DOCKET NUMBER 24-00266-UT
FILED DATE & TIME 07/30/2026 03:54 PM MST
FILED WITH NMPRC

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	**Docket No. 24-00266-UT**

FINAL ORDER

July 30, 2026

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission"), upon the issuance of a Recommended Decision on May 21, 2026. The Commission has reviewed the Recommended Decision, the evidentiary record, the exceptions filed by the parties, and applicable law, and hereby enters this Final Order.

The Commission denies New Energy Economy's ("NEE") Motion to Reopen Record to Examine Extraordinary Evidence of Bernhard Capital Partners' Newly-Formed Affiliate Gas Company, Delta Utilities' 300%-1000% Increase in Customer Bills ("NEE's Motion to Reopen"). The Commission grants the BCP Applicants'[1] Request for Confidentiality Determination ("BCP Applicants' Request Regarding Confidentiality") as well as the Joint Applicants'[2] Motion and Supporting Brief to Strike New Energy Economy's "Response to Exceptions" ("Joint Applicants' Motion to Strike").

[1] The term "BCP Applicants" refers to 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 II GP," and together with BCP Infrastructure Fund II and BCP Infrastructure Fund II-A, the "BCP Infrastructure Funds"); and Saturn Utilities Aggregator, LP; Saturn Utilities Topco, LP; Saturn Utilities, LLC; Saturn Utilities Holdco, LLC; Saturn Utilities Aggregator GP, LLC; and, Saturn Utilities Topco GP, LLC, (collectively, the "Saturn Companies").

[2] The term "Joint Applicants" refers to New Mexico Gas Company, Inc., a Delaware corporation ("NMGC"); Emera Inc., a Nova Scotia corporation ("Emera"); Emera U.S. Holdings Inc., a Delaware corporation ("EUSHI"); New Mexico Gas Intermediate, Inc., a Delaware corporation ("NMGI"); TECO Holdings, Inc., a Florida corporation ("TECO Holdings"); TECO Energy, LLC (formerly TECO Energy, Inc.), a Florida limited liability company ("TECO Energy"1); Saturn Utilities, LLC; a Delaware limited liability company ("Saturn Utilities"); Saturn Utilities Holdco, LLC, a Delaware limited liability company ("Saturn Holdco"); Saturn Utilities Aggregator, LP, a Delaware limited partnership ("Saturn Aggregator"); Saturn Utilities Aggregator GP, LLC, a Delaware limited liability company ("Saturn Aggregator GP"); Saturn Utilities Topco, LP, a Delaware limited partnership ("Saturn Topco"); Saturn Utilities Topco GP, LLC, a Delaware limited liability company ("Saturn Topco GP")2 ; BCP Infrastructure Fund II, LP, a Delaware limited partnership ("BCP Infrastructure Fund II"); BCP Infrastructure Fund II-A, LP, a Delaware limited partnership ("BCP Infrastructure Fund II-A"); and BCP Infrastructure Fund II GP, LP, a Delaware limited partnership ("BCP Infrastructure II GP," and together with BCP Infrastructure Fund II and BCP Infrastructure Fund II-A, the "BCP Infrastructure Funds").

I. BACKGROUND[3]

(1) On October 28, 2024, the Joint Applicants filed their Joint Application, with supporting testimony, seeking approval of (a) the acquisition of TECO Energy, NMGI and NMGC ("NMGC Group") by Saturn Holdco; (b) the Transition Services Agreement ("TSA"); (c) the divestiture of the NMGC Group by Emera, EUSHI and TECO Holdings; (d) NMGC's Amended General Diversification Plan ("Amended GDP"); and (e) any other approvals or authorizations necessary or required under the Public Utility Act ("PUA") to consummate and implement the Transaction[4].

(2) On June 27, 2025, the Commission issued its Order Granting Interlocutory Appeal, where the Commission found that certain information identified by the BCP Applicants was "trade secret information" and "conclude[d] that the information is entitled to protection from public disclosure."[5] The Commission directed the Hearing Examiners to "treat as confidential the information that is the subject of the BCP Applicants' interlocutory appeal."[6]

(3) On July 3, 2025, the Joint Applicants filed a revised Joint Application[7] with the supporting, revised, direct testimonies of nine witnesses.

(4) From November 3-14, 2025, the Hearing Examiners presided over an evidentiary hearing in this matter.

(5) On November 17, 2025, the evidentiary record closed with the filing by Staff of the Commission's Utility Division ("Staff") of Staff's Response to Fourth Bench Request.

---

[3] This order summarizes relevant background. The full electronic record of this proceeding is available at https://e360.prc.nm.gov/portal/public/.
[4] The term "Transaction" means the proposed acquisition of TECO Energy and the NMGC Group by Saturn Holdco.
[5] Order Granting Interlocutory Appeal (June 27, 2025) at 22.
[6] Order Granting Interlocutory Appeal at 25.
[7] The term "Joint Application" refers to the Joint Application in this matter, including all revisions made to the Joint Application as well as any additional commitments and modifications made by the Joint Applicants, or any of them, in the record of this matter.

(6) On December 3, 2025, NEE filed its Interlocutory Appeal to the New Mexico Public Regulation Commission Pursuant to 1.2.2.31(B)(5) NMAC and Request to File Out of Time ("Interlocutory Appeal"). In its Interlocutory Appeal, NEE challenged certain evidentiary and discovery rulings by the Hearing Examiners and asked the Commission to order additional discovery and the admission of additional evidence into the record.

(7) On December 18, 2025, the Commission issued its Order Denying Interlocutory Appeal, in which the Commission affirmed the evidentiary and discovery rulings challenged by NEE on the grounds that the Hearing Examiners had correctly applied relevant law, Commission rules, and Commission precedents.

(8) On December 18, 2025, post-hearing briefing was completed.

(9) On January 23, 2026, NEE filed NEE's Motion to Reopen.

(10) On February 2, 2026, NEE filed its "Supplemental Filing" to NEE's Motion to Reopen.

(11) On February 4, 2026, the BCP Applicants filed their response to NEE's Motion to Reopen ("BCP Applicants' Response to Motion"), and the NMGC Group filed their response to NEE's Motion ("NMGC Group's Response to Motion").

(12) On May 21, 2026, the Hearing Examiners issued their corrected recommended decision ("Recommended Decision" or "RD") in this matter. The Hearing Examiners filed a confidential version and a public version of the Recommended Decision, the latter having certain portions redacted.

(13) On June 3-4, 2026, exceptions to the Recommended Decision were filed by Staff, the New Mexico Department of Justice ("NMDOJ"), the New Mexico Affordable Reliable Energy Alliance ("NM AREA"), Western Resource Advocates ("WRA"), the Coalition for Clean Affordable Energy ("CCAE"), and NEE.

(14) On June 11, 2026, the Joint Applicants and NEE filed responses to the exceptions.

(15) On June 17, 2026, the Joint Applicants filed the Joint Applicants' Motion to Strike.

(16) On June 25, 2026, the BCP Applicants filed the BCP Applicants' Request Regarding Confidentiality, in which they requested that the Commission issue an order determining that certain redacted passages of the Recommended Decision "should not receive confidential treatment, and should be unredacted and made public . . ..".[8] The BCP Applicants further requested that the Commission "direct issuance or filing of a public version of the Recommended Decision with those redactions removed."[9] The request was supported by the Self-Affirmed Statement of Jeffrey M. Baudier, President of Saturn Utilities Holdco, LLC and Senior Managing Director of Bernhard Capital Partners Management, LP ("Baudier Affirmation"). The BCP Applicants noted that NEE was the only party that responded to the BCP Applicants' inquiry concerning party positions regarding the request and that NEE indicated that it opposed the request.

(17) On June 30, 2026, NEE filed its Response to BCP Applicants' Request for Confidentiality Determination ("NEE's Response to Request") as well as its Response to Joint Applicants' Motion and Supporting Brief to Strike ("NEE's Response to Motion to Strike")

II. DISCUSSION

A. Legal Standards

(18) The foundational, statutory standards governing public utilities are set forth in 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 regulations and in respect to its securities . . ..".[10] In particular, the Commission must give "prior express authorization" for the acquisition of a

[8] BCP Applicants' Request Regarding Confidentiality (June 25, 2026) at 1.
[9] BCP Applicants' Request Regarding Confidentiality at 4.
[10] NMSA 1978, § 62-6-4(A) (2003).

public utility or the transaction "shall be void and of no effect."[11] To seek such authorization, an "[a]pplication shall be made by the interested public utility by written petition containing a concise statement of the proposed transaction, the reason therefor and such other information as may reasonably be required by the commission."[12] The Commission must "promptly investigate" the application, "with hearings and upon such notices as the Commission prescribes."[13] 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."[14]

(19) Within the acquisition of a utility, a Class II transaction may arise. A Class II transaction includes "the formation . . . of a corporate subsidiary by a public utility or a public utility holding company by a public utility or its affiliated interest."[15] The Commission has 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."[16] A utility engaging in such a transaction "shall have the burden 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 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."[17]

---

[11] NMSA 1978, § 62-6-12(A)(3) and (B) (1989).
[12] NMSA 1978, § 62-6-13 (1953).
[13] NMSA 1978, § 62-6-13.
[14] NMSA 1978, § 62-6-13.
[15] NMSA 1978, § 62-3-3(L)(1) (2009).
[16] NMSA 1978, § 62-6-19(B)(2) (1982).
[17] NMSA 1978, § 62-6-19(C)(2) (1982).

(20) With respect to transactions involving a public utility and an affiliate, including Class II transactions, the Commission promulgated 17.6.450 NMAC ("Rule 450"). Rule 450 requires that a public utility must "first obtain[] written approval of a general diversification plan from the Commission,"[18] before the utility engages in a Class II transaction. The general diversification plan ("GDP") must include certain representations, commitments, and explanations surrounding the goals, structure, ownership, governance, financing, capital structure, investments, and risks of the transaction.

(21) When considering whether to approve a GDP, the Commission will consider whether the information in the GDP is complete, detailed, and acceptable to the Commission, and the Commission will consider whether approval is in the public interest. "Approval 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 at fair, just, and reasonable rates will not be adversely and materially affected by Class II transactions and their resulting effect . . . ."[19] Approval also requires that the utility make certain representations specified in Rule 450 and that the Commission make findings based upon such representations.[20] In addition, "[t]he Commission may require the modification of a general diversification plan and may attach conditions to the approval thereof in order to make such plan 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."[21]

[18] 17.6.450.10(A) NMAC.
[19] 17.6.450.10(C) NMAC.
[20] *See* 17.6.450.10(C) NMAC.
[21] 17.6.450.10(E) NMAC.

(22) In the course of the Commission's consideration of past, proposed utility acquisitions pursuant to these statutory provisions and Rule 450, the Commission has developed a set of six factors that it considers when reviewing an acquisition application ("Six-Factor Analysis"). The Six-Factor Analysis includes the following factors:

(1) Whether the transaction provides benefits to utility customers;

(2) Whether the Commission's jurisdiction will be preserved;

(3) Whether the quality of service will be diminished;

(4) Whether the transaction will result in the improper subsidization of non-utility activities;

(5) Careful verification of the qualifications and financial health of the new owner; and

(6) Adequate protections against harm to customers.[22]

(23) The Six-Factor Analysis[23] is helpful in structuring the parties' approaches to a utility-acquisition case, providing a framework for discussion, and for the Commission's review of the application. The Commission notes that the Six-Factor Analysis is an aid to assist the Commission in determining whether a utility acquisition, such as the Transaction, satisfies the standard for approval provided in the PUA. The Six-Factor Analysis in not a "test," in the strict sense of that word. The factors reviewed should not be considered individually as mandatory elements for approval of an application. The factors are reviewed and help inform the parties of what the Commission is generally concerned with in assessing an acquisition application. An application for approval of a utility acquisition may be granted even if one or more of the factors weighs

[22] *See* Docket No. 04-00315-UT, Certification of Stipulation (May 27, 2005) at 16-17; Docket No. 11-00085-UT, Recommended Decision of the Hearing Examiner (Dec. 2, 2011) at 15-16, approved by Final Order (Dec. 22, 2011).

[23] For the reasons stated in this paragraph, the Commission uses the phrase "Six-Factor Analysis" instead of "Six-Factor Test," the phrase used in the Recommended Decision.

against approval because, depending upon the case, some factors may have greater significance than others. Similarly, the Commission may look to facts or circumstances beyond the Six-Factor Analysis should they inform the PUA's controlling standard.

(24) The PUA provides the controlling standard, which is that, "unless the commission shall find that the proposed transaction is unlawful or is inconsistent with the public interest, it shall give its consent and approval in writing."[24]

B. Customer Benefits

(25) The Joint Applicants asserted that the evidence in this case shows that approval of the Transaction is in the public interest because it will provide both benefits and protections from harm to NMGC customers and will benefit New Mexico as a whole.[25]

(26) The 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 to make significant investments in its continued success; the return of several 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.[26]

(27) The Joint Applicants also claimed that New Mexicans generally and NMGC customers, in particular, will benefit from: $10 million in economic development investments; $5 million in

[24] NMSA 1978, § 62-6-13.
[25] Joint Applicants' Post-Evidentiary Hearing Brief at 2.
[26] Baudier Dir. at 111-112; Baudier Rebuttal at 48.

education and job training investments; $2.5 million in charitable giving; and twenty new NMGC jobs.[27]

(28) The 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.[28]

(29) A preponderance of the evidence in the record supports that the benefits offered by the Joint Applicants will provide value to NMGC's customers and to the State of New Mexico as a whole. These include the quantifiable benefits described above, such as the rate credit and temporary rate freeze. These also include unquantifiable benefits, such as commitments to: maintain local employees and headquarters, refrain from seeking approval of an additional sale for a 10-year period, and offer certainty, knowledge, and stability by retaining many of the qualities of NMGC that are known and relied upon.

(30) Some of the other benefits are expected to positively impact the state as a whole, such as the $5 million commitment for economic development and the $5 million commitment for renewable energy development.

(31) After considering the record as a whole and the Commission's past precedents in acquisition cases, the Commission finds that there is a preponderance of credible evidence in the record demonstrating that the benefits of the Transaction are sufficient to weigh in favor of finding that the Transaction will provide customer benefits.

[27] Baudier Dir. at 44-48, 112-113; Baudier Rebuttal at 48.
[28] Baudier Dir. at 17-25, 114.

C. Preservation of Commission Jurisdiction

(32) Review of the Joint Application included consideration of whether the Commission's jurisdiction will be preserved. The record is clear that the Commission will retain regulatory authority over NMGC and its upstream owners after the closing of this proposed acquisition. Formal jurisdiction constitutes the exercise of statutory authority, the ability to apply and enforce Rule 450 requirements and commitments, and the ability to apply Commission precedent. The preservation of jurisdiction must be effective and not merely formal, depending 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.

(33) The Commission is authorized to oversee and to regulate affiliates of a public utility to the extent provided by the PUA. In this instance, the nature of the private infrastructure fund ownership chain focuses the evaluation on discerning the contours of the affiliated interests.

(34) The preponderance of evidence supports a finding that the Commission's jurisdiction will be preserved, if certain conditions are included in the approval of the Transaction. The Commission first notes that the Transaction will not change NMGC's legal status as a New Mexico public utility, will not entail the transfer of utility assets, and will include broad commitments that preserve access to books, records, accounts, and documents. However, 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 ownership structure, the proposed Transaction includes a risk of financial and operational exposure to BCP entities that are not included among the BCP Applicants. Knowing this informs how the Commission should proceed with regulation of this utility; it does not mean that the Transaction should not be approved.

(35) Financially, the Transaction will depend upon the equity contributions of the BCP entity sponsors. Currently, as far as the Commission has been apprised, the sponsors' commitments have not been assigned to the BCP Infrastructure Funds. Thus, the execution of the assignment of the equity commitment obligations must be a prerequisite to the Commission's approval of the Transaction.

(36) The Commission determines below that approval of the Joint Application is conditioned upon the Joint Applicants demonstrating, before consummation of the Transaction, that the equity contribution obligations originally undertaken by the equity sponsors have been validly assigned to and assumed by the BCP Infrastructure Funds, as well as identifying with specificity any original sponsor or guarantor that remains obligated after closing. This condition is necessary not because the presence of initial sponsor commitments defeats jurisdiction, but because effective jurisdiction requires the Commission to know which entities actually bear the equity contribution obligations and whether any entity outside the proposed participating ownership chain continues to hold material rights or obligations connected to the acquisition financing.

(37) Beyond their financial influence, 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.

(38) Those relationships are not incidental. They are part of how the proposed post-Transaction structure is expected to operate. This structure creates 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.

(39) The Commission does not adopt the position of some of the Intervenors that these structural features require denial. The 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. These commitments effectively mitigate the risk that non-participating BCP entities could obstruct, hinder, diminish, impair, or unduly complicate Commission regulation.

(40) The appropriate remedy is therefore not rejection of the transaction, but transparency. Therefore, the Commission conditions approval of the Transaction on a requirement for semiannual reporting concerning formal relationships and engagements among NMGC, NMGI, TECO Energy, Saturn Holdco, the BCP Applicants, and non-participating BCP entities.

(41) A review of the requirements of Rule 450 is also central to the jurisdictional analysis. The rule requires more than a statement that jurisdiction will continue. It requires detailed GDP information, including descriptions of the corporate structure to be employed, the means of implementing that structure, the anticipated capital structure, the financing of affiliates, the effects

on the utility's capital structure and ability to attract capital, the 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.

(42) The Joint Applicants have supplied an Amended GDP and a consolidated body of voluntary and GDP commitments that correspond to the representations and commitments required by Rule 450. These include commitments concerning separate books and records, access by the Commission and Staff to affiliate and holding-company records, non-obstruction of Commission supervision and regulation, restrictions on excessive dividends and adverse holding-company actions, prohibitions on utility loans and guarantees for affiliates without Commission approval, and Commission-directed allocation studies and management audits.

(43) On this record, the Commission finds that the Joint Applicants have demonstrated that their Amended GDP commitments are credible. The Joint Applicants have provided sufficient testimony, documentary commitments, and hearing admissions to persuade the Commission that the commitments are credible and enforceable, subject to the assignment and reporting conditions stated in this Order.

(44) Finally, the evidence concerning NMGC management and local corporate governance is an important part of the consideration as to whether Commission jurisdiction will be preserved. Preservation of jurisdiction is not only a matter of formal legal authority over upstream entities. It also depends upon whether the utility will continue to be governed and operated in a manner that will maintain utility decisions as visible and accountable to the Commission.

(45) The Joint Applicants have provided credible and persuasive evidence that NMGC's existing management and local operational identity will be retained. Specifically, a preponderance of the evidence demonstrates that current employees and management will be retained and that the

NMGC board of directors will continue in materially similar form to provide governance oversight and guidance for NMGC management's strategy and business plans.

(46) The Joint Applicants' governance commitments also create structural checks on affiliate influence. The Joint Applicants have committed to a board-of-directors charter, the inclusion of independent, New Mexico resident directors, and the inclusion of at least three disinterested directors independent from the BCP Infrastructure Funds, their subsidiaries and affiliates, and BCP Management. The Joint Applicants have further committed to ensuring staggered terms for disinterested directors, holding board meetings in New Mexico, requiring that officer compensation be set by the board, ensuring that director compensation will not be tied to affiliate performance, and imposing restrictions upon members of NMGC's senior management from holding positions with the BCP Infrastructure Funds or BCP-controlled entities.

(47) Therefore, the Commission determines that the Joint Applicants have made a satisfactory showing regarding the continuation of Commission jurisdiction following the Transaction. However, the Commission's determination and approval of the Transaction is conditioned upon the following requirements:

> **(1) Assignment and assumption of equity contribution obligations.** Before consummation of the Transaction, the Joint Applicants shall file with the Commission and serve Staff and the parties a compliance certification, supported by executed assignment and assumption agreements, closing documents, or other competent documentation, demonstrating that the equity contribution obligations originally undertaken by the equity sponsors under the Equity Commitment Letter have been validly assigned to and assumed by the BCP Infrastructure Funds, and identifying any original sponsor, guarantor, or other entity that remains obligated after closing. The

filing shall state whether any equity sponsor or guarantor has been released; whether any commitment has been withdrawn, terminated, rescinded, reduced, or materially modified; the amount and percentage of each remaining equity commitment; and the identity of each entity that will hold direct or indirect equity interests in Saturn Holdco upon closing.

(2) Semiannual reporting on formal relationships with non-participating BCP entities. Beginning six months after closing upon the Transaction, and every six months thereafter for five 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 among 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 a 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, any changes from the prior report, and compliance with the Commission's rules concerning affiliates 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.

(48) Subject to these conditions, the Commission finds that the Transaction will sufficiently preserve Commission jurisdiction.

D. Whether Quality of Service Will Be Diminished

(49) The Joint Applicants argue that NMGC's service quality will be maintained and protected through NMGC's continued local control and management and the Joint Applicants' regulatory commitments concerning service quality.[29] The Joint Applicants have committed to the following specific protections to ensure that there is no diminution in NMGC's quality of service or reliability:

> a. 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 prudency review in NMGC's next general rate case;
>
> b. 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;
>
> c. NMGC Gas Control Operations will not be moved out of New Mexico without prior express Commission approval;
>
> d. NMGC will continue to participate in the annual JD Power Residential Gas Utility Customer Satisfaction Surveys and provide the Commission with the results;
>
> e. 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
>
> f. Mr. Baudier claimed that the Transaction will not result in any disruption or adverse impact to NMGC's gas supply or associated hedging arrangements.[30]

[29] Baudier Dir. at 51-52, 113.
[30] Baudier Dir. at 52.

(50) Mr. Shell testified that these commitments and protections relating to service and operations are consistent with NMGC's ongoing commitment to its customers and that they will help ensure that NMGC's operations will not be negatively affected by this Transaction.[31] 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 will ensure that NMGC's local management continues to be focused on continuing to provide safe and reliable service to customers.[32]

(51) As the President of NMGC for sixteen years, Mr. Shell testified that he was confident that this Transaction would not have any negative impact on NMGC's ability to meet its obligations under the PUA.[33] He affirmed that the commitments made by the Joint Applicants, as described in the revised Joint Application, coupled with the emphasis on local management and its expertise, will serve to ensure NMGC's continued compliance with its service obligations to its customers under the PUA.[34] Mr. Shell further 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 that its customers would be faced with the risk of less reliable service.[35]

(52) The Commission finds that a preponderance of the record evidence supports a finding that approval of the Transaction will not diminish the quality of NMGC's service.

E. Subsidization of Non-Utility Activities

(53) The Commission examined whether the Transaction is likely to result in the improper subsidization of non-utility activities. More particularly, the Commission considered whether

[31] Shell Dir. at 11-12.
[32] *Id.* at 12.
[33] *Id.*
[34] *Id.*
[35] *Id.* at 30.

NMGC customers may be required to subsidize parent-company, affiliate, investor, acquisition, transaction, integration, shared-services, non-regulated, non-utility, or unrelated business costs.

(54) The Joint Applicants have made direct and affirmative commitments to avoid acquisition premium, goodwill, and transaction-cost recovery, as well as non-utility subsidization. In addition, the Joint Applicants have included ring-fencing, accounting, debt, and dividend-related protections.

(55) The evidence is organized around two recurring themes. First, the Joint Applicants have made affirmative commitments that acquisition premium, goodwill, direct transaction costs, and non-utility activity costs will not be recovered from customers. 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.

(56) The operative question 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. The operative question is whether the evidentiary record, including the commitments made by the Joint Applicants and the Commission's continuing ratemaking authority, provides sufficient assurances against improper subsidization of non-utility activities. The Commission answers this question in the affirmative.

(57) The Joint Applicants have made direct commitments that acquisition premium, goodwill, direct transaction costs, and non-utility activity costs will not be recovered from NMGC customers. These commitments are material as 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. However, the record distinguishes the existence

of upstream owners and affiliated service providers from the separate question of whether affiliate or non-utility costs may be allocated to NMGC and then recovered from customers. The Joint Applicants have demonstrated that the answer to the second, operative question is no.

(58) The record concerning the planned, shared services supports the same conclusion. The TSA is a transitional continuity mechanism under which Emera and its affiliates will continue to provide services for a limited period of time while NMGC and Delta Utilities assume defined functions. It is critical to note that the Delta Utilities arrangement is not a transfer of NMGC's utility-management, accounting, or ratemaking responsibilities to an affiliate.

(59) The record also demonstrates that the types of accounting, reporting, and governance provisions that the Commission has generally viewed as central to preventing improper subsidization will be in place. These include a cost allocation manual ("CAM"), affiliate-transaction reporting, books-and-records access, arm's-length standards, separate books and records, limits on intercompany loans and guarantees, and dividend restrictions.

(60) The Joint Applicants committed to work with Staff on the CAM, to provide a draft within ninety days after closing, to file the CAM within six months after closing, and to revisit the CAM after the TSA terminates. The Joint Applicants have also committed to annual public submissions of allocation information, organized by FERC account and subaccount, during the term of the TSA or if NMGC receives services from another investment-fund company supported by BCP Management.

(61) The Commission finds that a preponderance of the record evidence demonstrates that approval of the Transaction will not result in improper subsidization of non-utility activities by NMGC ratepayers.

F. Sufficient Financial Health and Qualification of New Owners

(62) The record of this case reflects a careful examination and verification of the qualifications and financial health of the proposed new owners. The Commission considered operational qualifications, gas utility experience, executive and management capacity, financial strength, access to capital, credit metrics, ring-fencing commitments, protections for the utility from affiliate debt, dividend limits, capital structure commitments, and ownership structure.

(63) The Commission's review centered on two principal arguments by the Joint Applicants. First, the Joint Applicants argued 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. Second, the Joint Applicants argued that their commitments, credit-rating requirements, capital structure limits, dividend restrictions, and ring-fencing provisions support a finding of financial health.

(64) Some of the Intervenors argued that the BCP Applicants lack a sufficiently tested record as owners or operators of a natural gas utility comparable to NMGC. Further, they argued that the BCP Infrastructure-Saturn Holdco ownership structure will not provide the same financial depth and ability to provide long-term support as the current ownership does.

(65) The Joint Applicants' strongest evidence establishes that the Transaction will not replace NMGC's operating management with an untested set of managers. This is an important consideration as approval of the proposed Transaction does not require that the upstream owner replicate every operational function of an integrated public utility holding company. Instead, the Joint Applicants established that the new ownership structure, together with the utility's retained management and governance, is sufficient to support the regulated utility.

(66) The record concerning financial health also supports approval of the Transaction. The acquisition financing is built around committed debt and equity support, and the debt financing is non-recourse to NMGC. Staff's review of the evidence and its conclusion provided important, independent support for this determination.

(67) The BCP Applicants' capital-structure and credit-protection commitments are important considerations as well. The Joint Applicants have made commitments that NMGC and Saturn Holdco will continue to have credit-rating reviews 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.

(68) The Commission finds that a preponderance of the record evidence demonstrates that the acquiring entity has sufficient financial health to support continuation of the service provided by NMGC.

G. Adequate Protections against Harm to Customers

(69) The Commission examined risks of harm to customers that may result from the proposed Transaction. The identified risks are sufficiently mitigated by adequate protections. Maintenance of the Commission's jurisdiction, preserving the Commission's broad power to regulate, coupled with the ring-fencing commitments, especially the financial commitments, are important considerations in evaluating this factor. The statutory and rule requirements apply and are a significant source of consumer protection. These requirements ensure that the Commission has effective oversight to protect utility customers.

(70) The Commission determines that a preponderance of record evidence demonstrates that the ring-fencing and other commitments by the BCP Applicants, the conditions that the Commission

is placing upon the approval of the Transaction, and continuing Commission oversight after the Transaction closes provide adequate protection from harm to customers of NMGC.

III. EXCEPTIONS TO THE RECOMMENDED DECISION

A. Exceptions Concerning Whether the Transaction Provides Benefits to Utility Customers

(71) Staff, the NMDOJ, NM AREA, WRA, CCAE, and NEE filed exceptions in which they argued that the benefits provided by the Transaction were illusory, insufficient, or both.

(72) Staff recommended that the Commission condition approval of the Transaction upon the establishment of a Severe Weather Fund ("SWF"), to be funded by reallocating $12.5 million from other commitments made by the Joint Applicants. Staff stated that "[t]his $12.5 million represents a redirection of the aggregate $10 million and $2.5 million from offered economic development and charitable monies . . .."[36] In addition, Staff recommended the establishment of a working group concerning the SWF, which would be tasked with determining the amount of the initial contribution to the fund, explicating the types of weather events that would qualify for disbursement of funds, and determining methods for maintaining an adequate level of funding in the SWF.

(73) Staff argued that the SWF is needed because, otherwise, "[t]here are no long-term benefits to NMGC ratepayers stemming from this acquisition."[37] Staff further argued that some of the contributions offered by the Joint Applicants, such as charitable and economic contributions, are aimed at benefiting the state as a whole, not NMGC customers, and thus, should not be counted as benefits for the purposes of considering approval of the Transaction. Staff contended that, "[w]hile economic development and charitable contributions are certainly a benefit to New Mexico, all

[36] Staff's Exceptions to Recommended Decision (June 3, 2026) at 3.
[37] Staff's Exceptions to Recommended Decision at 4.

benefits resulting from this acquisition should be targeted towards NMGC ratepayers."[38] Thus, Staff requested that contributions concerning economic development and charitable contributions be reallocated to the proposed SWF.

(74) Staff further excepted to the Hearing Examiners' recommendation that the Commission not adopt Dr. Blank's recommendation to "allocate the public benefits of goodwill coming from this transaction to customers," adding that "Dr. Blank testified that the value of the government-created-and-protected monopoly with captive customers should be used to determine the level of customer and public benefits that should be transferred to customers as part of this acquisition."[39] Staff further argued that the additional goodwill should be allocated to ratepayers "[b]ecause it is a valuable intangible asset not created by the current nor past owners of the utility company."[40]

(75) The NMDOJ also argued that the Joint Applicants' proposed economic development fund should be replaced with the proposed SWF. The NMDOJ noted that, even though severe weather events "do not happen every year, they still happen, and climate change may result in a frequency of these events that substantially exceeds the historic rates."[41] NMDOJ further argued that "the economic development fund is somewhat self-serving, as it may result in a greater dependence on gas service."[42]

(76) NM AREA argued that, "[o]nce the non-transactional, status-quo-replicating commitments are set aside, the only direct, system-wide ratepayer benefit that remains is the $22.4 million rate credit."[43] NM AREA further argued that "the record showed that this credit is dwarfed by the costs

---

[38] Staff's Exceptions to Recommended Decision at 9.
[39] Staff's Exceptions to Recommended Decision at 9-10.
[40] Staff's Exceptions to Recommended Decision at 10.
[41] NMDOJ's Exceptions to Recommended Decision (June 3, 2026) at 6.
[42] NMDOJ's Exceptions to Recommended Decision at 6.
[43] NM AREA's Exceptions to Recommended Decision (June 3, 2026) at 7.

the Joint Applicants intend to seek to recover in a future rate case: up to $44.86 million in NMGC Oracle setup costs and approximately $11 million in Delta Utilities' legacy Oracle setup costs already incurred at Delta's Mississippi and Louisiana utilities."[44] NM AREA concluded that the Transaction will result in a net cost to NMGC's ratepayers.

(77) WRA argued that the Hearing Examiners' conclusions are "incompatible with the Commission's net public benefit standard," adding that "[a] finding that a transaction was designed to benefit the acquirer and the seller rather than customers, and that its commitments largely maintain the status quo, is precisely the kind of showing that the Commission has historically found insufficient."[45] WRA further argued that "approximately 24-26 of the 88 regulatory commitments do no more than accept the status quo rather than creating new, positive benefits," and added that, "[n]onetheless, the Recommended Decision treats compliance with existing rule requirements (such as Rule 450) and the mere preservation of existing rates and operations as weighing in favor of a net public benefit."[46]

(78) In addition, WRA argued that "[t]he Recommended Decision credits the Joint Applicants' shared information technology services model as providing customer benefits without adequately addressing WRA's unrebutted demonstration that those claimed benefits are illusory."[47] WRA further argued that its witness, Mr. Cebulko, "testified at length—and the record confirms—that the BCP Applicants' projected cost savings from the Oracle-based shared services platform were not sufficiently substantiated: the Joint Applicants provided no workpapers or supporting analysis for the claimed $32-56 million figure that the IT transition purportedly replaces."[48]

[44] NM AREA's Exceptions to Recommended Decision at 7.
[45] WRA's Exceptions to Recommended Decision (June 3, 2026) at 5.
[46] WRA's Exceptions to Recommended Decision at 5.
[47] WRA's Exceptions to Recommended Decision at 6.
[48] WRA's Exceptions to Recommended Decision at 6.

(79) NEE argued that, "if NMGC's current systems require modernization or replacement, that is a routine management responsibility that should occur regardless of whether the acquisition is approved," and added that "[a]n acquirer cannot manufacture a public benefit simply by promising to make investments that prudent utility management should already be making."[49] NEE further argued that "the record contains no persuasive evidence demonstrating actual customer savings, service improvements, or other quantifiable benefits resulting from the proposed IT replacement."[50]

(80) In response, the Joint Applicants argued that "it is neither necessary nor possible for Hearing Examiners to address every issue that arises in a case, particularly in a complex case such as this with multiple witness and a large record."[51] They further argued that "[t]he Hearing Examiners have the right to not be persuaded by CCAE's witnesses or arguments and to not include them in analysis in the RD," adding that "this is a complaint by an Intervenor that the Hearing Examiners did not give the testimony of its witnesses as much weight as the Intervenors had hoped."[52]

(81) The Joint Applicants noted that, "[a]s another evidentiary matter, various exceptions complain that particular elements of witnesses' testimonies were not discussed on a standalone basis, or that particular points were not discussed specifically, but rather were weighed among various elements of the record collectively."[53] They further noted that "[t]he Commission has stated that the 'purpose of exceptions is to identify legal flaws in the RD,' and declined to accept

[49] NEE's Exceptions to Recommended Decision (June 3, 2026) at 6.
[50] NEE's Exceptions to Recommended Decision at 6.
[51] Joint Applicants' Response to Exceptions (June 11, 2026) at 11.
[52] Joint Applicants' Response to Exceptions at 11.
[53] Joint Applicants' Response to Exceptions at 15.

calls to deviate from an RD when the Commission does not believe the RD's analysis is 'unlawful or so unreasonable that it should not be adopted.'"[54]

(82) The Joint Applicants asserted that, "[a]s the record confirms, the monetary benefits contributed at the sole expense of the Joint Applicants total between $76,900,000 and $86,900,000, not including the significant non-monetary benefits for customers and New Mexico."[55] They summarized the "direct customer benefits" of the Transaction as follows:

> $22.4 million in customer rate credits; $7 million to support low-income customers under the HeatNM Program; $30 to $40 million in savings from a rate freeze to September 2026 (such that new rates would not be effective until 2028); financially stable and experienced new owners who want to own NMGC and make significant investments for continued success; the return of back-office functions to New Mexico; cost savings from a shared state-of-the-art IT system, and continued local control by NMGC's current management and employees.[56]

The Joint Applicants also described "the indirect benefits to customers and overall benefits to New Mexico which include: $10 million in economic development investments; $5 million in education and job training investments; at least $2.5 million in charitable giving; and twenty new jobs in New Mexico."[57]

(83) The Joint Applicants countered NM AREA's claim that "Oracle migration costs overshadow the rate credits," arguing that "that comparison ignores the record evidence that NMGC would otherwise need to pursue a more expensive $56 million legacy-system path."[58] They further argued that "NM AREA compares the Oracle transition to a world that does not exist: one

[54] Joint Applicants' Response to Exceptions at 15 (quoting Docket No. 22-00270-UT, Final Order (Jan. 3, 2024) at 63-64).
[55] Joint Applicants' Response to Exceptions at 18 (citing JA Ex. 3 (Baudier Reb.) at Table JMB-2 (Revised Application Rebuttal) at 48).
[56] Joint Applicants' Response to Exceptions at 19.
[57] Joint Applicants' Response to Exceptions at 19.
[58] Joint Applicants' Response to Exceptions at 23.

in which NMGC can keep using aging SAP and Hitachi systems indefinitely without major reinvestment."[59]

(84) The Joint Applicants also addressed NEE's contentions regarding the proposed IT transition, noting that NEE "treats the IT transition as ordinary modernization, not a transaction benefit," and countering that "the Oracle/Delta model does more than replace aging software. It synergistically combines NMGC's required separation from Emera with a replacement path that gives NMGC a dedicated platform built for regulated gas utilities."[60] With respect to WRA's concerns about the imposition of potentially excessive costs upon ratepayers, the Joint Applicants argued that such concerns are "premature" as "[a]ny future request for recovery remains subject to Commission review, allocation proof, prudence review, and disallowance in a future rate case."[61]

(85) Finally, the Joint Applicants addressed the Hearing Examiners' recommendation to reject the proposed SWF. The Joint Applicants cited the Hearing Examiners' finding that "holding substantial amounts of money in account for an indeterminate amount of time also appears questionable" as well as the finding that "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."[62]

<u>Commission Determination</u>

[59] Joint Applicants' Response to Exceptions at 23.
[60] Joint Applicants' Response to Exceptions at 23.
[61] Joint Applicants' Response to Exceptions at 24.
[62] Recommended Decision at 78.

(86) The Commission rejects these exceptions. The Commission finds that the Transaction will provide benefits to customers of NMGC.

B. Exceptions Concerning the Preservation of the Commission's Jurisdiction

(87) The NMDOJ argued that this factor "does not ask only whether NMGC will remain formally subject to the Commission's statutory authority," adding that "[i]t 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."[63] The NMDOJ raised the following concerns regarding effective jurisdiction in the event of a default in the debt financing:

> Saturn Holdco secured $250 million in loans with a senior lien on all of the stock of TECO, which is a holding company of NMGCO. In the event of a default, these creditors would be able to seize all of the TECO's stock, and at least one, and possibly all eight, would be able to obtain a ten percent controlling interest in holding company. See, e.g., NMSA 1978, § 62-3-3(A)(2) (defining control as ten percent ownership). The creditors would thus become public utilities pursuant to Section 62-6-3(N). Default would thus result in a Class II transaction, requiring Commission approval. NMSA 1978 § 62-6-3(L) (defining Class II transactions); N.M.A.C. 17.6.450.10(A) (No public utility may engage in a Class II transaction after November 30, 1982 without first obtaining written approval of a general diversification plan from the Commission.) (cleaned up). However, given the existence of the lien, it is likely that the Commission would be powerless to prevent or even regulate the transaction.[64]

The NMDOJ further argued that, "[t]o make matters worse . . . sole jurisdiction over these transactions would lie with state and federal courts in the Borough of Manhattan in New York State and would be governed by the internal laws of New York."[65]

(88) NM AREA argued that the Hearing Examiners' analysis regarding this factor "is internally inconsistent on the equity-sponsor assignment question," and further argued that "Rule 450

[63] NMDOJ's Exceptions to Recommended Decision at 4-5 (citing Recommended Decision at 121).
[64] NMDOJ's Exceptions to Recommended Decision at 5.
[65] NMDOJ's Exceptions to Recommended Decision at 5.

requires, as a prerequisite to GDP approval, present-tense identification of the entities that will own or control the utility."[66] NM AREA further argued that "[t]he record does not show that the equity-sponsor commitments in the Equity Commitment Letter have been assigned to the BCP Infrastructure Funds, and the entities that will actually hold the equity-funding obligation at closing have not been identified," while noting that "[t]he RD's Decretal Paragraph A acknowledges this issue."[67] NM noted that the Recommended Decision recommends "condition[ing] approval on 'Joint Applicants' demonstration that the equity sponsor obligations have been assigned to BCP Infrastructure Funds,'" and contended that "Rule 450 does not permit a post-closing reporting regime to substitute for the present-tense disclosure 17.6.450.10(B) NMAC requires."[68]

(89) NM AREA further argued that "[t]he RD's treatment of BCP Management exhibits the same defect," and asserted that "BCP Management (not the Funds) makes 'the investment, funding, and control decisions' for the BCP Infrastructure Funds."[69] NM AREA contended that "[t]he RD's remedy of semiannual reporting on relationships does not bring BCP Management within the Commission's jurisdiction; it merely allows the Commission to observe from outside."

(90) NM AREA stated that its primary recommendation was that the Commission reject the Recommended Decision's recommendation regarding this factor and find that the Joint Applicants have failed to satisfy 17.6.450.10(B) NMAC. NM AREA added that, "[a]t the bare minimum, the Commission should expressly adopt the Decretal Paragraph A condition in any final order, conform the Findings of Fact accordingly, and apply [additional conditions recommended by NM AREA]."[70]

[66] NM AREA's Exceptions to Recommended Decision at 9 (citing 17.6.450.10(B) NMAC).
[67] NM AREA's Exceptions to Recommended Decision at 9.
[68] NM AREA's Exceptions to Recommended Decision at 9 (citing Recommended Decision at 180).
[69] NM AREA's Exceptions to Recommended Decision at 10 (quoting NM AREA's Brief-in-Chief at 14).
[70] NM AREA's Exceptions to Recommended Decision at 13.

(91) In response, the Joint Applicants countered that the "NMDOJ argues without evidence that the RD erred because creditors of upstream owners among the BCP Applicants could seize NMGC without Commission approval," and noted that NM AREA "makes a similar claim."[71] The Joint Applicants argued that "[t]he Public Utility Act in New Mexico is quite clear that no such change in an upstream owner, whether external or internal, could occur without prior Commission approval," and that, "[c]ontrary to the NMDOJ's and NM AREA's fears, existing New Mexico law is clear that these scenarios cannot occur."[72] The Joint Applicants further argued that "NMSA 1978, Section 62-6-12(B) clearly prohibits any transaction that results in the change in control or exercise of control over a public utility," and "[t]hus, under Section 62-6-12(B), any attempt by a creditor of any upstream owners to seize NMGC without prior Commission approval would be void and of no effect under our laws, and cannot happen."[73] They added that "[t]he same would be true for [an] internal restructuring transaction resulting in a change in holding companies."[74] The Joint Applicants further noted that "Commission Rule 17.6.450.15 NMAC states that 'a holding company may not divest itself of or spin-off a public utility without the prior approval of the Commission,'" and that "[a]ny of NMGC's upstream owners referenced by NMDOJ and NM AREA would be a public utility holding company under NMSA 1978, Section 62-3-3(N)."[75]

(92) The Joint Applicants further argued that "the evidence in the record demonstrates that the funds have been identified, contrary to NM AREA's complaints, and fully funded and that the equity commitments will be assigned to them," adding that "[t]he formal assignment is the only

[71] Joint Applicants' Response to Exceptions at 25.
[72] Joint Applicants' Response to Exceptions at 25.
[73] Joint Applicants' Response to Exceptions at 25.
[74] Joint Applicants' Response to Exceptions at 25.
[75] Joint Applicants' Response to Exceptions at 26 (quoting 17.6.450.15 NMAC).

remaining step, and the Hearing Examiners have taken appropriate action by conditioning approval on the Joint Applicant's demonstration that this is completed."[76]

(93) The Joint Applicants also took issue with NM AREA's "claims that the Commission's jurisdiction will not be preserved because BCP Management and the entities in the Equity Commitment Letters . . . are not applicants," countering that "[t]his assertion is not supported by New Mexico law."[77] They argued that "[t]he issue of whether a private fund manager, such as BCP Management, is an affiliate (or is to be in the GDP or an applicant) was litigated in *EPE-IIF*," and that "IIF's fund manager (JPMIM) . . . was not required to be in the GDP nor required to be an applicant."[78]

Commission Determination

(94) The Commission rejects these exceptions. The Commission finds that the Commission's jurisdiction will be preserved after the Transaction.

C. Exceptions Concerning Whether the Quality of NMGC's Service Will Be Diminished

(95) NM AREA argued that "the Joint Applicants bear the burden of the affirmative showing that the proposed acquisition will not diminish the quality of service NMGC currently provides," adding that "[t]his showing requires record evidence of the acquirer's operational capability, not the absence of contrary evidence from intervenors."[79]

(96) NM AREA further argued that the Recommended Decision "does not address the operational risk of unwinding Emera's mature shared services platform within the two-year TSA

[76] Joint Applicants' Response to Exceptions at 27.
[77] Joint Applicants' Response to Exceptions at 27.
[78] Joint Applicants' Response to Exceptions at 27 (citing Docket No. 19-00234-UT, Order on Briefing (Jan. 24, 2020)).
[79] NM AREA's Exceptions to Recommended Decision at 13.

window while simultaneously hiring approximately twenty new NMGC employees to absorb the returning functions."[80]

(97) In response, the Joint Applicants noted that they "have committed to several protections specific to ensuring that there is no diminution in NMGC's service quality and to establishing ring-fencing requirements."[81] They further argued that, "if the Transaction is approved, NMGC's current management team and employees will continue to be responsible for all aspects of NMGC's day-to-day business and operations."[82]

(98) The Joint Applicants also addressed NM AREA's claim that its witness, Mr. Walters, provided "specific and unrebutted" testimony concerning any operational risks involved in unwinding the Emera platform.[83] The Joint Applicants countered that "Witness Walters himself acknowledged, 'I don't have any reason to believe that [the Transaction] will, in fact, impact the service quality in a negative fashion. I'm just saying that the risk is there.'"[84] They concluded that "[t]he RD properly found that such speculation is not sufficient to rebut the Joint Applicants' showing."[85]

Commission Determination

(99) The Commission rejects these exceptions. The Commission finds that the Transaction will not diminish NMGC's quality of service and adequate protection against this risk exists.

---

80 NM AREA's Exceptions to Recommended Decision at 14.
81 Joint Applicants' Response to Exceptions at 29 (citing Recommended Decision at 126-127).
82 Joint Applicants' Response to Exceptions at 29 (citing JA Ex. 1 (Baudier Dir.) at 51; JA Ex. 10 (Shell Dir.) at 9; RD at 126-128).
83 Joint Applicants' Response to Exceptions at 29.
84 Joint Applicants' Response to Exceptions at 29 (quoting Tr. (Vol. 7) 1757 (Walters)).
85 Joint Applicants' Response to Exceptions at 29 (citing Recommended Decision at 131).

D. Exceptions Concerning Whether the Transaction Will Result in the Improper Subsidization of Non-Utility Activities

(100) NM AREA noted that "Delta Utilities is the regulated gas LDC, managed by BCP, that the Joint Applicants propose will provide NMGC's shared services post-closing," and argued that "[t]he record shows Delta's integration plan is incomplete: its shared-services platform was stood up in 2025, remains in a stabilization phase, and has not demonstrated cost savings even at Delta's own Louisiana and Mississippi utilities."[86]

(101) NM AREA further argued that "[t]he Transition Services Plan as a direct contract from Delta Utilities to Saturn Holdco . . . is an on-the-record affiliate transaction between two regulated utilities owned by the same management group."[87] NM AREA then asserted that "the RD impermissibly defers the Rule 450 lowest-cost analysis to a future rate case," and argued that "17.6.450.10(B) NMAC requires the lowest-cost showing now, at the GDP stage, before the affiliate transaction is approved."[88] NM AREA concluded that "[t]he Commission should not approve a Class II shared services arrangement that the Joint Applicants have not shown to be the least-cost option."[89]

(102) NM AREA also raised concerns about potential "[h]olding-company-tier fees," and added that "[n]owhere in the RD do the Hearing Examiners question whether such fees constitute improper subsidization of non-utility activity by NMGC ratepayers."[90]

(103) In response, the Joint Applicants argued that, "[n]otably, in this proceeding, the only services NMGC will receive after the conclusion of the Transition Services Agreement are a

[86] NM AREA's Exceptions to Recommended Decision at 15.
[87] NM AREA's Exceptions to Recommended Decision at 15.
[88] NM AREA's Exceptions to Recommended Decision at 15-16.
[89] NM AREA's Exceptions to Recommended Decision at 16.
[90] NM AREA's Exceptions to Recommended Decision at 16.

defined set of IT services," and that "[t]his will actually constitute a reduction in both the categories and quantity of NMGC's payments for shared services, as compared to the status quo in the Emera structure."[91] They further argued that "[t]he service will be provided only pursuant to an arm's length contract between NMGC and Delta Utilities, and NMGC will have to seek authorization for recovery in a rate case, subject to a prudency standard, as it would for any other service."[92]

(104) The Joint Applicants also took issue with NM AREA's assertion that "17.6.450.10(B) NMAC requires something it calls a 'lowest-cost showing now, at the GDP stage,'" and argued that "there is no such requirement evident in the Rule, nor has the Commission ever imposed such a requirement in any prior Class II transaction proceeding . . ..."[93]

(105) With respect to NM AREA's concerns about potential holding-company-tier fees, the Joint Applicants countered that, "[t]o the extent NM AREA is claiming there will be fees direct-charged from parent companies to NMGC, that is false and has no basis in the record, and, regardless, any such fees could only be recovered in rates if they were found to be prudently incurred."[94]

Commission Determination

(106) The Commission rejects these exceptions. The Commission finds that the Transaction will not result in the improper subsidization of non-utility activities.

E. Exceptions Concerning the Qualifications and Financial Health of the New Owner

(107) NM AREA argued that the Hearing Examiners' conclusion that "the BCP Infrastructure Funds are 'sufficiently financially healthy and qualified to own NMGC' rests on a . . . conclusion

[91] Joint Applicants' Response to Exceptions at 30.
[92] Joint Applicants' Response to Exceptions at 30.
[93] Joint Applicants' Response to Exceptions at 31 (quoting NM AREA's Exceptions to Recommended Decision at 16).
[94] Joint Applicants' Response to Exceptions at 31-32.

that lacks factual support."[95] NM AREA further argued that "[t]he RD does not explain how any of the Joint Applicants' commitments cure recency, how any commitment cures the scale mismatch between Emera and the BCP Infrastructure Funds, or how any commitment cures the mismatch between the 10- to 12-year life of the BCP Infrastructure Funds and the 50- to 100-year lifespan of NMGC's pipeline assets . . .."[96]

(108) WRA contended that "the Commission's qualification inquiry must address the qualifications of the proposed new owner -- BCP and its associated entities -- not solely the qualifications of the utility that will be acquired."[97] WRA argued that "NMGC's retained management cannot substitute for the acquirer's own demonstrated track record."[98]

(109) NEE argued that "[t]he Recommended Decision fails to grapple with substantial evidence demonstrating that Bernhard Capital Partners lacks the experience, qualifications, and proven utility-management record necessary to justify approval of this acquisition," and further argued that "BCP entered the regulated gas utility business only recently and has no meaningful history operating a large gas utility."[99]

(110) In response, the Joint Applicants objected to the standard that WRA would have the Commission apply regarding financial health, namely, "whether the acquirer has a 'demonstrated ownership and integration record sufficient for a utility of NMGC's scale.'"[100] They contended that such a standard "is simply one invented by WRA; it is not a standard of this Commission."[101]

---

[95] NM AREA's Exceptions to Recommended Decision at 17.
[96] NM AREA's Exceptions to Recommended Decision at 17.
[97] WRA's Exceptions to Recommended Decision at 9.
[98] WRA's Exceptions to Recommended Decision at 9.
[99] NEE's Exceptions to Recommended Decision at 3.
[100] Joint Applicants' Response to Exceptions at 33 (quoting WRA's Exceptions to Recommended Decision at 9).
[101] Joint Applicants' Response to Exceptions at 33.

(111) The Joint Applicants also took issue with the "parallel NM AREA and WRA arguments that the 'finite life' of the BCP Infrastructure Funds should have been given more weight," arguing that these are merely arguments "for reweighing the evidence already analyzed in the RD."[102] The Joint Applicants further argued as follows:

> Moreover, the implication that the potential for another Class II application more than ten years from now is some sort of harm is belied by: (1) the Commission's prior findings that a ten-year hold period is an affirmative benefit (meaning its absence would be neutral and not a harm); and (2) the fact that the record reflects that there is no evidence that utility customers have been harmed by prior recurring Class II transactions (and are required to receive benefits from each such transaction).[103]

The Joint Applicants further argued that "NMGC is the perfect example of this, as NMGC has been the subject of three change of ownership transactions in the last 20 years before this one, with no evidence of any harm from any of the transactions."[104]

(112) With respect to qualifications, the Joint Applicants argued that the Hearing Examiners had correctly found that the BCP Applicants are qualified, based upon "[t]he retained NMGC management structure, the use of Delta Utilities and BCP-related expertise for defined support functions . . .."[105]

Commission Determination

(113) The Commission rejects these exceptions. The Commission finds that the entities that will own, directly and indirectly, NMGC are sufficiently qualified and financially healthy to own NMGC.

[102] Joint Applicants' Response to Exceptions at 35.
[103] Joint Applicants' Response to Exceptions at 35 (citing Docket No. 19-00234-UT, Amended Certification of Stipulation (Feb. 12, 2020) at 62-63).
[104] Joint Applicants' Response to Exceptions at 35.
[105] Recommended Decision at 170.

F. Exceptions Concerning Whether the Transaction Will Provide Adequate Protections Against Harm to Customers

(114) NM AREA objected to the Hearing Examiners' "dismissal of intervenor concerns regarding misaligned incentives in the private-equity-funded structure as 'speculative,' arguing that the Hearing Examiners had "failed to engage the record."[106] NM AREA argued that "the acquisition premium creates economic pressure to extract value from ratepayers."[107]

(115) WRA argued that the most fundamental harm "is the structural incentive for BCP Applicants to aggressively expand NMGC's rate base in order to justify the $130-185 million premium paid over net book value, boost earnings during the planned ownership period, and enhance NMGC's resale value at exit."[108] WRA further argued that "[t]he Recommended Decision dismisses this concern, concluding that concerns about increasing rates 'was more speculation than fact' and that 'there was not sufficient evidence to show that this was Joint Applicants' intent or plan.'"[109] WRA contended that "[t]his dismissal is not supported by the record," adding that "BCP's own internal financial model -- not WRA's speculation -- shows the accelerated rate base growth."[110]

(116) CCAE argued that there was evidence in the record that the Transaction would lead to increased emissions of greenhouse gases and other harmful pollutants. CCAE argued that this "is a relevant factor for consideration, particularly when deciding whether the acquisition protects against harms to customers, and it is an important aspect of the proposed acquisition."[111]

---

[106] NM AREA's Exceptions to Recommended Decision at 19 (citing Recommended Decision at 177-178).
[107] NM AREA's Exceptions to Recommended Decision at 19.
[108] WRA's Exceptions to Recommended Decision at 12.
[109] WRA's Exceptions to Recommended Decision at 12 (quoting Recommended Decision at 178).
[110] WRA's Exceptions to Recommended Decision at 13.
[111] CCAE's Exceptions to Recommended Decision at 5.

(117) In response, the Joint Applicants argued that "[t]he Recommended Decision properly characterizes as 'speculation' and incorporates into its analysis WRA's testimony on 'overinvestment risk' that is the basis for WRA's exception . . .."[112] They further argued that such capital expenditure issues are "basics of utility regulation, and neither ring-fencing nor any other add-on condition is necessary or appropriate to ensure that the Commission's ratemaking will continue to encompass ROE analyses and prudency reviews."[113]

(118) The Joint Applicants further argued that "CCAE did not present credible evidence to support its claim that the acquisition will impact or result in increased greenhouse-gas emissions."

(119) The Joint Applicants also noted that the Joint Applicants' witness, Mr. Shell, testified that "'[d]ecisions regarding the expansion of NMGC's distribution network to serve additional customers are soundly within the discretion of NMGC's management' and that NMGC must serve customers who seek service 'regardless of the ultimate ownership of NMGC.'"[114]

Commission Determination

(120) The Commission rejects these exceptions. The Commission finds that the Transaction will provide adequate protections against harm to customers.

IV. NEE'S MOTION TO REOPEN

(121) In NEE's Motion to Reopen, NEE asked that the Commission reopen the record in this matter "to examine new, extraordinary evidence that Bernhard Capital Partners' ('BCP') recently acquired Delta Utilities, a public monopoly gas utility has raised customers' bills more than 1000%."[115] NEE argued that this information "is material to the proposed transaction by BCP and

[112] Joint Applicants' Response to Exceptions at 38 (quoting Recommended Decision at 178).
[113] Joint Applicants' Response to Exceptions at 39.
[114] Joint Applicants' Response to Exceptions at 13 (quoting JA Ex. 11 (Shell Reb.) at 22-23).
[115] NEE's Motion to Reopen (Jan. 23, 2026) at 1-2.

Saturn Holdco to acquire New Mexico Gas Company ('NMGC') and warrants reopening the case for further discovery and examination."[116] NEE further argued that the alleged facts "were unknown during the hearing in this case and they are sufficiently alarming that the Hearing Examiners should examine the facts, assess them and include them in the record for the NM PRC to make the ultimate determination of whether BCP should be permitted to acquire our gas utility."[117]

(122) NEE cited 1.2.2.37(E)(4) NMAC, of the Commission's Rules of Procedure, as the procedural basis for NEE's motion. This paragraph provides as follows: "The commission on its own motion may at any time reopen any proceeding when it has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of such proceeding."[118] NEE's citation to this subsection is inapposite as NEE's motion belongs to NEE, not the Commission.

(123) A motion to reopen a proceeding "shall specify those facts claimed to constitute grounds in justification thereof, including material changes of fact or law alleged to have occurred since the conclusion of the public hearing, and shall contain a brief statement of proposed additional evidence and an explanation as to why such evidence was not previously produced."[119]

(124) In NEE's Motion to Reopen, NEE cited to Docket No. 20-00222-UT and further alleged that there is "new, extraordinary evidence that Bernhard Capital Partners' [] recently acquired Delta Utilities, a public monopoly gas utility has raised customers' bills more than 1000%." NEE included articles and videos from WBRZ and WAFB, which are apparently television stations in

[116] NEE's Motion to Reopen at 3.
[117] NEE's Motion to Reopen at 3.
[118] 1.2.2.37(E)(4) NMAC.
[119] 1.2.2.37(E)(2) NMAC.

Louisiana, concerning alleged increases in utility rates by Delta Utilities. NEE also included an affirmation by Mariel Nanasi, counsel for NEE, who attested that she had "watched the videos in the attached links, read multiple news stories on the subject, [and] read dozens and dozens of facebook and reddit comments . . ..."[120]

A. This matter is distinguishable from Docket No. 20-00222-UT, concerning the proposed acquisition of Public Service Company of New Mexico by Avangrid, Inc.

(125) NEE argued that the Commission's decision in Docket No. 20-00222-UT[121] is "[i]nstructive" insofar as the Commission "recognized . . . that prior ownership experience at affiliated utilities is not merely relevant, but probative of whether a proposed acquisition is consistent with the public interest."[122] NEE further argued:

> A central reason the Hearing Examiner recommended against approval of Avangrid's acquisition of PNM was Avangrid's demonstrated failure to protect customers and ensure basic utility service quality, as evidenced by the prolonged and severe billing and customer-service crisis at Central Maine Power ('CMP'). The Hearing Examiner treated the Maine experience not as an isolated operational error, but as probative evidence of systemic governance failures directly relevant to whether Avangrid could be entrusted with control of New Mexico's largest electric utility, Public Service Company of New Mexico ('PNM').[123]

NEE added that "[t]he Avangrid-owned Central Maine Power billing crisis is instructive precisely because it demonstrates how billing failures, governance deficiencies, and profit-driven

[120] NEE's Motion to Reopen, Self-Affirmation of Mariel Nanasi.
[121] *See* Docket No. 20-00222-UT, *In the Matter of the Joint Application of Iberdrola, S.A., Avangrid, Inc., Avangrid Networks, Inc., NM Green Holdings, Inc., Public Service Company of New Mexico and PNM Resources, Inc. for Approval of the Merger of NM Green Holdings, Inc. with PNM Resources Inc.; Approval of a General Diversification Plan; and All Other Authorizations and Approvals Required to Consummate and Implement this Transaction, Iberdrola, S.A., Avangrid, Inc., Avangrid Networks, Inc., NM Green Holdings, Inc., Public Service Company of New Mexico and PNM Resources, Inc., Joint Applicants*.
[122] NEE's Motion to Reopen at 7.
[123] NEE's Motion to Reopen at 5.

management decisions can metastasize into years-long customer harm once control over a regulated monopoly is transferred."[124]

Commission Determination

(126) The Commission finds that this matter is distinguishable from Docket No. 20-00222-UT. As noted by NEE, Central Maine Power was "Avangrid-owned." The hearing examiner, in his Certification of Stipulation in Docket No. 20-00222-UT, found that Central Maine Power was owned by Avangrid Networks, Inc.[125] Avangrid Networks, Inc., was among the applicants in Docket No. 20-00222-UT, and was described by the hearing examiner in that matter as follows:

> Avangrid Networks, Inc. is the holding company for all of Avangrid, Inc.'s regulated public utility businesses. Its mission is to build and operate responsible energy infrastructure that benefits communities, improves economic development, delivers environmental sustainability for future generations, and provides high quality and reliable service to customers. Currently, approximately 3.3 million customers receive electric and natural gas utility services from Avangrid Networks, Inc.'s eight utilities operating in four states . . . Avangrid Networks, Inc. is a public utility holding company, and its sole purpose is to own Avangrid, Inc.'s interest in public utilities. Thus, Avangrid, Inc. will transfer its interest in [PNM Resources, Inc.] to Avangrid Networks, Inc. promptly after the Merger is consummated, and [PNM Resources, Inc.] will be held like Avangrid, Inc.'s other utilities.[126]

If the acquisition proposed in Docket No. 20-00222-UT had been approved and executed, then Avangrid Networks, Inc., would have indirectly owned PNM, through ownership of PNM Resources, Inc., the public utility holding company that owned PNM. Moreover, Avangrid Networks, Inc., was owned by another joint applicant, Avangrid, Inc.[127], which was the entity

[124] NEE's Motion to Reopen at 7 (citing Docket No. 20-00222-UT, Certification of Stipulation (Nov. 1, 2021) at 112-122).
[125] Docket No. 20-00222-UT, Certification of Stipulation at 107.
[126] Docket No. 20-00222-UT, Certificate of Stipulation at 23-25.
[127] Docket No. 20-00222-UT, Certificate of Stipulation, Appendix 3 at 39.

proposed “to maintain an indirect controlling ownership interest in PNM for not less than ten years following the closing of the Proposed Transaction.”[128]

(127) Avangrid, Inc., was a publicly traded company and “one of the largest energy companies in the United States,” with approximately $36 billion in assets and operations in 24 states.[129] In this matter, however, the entities proposed to assume indirect ownership of NMGC are special-purpose entities. As Mr. Baudier testified, “[e]ach of the BCP Infrastructure Funds and the Saturn Companies were formed within the last twelve months and do not yet have operations or ownership of entities other than one another.”[130] Whereas Avangrid, Inc., was a well-established owner and operator of utilities, with a substantial history relevant to the acquisition proposed in Docket No. 20-00222-UT, the entities that are proposed to own NMGC have no such history.

B. NEE failed to show that the allegations concerning Delta Utilities are relevant to this matter as NEE failed to demonstrate common ownership or control.

(128) NEE argued that “[c]ustomers of BCP-owned Delta Utilities are now experiencing a billing debacle of extraordinary magnitude . . ..”[131] NEE further argued:

> The Avangrid–CMP experience supplies the doctrinal foundation: prior billing failures at affiliated utilities are a legitimate basis for skepticism and heightened scrutiny. The BCP owned and controlled Delta Utilities evidence goes further. It demonstrates that BCP is currently failing to protect customers in another regulated jurisdiction, resulting in precisely the type of harm—billing chaos, customer distress, and political intervention—that the Commission presumably wishes to avoid here.[132]

---

[128] Docket No. 20-00222-UT, Certificate of Stipulation at 104.
[129] Docket No. 20-00222-UT, Certificate of Stipulation at 23.
[130] Supplemental Testimony of Jeffrey M. Baudier (March 4, 2025) at 13.
[131] NEE’s Motion to Reopen at 7.
[132] NEE’s Motion to Reopen at 9-10.

(129) The BCP Applicants countered that "what NEE cites lacks relevance to this proceeding because it does not relate to how NMGC would be led, managed, or operated post-Transaction."[133] The BCP Applicants added the following:

> As thoroughly established in the NMGC acquisition proceeding, following the close of the proposed transaction, local control and management at NMGC will remain in place. NMGC's existing local management team will continue to direct all aspects of NMGC's business and operations, including billing practices and customer protections. NMGC will not undergo any billing system transition as a result of the Transaction. NMGC customer bill presentation will not change as a result of the Transaction.[134]

(130) The BCP Applicants further argued that the commitments that it has made provide protection from the concerns raised by NEE in the motion. Specifically, the BCP Applicants cited the following commitments:

> 15. NMGC will maintain its existing low-income assistance bill assistance program while evaluating potential methods to improve it . . .
>
> 17. 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. [and]
>
> 18. 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.[135]

(131) The BCP Applicants further argued that, to the extent that Delta Utilities would have any involvement with NMGC post-transaction, such involvement would be limited to "provid[ing] shared IT services to NMGC," and noted that "NMGC will otherwise continue to own its current systems."[136]

---

[133] BCP Applicants' Response to Motion (Feb. 4, 2026) at 7.
[134] BCP Applicants' Response to Motion at 7 (citing Joint Applicants Ex. 10 (Shell Direct) at 8-9; 14-15; Joint Applicants Ex. 1 (Baudier Direct); and JA Exhibit JMB-4 (Revised Application) at 2).
[135] BCP Applicants' Response to Motion at 7 (citing JA Exhibit JMB-4 (Revised Application) at 2).
[136] BCP Applicants' Response to Motion at 7 (citing Joint Applicants Ex. 6 (Tumminello Direct) at 3).

Commission Determination

(132) The Commission finds that NEE failed to show that the allegations concerning Delta Utilities are relevant to this matter. NEE asserted that "BCP investment funds have acquired natural gas LDCs, collectively known as Delta Utilities in April 2025 and July 2025 . . .."[137] However, NEE failed to show that, if the proposed Transaction in this matter were completed, there would be common ownership of or control over NMGC and Delta Utilities. Without such a showing, NEE was unable to demonstrate that alleged decisions by the management of Delta Utilities are indicative of decisions that are likely to be made by the management of NMGC should the proposed Transaction go forward. NEE's motion simply took this for granted as an implied assumption. The record in this matter does not support such an assumption.

(133) In addition to the above evidence concerning post-Transaction ownership and control, cited by the BCP Applicants, there is additional evidence in the record that undermines the premise of NEE's motion. Mr. Baudier testified that Delta Utilities is owned by BCP Infrastructure Fund, LP, and BCP Infrastructure Fund, LP II, which are not participants in the proposed acquisition of NMGC.[138] Mr. Baudier further testified as follows:

> Generally, each of BCP's portfolio companies is a distinct, standalone entity with its own boards of directors (or equivalent governing body) and dedicated management team, as will be the case with NMGC if the Transaction closes. In this and other transactions BCP brings to bear ownership expertise and relies largely on the local management team to run the business. NMGC's current local management possesses unique first-hand knowledge of the specific environment in which the company operates and is therefore invaluable to the partnership philosophy discussed above. These rigorous governance practices, as supplemented by the commitments set forth in the Amended GDP and discussed later in my testimony, will be conditions to approval of the Transaction, and will continue if the Transaction closes. Other than the BCP Applicants, none of the other BCP

[137] NEE's Motion to Reopen at 1, n. 2.
[138] Revised Application Testimony of Jeffrey M. Baudier at 95-96.

> companies, nor any of their respective subsidiaries, will have any ownership interest in or control over NMGC.[139]

Mr. Baudier added that, "[o]ther 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."[140]

(134) In addition to the commitments cited above, the BCP Applicants have made the following commitments concerning control of NMGC:

> 1. 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;
>
> 2. NMGC will remain a separate entity, with local management and employees responsible for day-to-day operations; [and]
>
> 3. 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 . . ..[141]

(135) As neither NEE's motion nor the record in this matter have shown that there will be common ownership or control over Delta Utilities and NMGC, should the proposed transaction proceed, NEE has failed to show that there is good cause to reopen the record.

(136) The Commission denies NEE's motion as NEE has failed to show that the allegations that form the basis of NEE's request to reopen the record are relevant to this matter. As the findings in this Order provide a sufficient basis for the Commission to deny NEE's motion, the Commission does not address other arguments made by the parties in the briefing.

---

[139] Revised Application Testimony of Jeffrey M. Baudier at 10.
[140] Revised Application Testimony of Jeffrey M. Baudier at 10.
[141] Revised Application Testimony of Jeffrey M. Baudier at 49.

V. BCP APPLICANTS' REQUEST REGARDING CONFIDENTIALITY

(137) The BCP Applicants requested that the Commission issue an order determining that certain, redacted passages of the Recommended Decision "should not receive confidential treatment and should be unredacted and made public."[142]

(138) Trade secrets are generally protected from disclosure by the Uniform Trade Secrets Act ("UTSA").[143] The UTSA defines "trade secret" as follows:

> D. "trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process, that:
>
> (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
>
> (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy . . ..[144]

(139) The BCP Applicants noted that they had "previously sought confidential treatment for specific information that appeared in material provided in response to the Hearing Examiners' Bench Requests . . .."[145] They added that the "information has been further used in this proceeding in accordance with the Protective Order, and some appears in (and has been redacted from the public version of) the Recommended Decision."[146] They further stated, however, that "the contents of the specific Proposed De-Designations do not themselves disclose the specific commercially-sensitive information that was the basis for the Confidential Material designations, nor any equivalent commercially sensitive detail."[147]

[142] BCP Applicants' Request Regarding Confidentiality (June 25, 2026) at 1.
[143] NMSA 1978, §§ 57-3A-1 to -7 (1989).
[144] NMSA 1978, § 57-3A-2(D).
[145] BCP Applicants' Request Regarding Confidentiality at 3.
[146] BCP Applicants' Request Regarding Confidentiality at 3.
[147] BCP Applicants' Request Regarding Confidentiality at 3.

(140) The BCP Applicants argued as follows:

> Because the text of the Proposed De-Designations should not remain designated as confidential material, no redaction of those passages is necessary to protect any legitimate confidentiality interest. Public disclosure also serves the public interest. De-designating and un-redacting the material at issue will promote transparency without compromising any protected information.[148]

(141) Mr. Baudier attested that "[p]ublic disclosure of the language contained in the Proposed De-Designations would not reveal commercially-sensitive information or likely cause competitive harm to the BCP Applicants or any other person that would merit a confidentiality designation."[149]

(142) NEE requested that the Commission "order that the Corrected Recommended Decision be unsealed in its entirety," arguing that "[t]he Commission should reject the artificial line BCP attempts to draw between those passages it now wishes to disclose and those it continues to shield from public scrutiny."[150]

(143) NEE further argued that "[o]nce the Recommended Decision entered the public domain, any claim of trade secret protection was extinguished."[151] NEE alleged that "[t]he unredacted Recommended Decision has been publicly disseminated, portions have been reported in the press, and the substance of the redacted material is now publicly known."[152] In addition, NEE argued as follows:

> The Protective Order likewise recognizes that confidentiality ends once information enters the public domain. Indeed, BCP itself quotes the Protective Order, which expressly provides that material shall not be treated as confidential if it 'is in the public domain' or "becomes part of the public domain." Having acknowledged that principle, BCP cannot selectively invoke confidentiality after the information has already become public.[153]

[148] BCP Applicants' Request Regarding Confidentiality at 3.
[149] BCP Applicants' Request Regarding Confidentiality, Baudier Affirmation at 2.
[150] NEE's Response to Request (June 30, 2026) at 2.
[151] NEE's Response to Request at 2.
[152] NEE's Response to Request at 3 (citing three online articles from the Albuquerque Journal).
[153] NEE's Response to Request at 3-4.

(144) NEE also contended that "BCP has utterly failed to establish that any remaining redaction satisfies the governing legal standard," and argued that "BCP's filing contains only generalized assertions that certain passages should remain confidential."[154] NEE further argued that "[t]he party seeking secrecy bears the burden of making a detailed, particularized evidentiary showing that disclosure would produce a clearly defined and serious injury."[155]

(145) Finally, NEE argued that "[t]he Commission should not engage in piecemeal editing of its own Corrected Recommended Decision based upon unsupported assertions from the very parties seeking approval of the transaction."[156] NEE added that, "[i]f confidentiality is to continue for any portion of the Commission's adjudicative decision, the proponent of secrecy must justify each redaction with particularity."[157]

<u>Commission Determination</u>

(146) The Commission finds that the BCP Applicants' Request Regarding Confidentiality should be granted. The BCP Applicants have provided evidence, in the form of the Baudier Affirmation, that the redacted content of the Recommended Decision at issue in the request does not consist of trade-secret information and should be disclosed to the public.

(147) In addition, the BCP Applicants have consented to disclosure of the redacted information at issue.

(148) In NEE's Response to Request, NEE improperly seeks relief in the form of an order of the Commission finding that all redacted portions of the Recommended Decision should be disclosed

[154] NEE's Response to Request at 4.
[155] NEE's Response to Request at 4.
[156] NEE's Response to Request at 6.
[157] NEE's Response to Request at 6.

to the public. NEE's Response to Request is not a motion for relief, and it includes factual assertions unsupported by evidence, in violation of the Commission's Rules of Procedure.[158]

(149) The BCP Applicants are not subject to an ongoing burden of proof regarding the confidentiality of the portions of the Recommended Decision for which the BCP Applicants are not seeking disclosure in the Request. The BCP Applicants have satisfied their burden of proof regarding the confidentiality of such information, as the Commission found in its Order Granting Interlocutory Appeal.[159]

(150) The inclusion of the redacted material in the Recommended Decision served to illustrate important differences between the acquiring entity's private infrastructure fund ownership structure and the publicly traded holding company that currently owns NMGC. This illustration, which is also plain to see in the unredacted information provided on Figure 1 of the RD, shows that investor influence can be more direct and complicated by affiliate transactions than at a publicly traded utility holding company. The Commission has examined the evidentiary record, including the information redacted in the RD, and finds that the consumer protections enumerated above are sufficient to regulate effectively despite these differences. The Commission notes that, in reaching the findings and rulings in this Order, it is unnecessary to rely upon any of the material that was redacted from the RD, with the exception of the material that is made public pursuant to this Order and is attached as Exhibit A to this Order, consisting of the unredacted passages of the RD.

---

[158] *See* 1.2.2.12(A)(4) NMAC ("Motions based on factual allegations that do not appear of record shall be supported by affidavit filed along with the motion.")

[159] *See* Order Granting Interlocutory Appeal (June 27, 2025) at 22-24.

VI. JOINT APPLICANTS' MOTION TO STRIKE

(151) The Joint Applicants requested that the Commission strike NEE's Response to Exceptions to the Corrected Recommended Decision of May 21, 2026 ("NEE's Response to Exceptions").

(152) With respect to exceptions and responses to exceptions, the Commission's Rules of Procedure provide, in relevant part, as follows:

> **Contents:** Responses shall not raise for the first time matters which were not raised in the exceptions of a party or the staff. Exceptions and any responses must specifically set forth:
> **(a)** the precise portions of the proposed decision to which the exception is taken or response to exception is made; [and]
> **(b)** the reason for the exception or response . . ..[160]

(153) The Joint Applicants argued that NEE's Response to Exceptions does not satisfy the requirements of the Rules of Procedure regarding responses to exceptions. They made the following arguments:

> The NEE Response does not comply with the requirements of 1.2.2.37(C) NMAC. The NEE Response contains no argument or evidence in opposition to other parties' exceptions. Instead, NEE (1) offers new exceptions and (2) argues in favor of its originally filed exceptions, supplementing its own arguments by referencing other parties' exceptions. NEE also includes what is either an additional new exception or a motion but does not meet any of the procedural requirements for either. Accordingly, the Commission should disregard the NEE Response and strike it from the record.[161]

(154) The Joint Applicants further argued that NEE's filing constituted an attempt to circumvent the page limitations and time limitations that the Commission's Rules of Procedure place upon exceptions.[162]

---

[160] 1.2.2.37(C)(2)(a) and (b) NMAC.
[161] Joint Applicants' Motion to Strike (June 17, 2026) at 3.
[162] Joint Applicants' Motion to Strike at 4 (citing 1.2.2.37(C)(1)(a) and (b)).

(155) The Joint Applicants also objected to NEE's inclusion of "a request that any Commission Order approving the Application be designated as not effective at the time it were to be issued."[163] The Joint Applicants noted that the Commission's Rules of Procedure provide that "[o]rders . . . issued by the commission are effective on the date they are filed unless otherwise stated in the order or document."[164] They further noted that the RD, "consistent with the Commission Rules, includes a Decretal Paragraph stating that the 'Order is effective when signed.'"[165]

(156) The Joint Applicants argued that NEE's request for a delay in the effective date of the final order in this matter "does not conform to the requirements for a motion to the Commission requesting relief and does not even attempt to establish any of the elements of a stay under New Mexico law."[166]

(157) NEE responded, arguing that it "specifically cited and discussed exceptions filed by Staff, NMDOJ, WRA, and NM AREA," and adding that "[t]he purpose of the filing was to explain why the Commission should adopt those parties' positions, particularly where those positions reinforced concerns already raised by NEE."[167] NEE further argued that "[t]he Commission's rules governing rebuttal evidence recognize that material may be submitted to explain, counteract, repel, or disprove positions advanced by another party," and that its response to the exceptions "performed a similar function."[168]

---

[163] Joint Applicants' Motion to Strike at 6 (citing NEE's Response to Exceptions at 23-24).
[164] 1.2.2.10(B)(5) NMAC.
[165] Joint Applicants' Motion to Strike at 6 (quoting Recommended Decision at 181).
[166] Joint Applicants' Motion to Strike at 6 (citing *Tenneco Oil Co. v. N.M. Water Quality Control Comm'n*, 1986-NMCA-033, ¶ 10, 105 N.M. 708 (describing the four-part test for stay of administrative order pending appeal)).
[167] NEE's Response to Motion (June 30, 2026) at 8.
[168] NEE's Response to Motion at 8 (citing 1.2.2.25(N) NMAC).

(158) Commission Determination

(159) The Joint Applicants' Motion to Strike should be granted. NEE has attempted to evade the time and page limitations upon exceptions by making a filing that is a response to exceptions in name only. Employing such tactics is unfair to other parties in the case that follow the Commission's Rules of Procedure. Moreover, NEE's citation to the Commission's evidentiary rules is unavailing, as exceptions and responses to exceptions are not opportunities to introduce new evidence. The evidentiary record closed on November 17, 2025.

(160) With respect to NEE's request for postponement of the effective date of this Order, any such request should have been included in NEE's exceptions or in a timely filed motion, either of which would have provided other parties an opportunity to respond. It would be unfair to other parties for the Commission to consider such a request now.

VII. CONCLUSION AND ACTION

(161) The Commission grants the Joint Application, approves the Joint Applicants' Amended GDP, approves the TSA, and approves the Transaction[169], subject to the conditions stated in this Order.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to the findings provided throughout this Order above, the Commission finds and concludes:

(162) 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.

(163) The Commission has jurisdiction over the parties and the subject matter of this docket.

(164) Reasonable, proper, and adequate notice of this proceeding was provided.

(165) After considering the Six-Factor Analysis to assist in determination of the public interest and the record, 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. This evidence-based determination consisted of findings that:

- A preponderance of credible evidence demonstrated that the Transaction is in the public interest and will result in a net public benefit;
- The Transaction will provide benefits for NMGC's customers;
- The Commission's jurisdiction will be preserved after the Transaction, subject to confirmation of assignment of Equity Sponsor obligations under the Purchase and Sale Agreement and Equity Commitment Letter to BCP Infrastructure Funds, as well as biannual reporting on the number, manner, and degree of formal interactions that the proposed owners have with non-participating BCP entities;
- NMGC's quality of service will not be diminished;
- The ring-fencing commitments made by the BCP Applicants will provide sufficient protection against improper subsidization of non-utility activities;
- The financial health and qualifications of the entities that will own NMGC subsequent to the Transaction are sufficient to support the continuation of service;
- There are adequate protections to ensure against harm to customers;
- The Amended GDP should be approved; and

- The TSA should be approved.

IX. ORDER

IT IS THEREFORE ORDERED:

(A) The Joint Application is GRANTED, subject to the conditions stated in this Order.

(B) The Amended GDP is APPROVED.

(C) The Joint Applicants' proposed corrections to the hearing transcript's references to its counsel and to its witnesses are GRANTED pursuant to 1.2.2.34(C) NMAC, and all other proposed corrections are DENIED.

(D) 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.

(E) The Commission has taken administrative notice of all Commission orders, rules, and decisions in all Commission proceedings cited in this final order.

(F) Any matter not specifically ruled on during the hearing or in this writing is resolved consistent with this Final Order.

(G) NEE's Motion to Reopen is DENIED.

(H) The BCP Applicants' Request Regarding Confidentiality is GRANTED.

(I) The Joint Applicants' Motion to Strike is GRANTED.

(J) Motions for rehearing shall be timely if filed by August 31, 2026. Responses to motions for rehearing shall be timely if filed by September 4, 2026. Replies to responses shall not be filed.

(K) If no motions for rehearing are filed, or if all motions for rehearing are denied by operation of law, this Docket shall close by operation of law.

(L) This Order is effective when signed.

(M) In computing time in accordance with statute, regulation, or Commission order, computation shall begin on the date that this Order is filed with the Chief Clerk of the Commission's Records Management Bureau or the Chief Clerk's designee.

SIGNED under the Seal of the Commission at Santa Fe, New Mexico, this 30th day of July, 2026.

NEW MEXICO PUBLIC REGULATION COMMISSION

VOTED NO
GABRIEL AGUILERA, COMMISSIONER

[s] Greg Nibert, electronically signed
GREG NIBERT, COMMISSIONER

[s[Patrick J. O'Connell, electronically signed
PATRICK J. O'CONNELL, COMMISSIONER

(36) Finally, and in support of the equity sponsors' commitments, the PSA also depends on the Limited Guarantee. Under this guarantee, the Guarantors absolutely, irrevocably and unconditionally guarantee to the Guaranteed Parties, [Emera, EUSHI, and TECO Holdings] severally and not jointly, the due and punctual performance and discharge of its allocable share of Buyer's [Saturn Holdco's] payment obligations under the PSA.[69] 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.[70] The Guarantors of the Limited Guarantee are the same entities as the equity sponsors, namely, BCP Infrastructure Fund, LP, BCP Infrastructure Fund-A, BCP Infrastructure Fund GP, LP, BCP Fund III, LP, BCP Fund III-A, LP, BCP Fund III GP, LP.[71] The letter is a sponsor-side contractual support obligation in the interest of the Sellers for specified Buyer payment obligations.[72]

(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.

[69] Limited Guarantee (Unredacted) at 1.

[70] Limited Guarantee (Redacted) at 1.

[71] Limited Guarantee (Unredacted) at 1.

[72] Limited Guarantee (Redacted) at 1.

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) Financially, the PSA depends on the equity contributions of the BCP entity sponsors. Currently, as far as the Commission has been apprised, the sponsors' commitments have not been assigned to the BCP Infrastructure Funds, despite the indications made by Baudier. If the transaction is approved, and the equity commitment obligations have not been assigned, these sponsors will be required to fund Saturn Holdco with the equity in exchange for some type of equity interest that, according to the PSA, could be controlling. In such a circumstance, the new owner, Saturn Holdco, could have owners (or at least members with substantial financial interests in the company) that did not participate as applicants in the present proceeding, which would violate Rule 450.

(202) The Hearing Examiner therefore determines that approval should be conditioned on Joint Applicants demonstrating, before consummation of the transaction, that the equity contribution obligations originally undertaken by the equity sponsors have been validly assigned to and assumed by the BCP Infrastructure Funds, as well as identifying with specificity any original sponsor or guarantor that remains obligated after closing. This condition is necessary not because the presence of initial sponsor commitments defeats jurisdiction, but because effective jurisdiction requires the Commission to know which entities actually bear the equity contribution obligations

and whether any entity outside the proposed participating ownership chain continues to hold material rights or obligations connected to the acquisition financing.

(203) Beyond their financial influence, 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

(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:

1. Assignment and assumption of equity contribution obligations. Before consummation of the Transaction, Joint Applicants shall file with the Commission and serve Staff and the parties a compliance certification, supported by executed assignment and assumption agreements, closing documents, or other competent documentation, demonstrating that the equity contribution obligations originally undertaken by the equity sponsors under the Equity Commitment Letter have been validly assigned to and assumed by the BCP Infrastructure Funds, or identifying any original sponsor, guarantor, or other entity that remains obligated after closing. The filing shall state whether any equity sponsor or guarantor has been released; whether any commitment has been withdrawn, terminated, rescinded, reduced, or materially modified; the amount and percentage of each remaining equity commitment; and the identity of each entity that will hold direct or indirect equity interests in Saturn Holdco upon closing.
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

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 confirmation of assignment of equity sponsor obligations under the PSA and Equity Commitment Letter to BCP Infrastructure Funds and 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.