

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

**REBUTTAL TESTIMONY AND EXHIBITS
OF
ERIC L. TALLEY**

May 16, 2025

**NMPRC CASE NO. 24-00266-UT
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JA Exhibit ELT-1 (Rebuttal): Resume

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I. INTRODUCTION AND PURPOSE

Q. PLEASE STATE YOUR NAME AND A HISTORY OF YOUR ACADEMIC QUALIFICATIONS.

A. My name is Eric L. Talley. I am the Isidor and Seville Sulzbacher Professor as well as the Faculty Co-Director of the Millstein Center for Global Markets and Corporate Ownership at Columbia University. I am also a member of the European Corporate Governance Institute (“ECGI”). Until August 2015, I held the Rosalinde and Arthur Gilbert Endowed Chair in Law, Business and the Economy at the University of California at Berkeley, where I was the Co-Director of the Berkeley Center in Law, Business and the Economy. Prior to my appointment at Berkeley, I was the Ivadelle and Theodore Johnson Professor of Law and Business at the University of Southern California (“USC”), where I had dual appointments in the Gould School of Law and the Marshall School of Business (Finance and Business Economics), and served as Faculty Director of the USC Center in Law, Economics, and Organization, a multidisciplinary research group organized across three university departments (law, business, and economics). Also, from 2001 to 2004, I directed the USC/Caltech Olin Center for the Study of Law and Rational Choice. Simultaneous with much of my academic career, I held the position of Senior Economist (Affiliated Adjunct) at the RAND Corporation. At RAND, I conducted research on corporate governance, corporate culture, contract design, securities fraud, securities regulation, the legal and accounting professions, civil justice, business ethics, and private class actions. I hold a Ph.D. in economics from Stanford University, as well as a J.D. from Stanford Law School.

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1 I have taught numerous classes over the course of my 29-year academic career in the areas
2 of mergers and acquisitions, corporate finance, corporate law, corporate governance,
3 economic analysis of law, business ethics, valuation, contracts, statistics, law and
4 economics, behavioral law and economics, machine learning and law, risk arbitrage, and
5 game theory. On two occasions (2017 and 2022), I have received the Willis L.M. Reese
6 Award for Excellence in Teaching from the graduating class of Columbia Law School.

7
8 In 2024, I was elected to the American Academy of Arts and Sciences, one of the oldest
9 and most prestigious learned societies in the United States. Until November 2022, I served
10 as the Immediate Past Chair of the Board of the Society of Empirical Legal Studies
11 (“SELS”), the leading academic association in the world of empirical legal scholars. I was
12 Chair of the Board of SELS from 2017 to 2019. I additionally served as co-President of
13 SELS (2013 to 2014). Additionally, I have been elected multiple times to the board of the
14 American Law and Economics Association (“ALEA”), the leading academic association
15 in the world of law and economics scholars (finishing my most recent term in May 2019).
16 I have previously served as Chair of both the American Association of Law Schools
17 (“AALS”) section on Law and Economics and the AALS section on Contracts.

18
19 I frequently speak both to academic audiences and to professional associations, including
20 attorneys, utilities regulators, judges, and corporate directors. I have many times been
21 retained to provide training sessions for practitioners and judges regarding governance and
22 valuation practices.

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1 I have for the last seventeen years conducted training on valuation and finance for state
2 utilities regulators and their staff, typically organized by the Institute for Regulatory Law
3 and Economics, sponsored by University of Colorado and Northwestern University.

4
5 In 2008, I was selected to deliver the annual Francis G. Pileggi Distinguished Lecture on
6 corporate law and governance before the assembled Delaware judiciary (state court and
7 federal court judges). I have testified as an expert in a variety of legal proceedings related
8 to corporate structuring, valuation and governance in both United States courts and
9 international tribunals.

10
11 I have conducted research and published dozens of articles in areas pertaining to corporate
12 valuation, corporate governance, economic analysis of law, bargaining theory, auction
13 design, business judgment and ethics, fiduciary duties, corporate opportunities, securities
14 market regulation, and related topics. My publications have appeared in refereed journals,
15 law reviews, and edited volumes, and I am a referee for a number of academic journals in
16 my field. Many of my recent publications have focused on the architecture and structure
17 of legal texts, including (but not limited to) large transactional documents such as mergers
18 and acquisitions agreements. On multiple occasions, my published scholarship has been
19 designated as one of the “Ten Best Corporate and Securities Articles of the Year” by the
20 Corporate Practice Commentator.

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1 A more complete summary of my educational background and professional qualifications
2 is presented in JA Exhibit ELT-1 (Rebuttal): Resume, which includes a list of my
3 publications, speaking engagements, refereeing experience, and previous expert testimony.
4

5 I am also proud to note that I am a third-generation New Mexican, having grown up in Los
6 Alamos, New Mexico where I graduated from Los Alamos High School prior to beginning
7 university. My father grew up in Portales, New Mexico, near where his parents
8 homesteaded with their families at the beginning of the twentieth century.
9

10 **Q. WILL YOU RECEIVE COMPENSATION FOR APPEARING IN THIS CASE?**

11 **A.** With respect to this matter, I am being compensated at my usual and customary rate of
12 \$1,750 per hour.
13

14 **Q. WILL THE AMOUNT OF COMPENSATION YOU RECEIVE FOR APPEARING**
15 **IN THIS CASE DEPEND IN ANY WAY ON THE RESPONSES YOU PROVIDE IN**
16 **YOUR TESTIMONY?**

17 **A.** It does not: My compensation in this matter is in no way contingent or based on the content
18 of my opinion or the outcome of this or any other matter.
19

20 **Q. HAVE YOU SUBMITTED OTHER PRE-FILED TESTIMONY IN THIS CASE?**

21 **A.** No.
22

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Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my Rebuttal Testimony is to address and respond to testimony in this case (In the Matter of the Joint Application for Approval to Acquire New Mexico Gas Company, Inc. By Saturn Utilities Holdco, LLC) regarding the proposed corporate and capital structure of the Transaction, and private equity ownership of a utility. In this Joint Application, Emera Inc (“Emera”), New Mexico Gas Company (“NMGC”), Saturn Utilities Holdco, LLC (“Saturn Holdco”), and affiliates, are requesting approval for a transaction in which Saturn Holdco will acquire NMGC and Emera, with Emera U.S. Holdings, Inc., and TECO Holdings, Inc., will divest their existing ownership of NMGC (the “Transaction”). My testimony responds to that of Mark E. Garrett on behalf of the New Mexico Department of Justice (“NMDOJ”) with respect to private equity ownership of a utility, the proposed capital structure and the acquisition premium, and of Christopher K. Sandberg on behalf of New Energy Economy (“NEE”) with respect to the proposed capital structure of the Transaction.

Q. BRIEFLY SUMMARIZE THE RESPONSES IN YOUR TESTIMONY.

A. Nothing about the proposed Transaction’s structure or funding, nor anything about private equity ownership as designed in this Transaction, should cause concern on the part of the Commission. The Commission will be able to regulate NMGC as it does today. The post-Transaction structure is straightforward; it is no more complicated than the present structure, which has not been an obstacle. The funding of the Transaction is reasonable and conservative, and both the structure and the financial strength are bolstered by

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1 proposed protections offered by the BCP Applicants.¹ Private equity investment is
2 compatible with utility ownership and regulation and does not present inherent regulatory
3 challenges or risks to customers.
4

II. TRANSACTION STRUCTURING

6 **Q. HAVE WITNESSES RAISED ISSUES REGARDING THE STRUCTURE –**
7 **INCLUDING FUNDING – OF THE PROPOSED TRANSACTION?**

8 **A.** Yes. Ms. Velasquez testified that the Utility Division Staff (“Staff”) is uncertain whether
9 there is something inherent to private equity or the proposed corporate structure that would
10 result in the “obstruction, hindrance, diminished, [or] impaired supervision” of the
11 “regulation and supervision” of NMGC.² Mr. Garrett asserts throughout his testimony that
12 the goals of private equity may be inconsistent with the goals of a public utility, and that
13 BCP³ plans on “using double leverage (arbitraging debt for equity) to increase profits at
14 ratepayers expense.”⁴ Mr. Sandberg makes similarly broad generalizations and allegations
15 as to private equity investment at large.
16

¹ The “BCP Applicants” are BCP Infrastructure Fund II, LP (“BCP Infrastructure Fund II”); BCP Infrastructure Fund II-A, LP (“BCP Infrastructure Fund II-A”); BCP Infrastructure Fund II GP, LP (“BCP Infrastructure Fund II GP”); Saturn Utilities Aggregator, LP (“Saturn Aggregator”); Saturn Utilities Topco, LP (“Saturn Topco”); Saturn Utilities, LLC (“Saturn Utilities”); Saturn Holdco; Saturn Utilities Aggregator GP, LLC (“Saturn Aggregator GP”); and Saturn Topco GP, LLC (“Saturn Topco GP”).

² See Direct Testimony of Naomi A. Velasquez at 20-22.

³ “BCP” or “BCP Management” means Bernhard Capital Partners Management, LP.

⁴ Direct Testimony of Mark E. Garrett at 21-22.

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A. POST-TRANSACTION HOLDING COMPANY STRUCTURE

Q. PLEASE SUMMARIZE THE PRE- AND POST-TRANSACTION CORPORATE STRUCTURES OF NMGC AND ITS PARENT COMPANIES.

A. Today, NMGC is owned by New Mexico Gas Intermediate, Inc. (“NMGI”), which is owned by TECO Energy, LLC, which is owned by both TECO Energy, LLC and (through non-voting shares) TECO Holdings, Inc., which are both owned by Emera U.S. Holdings, Inc., which is owned by both Emera Energy U.S. Subsidiary No. 1, Inc. and Emera Inc.; Emera Energy Subsidiary No. 1, Inc. is itself owned by Emera Energy Inc., which is owned by Emera Inc., which is owned via publicly-traded shares, traded and held by public shareholders of varying types and sizes, known and unknown.

Post-Transaction, NMGC would continue to be owned by NMGI, which would continue to be owned by TECO Energy, LLC. TECO Energy, LLC will only have one owner, Saturn Holdco (replacing the two parents TECO Energy has today). In turn, Saturn Holdco will be owned by Saturn Utilities, which will be owned by Saturn Topco, which will be owned by both Saturn Topco GP and Saturn Aggregator. Saturn Aggregator will be owned by both Saturn Aggregator GP and the BCP Infrastructure Funds.⁵

⁵ The “BCP Infrastructure Funds” are BCP Infrastructure Fund II, BCP Infrastructure Fund II-A, and BCP Infrastructure Fund GP.

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1 In short, today, NMGC has seven levels of upstream ownership leading to its ultimate
2 parent entity shareholders, with two points of interlocking ownership. Post-Transaction,
3 NMGC would have eight levels of upstream ownership leading to the investors in the BCP
4 Infrastructure Funds, with two points of interlocking ownership.

5
6 The respective structures were illustrated in diagrams provided at JA Exhibit Supplemental
7 Information 2, titled “Corporate Ownership of New Mexico Gas Company.”
8

9 **Q. DO YOU FIND ONE STRUCTURE TO BE MORE COMPLEX THAN THE**
10 **OTHER?**

11 **A.** No. In fact, they are remarkably similar forms of multi-layered ownership structure.
12

13 **Q. DO YOU AGREE WITH MR. CHRISTOPHER SANDBERG’S SUGGESTION**
14 **THAT THE PROPOSED ACQUISITION IS A MERGER WITH SUCH**
15 **COMPLEXITIES THAT RATEPAYERS SHOULD PER SE RECEIVE**
16 **OFFSETTING POSITIVE BENEFITS IN CONNECTION WITH THE**
17 **TRANSACTION?**⁶

18 **A.** No. The Transaction envisions that NMGC’s structure will be left intact after the
19 acquisition, and that its equity cushion will even be augmented. My understanding is that
20 it will be held as a separately operating subsidiary, and debt incurred by other affiliates of

⁶ Direct Testimony of Christopher K. Sandberg at 12-13.

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1 the BCP Applicants will have no recourse to NMGC's assets. The Transaction does not
2 appear to involve or contemplate the integration of NMGC's operations with other
3 operating companies. The proposed structure is simple and transparent, and I therefore
4 disagree with the characterization of the Transaction as complicated. It is not.

5
6 **Q. IS THIS TRANSACTION STRUCTURE COMMON AMONG TRANSACTIONS**
7 **INVOLVING PUBLIC UTILITIES?**

8 **A.** My review of the documents in this case reveals a transaction structure that seems
9 eminently unremarkable in the M&A space generally, and the utilities space in particular.
10 For a variety of reasons, a buyer (often referred to as the "parent") will prefer to accomplish
11 an acquisition through one or more special purpose entities ("SPEs") sometimes known as
12 "acquisition subs" or "catalysts" that are specially created for the express purpose of
13 consummating the acquisition. The ultimate transaction is then formally executed and
14 consummated as and between the target company and the acquisition sub(s), with the
15 surviving post-acquisition entity becoming a wholly owned subsidiary of the parent.

16
17 The reason for this structure emanates principally from transaction cost management goals
18 that have little to do with the issues surrounding this regulatory proceeding. Using an
19 acquisition sub is typically the easiest and most expedient way to authorize the purchase
20 from the buyer side, as well as to manage a variety of contractual issues of the target firm
21 when its assets and liabilities are to remain intact with the surviving entity. There are often
22 tax reasons to utilize specific SPE structures for effectuating an acquisition as well. I teach

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1 my students to expect the acquisition sub structure for virtually all types of acquisitions,
2 regardless of whether private equity buyers are involved or not.

3
4 In addition to the aforementioned rationales for consummating an acquisition through a
5 catalyst, a final attribute that is important for this transaction comes through something
6 known as “asset partitioning.” Corporations, LLCs, LLPs and other limited liability
7 entities provide important buffers against systemic risk and liability flows that can unsettle
8 an otherwise healthy business or set of businesses. It is critical, moreover, to note that
9 limited liability runs both ways. First, it shields an equity owner from cataclysmic
10 liabilities incurred at the company level. But just as important, limited liability shields the
11 company from cataclysmic liabilities incurred by the owner and the owner’s affiliate
12 entities. As a matter of corporate law, the general rule is that the operating company cannot
13 be made to answer for debts or liabilities of its parent/affiliates, absent a showing that
14 failure to allow such “corporate veil piercing” would permit a fraud or create an injustice
15 (truly high bars, and rarely invoked). Moreover, the limited liability veil operates at each
16 level of ownership in a company owned through a succession of intermediate entities. For
17 example, if a parent holding company owned 100% of a direct subsidiary A, which itself,
18 in turn, owned 100% of a “grandchild” subsidiary B, it would be extremely difficult for a
19 creditor of the parent to access the assets of the grandchild subsidiary B under standard
20 legal prescriptions of veil piercing. To do so, that creditor would have to navigate a
21 successful “veil piercing” case twice over, first as between the parent and subsidiary A,
22 and then as between subsidiary A and subsidiary B. Consequently, additional layers of

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1 ownership entity tend to insulate the held company from the vicissitudes of the parent's
2 obligations.

3
4 **Q. ARE THERE DIFFERENCES YOU NOTE BETWEEN THE EXISTING**
5 **STRUCTURE AND THE PROPOSED STRUCTURE?**

6 **A.** Yes. While the two structures are, as I have previously observed, remarkably similar in
7 terms of overall ownership structure, the proposed Post-Transaction relationships
8 incorporate numerous ring-fencing and governance assurances, many of which appear to
9 be above and beyond what is currently in place. For simplicity, in what follows I will refer
10 to these measures, in aggregate, as "ring-fencing."

11
12 **Q. PLEASE DESCRIBE THE "RING-FENCING" MEASURES YOU REFERENCE.**

13 **A.** I have reviewed the "Joint Applicants' Commitments" that were set forth in JA Exhibit
14 Supplemental Information 4 identified as addressing "Governance Limits and
15 Documentation" and "Ring Fencing Commitments" and the additional, related
16 commitments set forth in the Rebuttal Testimony of Jeffrey M. Baudier. In my opinion,
17 these measures are well accepted vehicles for assuring the governance, operational, and
18 financial independence of NMGC from the other companies in the BCP complex. These
19 include (inter alia) provisions that ensure that four members of the NMGC board consists
20 of independent directors, the pegging of director compensation to NMGC performance
21 (rather than the BCP Applicants), an undertaking not to seek recovery of upstream
22 insolvency costs from NMGC customers, an undertaking to avoid certain interested-party

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1 transactions or loan obligations, an undertaking to maintain NMGC's credit rating as an
2 independent entity, and an undertaking to keep accurate, appropriate, and detailed financial
3 accounts of NMGC and Saturn Holdco as respective separate entities.

4
5 **Q. HAVE YOU PREVIOUSLY SEEN "VEIL PIERCING" IN THE ABSENCE OF CO-**
6 **MINGLED ASSETS?**

7 **A.** This transaction is a good example of how to avoid many of the preconditions to veil
8 piercing. Because the formal commitments to which the BCP Applicants accept as
9 conditions for approval of the Transaction specifically require there be no co-mingled
10 assets, there is little to no likelihood of a finding of fraud or injustice that are the
11 prerequisites for "piercing" the corporate veil. With such formal separation, in fact, veil
12 piercing is virtually impossible without significant other infirmities such as fraud. A
13 necessary condition for veil piercing is that there be "unity of interest" between the entity
14 being pierced and the entity that is the source of the unsatisfied liability. A key determinant
15 of unity of interest is whether the parties adhere to the separateness of one another's assets
16 and liabilities. If the parties are assiduous about doing so, and they do so with appropriate
17 corporate formalities, the preconditions for veil piercing are almost certainly not met. This
18 transaction is a good example of how to avoid commingling (and thus veil piercing).
19 Because the formal commitments to which the BCP Applicants accept as conditions for
20 approval of the Transaction specifically require there be no co-mingled assets, there is little
21 to no likelihood of a finding that would require "piercing" the corporate veil. Moreover,
22 the several additional ring-fencing provisions (detailed above) provide additional

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1 assurances that NMGC’s business and business assets will be kept and operated separately
2 from other affiliates.

**B. TRANSACTION FINANCING AND POST-TRANSACTION
FINANCIAL STRENGTH**

6 **Q. PLEASE SUMMARIZE THE FINANCING STRUCTURE OF THE BCP**
7 **APPLICANTS’ PURCHASE OF NMGC FROM EMERA.**

8 **A.** The BCP Applicants have opted to execute this transaction through a subsidiary catalyst,
9 Saturn Holdco, as well as a series of intermediate entities (including Saturn Aggregator;
10 Saturn Topco; Saturn Aggregator GP; and Saturn Topco GP). The Transaction – valued at
11 approximately \$1.25 billion in enterprise value – envisions the assumption of \$550 million
12 in existing NMGC debt, with the balance taking the form of a cash payment to Emera of
13 approximately \$700 million. The latter contribution, as I understand it, will be funded by
14 \$450 million of equity contributions from the BCP Infrastructure Funds, augmented by a
15 \$250 million upstream fund-raise in new private debt, at the Saturn Holdco level, which is
16 non-recourse to NMGC.

18 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY “THE ASSUMPTION OF \$550**
19 **MILLION IN EXISTING NMGC DEBT,” WHICH HAS ALSO BEEN REFERRED**
20 **TO AS “PORTABLE DEBT.”**

21 **A.** In an acquisition transaction, the target company may already have legacy debt whose
22 terms are sufficiently attractive to keep in place. Typical legacy debt obligations (including

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1 those at issue here) permit the debt to be kept in place at the company level, and thus part
2 of the “price” the buyer pays takes the form of assuming existing debt. That is the basic
3 structure present in this Transaction, as I understand it.

4
5 **Q. DO YOU HAVE ANY CONCERN WITH THE ASSUMPTION OF DEBT?**

6 **A.** Not at all. This is an entirely standard approach that provides continuity to the financial
7 structure of NMGC. In fact, it is often efficient to keep debt in place at the target level
8 (when, for example, it has favorable interest rates relative to prevailing market rates).

9
10 **Q. MR. SANDBERG QUOTES AN INTERVIEW FOR THE PROPOSITION THAT A**
11 **“PRIVATE EQUITY FIRM USES A LITTLE BIT OF ITS OWN MONEY, A**
12 **LITTLE BIT OF INVESTORS’ MONEY, AND A WHOLE LOT OF BORROWED**
13 **MONEY TO BUY COMPANIES”⁷ – DO YOU FIND THAT TO BE THE CASE IN**
14 **THIS TRANSACTION?**

15 **A.** No. Some may equate “private equity” to heavily leveraged transactions, but this
16 Transaction is a good illustration that equating the two is a misconception. That excerpt
17 Mr. Sandberg quotes does not describe this Transaction (or relate to it in any way, as far as
18 I can determine).

19

⁷ Direct Testimony of Christopher K. Sandberg, at 34.

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**Q. DO YOU HAVE ANY CONCERNS REGARDING THE MIX OF EQUITY
FUNDING FROM THE BCP INFRASTRUCTURE FUNDS AND DEBT AT
SATURN HOLDCO?**

A. No. Most significantly, NMGC's equity ratio will not change as a consequence of this Transaction. The same equity and debt currently existing at NMGC will remain. NMGC's actual capital structure is and will continue to be over 60%.⁸ The BCP Applicants have projected the post-Transaction equity ratio to remain over 60% in future years.

Moreover, the mix of equity and debt used to make the purchase from Emera has a considerable equity component, with proportionately little debt. I would emphasize, moreover, that the new debt component is non-recourse to NMGC and thus cannot affect or impair NMGC or its customers. The purchase is being conservatively funded, and Saturn Holdco itself will have a conservative equity component.

For further context regarding standard financing practices, the Commission stated and accepted that during Emera's own purchase of TECO (and, by extension, NMGC), Emera made a \$6.5 billion payment consisting of:

funds raised from the sale of ('CAD') \$2 billion of convertible debentures issued in connection with the Proposed Transaction that will be converted into Emera common stock and cash on hand at Emera; (ii) preferred equity

⁸ Compare JA Exhibit NMDOJ 1-1a (New Mexico Gas Company, Inc. Balance Sheets through September 30, 2024) with JA Exhibit JMB-3 at p. 23.

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1 issuances in the United States and Canada (\$1.0 billion); and (iii) long-term
2 debt issuances in the United States and Canada (\$3.5 billion).⁹
3

4 That was also a reasonable financing structure, but I note that it had a considerably lower
5 proportion of equity and a higher proportion of debt than in this Transaction.
6

7 **Q. MR. GARRETT ASSERTS THAT THE PRESENCE OF DEBT AT BOTH NMGC**
8 **AND AT A PARENT COMPANY IN THE POST-TRANSACTION STRUCTURE**
9 **CONSTITUTES AN “ADDED RISK[] FOR RATEPAYERS” ASSOCIATED WITH**
10 **THE TRANSACTION, INCLUDING TO “INCREASE PROFITS AT RATEPAYER**
11 **EXPENSE”¹⁰ – DO YOU AGREE?**

12 **A.** No. First, as I have explained, I do not think the debt at NMGC, the upstream debt, or the
13 combination of the two presents a risk to customers. Quite the opposite, in fact.
14

15 Second, to the extent Mr. Garrett’s concern is that “BCP may be planning to include the
16 acquisition premium in the capital structure so that the premium would be recovered
17 indirectly through higher returns,”¹¹ I note that there is leverage in the existing structure,
18 and there is no allegation that the Commission has been unable to regulate NMGC and its
19 rates. It is broadly common for utility operating companies to carry their own debt, and

⁹ See Certification of Stipulation, at p.8, Case No. 15-00327-UT.

¹⁰ Direct Testimony of Mark E. Garrett at, e.g., p. 21.

¹¹ *Id.*

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1 for one or more parent entities to also carry debt. The Commission regulates the operating
2 utility and its investments.

3
4 **Q. PLEASE DESCRIBE YOUR COMPARISON OF UPSTREAM LEVERAGE IN**
5 **THE EXISTING STRUCTURE VERSUS IN THE PROPOSED STRUCTURE?**

6 **A.** Under the status quo, NMGC operates in an affiliate structure where the incurrence of
7 intermediate level debt appears to have been a longstanding practice. For instance, as stated
8 above, Emera financed the prior acquisition of NMGC with combined \$6.5 billion of debt
9 and equity, including \$2 billion of convertible debentures, \$1 billion of preferred equity,
10 and \$3.5 billion of long-term debt. Emera additionally assumed \$3.9 billion of TECO's
11 debt obligations in that transaction for a total enterprise value of \$10.4 billion. Assuming
12 the new debt was ascribed to NMGC in the same manner that Mr. Garrett has calculated a
13 supposed "actual equity level" of "36%" in this Transaction (which, as noted above, would
14 be improper), the implied equity ratio in the Emera transaction would be less than 29%, or
15 about 7% lower than the resulting equity ratio that this Transaction would deliver.

16
17 Moreover, based on documents reviewed in preparation for this testimony, during Emera's
18 ensuing ownership of TECO, NMGC has routinely held debt at no fewer than three levels
19 within its structure: Indeed, its most recent reporting year, the publicly available audited
20 financials of Emera reveal that each of Emera Inc., NMGI, and NMGC held long-term
21 debt. While Mr. Garrett expresses concern at the two layers of debt resulting from this
22 transaction, he appears curiously inconsistent in his concerns as to the status quo, where he

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1 ignores the two layers of debt currently in NMGC's existing capital structure and the *three*
2 layers of debt present during Emera's ownership of NMGC. Thus, to the extent that one
3 harbors concerns about debt loads across the post-acquisition affiliate structure, the
4 proposed transaction appears fully consistent with the status quo (if not a discernible
5 improvement).

6
7 I understand that Mr. Garrett repeatedly asserted when deposed in this proceeding that he
8 is unable to determine whether there is what he calls "double leverage" in the existing
9 structure. It is clear upon inspection, however, that there exists debt at both NMGC and an
10 upstream parent today, and I did not find this difficult to determine.

11
12 **III. BENEFITS OF PRIVATE EQUITY OWNERSHIP**

13 **Q. ARE YOU AWARE OF WITNESSES IN THIS PROCEEDING ALLEGING THAT**
14 **PRIVATE-EQUITY OWNERSHIP IS HARMFUL?**

15 **A.** Yes. Both Mr. Garrett and Mr. Sandberg have alleged risks or harms inherent to private
16 equity versus publicly-traded holding companies.

17
18 **Q. DOES IT APPEAR TO YOU THAT, AS A POLICY MATTER, THE STATE OF**
19 **NEW MEXICO VIEWS PRIVATE EQUITY AS HARMFUL?**

20 **A.** No. In fact, the State of New Mexico itself makes significant private equity investments
21 for the benefit of New Mexico citizens and retirees. The New Mexico Educational

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1 Retirement Board has invested \$30 million in funds managed by BCP Management itself.
2 More generally, according to its website, the New Mexico State Investment Council
3 (“SIC”), which invests (among other things) the retirement funds for New Mexico state
4 employees, has been making investments in private equity funds since 1989, and currently
5 has over \$4.5 billion in assets and a long-term allocation target of 13% for private equity
6 investments. The SIC has invested in hundreds of private companies, through dozens of
7 managers and more than 100 limited partnerships.¹² In fact, the SIC’s 2025 Annual
8 Investment Plan specifically projects that it will consciously seek “[g]reater exposure to
9 private market assets over publicly-traded assets” over the next seven to ten years.¹³ The
10 fact that New Mexico views private equity as a vehicle for investing the state’s funds on
11 behalf of its retirees, and has billions of dollars invested, stands as persuasive rebuttal to
12 the unfounded claims that private equity investments are unacceptably risky or at odds with
13 the businesses in which they invest.
14

15 **Q. ARE YOU AWARE OF WITNESSES IN THIS PROCEEDING ALLEGING THAT**
16 **PRIVATE-EQUITY OWNERSHIP OF UTILITIES IS UNUSUAL AND NEW?**

17 **A.** Yes. Mr. Garrett made this claim in his deposition.
18

¹² <https://www.sic.state.nm.us/investments/alternative-investments/private-equity-investments/>. Last checked May 14, 2025.

¹³ <https://www.sic.state.nm.us/wp-content/uploads/2024/10/Annual-Investment-Plan-FY25.pdf>. Last checked May 15, 2025.

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1 Q. ARE YOU AWARE OF OTHER INSTANCES OF PRIVATE EQUITY
2 OWNERSHIP PURCHASES OF UTILITIES?

3 A. Yes. My understanding of this Transaction is that it is a “going private” transaction,
4 wherein a holding company of NMGC is proposed to be sold by its ultimate owner Emera
5 (a publicly traded company) under the statutory merger process to a wholly owned affiliate
6 of the BCP Infrastructure Funds, which is a private equity company that is not itself
7 publicly traded in public markets. Going-private transactions are hardly new vehicles, even
8 in the utilities space, and indeed the acquisitions market in general, bears witness to a
9 significant upturn in such transactions over the last quarter-century. The utilities sector is
10 no exception, and private equity ownership structures have become far more dominant in
11 recent years here, too. By way of comparison, and to get greater perspective on how
12 conventional private equity acquisitions interact in this space, I consulted the FactSet
13 database, which includes a widely used screener for assessing acquisitions transactions,
14 filterable by industry. Using a look-back period of ten years, I searched for completed
15 North American acquisitions in the Utilities space (FactSet Industry code 4700) in which
16 the target company was (or was part of) a public company. The database returned 48 such
17 acquisitions, of which 17 (or 35.4 percent) were “going private” companies (and thus the
18 buyer was not a public company).

19
20 Q. WERE THE TRANSACTIONS IN THE FACTSET DATABASE COMPARABLE
21 IN STRUCTURE AND TRANSACTION VALUE TO THE BCP APPLICANTS’
22 ACQUISITION OF NMGC FROM EMERA?

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1 **A.** Yes. The going private transactions in this space had an average transaction valuation of
2 \$2.412 billion (at closing), and a median transaction valuation of \$963 million (again at
3 closing), with a maximum transaction value of \$15.7 billion and a minimum of \$1.98
4 million. This robust population of going-private transactions, moreover, are quite
5 comparable to (if perhaps slightly smaller than) non-going private acquisitions, which had
6 an average transaction valuation of \$4.053 billion, and a median transaction valuation of
7 \$1.671 billion, with a maximum transaction value of \$13.338 billion and a minimum of
8 \$34.75 million. The instant transaction, which is currently projected to close at a value of
9 \$1.25 billion fits comfortably within the FactSet of precedent transactions, and it is indeed
10 smaller than the average transaction in either subset. I note further that the use of special
11 purpose vehicles to consummate an acquisition transaction is overwhelmingly the favored
12 structural choice for the deals in the FactSet database. Indeed, of the nine going-private
13 deals where FactSet specifically reports on deal structure, *all of them* used a structure that
14 involves a special purpose entity. Moreover, of the entire collection of utilities acquisitions
15 (public or private) 30 of the 31 acquisitions for which FactSet reports the deal structure
16 utilized an SPE catalyst to consummate the transaction. This simply confirms what I teach
17 my students: SPE structures are overwhelmingly likely in all types of mergers and
18 acquisitions.

19
20 **Q. ARE THERE ANY ADVANTAGES TO PRIVATE EQUITY OWNERSHIP**
21 **STRUCTURES?**

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1 **A.** Yes. There are distinct advantages of a private ownership structure that public ownership
2 cannot offer, especially for long-term value preservation and creation. And in my opinion,
3 some of these economic advantages have driven the increased popularity of the private-
4 equity structure. Put simply, private equity structures often lead to better and more
5 attentively managed companies over the long term. Much of modern financial economics
6 is predicated around structuring companies to minimize problems that can occur when
7 those who control a firm are not coterminous with its owners (including stockholders and
8 other stakeholders).¹⁴ When this gulf between ownership and control is appreciable, a
9 variety of value destroying behaviors can manifest.

10
11 **Q. HOW DO PRIVATE EQUITY STRUCTURES COMPARE TO PUBLICLY-**
12 **TRADED ENTITIES IN THIS REGARD?**

13 **A.** Publicly-traded firm management (which by hypothesis has limited ownership stake) will
14 have more attenuated ties to the long-term viability of the firm. Consequently, managers
15 of such firms will have lower incentives to steward the company in a manner consistent
16 with long-term growth. Moreover, for public companies, outside ownership is mediated
17 through anonymous market transactions, which can lead to a variety of short-term activists
18 purchasing appreciable stakes in order to pressure the company to enhance its immediate
19 liquidity (e.g., through dividend payments, share repurchases, and divesting longer term

¹⁴ See ADOLF BERLE & GARDINER MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY (1932); Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

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1 assets such as R&D capacity). These outside activist investors, moreover, are not
2 especially interested in underwriting the types of investment that will, over the long term,
3 enhance the quality, dependability, and profitability of the firm down the road.

4
5 Private equity structures address many of these problems. By concentrating ownership in
6 a smaller group of investors (not public securities markets), the private equity structure
7 sharpens the tie between the firm's long-term health and managerial incentives. Managers
8 must work closely with private equity investors to make strategic and operational decisions
9 that bolster the firm's long-term value. This makes managerial incentives much more
10 closely tethered to company performance. Furthermore, as compared to public equity
11 markets, private capital is *patient* capital. It is presumed that private equity investors will
12 be locking up their capital for a long amount of time (a decade or more is common), without
13 the easy option to "dump their shares" on the stock markets. Removing easy liquidity of
14 ownership stakes does more than tie current owners to the mast of long-term value creation,
15 however. It also acts as an insurance policy against shareholder activists who would
16 threaten to mount control contests as a means to extract liquidity from the company through
17 disbursements, debt recapitalizations, and divestments of long-term assets.

18
19 **Q. IS THE IDEA OF ACTIVIST INVESTOR PRESSURE ON A PUBLICLY-TRADED**
20 **UTILITY HOLDING COMPANY ONLY A THEORETICAL MATTER?**

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1 **A.** No. For example, an activist investor – Starboard Value LP – acquired a 7.5% stake in
2 Canadian utility holding company Algonquin Power & Utilities Corp. (“Algonquin”).¹⁵ It
3 leveraged this stake to obtain seats on the Algonquin board of directors, in conjunction
4 with the retirement of the Chair of the board.¹⁶

5
6 As another recent example, the activist investor Elliott Management acquired a stake in
7 Evergy, Inc., and acquired two seats on its board.¹⁷

8
9 **Q. WHAT RISKS HAVE INTERVENOR WITNESSES ALLEGED ASSOCIATED**
10 **PRIVATE EQUITY OWNERSHIP?**

11 **A.** Although some have criticized private equity structures (as detailed below), most such
12 criticisms concede that the factors laid out above are bona fide advantages of this type of
13 ownership structure. To the extent that PE structures receive criticism as a policy matter,
14 however, it appears largely to be directed to the debt-equity structures that they maintain,
15 and the possibility in certain cases that the portfolio company will be driven into too much
16 leverage and financial distress. While this type of concern is well taken, it bears noting
17 that the adverse effects of leverage are no less problematic with public ownership

¹⁵ [Starboard Sends Letter to Algonquin Power & Utilities Regarding Opportunities to Enhance Shareholder Value, https://www.prnewswire.com/news-releases/starboard-sends-letter-to-algonquin-power--utilities-regarding-opportunities-to-enhance-shareholder-value-301871169.html](https://www.prnewswire.com/news-releases/starboard-sends-letter-to-algonquin-power--utilities-regarding-opportunities-to-enhance-shareholder-value-301871169.html).

¹⁶ [Algonquin Power & Utilities Corp. to Add Brett Carter and Christopher Lopez to the Board of Directors, https://www.prnewswire.com/news-releases/algonquin-power--utilities-corp-to-add-brett-carter-and-christopher-lopez-to-the-board-of-directors-302121535.html](https://www.prnewswire.com/news-releases/algonquin-power--utilities-corp-to-add-brett-carter-and-christopher-lopez-to-the-board-of-directors-302121535.html).

¹⁷ <https://newsroom.evergy.com/2020-03-03-Evergy-Announces-Agreement-with-Elliott-Management>

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1 structures. Indeed, as noted above, shareholder activists of public companies are well
2 known for pushing public companies into highly leveraged recapitalizations in order to
3 extract dividends for the shareholders. Thus, the effects of leverage are not confined in
4 any respect to privately owned companies.

5
6 **Q. IS THE INSTANT TRANSACTION'S CAPITAL STRUCTURE SUFFICIENTLY**
7 **PROTECTIVE OF NMGC?**

8 **A.** Yes. To the extent that there can be risks in any ownership structure, including private
9 equity ownership, such concerns can readily be mitigated, and appropriate steps appear to
10 have been taken here to protect the public's interest. There are a variety of measures that
11 a private equity company can put into place to protect the operating assets and business
12 viability of the portfolio company. One of them is maintaining an adequate equity
13 component in the capital structure.

14
15 In my opinion, the proposed Transaction structure and its ring-fencing provisions help
16 ensure that there are adequate protections against excessive leverage and financial distress.
17 As noted above, the way that the transaction is structured (\$550 million in assumed debt
18 and \$700 million in equity contribution at the operating utility level) will result in a robust
19 equity ratio of 56%, which provides a significant equity cushion for absorbing losses,
20 thereby minimizing many of the possible criticisms of a leveraged capital structure that
21 private equity sponsors sometimes receive. Moreover, while \$250 million of the \$700
22 million equity contribution will be indirectly financed by new debt of BCP affiliates, this

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1 debt appears to be explicitly non-recourse to NMGC, thereby insulating NMGC from the
2 effects (if any) of this leverage. In my opinion, then, there is nothing about the proposed
3 acquisition that appears odd, peculiar, or out of step from what have now become common
4 private-equity acquisitions.

IV. CONCLUSIONS

7 **Q. PLEASE SUMMARIZE YOUR CONCLUSION.**

8 **A.** On the basis of the analysis above, I am of the opinion that the proposed Transaction is not
9 only unremarkable and transparent, but that it does not introduce any material complexities,
10 structuring concerns, or financial concerns for New Mexico customers. To the contrary,
11 the added ring-fencing protections provided with the Transaction will, in my opinion,
12 augment the organizational security and solvency of NMGC.

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Professional/Employment

<i>2015-Pres.</i>	Isidor and Seville Sulzbacher Professor of Law , Columbia Law School, New York, NY.
<i>2017-Pres.</i>	Faculty Co-Director , Millstein Center for Global Markets and Corporate Ownership, Columbia Law School.
<i>2016-Pres.</i>	Affiliated Expert , Cornerstone Research, New York, NY.
<i>2025</i>	Visiting Professor , Stanford Law School, Stanford California.
<i>2025</i>	Visiting Research Fellow , European University Institute, Florence Italy.
<i>2018, 2021, 2024</i>	Visiting Professor , ETH Zurich (Gerzensee Study Center), Switzerland.
<i>2016</i>	Visiting Professor , Buchmann Faculty of Law, Tel Aviv University.
<i>2009-2015</i>	Arthur and Rosalinde Gilbert Foundation Chair in Law, Business and the Economy , UC Berkeley School of Law, Berkeley, CA.
<i>2006-2014</i>	Faculty Co-Director , Berkeley Center for Law, Business and the Economy, UC Berkeley School of Law, Berkeley, CA.
<i>2006-2009</i>	Professor of Law , UC Berkeley School of Law, Berkeley, CA.
<i>2004-2015</i>	Senior Economist , RAND Corporation, Santa Monica, CA, Institute for Civil Justice (Affiliated adjunct staff).
<i>2011</i>	Visiting Professor , University of Chicago School of Law, Chicago IL.
<i>2008-2009</i>	Robert B. and Candice J. Haas Visiting Professor in Corporate Finance and Law , Harvard Law School, Cambridge, MA.
<i>2006</i>	Commentator , <i>Marketplace</i> Radio; American Public Media. Weekly slot on national public radio program discussing business and legal affairs.

2005-2006 **Visiting Professor**, UC Berkeley School of Law. Co-Director, Berkeley Center for Law, Business and the Economy.

2005-2006 **Ivadelle & Theodore Johnson Chair in Law and Business**, University of Southern California, Gould School of Law.

2005-2006 **Professor of Finance and Business Economics**, USC Marshall School of Business.

2000-2005 **Professor of Law**, Univ. of Southern California Law School. (Director, USC Center in Law Economics & Organization, 2002-2004; Director, USC/Caltech Olin Center for Study of Law & Rational Choice, 2002-2004).

2003 (Spr.) **Visiting Research Fellow**, Institute for Civil Justice, RAND Corporation, Santa Monica, CA.

2001-2003 **Visiting Professor**, California Institute of Technology, Department of Humanities and Social Sciences.

2000 (Aut.) **Visiting Professor and Alfred P. Sloan Research Fellow**, Georgetown University Law Center.

1997-2000 **Associate Professor of Law**, University of Southern Cal. Law School.

1995-1997 **Assistant Professor of Law**, University of Southern Cal. Law School.

1993-94 **Contract Specialist**, Brown & Bain, Palo Alto, CA (non-practicing consultant).

1993 **Summer Associate**, Brown & Bain, Palo Alto, CA.

1993 **Lecturer**, Stanford University. Intermediate microeconomics.

1990, 1992 **Instructor**, Stanford Law School. Taught two seminars for law faculty on the fundamentals of economic analysis and game theory.

Education

Ph.D./J.D. **Stanford University Dept. of Economics & Stanford Law School.** 1989-95, 1999. Doctoral Dissertation Committee: Paul R. Milgrom (chair; 2020 Nobel Prize recipient); Ian Ayres; A. Mitchell Polinsky.

B.A. **University of California, San Diego.** 1984-88. Magna Cum Laude. Majors: economics and political science; minor: mathematics.

High School **Los Alamos High School**, Los Alamos, NM. 1981-84.

Courses Taught

- I. Corporate Law / Business Associations
- II. Corporate Finance
- III. Corporate Governance
- IV. Contract Law
- V. Mergers and Acquisitions
- VI. Valuation Bootcamp for Lawyers
- VII. Machine Learning and Law
- VIII. Securities Regulation
- IX. Private Capital (seminar)
- X. Shareholder Activism (seminar)
- XI. Legal Financial Arbitrage (seminar; joint Columbia Business & Law Schools)
- XII. Law and Economics (seminar)
- XIII. Law and Empirical Finance (seminar)

Books

- CORPORATE FINANCE AND LAW (Edward Elgar Publishing Ltd.) (Advanced Introduction Series, under contract).
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- *Disclosure Norms*, 149 U. PENN. L. REV. 1955 (2001).
- *A Theory of Legal Presumptions* 16 J. L. ECON. & ORG. 1 (2000) (with Antonio Bernardo & Ivo Welch).
- *Judicial Auditing*, 29 J. LEGAL STUD. 649 (2000) (with Matthew Spitzer).
- *Taking the “I” Out of “Team”: Intra-Firm Monitoring and the Content of Fiduciary Duties*, 24 J. CORP. LAW 1001 (1999).
- *Precedential Cascades: An Appraisal*, 73 SO. CAL. L. REV. 87 (1999).

- *Turning Servile Opportunities to Gold: A Strategic Analysis of the Corporate Opportunities Doctrine*, 108 YALE L. J. 277 (1998). *Corporate Practice Commentator* designation as author of one of the “Top Ten Corporate and Securities Articles of 1999.”
- *Interdisciplinary Gap-Filling: Game Theory and the Law*, 22 J. LAW & SOC. INQ. 1055 (1997) (review essay).
- *Investment Policy and Exit-Exchange Offers within Financially Distressed Firms*, 51 J. FINANCE 871 (1996) (with Antonio Bernardo).
- *Liability-Based Fee Shifting Rules and Settlement Mechanisms Under Incomplete Information*, 71 CHI.-KENT L. REV. 461 (1995).
- *Distinguishing Between Consensual and Non-consensual Advantages of Liability Rules*, 105 YALE L. J. 235 (1995) (with Ian Ayres).
- *Solomonic Bargaining: Dividing a Legal Entitlement to Facilitate Coasean Trade*, 104 YALE L.J. 1027 (1995) (with Ian Ayres).
- *Contract Renegotiation, Mechanism Design and the Liquidated Damages Doctrine*, 46 STAN. L. REV. 1195 (1994).
- BARGAINING UNDER INCOMPLETE INFORMATION AND THE DESIGN OF LEGAL RULES, Doctoral Dissertation, Stanford University (1999).

Submitted Papers, Working Papers and Works-in-Progress

- *Fix the Price or Price the Fix? Resolving the Sequencing Puzzle in Corporate Contracting* (with Joshua Higbee, Matthew Jennejohn & Cree Jones) (working paper 2025) (available at SSRN: <https://ssrn.com/abstract=5159164>).
- *Our Misguided Faith in Corporate Voting* (with Ben Johnson & Jennifer Juergens) (2024).
- *Is There Politics In Money? M&A Contracting and Regulatory Risk* (with Reilly Steel) (working paper 2024)
- *Efficient Liability Assignment in Hub and Spoke Networks* (with Jiyoung Kim) (2023)
- *COVID-19 as a Force Majeure in Corporate Transactions* (with Julian Nyarko & Matt Jennejohn).
- *The Utility of Finance* (2017) (with Shlomit Azgad-Tromer). Available at <https://ssrn.com/abstract=2994314>.
- *A Machine Learning Classifier for Corporate Opportunity Waivers* (2016) (with Gabriel Rauterberg) Available at <https://ssrn.com/abstract=2849491>

- *Financial Regulation and the World's Most Important Number: LIBOR Reporting Behavior during the Credit Crisis* (2013)
- *Optimal Liability for Terrorism* (with Darius Lakdawalla) (2005)
- *Uncorporated Professionals* (with John Romley) (2004) (available for download at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=587982).
- *Equilibrium Expectations and Legal Doctrine* (2005).
- *The Impact of Regulation and Litigation on Small Business and Entrepreneurship: An Overview*, RAND Working Paper WR-317-ICJ (2006) (with Lloyd Dixon, Susan M. Gates, Kanika Kapur, and Seth A. Seabury).
- *Criteria Used to Define a Small Business in Determining Thresholds for the Application of Federal Statutes*, RAND Working Paper WR-292-ICJ (2005) (with Ryan Keefe and Susan M. Gates).
- *A Defense of Shareholder Favoritism* (with Stephen Choi 2002).
- *Incentives, Investment, and the Legal Protection of Trade Secrets* (with Gillian Lester, 2001).
- *Corporate Governance, Executive Compensation and Securities Litigation* (May 2004) (with Gudrun Johnsen).
- *Private Information, Self-Serving Biases, and Optimal Settlement Mechanisms: Theory and Evidence* (November 2003) (with Seth Seabury).
- *Trade Secrets and Mutual Investments* (with Gillian Lester) USC Law School Working Paper # 00-15; Georgetown Law and Economics Research Paper No. 246406 (Oct. 2000).
- *A Note on Presumptions with Sequential Litigation*, USC Olin Working Paper # 99-9 (with Antonio Bernardo) (1999).
- *Property Rights, Liability Rules, and Coasean Bargaining Mechanisms under Incomplete Information*, Stanford Olin Working Paper # 108 (1994).

Funding/Grants

- Securities and Exchange Commission Grant to study investment advisors and broker dealers, RAND Corporation, 1/2007-3/2008; \$280,000 (research staff, task director).
- Ewing Marion Kauffman Foundation, 3-year support grant to fund RAND Center for the Study of Small Business Regulation and Litigation; 11/03-10/06; \$1,500,000 (co-PI).

- John Olin Foundation, 3-year support grant to fund USC/Caltech Program in Law and Rational Choice, 6/02-6/05; \$300,000 (PI).
- University of Southern California, 3-year Seed Money Grant to Implement USC Center in Law, Economics and Organization, 7/00-6/03; \$800,000 (co-PI).
- University of Southern California Zumberge Junior Fac. Award, 8/97-6/98; \$30,000 (PI).

Endowed Presentations and Notable Addresses

- Keynote Address: The Renewed (and Wild) Race in Corporate Law (Case Western Reserve School of Law 2025).
- Delaware Judicial Retreat (October 2024) (Invited presentation on corporate law and governance before Delaware Court of Chancery and Supreme Court at annual Judicial Retreat).
- Commencement Address, Columbia Law School Class of 2022 (faculty speaker and recipient of Willis L. M. Reese Prize for Excellence in Teaching) (*Peerless*) (Available at <https://ssrn.com/abstract=4116830>).
- Delaware Judicial Retreat (October 2020) (Invited presentation on corporate law and governance before Delaware Court of Chancery and Supreme Court at annual Judicial Retreat).
- Keynote Address, Michigan State University Law Review symposium, Lansing MI (April 2020).
- Delaware Judicial Retreat (October 2018) (Invited presentation on corporate law and governance before Delaware Court of Chancery and Supreme Court at annual Judicial Retreat).
- Keynote Address, Conference on Empirical Legal Studies East Asia (CELSEA), Taipei, Taiwan (June 2017).
- Commencement Address, Columbia Law School Class of 2017 (faculty speaker and recipient of Willis L. M. Reese Prize for Excellence in Teaching) (*Triumphs of Commission*) (available at <https://ssrn.com/abstract=2970477>)
- Fifty-Ninth Annual John R. Coen Lecture, University of Colorado at Boulder, March 2016 (*Is the Law a Driverless Car? Assessing How (or Whether) the Data Analytics Revolution Will Transform the Legal Profession*) (available at <http://lawweb.colorado.edu/events/details.jsp?id=6629>).
- Commencement Address, UC Berkeley LLM Graduation (elected faculty speaker) (2011).

- Chair Installation Address, Rosalinde & Arthur Gilbert Chair in Law, Business and the Economy, UC Berkeley School of Law, April 2009.
- Twenty-Fifth Annual Francis G. Pileggi Distinguished Lecture in Law, Delaware Journal of Corporate Law, Widener University, October 2008.
- Ninth Annual Distinguished Speaker Series, McGeorge Law School, University of the Pacific, November 2001 (*Common Agency in Fiduciary Law*).

Awards and Service

- Elected to the American Academy of Arts and Sciences (2024).
- Elected Research Member, European Corporate Governance Institute (2022).
- Willis L.M. Reese Prize for Excellence in Teaching, Columbia Law School (2022).
- Willis L.M. Reese Prize for Excellence in Teaching, Columbia Law School (2017).
- *Corporate Practice Commentator* commendation for “Ten Best Corporate and Securities Articles written in 2022 (for *Cleaning Corporate Governance*). 5/23
- *Corporate Practice Commentator* commendation for “Ten Best Corporate and Securities Articles written in 2017 (for *Contracting out of the Fiduciary Duty of Loyalty: An Empirical Analysis of Corporate Opportunity Waivers*). 5/18
- *Corporate Practice Commentator* commendation for “Ten Best Corporate and Securities Articles written in 2016 (for *Corporate Inversions and the Unbundling of Regulatory Competition*). 5/17
- *Corporate Practice Commentator* commendation for “Ten Best Corporate and Securities Articles written in 2009 (for *Going Private Decisions and the Sarbanes Oxley Act of 2002: A Cross-Country Analysis*). 4/10
- *Corporate Practice Commentator* commendation for “Ten Best Corporate and Securities Articles written in 2004 (for *Unregulable Defenses and the Perils of Shareholder Choice*). 4/05.
- *Corporate Practice Commentator* commendation for “Ten Best Corporate and Securities Articles written in 1999” (for *Turning Servile Opportunities to Gold: A Strategic Analysis of the Corporate Opportunities Doctrine*). 3/00.
- Board Member, Ira M. Millstein Center for Global Markets and Corporate Ownership (2017-Present); Executive Committee Member (2020-Present).

- Board of Directors, Society for Empirical Legal Scholars (SELS) (2009-2022) (Immediate Past Chair, 2019-2022; Chair Elect, 2015-2019; Immediate Past President, 2014-15; President 2013-14; Vice President 2012-13).
- Board of Directors, American Law and Economics Association (Elected member; three-year term: June 2016-May 2019).
- Executive Committee, Data Science Institute, Columbia University (2015-Present)
- Program Committee, American Law and Economics Association Annual 2017 Conference (June 2016 – May 2017).
- University of California System-wide Committee on Academic Personnel (UCAP) (2014-2015).
- UC Berkeley Campus Budget and Interdepartmental Relations Committee (Budget Committee) (2011-2014; Chair, 2013-14; ex officio 2014-2015).
- UC Berkeley Academic Senate Divisional Council (DIVCO) (2013-14).
- UC Berkeley Academic Planning and Resource Allocation Committee (CAPRA) (2013-14).
- Legal Education Advisory Board, BARBRI, Inc., August 2013-15.
- Board of Directors, American Law and Economics Association (Elected member; three-year term: June 2005-May 2008).
- Elected Member, Dean's Faculty Advisory Committee, UC Berkeley School of Law (2010 – 2013).
- Chair, Dean Search Committee, Haas Business School, UC Berkeley (2007-2008).
- Member, National Science Foundation Law and Social Science Grant Evaluation Panel (2008 - 2010).
- Program Committee, American Law and Economics Association Annual 2006 Conference (with D. Rubinfeld, and K. Pastor) (November 2005 – May 2006).
- Chair, Administration and Finance Committee (Elected), USC Law School 2004-05.
- Finance Committee, University of Southern California Board of Trustees (faculty representative), 2004-05.
- Representative, Faculty Senate, University of Southern California 2004-05.

- Board Treasurer, The Growing Place Early Childhood Education Center Board of Directors (non-profit) 2004-05.
- Board of Directors, The Growing Place Early Childhood Education Center Board of Directors (non-profit), 2002-2005.
- Chair, Faculty Appointments Committee, USC Law School 2003.
- Chair, AALS Section in Law and Economics, 2004-05.
- Chair, AALS Section in Contracts, 2007-08.
- Chair, Faculty Handbook Committee, University of Southern California, 2002-03. Oversaw reorganization of faculty handbook (approved by USC Faculty Senate, 2004).
- Alfred P. Sloan Foundation Research Fellowship, Georgetown Law Center. 9/00-12/00.
- Zumberge Junior Faculty Research Award, USC. 7/97 - 7/99.
- Centennial Teaching Award, Stanford University. 6/95.
- Articles Editor, *Stanford Law Review* 1993-94 (Volume 46).
- Outstanding Teaching Assistant Award in Economics. 3/94; 6/94; 12/94.
- Hellman Prize for Outstanding Law-Review Note, *Stanford Law Review*. 5/94
- Fellow, Stanford Center for Conflict and Negotiation. 11/92-10/93
- Goldsmith Award for Outstanding Paper in Dispute Resolution. 4/93
- Hilmer Oehlmann, Jr. Prize for excellence in legal research and writing. 5/92
- John Olin Foundation Fellowship in law and economics. 4/94; 6/94; 6/92
- Phi Beta Kappa
- Departmental Honors in both economics and political science, University of California, San Diego. Graduated Magna Cum Laude from Revelle College. 12/88

Professional Affiliations

- Elected Member, American Academy of Arts & Sciences.
- Elected Research Member, European Corporate Governance Institute.
- Member, American Law and Economics Association; Society for Empirical Legal Studies.

- Referee, *American Economic Review*; *Rand Journal of Economics*; *Journal of Law, Economics & Organization*; *Journal of Legal Studies*; *Review of Economic Studies*; *International Review of Law and Economics*; *International Economic Review*; *Journal of Law and Economics*.

Consulting/Testimony (Last 4 Years)

- SVB Financial Group v. Federal Deposit Insurance Corporation 5:24-cv-01321-BLF (2025). Designated as consulting expert in corporate structures and risk oversight.
- Hecate Holdings Inc. v. Repsol Renewables N.A. C.A. No. 2024-0928-KSJM (2024). Served as expert in acquisition bargaining, efficient contract design and practice, and options pricing structure.
- FourWorld Event Opportunities Fund et al. HomeStar InvestCo AB (T 7674-22) (Stockholm District Court, Sweden 2024). Served as expert in valuation of appraisal proceeding of Swedish public company). Submitted report and gave live testimony.
- Massoumi v. Ganju, et al. (NY Sup. Court) (654289/2020) (2023). Served as expert analyzing corporate governance and disclosure in leadership contest).
- Javice v. JP Morgan Chase Bank (Delaware Chancery Court) (CA 2022-1179-KSJM) (2023). Served as a consulting expert analyzing contractual indemnification / advancement provisions in M&A agreements.
- Politan Capital Management LP v. Masimo Corp. (Delaware Chancery Court) (CA 2022-0948-NAC) (2023). Served as testifying expert analyzing corporate governance and shareholder voting dynamics related to an advance-notice bylaw of a public company.
- Alterra America Insurance Co. et al v. National Football League (Supreme Court of New York, New York County, Index No. 652813/2012) (2022). Served as consulting expert analyzing economic aspects of concussion settlement liability as between unincorporated league and member teams using.
- Edison Electric Institute (EEI). Deliver in-depth lectures on economics, finance, and ROE estimation to US-based utilities regulators (commissioners and staff) (2020-Pres.).
- Institute for Regulatory Law and Economics (IRLE). Deliver in-depth lectures on economics, finance, and ROE estimation to US-based utilities regulators (commissioners and staff) (2008-Pres.).
- Sears Holding Corporation, et al. v. Lampert, et al., Case No. 19-08250 (RDD) (Bankr. S.D.N.Y.) (2021-22). Served as consulting expert on corporate governance in relation to several spin-off and loan transactions.
- Rising Tide I, LLC v. Fitzsimmons et al. (Case # 3:17-cv-01232-EDL) (N.D. Cal. 2020).

Retained as expert to render opinion as to corporate governance practices in connection with allegations of securities fraud.

- Global Blue Group AG Acquisition by Far Point Acquisition Corp. (2020). Retained as expert to evaluate corporate governance practices in board deliberations as to whether a Material Adverse Effect had occurred in a de-SPAC transaction.
- PWP Xerion Holdings III, LLC v. Red Leaf Resources Inc. (C.A. No. 2017-0235-JTL) (2019). Served as expert in valuation issues related to alleged breach of preemptive rights and quantification of associated damages.

Students/Advisees

- Reilly Steel, Columbia Law School (JD), Millstein Fellow (2017-18); Clerk to Hon. Leo Strine (Del.) (2018-19); Doctoral Candidate, Princeton Political Science department; Academic Fellow & Post-Doctoral Fellow, Columbia Law School (2024-26).
- Jens Frankenreiter, Columbia Law School Post-Doctoral Fellow (2018-19); Assistant Professor of Law, Washington University St. Louis.
- Julian Nyarko, Columbia Law School Post-Doctoral Fellow (2019-21); Assistant Professor of Law, Stanford Law School.
- Sarath Sanga, UC Berkeley Economics Department (PhD); Yale Law School (JD), Professor of Law, Northwestern University Law School.
- Surajeet Chakravarty, USC Economics Department (PhD), Associate Professor, University of Exeter Business School.
- Svetlana Pevnitskaya, USC Economics Department (PhD), Associate Professor of Economics, Florida State University.
- Kathryn Zeiler, Caltech, Social Science (PhD) / USC Law (JD), Professor of Law, Boston University
- Jingfeng Lu, USC Economics Department (PhD), Professor of Economics, National University of Singapore Department of Economics.
- Brian Broughman, UC Berkeley JSP Program (PhD), Professor of Law, Vanderbilt university.
- Michael Gilbert, UC Berkeley JSP Program (PhD), Professor of Law, University of Virginia.
- Andrew Hayashi, UC Berkeley JD / PhD (Economics), Professor of Law, University of Virginia.

· Mira Ganor, UC Berkeley JSD Candidate (2008), Professor of Law, University of Texas.

Personal

- Date of Birth: 26 March, 1966.
- Married (since 1998) to Gillian Lester, Dean Emerita, Columbia Law School.
- Two children.
- Hobbies include cycling, hiking, classical/jazz guitar, and skiing.

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

))))))))

JOINT APPLICANTS

In accordance with 1.2.2.35(A)(3) NMAC and Rule 1-011(B) NMRA, Dr. Eric L. Talley, Isidor and Seville Sulzbacher Professor of Law at Columbia Law School, affirms and states under penalty of perjury under the laws of the State of New Mexico: I have read the foregoing Rebuttal Testimony and Exhibits. I further affirmatively state that I know the contents of my Rebuttal Testimony and Exhibits and they are true and accurate based on my personal knowledge and belief.

/s/Dr. Eric L. Talley
Dr. Eric L. Talley

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,) Case No. 24-00266-UT
LLC.)
JOINT APPLICANTS)**

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent via email a true and correct copy of ***Rebuttal Testimony and Exhibits of Dr. Eric L. Talley***

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**Rebuttal Testimony and Exhibits
Of Dr. Eric L. Talley**

Case No. 24-00266-UT

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Ana C. Kippenbrock, Law Clerk	Ana.Kippenbrock@prc.nm.gov ;

DATED this May 16, 2025.

/s/Anita Hart

Anita Hart

Director, Regulatory Affairs

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