits, the ring-fencing protections, and Staff's affirmative financial-health review collectively establish that Joint Applicants have met their burden.

(317) Accordingly, the Hearing Examiner determines that Factor Five supports approval of the transaction. The evidence does not justify additional Factor Five conditions beyond the commitments already made in the record and the Commission's continuing authority to review NMGC's future rates, capital expenditures, cost of capital, affiliate transactions, dividend practices, and service quality. Any later request to recover costs, alter capital structure treatment, or recover capital investments remains subject to the ordinary burden of proof in the appropriate

Commission proceeding. For purposes of this acquisition review, however, Joint Applicants have established that the proposed new owners are sufficiently financially healthy and qualified to own NMGC.

## **G. Adequate Protections against Harm to Customers**

### **1. Legal Standards**

(318) This factor considers whether there are adequate protections of harm that might result from the transaction. Historically, ring-fencing commitments, especially financial ones, and ones that are based on NMGC's existing ring-fencing commitments have been used to evaluate this factor. Further, there are additional commitments similar to those set out in the EPE acquisition case that can be utilized. Finally, there are statutory and rule requirements of public utility regulation, like Rule 450 and other reporting requirements that can be instructive in this evaluation and assure future compliance.

### **2. Discussion**

(319) Joint Applicants maintain that customers will be adequately protected from risks due to the Transaction through numerous regulatory commitments, including extensive ring-fencing commitments in the Joint Application.<sup>620</sup> Mr. Baudier testified that the proposed financial ring-fencing commitments are based on NMGC's existing ring-fencing commitments as well as certain of the ring-fencing commitments approved in Case No. 19-00234-UT relating to the El Paso Electric acquisition. These 24 commitments are set forth in JA Exhibit 1 Attachment JMB-4 (Revised Application) under the heading "Ring-Fencing Commitments." For brevity, the commitments will be grouped in general categories and include the following:

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<sup>620</sup> Baudier Dir. at 52-58, 114.

- (320) a. ownership (1)
- (321) b. provisions regarding notice, conditions for, restrictions on, payment of dividends (3-5)
- (322) c. restrictions on, explanation of credit, debt, asset transfers, and limitations between and among NMGC, Saturn Holdco. BCP and its affiliates (2,7-18, 22, 24)
- (323) d. access to books, records, how to keep appropriate accurate records (19-20, 23) <sup>621</sup>

### **Staff and Intervenor Responses**

(324) In order to receive Staff's recommendation that there were sufficient protections against harm from the transaction, Staff sought certain commitments from the Joint Applicants including: to not seek recovery of Acquisition Premium and Transaction Cost with condition to include terms from 15-00327-UT provide assurance that these costs, specifically, will not impact rates. <sup>622</sup> Staff Witness Jojola testified that there were other commitments regarding the day to day operations that were necessary including: an extension of the period to maintain current employees from 36 months to 5 years; requirement that the additional 20 positions to be filled for shared service in New Mexico if filled by third party vendors that they be located in New Mexico; maintenance of the 760 position workforce, and that NMGC's existing headquarters remain in New Mexico. <sup>623</sup>

(325) Due to the undetermined rate impact of the transfer of 20 local positions to New Mexico and establishment of shared IT services, Staff support the acquisition with specific cost allocations in place to mitigate rate increases. Staff Witness Ms. Naomi Velasquez testified that Staff's goal is to ensure that 20 full time employees will be employed in New Mexico with NMGC next general

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<sup>621</sup> *Id.* at 53-58.

<sup>622</sup> Jojola Dir. at 11-12.

<sup>623</sup> *Id.* at 7-8.

rate case and has requested that in the rate case application testimony and supporting documentation include the following information:

- Stating if all 20 positions have been fully relocated to New Mexico.
- Including if the 20 positions were filled internally or externally.
- Position description name (HR services, finance accounting, etc.).
- Hourly pay of each position.
- Total annual cost for each relocated employee.
- Providing the start date of employee(s) and current status.
- Providing reason for vacant positions in testimony and anticipated date and positions will be filled.<sup>624</sup>

(326) Ms. Velasquez also testified as to Staff's concern that ratepayers would be paying a premium cost for services by Emera, NMFC, and Delta Utilities during the same time period. She recommended an allowance limit of \$12 million until the next future rate case.<sup>625</sup>

(327) Mr. Walters asserted that BCP's lack of operating experience presents a risk of harm to the public, which he believes is further exacerbated by the fact it is still in the start-up phase both as a company and in its utility operations.<sup>626</sup>

(328) NEE Witness Jesse George, an attorney in Louisiana who has participated in proceedings with BCP and Delta States Utilities, LLC before the City of New Orleans, testified that his experience in that proceeding was that BCP's overly secretive legal positions are contrary to the

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<sup>624</sup> *Id.* at 13.

<sup>625</sup> *Id.* at 9-10.

<sup>626</sup> Walters Dir. at 9.

requirements of transparency and accountability.<sup>627</sup> NEE Witness Mr. Sandburg testified that there is no way to predict how the inexperienced Joint Applicants will actually operate and asserted that given the customer antagonistic practices observed with private equity takeovers, there was a very real risk that NMGC customers.<sup>628</sup>

(329) Mr. Cebulko testified that the proposed acquisition will increase the risk to customers of short- and long-term rate increases because BCP Applicants' incentives are misaligned with those of NMGC customers. While acknowledging some misalignment between utility ownership and ratepayer interests may be inherent to monopoly regulation, Mr. Cebulko testified that the misalignment in this case is exaggerated by the facts for two reasons: 1) the BCP Applicants' interest in NMGC is short-term while the ratepayers' interest in NMGC are long-term, and 2) the pressure on the BCP Applicants' to earn a return for its investors in a short period of time after agreeing to pay a premium of between \$130 million and \$185 million over book value, is not financially rational unless the Company intends to achieve operational efficiencies from the Acquisition, intends to grow its rate base, or increase its rate of return through a higher ROE or a change to its capital structure.<sup>629</sup> Mr. Cebulko also concluded the BCP Applicants' intend to accelerate investment in rate base regardless of necessity.<sup>630</sup>

(330) In support of time misalignment, Mr. Cebulko points out the 12 year term of the BCP Infrastructure Funds and their limited three one-year extensions contrasted with utility services being capital intensive with long lives-the vast majority of NMGC's distribution pipelines service

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<sup>627</sup> NEE Exhibit 2, Direct Testimony of Jesse George ("George Direct") at 1-2.

<sup>628</sup> Sandberg Dir. at 23.

<sup>629</sup> Cebulko Dir. at 10-12.

<sup>630</sup> *Id.*

lives are greater than 50 years and their transmission lines have estimates service lives that exceed 100 years.<sup>631</sup> Mr. Cebulko further testified that ratepayers are, for the most part, captive customers who expect their service will remain affordable, safe, and reliable in perpetuity.<sup>632</sup> Mr. Cebulko maintains that it is in the public interest for the utility and its customers to have similar long term visions about the programs and investments that the utility makes and that an ownership group with a short term vision, like BCP Applicants, can be problematic, because their interests are not well aligned with their customers. He also testified that mergers and acquisitions can introduce uncertainty and instability relating to such issues as changes, layoff, wages and benefits to employees, and to customers, it can lead to changes in priorities and customer service.<sup>633</sup>

(331) Mr. Cebulko also testified that BCP Applicants limited utility experience (acquisition of two gas utilities in Louisiana and Mississippi in April 2025 and July 2025, and owning a small regulated water utility in North Carolina and Indiana 2021 with 2000 customers) creates substantial uncertainty and risk for New Mexico customers.<sup>634</sup> Mr. Cebulko recommended that if the Commission were considering approval of the Acquisition, it should order BCP applicants to immediately file a non-consolidation opinion regarding the proposed ring fencing provisions.<sup>635</sup> He also recommended that the Commission require BCP Applicants to provide equivalent public disclosures to the regulator and the public on the same cadence as publicly held companies, and

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<sup>631</sup> *Id.* at 12-13.

<sup>632</sup> *Id.*

<sup>633</sup> *Id.* at 14.

<sup>634</sup> *Id.* at 46.

<sup>635</sup> *Id.* at 53. See also, No. 7 of Joint Applicants Response to Bench Request 1.

that the Commission hold NMGC to the same rules applicable to the New York Stock Exchange Corporate Governance Standards and several sections of the Sarbanes-Oxley Act.<sup>636</sup>

### **Joint Applicants' Rebuttal**

(332) In response to NEE's criticism there is no benefit to preserving existing customer protection Mr. Baudier, testified that the Joint Applicants believe that it is important to preserve the protections and therefore they are included in the Joint Application.<sup>637</sup>

(333) In response to criticisms regarding BCP's lack of experience with regulated utilities, Mr. Baudier testified that Delta Utilities was formed through the acquisition of natural gas local distribution companies ("LDCs") in Louisiana and Mississippi from CenterPoint Energy Resources Corp., and in Louisiana from Entergy Louisiana, LLC and Entergy New Orleans, LLC. and that Delta Utilities has approximately 1,000 employees and a market capitalization of \$1.7 billion. Combined, these LDCs serve approximately 600,000 customers.<sup>638</sup>

(334) In responding to NM AREA's concern regarding increased risk to customers due to potential financial strains on the new owner, Mr. Shell testified that had NMGC had essentially operated d a stand-alone entity had has not needed to rely on Emera , or its affiliates, for any debt financings, other than enlisting the assistance of affiliate treasury employees as part of their shared services arrangement. It is Mr. Shell's opinion that NMGC's ability to obtain debt financing won't change if the acquisitions is approved. Further, he testified that his belief is supported by the

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<sup>636</sup> *Id.* at 54-56.

<sup>637</sup> Baudier Rebuttal at 34.

<sup>638</sup> *Id.* at 21.

findings in the Fitch 2025 rating report stating that Fitch sees no negative impact on NMC's credit rating as a result of this transaction.<sup>639</sup>

### 3. Determination

(335) In order to assure there are adequate protections against harm, it is necessary to first identify what harm might occur. This inquiry seems interrelated to factor 3, whether quality of service would be diminished, which of course, would be harmful. Potential unreasonable rates would be harmful. If the Commission doesn't have sufficient control over all the attached parts of the entity such that it is able to require accountability and document production as well as compliance with its regulations, rules, and orders, then that would be a harm. If the financial structures of the acquiring entity are not sufficiently stable, appropriately funded, or are subject to the control of another upstream business, then there may be potential harm to customers. Additionally, if there were potential opportunities for subsidies to non-utilities or for non-utility purposes, this could be harmful to customers.

(336) As stated in Avangrid, the benefits are not meaningful if the customers do not have reliable service. Further, the benefits cited may not be as significant as they are portrayed. Unlike the record in the Avangrid case, the record in this case does not contain a clear showing of potential harms that can negatively affect the basic need for reliable service. Thus, the question becomes, do potential harms outweigh the promised benefits?

(337) There is evidence of over 20 proposed financial ring-fencing commitments that are based on NMGC's existing ring-fencing commitments as well as additional commitments similar to those set out in the EPE acquisition case. In addition to the statutory and rule requirements of

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<sup>639</sup> Shell Rebuttal at 10.

public utility regulation, there are additional conditions offered in this recommended decision to provide information and assurance of future compliance. These commitments and requirements have been the previous tools of protection for ratepayers. Most of Staff's proposed conditions for assuaging their concerns about ratepayer harms were agreed to by Joint Applicants. Other concerns assigning harm solely on the basis of the financial structure of the acquirer, private equity, like misaligned priorities, that were speculative and not supported by sufficient credible evidence in the record.

(338) There were reasonable concerns regarding Joint Applicants' brief history of regulated gas utility experience. The evidence showed that Joint Applicants have about a year of running 2 gas LDC's located in Louisiana and Mississippi that have 1000 employees, serve 600,000 customers and a market capitalization of \$1.7 billion. A year is not a long time in regulatory terms but there is no sufficient evidentiary record to support problems or difficulties that Delta Utilities is having in providing service to its customers, or that the protections proposed in this case would not be sufficient to safeguard ratepayers and the provision of safe adequate and reliable service .

(339) There were also reasonable concerns that there might be harm regarding increasing rates but again this was more speculation than fact. There was not sufficient evidence to show that this was Joint Applicants' intent or plan or that the ring fencing and other commitments were not adequate to protect ratepayers from harm.

(340) The Hearing Examiners determine that there is sufficient evidence in the record as well as Commission precedent that the ring-fencing commitments, other commitments and agreements, conditions recommended to be imposed by this recommended decision, as well as statutory and rule requirements provide adequate protection of harm to customers if the Commission approves this transaction.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

(341) The Commission finds and concludes:

(342) NMGC is certified and authorized to conduct the business of providing public utility service within the State of New Mexico, provides gas utility services within the State of New Mexico, and as such is a public utility subject to the jurisdiction of the Commission under the PUA.

(343) The Commission has jurisdiction over the parties and the subject matter of this docket.

(344) Reasonable, proper, and adequate notice of this proceeding was provided.

(345) After considering the requirements of the Six-Factor test required for the determination of a net public benefit, there is a preponderance of credible evidence that approval of the divestiture and sale of NMGC Group by Emera Group to Saturn Holdco is in the public interest and results in a net public benefit. This evidenced based determination consisted of finding that:

1. The transaction provides benefits for utility customers;
2. There was sufficient evidence that the Commission's jurisdiction would be preserved, subject to [REDACTED] [REDACTED] biannual reporting on the number, manner, and degree of formal interactions that the proposed owners have with non-participating BCP entities.
3. The quality of service will not be diminished;
4. The ring-fencing requirements provide sufficient protection against improper subsidization of non-utility activities;
5. There was sufficient evidence demonstrating the financial health of the new owner; and
6. There is sufficient evidence of adequate protections against harm to customers.

(346) Additional evidence was considered regarding representative conditions that the Commission has previously attached to its approvals to ensure an acquisition is in the public interest like rate credits, rate freezes, economic development contributions, maintain current offices for a period of time, maintain employee wages and benefits, not recover transaction costs from ratepayers, require notice to Commission of intent to pay a dividend to the holding company, agreement not to recover acquisition adjustment from ratepayers, filling of CAM, and agreement not to sell for a period of time, among other conditions.

(347) There was a preponderance of credible evidence that supports approving the Amended GDP.

(348) There was a preponderance of credible evidence that supports approving the TSA.

(349) Joint Applicants proposed corrections to the transcript references to its counsel and to its witnesses are **GRANTED** pursuant to 1.2.2.34.C NMAC, all other proposed corrections are **DENIED**.

## V. DECRETAL PARAGRAPHS

(A) There is a preponderance of credible evidence that approval of the divestiture and sale of NMGC Group by Emera Group to Saturn Holdco is in the public interest and results in a net public benefit. This evidenced based determination consisted of finding that: 1) the transaction provides benefits for utility customers; 2) there was sufficient evidence that the Commission's jurisdiction would be preserved subject to a reporting requirement similar to El Paso Electric's fining to the SEC, and subject Joint Applicants' demonstration that the equity sponsor obligations have been assigned to BCP Infrastructure Funds. The credible representations met the requirements under Rule 450; 3) the quality of service will not be diminished; 4) the ring fencing requirements provide sufficient protection against improper subsidization of non-utility activities; 5) there was sufficient

evidence demonstrating the financial health of the new owner; and 6) sufficient evidence of adequate protections against harm to customers.

(B) Additional evidence was considered regarding representative conditions that the Commission has previously attached to its approvals to ensure an acquisition is in the public interest like rate credits, rate freezes, economic development contributions, maintain current offices for a period of time, maintain employee wages and benefits, not recover transaction costs from ratepayers, require notice to Commission of intent to pay a dividend to the holding company, agreement not to recover acquisition adjustment from ratepayers, filling of CAM, and agreement not to sell for a period of time, among other conditions.

(C) There was a preponderance of credible evidence that supports approving the Amended GDP.

(D) There was a preponderance of credible evidence that supports approving the TSA.

(E) Any finding or conclusion not specifically stated here but that is necessary to make this writing coherent and complete is adopted by the Commission as if it were stated.

(F) The Commission has taken administrative notice of all Commission orders, rules, and decisions in all Commission proceedings cited in this final order.

(G) Any matter not specifically ruled on during the hearing or in this writing is resolved consistent with this Final Order.

(H) If no motions for rehearing are filed, or if all motions for rehearing are denied by operation of law, this Docket shall close.

(I) This Order is effective when signed.

(J) In computing time in accordance with statute, regulation, or Commission order, the computation shall begin on the date that this Order is filed.

**ISSUED** under the seal of the Commission at Santa Fe, New Mexico this 21<sup>st</sup> day of May 2026.

**NEW MEXICO PUBLIC REGULATION COMMISSION**



*Elizabeth C. Hurst*

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**Elizabeth C. Hurst**  
**Hearing Examiner**  
[elizabeth.hurst@prc.nm.gov](mailto:elizabeth.hurst@prc.nm.gov)

**NEW MEXICO PUBLIC REGULATION COMMISSION**

A stylized, handwritten signature in black ink, appearing to be "Patrick Schaefer".

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**Patrick Schaefer**  
**Hearing Examiner**  
[patrick.schaefer@prc.nm.gov](mailto:patrick.schaefer@prc.nm.gov)

## APPENDIX A – PROCEDURAL BACKGROUND

(1) The present application has sixteen (16) Joint Applicants.<sup>640</sup> They can be grouped into various categories depending on their role in the proposed transaction. The first group contains NMGC and its current immediate upstream owners, namely,

1. New Mexico Gas Company, Inc., a Delaware corporation (“NMGC”);
2. New Mexico Gas Intermediate, Inc., a Delaware corporation (“NMGI”); and
3. TECO Energy, LLC, a Florida limited liability company (“TECO Energy”).

These three together are known as the NMGC Group. In this group, TECO Energy owns NMGI, which then owns NMGC.

(2) The second group consists of the Saturn Companies, a series of recently formed upstream entities, all registered in Delaware, that would own NMGC Group if the transaction were to be approved. They are

4. Saturn Utilities Holdco, LLC, (“Saturn Holdco”);
5. Saturn Utilities, LLC, (“Saturn Utilities”);
6. Saturn Utilities Topco, LP, (“Saturn Topco”);
7. Saturn Utilities Topco GP, LLC, (“Saturn Topco GP”);
8. Saturn Utilities Aggregator, LP, (“Saturn Aggregator”); and
9. Saturn Utilities Aggregator GP, LLC, (“Saturn Aggregator GP”).

(3) The third group is the BCP Infrastructure Funds, the ultimate proposed upstream owners of the Saturn Companies, and in turn, NMGC Group. All are registered in Delaware. They are

10. BCP Infrastructure Fund II, LP (“BCP Infrastructure Fund II”);

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<sup>640</sup> The original docket caption reflected the names of all applicants listed here. To improve readability, an Order Changing Caption, making it shorter, was issued on November 27, 2024.

11. BCP Infrastructure Fund II-A, LP (“BCP Infrastructure Fund II-A”); and
  12. BCP Infrastructure Fund II GP, LP, a Delaware limited partnership (“BCP Infrastructure II GP”).
- (4) The final group contains the current immediate and upstream owners of NMGC Group.
13. Emera Inc., a Nova Scotia corporation (“Emera”);
  14. Emera U.S. Holdings Inc., a Delaware corporation (“EUSHI”); and
  15. Teco Holdings, Inc., a Florida corporation (“Teco Holdings”).
- (5) On October 28, 2024, Joint Applicants filed a Joint Application (“Application”) with supporting testimony seeking approval of (1) the acquisition of TECO Energy, NMGI and NMGC (the “NMGC Group”) by Saturn Holdco; (2) the Transition Services Agreement (“TSA”); (3) the divestiture of the NMGC Group by Emera, EUSHI and TECO Holdings; (4) NMGC’s Amended General Diversification Plan (“Amended GDP”); and (5) any other approvals or authorizations necessary or required under the PUA to consummate and implement the Transaction.<sup>641</sup>
- (6) The parties in this proceeding are the following:
1. Joint Applicants;
  2. The Commission Utility Division Staff (“Staff”);
  3. Coalition for Clean Affordable Energy (“CCAIE”);
  4. Federal Executive Agencies (“FEA”);
  5. Incorporated County of Los Alamos (“LAC”);
  6. New Mexico Affordable Reliable Energy Alliance (“NM AREA”);
  7. New Mexico Department of Justice (“NMDOJ”);

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<sup>641</sup> Joint Application at 2 (Oct. 28, 2024).

8. New Energy Economy (“NEE”);
  9. Prosperity Works (“PW”); and
  10. Western Resource Advocates (“WRA”).
- (7) On November 1, 2024, the Commission appointed Elizabeth C. Hurst as Hearing Examiner. Subsequently, on January 22, 2025, the Commission appointed Patrick Schaefer as Co-Hearing Examiner.
- (8) On November 5, 2024, Joint Applicants filed a Motion for Entry of Protective Order to establish conditions for the disclosure and use of confidential and proprietary information. Joint Applicants’ Motion for Protective Order was granted on December 30, 2024.
- (9) A prehearing conference to discuss procedural matters and a procedural schedule and notice was conducted on November 20, 2024. In attendance were representatives of Joint Applicants, CCAE, FEA, LAC, NEE, NMDOJ, WRA, and Staff.
- (10) On November 27, 2024, Hearing Examiner Hurst issued a Procedural Order setting a deadline for interventions for February 3, 2025, and the evidentiary hearing from June 23 – July 3, 2025. Then, Joint Applicants were ordered to publish the Notice to Customers of its Application via newspaper, bill stuffer, and website posting by December 6, 2024. NMGC filed affidavits of compliance on December 20, 2024, and January 9, 2025. The Joint Applicants were also required to file the supplemental information set forth in Paragraph B.
- (11) On December 5, 2024, NEE filed a Motion for Order Requiring Management Audit.
- (12) On December 18, 2024, Joint Applicants filed a Response in Opposition to New Energy Economy’s Motion for Order Requiring a Management Audit.
- (13) On December 19, 2024, Joint Applicants filed their Response to Request for Supplemental Information responding to Paragraph B of the Procedural Order.

(14) On February 19, 2025, the Hearing Examiners issued a Bench Request to Joint Applicants requesting specific information and documentation regarding BCP Infrastructure Funds, Bernhard Capital Partners Management, L.P., each of the Saturn Companies, an unredacted copy of the Purchase and Sale Agreement, as well as specific information relating to the Purchase and Sale Agreement, and information regarding the Joint Applicants and general partners.<sup>642</sup>

(15) On March 4, 2025, BCP Applicants filed a Motion for Confidentiality, requesting the determination that a series of exhibits and information provided in response to the Bench Request were not subject to public disclosure, because they contained trade secret information that would cause competitive harm to the BCP Applicants if publicly disclosed. BCP Applicants also provided Notice of Submission of the Claimed Confidential Information for In Camera Review.

(16) On March 5, 2025, BCP Applicants filed the Supplemental Testimony and Exhibits of Jeffrey M. Baudier in Response to the February 19, 2025, Bench Request.

(17) On March 4, 2025, Emera and NMGC filed a Claim of Confidentiality requesting that the Commission treat as confidential the policy limit amount for cyber liability provided in response to Bench Request 16(G) pursuant to paragraph K of the Protective Order.

(18) On March 19, 2025, the Joint Applicants filed a Motion for Amendment of the Procedural Order to change some of the procedural dates to allow for more time for settlement discussions. Parties were notified by e-mail that the proposed schedule would require a change to the hearing date to allow for consideration of any stipulation, Joint Applicants indicated that they would prefer

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<sup>642</sup> This Bench Request requested the production of documents that concern the financial architecture underlying both the Purchase and Sale Agreement ('PSA') and the private equity funds, namely, the BCP Infrastructure Funds, that will ultimately own TECO Energy ('Target Company') and thereby NMGC, through a series of intermediate proprietary subsidiaries, namely, the Saturn Companies.

to keep the existing schedule and on March 24, 2025, an Order Allowing Withdrawal of Motion for Amendment of Procedural Schedule was issued.

(19) On March 24, 2025, as a result of reviewing Joint Applicants' Bench Request Responses, the Hearing Examiners issued second Bench Requests to Joint Applicants for Further Information regarding debt and equity commitments. Accordingly, on March 31, 2025, BCP Applicants filed the Second Supplemental Testimony of Jeffrey M. Baudier and Supplemental Testimony of Karen E. Hutt.

(20) On March 24, 2025, the Hearing Examiners issued an Order Denying NEE's Motion for Order Requiring Management Audit.

(21) On March 28, 2025, the NMDOJ filed a Motion to Compel Production of Unredacted Exhibit NMDOJ 1-37. Responses were filed by Emera and NEE.

(22) On April 3, 2025, the Hearing Examiners issued an Order Denying BCP Applicants' Motion for Confidentiality and Denying NMGC's Motion for Confidentiality of various exhibits supplied in response to the February 19, Bench Requests.

(23) On April 3, 2025, BCP Applicants filed a Motion for Leave to File Supplemental Testimony in Response to Bench Request No. 5 to which they had responded on March 4, 2025, because they identified new information regarding limited partners in the BCP Infrastructure Funds. The Motion was granted on the same date.

(24) On April 7, 2025, BCP Applicants filed an Emergency Motion to Stay or Limit Amendment to the Hearing Examiners' Order Denying BCP Applicants' Motion for Confidentiality and Denying NMGC's Motion for Confidentiality Leave. On the same date the

Protective Order was amended to include the text regarding the conditions on the pending the request for stay and interlocutory appeal.<sup>643</sup>

(25) On April 7, 2025, BCP Applicants filed Motion for Interlocutory Appeal of the Order Denying Confidentiality to BCP Applicants and NMGC. Briefings were filed by various parties as to these requests.

(26) On April 8, 2025, the Hearing Examiners issued an Order Granting NMDOJ Motion to Compel Unredacted JA Exhibit 1-37 (Revised).

(27) On April 8, 2025, BCP Applicants following the filing of the Second Supplemental Testimony to the Bench Request Responses identifying certain limited partners to date, filed a Request for Confidentiality Treatment seeking to preserve the confidentiality of the identities of the limited partners and prevent public disclosure. The Motion was granted on April 23, 2025.<sup>644</sup>

(28) On April 11, 2025, the Hearing Examiners issued a Second Bench Request to Joint Applicants for Further Information. This Bench Request addressed the Second Supplemental Testimony of Jeffrey M. Baudier filed on March 31, 2025, responding to the March 24, 2025, Bench Request.

(29) On April 11, 2025, Emera filed an Emergency Request for Stay and Clarification of Order Granting NMDOJ's Motion to Compel Unredacted JA Exhibit NMDOJ 1-37 (Revised) and followed with the filing of a Motion for Interlocutory Appeal over the Order Granting NMDOJ's Motion to Compel. Parties filed several responses to these requests.

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<sup>643</sup> Order Amending Protective Order: 'Following a Commission ruling on confidentiality, the information shall be made available only pursuant to the Commission's Order; provided however, that an application for reconsideration, rehearing or interlocutory appeal filed by any holder of Confidential Material shall act as a stay of such order pending reconsideration, rehearing or interlocutory appeal.' (Apr. 7, 2025).

<sup>644</sup> Order Granting BCP Applicants' Request for Confidentiality (Apr. 23, 2025).

(30) Addressing Emera’s request for clarification, on April 11, 2025, the Protective Order was further amended to clarify that “[the] sentence [previously added to the Protective Order] is also applicable to documents under any claim of privilege.” And to “reflect that Emera was required to produce, not file, the unredacted documents requested by NMDOJ 1-37 (Revised).

(31) On April 15, 2025, Joint Applicants filed the Supplemental Testimony of Jeffrey M. Baudier in Response to the April 11, 2025, Bench Request.

(32) On April 17, 2025, the Direct Testimonies were filed of: Naomi A. Velasquez, Stephani L. Penn, Dwight D. Etheridge, Mark E. Garrett, Angela J. Vitulli, Larry Blank, Felicia S. Jojola, Christopher K. Sandberg, Michael Kenney, Marc A. Tupler, Jason C. Price, Bradley T. Cebulko, and Daren K. Zigich.

(33) On April 18, 2025, the Hearing Examiners issued an Order Permitting BCP Applicant’s Interlocutory Appeal.

(34) On April 23, 2025, the Hearing Examiners issued an Order Granting BCP Applicants Request for Confidentiality of the identity of the limited partners as provided in Supplemental Responses to Bench Request No. 5.

(35) On April 25, 2025, the Hearing Examiners issued an Order Granting Emera’s Request for Consideration of Emera’s Motion for Interlocutory Appeal of April 11, 2025, finding, after further review, that the sentence subject to the Motion for Interlocutory Appeal was subject to attorney-client privilege.<sup>645</sup>

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<sup>645</sup> Order Granting Emera’s Request for Reconsideration at 9 (Apr. 25, 2025).

(36) On May 2, 2025, the Commission issued an Order Requiring Further Briefing with respect to BCP Applicants' claims of confidentiality concerning the documents and information at issue in their interlocutory appeal.<sup>646</sup>

(37) On May 9, 2025, the Hearing Examiners issued an Order Denying Emera's request for Confidential Treatment of Certain Information and required them to disclose the response to NMDOJ 1-37 (Revised).

(38) On May 14, 2025, Emera filed a Motion for Interlocutory Appeal of the May 9, 2025, Order.

(39) On May 16, 2025, the following Rebuttal Testimonies were filed: Mark S. Miko, John J. Reed, Peter I. Tumminello, Eric L. Talley, Lisa M. Quilici, Dr. Christopher A. Erickson, Jeffrey M. Baudier, Karen E. Hutt, and Ryan A. Shell.

(40) On May 27, 2025, Joint Movants, Staff, NMDOJ, NEE, WRA, CCAE, NM AREA filed a Joint Motion to Dismiss Without Prejudice or for Alternative Relief and Brief in Support, alleging that the Joint Applicants, under the guise of filing rebuttal testimony, sought to make substantive changes to their initial Application, and that this was an attempt to amend the Application one month before the scheduled hearing is contrary to the Commission's Rules of Procedure and the November 7, 2024, Procedural Order.<sup>647</sup>

(41) On May 28, 2025, in an Order Setting Response and Reply Deadlines to the Joint Motion to Dismiss, the Hearing Examiners ordered Joint Movants to comprehensively identify the portions

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<sup>646</sup> Order Requiring Further Briefing (May 5, 2026).

<sup>647</sup> Motion to Dismiss at 1.

of Joint Applicants' testimony at issue by May 29, 2025, and set responses to the Motion to Dismiss to be filed by June 2, 2025.<sup>648</sup>

(42) On May 29, 2025, Joint Movants filed a Joint Response to the Hearing Examiners May 28<sup>th</sup> Order identifying the improper Joint Applicants' Rebuttal.

(43) On June 2, 2025, Joint Applicants filed their Response to Joint Motion to Dismiss. While asserting that the allegations in the Joint Motion were incorrect and without merit, the Joint Applicants acknowledged that the Joint Movants wanted to have some delay in the schedule to evaluate the rebuttal testimony. The Joint Applicants proposed alternative schedules that provided for new testimony filing deadlines and an approximate six-week extension of the schedule culminating in a hearing at the end of August.

(44) A prehearing and status conference was set for June 11, 2025, to discuss the Joint Motion to Dismiss, the parties' proposed deadlines for Joint Applicants' revised Application, testimony, and hearing dates.<sup>649</sup>

(45) On June 12, 2025, the Hearing Examiners issued an Order vacating the Procedural Order's prehearing and hearing dates.<sup>650</sup>

(46) On June 26, 2025, the Commission issued an Order Granting Interlocutory Appeal that granted BCP Applicants interlocutory appeal and reversed the appealed order of the Hearing Examiners.

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<sup>648</sup> Order Setting Response and Replies Deadlines to the Joint Motion to Dismiss (May 28, 2025).

<sup>649</sup> Order Setting Prehearing and Status Conference (June 9, 2025).

<sup>650</sup> Order Vacating Prehearing and Hearing Dates (June 12, 2025).

(47) On June 30, 2025, the Hearing Examiners issued an Order Setting Filing Dates for Revised Application that set July 3, 2025, as the deadline for a revised application and July 9, 2025, for parties to provide proposed procedural dates.

(48) On July 3, 2025, Joint Applicants filed a Revised Joint Application and the supporting revised direct testimonies of nine witnesses.

(49) On July 11, 2025, the Hearing Examiners issued an Order Setting Procedural Dates for Revised Application that established the new procedural schedule for the processing of the revised application that set, among other things, the evidentiary hearing for November 3 to 14, 2025.<sup>651</sup>

(50) A Motion to Strike Testimony of Suedeen Kelly was filed on August 29, 2025. Joint Applicants Response was filed on September 11, 2025.

(51) NEE filed a Motion to Compel and for Sanctions on September 3, 2025. Joint Applicants Response was filed on September 11, 2025.

(52) On September 19, 2025, an Order Denying NEE Motion to Compel and for Sanctions was issued.

(53) On September 22, 2025, an Order Denying NEE Motion to Strike was issued.

(54) On September 22, 2025, the Commission issued an Order Setting Public Comment Hearing, The Commission conducted an in-person Public Comment Hearing in Albuquerque on October 28, 2025, where 49 citizens provided oral public comment.<sup>652</sup> In addition, during the period of December 5 through January 23, 2026, the Commission received over 350 pages with written comments from concerned citizens and organizations expressing positions against and in support of the transaction.

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<sup>651</sup> Order Setting Procedural Dates for Revised Application (July 11, 2025).

<sup>652</sup> Transcript of Proceedings (October 8, 2025).

(55) On September 25, 2025, Joint Applicants filed a Motion to File the Third Supplemental Testimony of Jeffery M. Baudier.

(56) On September 26, 2025, the following Revised Direct Testimonies were filed: Naomi A. Velasquez, Stephani L. Penn, Dwight D. Etheridge, Angela J. Vitulli, Larry Blank, Felicia S. Jojola, Christopher K. Sandberg, Michel Kenney, Marc A. Tupler, Jason C. Price, and Daren K. Zigich. Additionally, there was Direct Testimony from Christopher C. Walters, Jesse George, and Bryce Zedalis.

(57) On October 10, 2025, the following Revised Application Testimonies were filed: Mark S. Miko, Peter I. Tumminello, Eric L. Talley, Lisa M. Quilici, Dr. Christopher A. Erickson, Suedeem Kelly, Jeffrey M. Baudier, Karen E. Hutt, and Ryan A. Shell. Dwight D. Etheridge also filed Rebuttal Testimony.

(58) On October 20, 2025, Joint Applicants filed Objections and Motion in Limine to Exclude the Testimony of NEE Witness Jesse George.

(59) On October 29, 2025, Joint Applicants filed a Notice of Extension of Outside Date of Purchase and Sale Agreement.

(60) On October 31, 2025, the NMDOJ filed a Motion to Withdraw the testimony of Mark E. Garrett.

(61) On November 3, 2025, the Hearing Examiners issued an Order Granting in Part and Denying in Part Joint Applicants Motion to Strike the Testimony of Jesse George.

(62) Several other motions and orders not listed here addressing scheduling, evidentiary issues, and confidentiality matters were filed.

(63) The public evidentiary hearing was conducted November 3-14, 2025. In attendance were Commissioners Aguilera, Niebert, and O'Connell, counsel for Joint Applicants, Staff, and

Intervenors CCAE, FEA, LAC, NM AREA, NMDOJ, NEE, WRA, PW. Testimony and exhibits were provided by Joint Applicants, Staff, NM AREA, CCAE, FEA, NEE, and WRA. There were 24 witnesses.

(64) Transcripts of the Hearings were filed on November 4-7, 10, 12, 13, and 17.

(65) Responses to Hearing Bench Requests were filed on November 4, 5, 12, and 17

(66) On November 19, 2025, the Hearing Examiners issued a Briefing Order setting December 10, 2025, for post-hearing briefs and December 18, 2025, for replies.

(67) On December 3, 2025, NEE filed a Motion for Interlocutory Appeal. Joint Applicants filed a Response to this Motion,

(68) On December 10, 2025, NM AREA filed a Motion for Reconsideration of Oral Ruling Admitting Staff Response to Bench Request No. 4 into evidence. NM AREA asserted that Staff's response was inadmissible hearsay as it was provided by a Staff member who did not testify at the hearing. Staff and Joint Applicants filed Responses to this Motion.

(69) On December 10, 2025, Joint Applicants filed Proposed Corrections to the Transcripts.

(70) Post-Hearing Briefs were filed by Joint Applicants, Staff, CCAE, FEA, NEE, NM AREA, NMDOJ, and WRA.

(71) On December 18, 2025, the Commission issued an Order Denying Interlocutory Appeal that denied NEE's interlocutory appeal request.

(72) On January 23, 2026, NEE filed a Motion to Reopen the Evidentiary Record to Consider Extraordinary Evidence concerning BCP's Affiliate Delta Utilities. On February 4, 2026, BCP Applicants filed a Response.

(73) On February 10, 2026, Joint Applicants filed a Notice of Affirmation Regarding Amendment to the Purchase and Sale Agreement.