Outlook

24-00266-UT - Order Permitting Interlocutory Appeal

From Kippenbrock, Ana, PRC <Ana.Kippenbrock@prc.nm.gov>

Date Fri 4/18/2025 5:33 PM

To TMD@jkwlawyers.com <TMD@jkwlawyers.com>; BJH@jkwlawyers.com <BJH@jkwlawyers.com>; NMGCRegulatory@nmgco.com <NMGCRegulatory@nmgco.com>; RGifford@wbklaw.com <RGifford@wbklaw.com>; DHardy@hardymclean.com <DHardy@hardymclean.com>; JMclean@hardymclean.com <JMclean@hardymclean.com>; TRode@hardymclean.com <TRode@hardymclean.com>; WDubois@wbklaw.com <WDubois@wbklaw.com>; Ebaker@scottmadden.com <Ebaker@scottmadden.com>; Desaillan.ccae@gmail.com <Desaillan.ccae@gmail.com>; lynch.cara.nm@gmail.com <lynch.cara.nm@gmail.com>; Sricdon@earthlink.net <Sricdon@earthlink.net>; Mewen@indecon.com <Mewen@indecon.com>; AVitulli@indecon.com <AVitulli@indecon.com>; JPrice@indecon.com <JPrice@indecon.com>; Spenn@indecon.com <Spenn@indecon.com>; Jelani.Freeman@hq.doe.gov <Jelani.Freeman@hq.doe.gov>; Emily.Medlyn@hq.doe.gov <Emily.Medlyn@hq.doe.gov>; DEtheridge@exeterassociates.com <DEtheridge@exeterassociates.com>; DNajjar@virtuelaw.com <DNajjar@virtuelaw.com>

Cc Records, PRC, PRC <PRC.Records@prc.nm.gov>; Hurst, Elizabeth, PRC <Elizabeth.Hurst@prc.nm.gov>; Schaefer, Patrick, PRC <patrick.schaefer@prc.nm.gov>

1 attachment (2 MB)

24-00266-UT - 4-18-25 - PS - Order Permiting Interlocutory Appeal.pdf;

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

Ana C. Kippenbrock
Law Clerk
Hearing Examiners Division
New Mexico Public Regulation Commission
P.O. Box 1269
Santa Fe, NM 87504
(505) 690-4191
Ana.Kippenbrock@prc.nm.gov

NEW MEXICO
PUBLIC REGULATION
COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

ORDER PERMITTING INTERLOCUTORY APPEAL

THIS MATTER comes before Hearing Examiners, Elizabeth Hurst and Patrick Schafer, for the New Mexico Public Regulation Commission ("Commission"), upon the BCP Applicants' Motion for Interlocutory Appeal ("Motion for Interlocutory Appeal"), filed with the Commission on April 7, 2025, of the Hearing Examiners' Order Denying BCP Applicants' Motion for Confidentiality and Denying NMGC's Motion for Confidentiality ("Order Denying Confidentiality"), filed on April 3, 2025. The Order Denying Confidentiality is attached to the present Order as Exhibit A and the Motion is attached as Exhibit B. The Hearing Examiners **FIND AND CONCLUDE** that:

1. On February 19, 2025, the Hearing Examiners issued a Bench Request ("Bench Request," or, "BR") to Joint Applicants for further information regarding the financial structures to be used in the proposed sale and acquisition of TECO Energy, LLC, ("TECO Energy"), the parent company of New Mexico Gas Company, Inc., ("NMGC").
2. The Joint Applicants include 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"); NMGC, a Delaware

corporation; TECO Holdings, Inc., a Florida corporation ("TECO Holdings"); TECO Energy, a Florida limited liability company (formerly TECO Energy, Inc.); Saturn Utilities, LLC, a Delaware limited liability company ("Saturn Utilities"); Saturn Utilities Holdco, LLC ("Saturn Holdco"); 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," together with BCP Infrastructure Fund II and BCP Infrastructure Fund II-A, the "BCP Infrastructure Funds"); Saturn Utilities Aggregator, LP ("Saturn Aggregator"); Saturn Utilities Aggregator GP, LLC ("Saturn Aggregator GP"); Saturn Utilities Topco, LP ("Saturn Topco") and Saturn Utilities Topco GP, LLC ("Saturn Topco GP" and together with Saturn Utilities, Saturn Aggregator, Saturn Aggregator GP, and Saturn Topco, the "Saturn Companies")(BCP Infrastructure Funds and Saturn Companies, collectively, "BCP Applicants").

3. Among other information, the Hearing Examiners requested the production of documents that concern the financial architecture underlying both the Purchase and Sale Agreement ("PSA") and the private equity funds, namely, the BCP Infrastructure Funds, that will ultimately own TECO Energy ("Target Company"), and thereby NMGC, through a series of intermediate proprietary subsidiaries, namely, the Saturn Companies.
4. On March 4, 2025, BCP Applicants filed Supplemental Testimony of Jeffery M. Baudier in response to the Bench Request wherein the requested documents and

information were produced. Some documents and information were fully redacted while others were partially redacted.

5. On the same day, BCP Applicants also filed pursuant to the Protective Order filed in this proceeding on December 30, 2024, BCP Applicants' Notice of Submission of Confidential Material for In Camera Review and BCP Applicants' Request for Confidential Treatment of Bench Responses ("Request").
6. Specifically, the BCP Applicants argued that full or partial redactions of information in the following documents constitute trade secrets and therefore should be exempt from public disclosure. Their assertion of trade secrets concerns the following documents:

    - Exhibit BR-3 - Limited Partnership Agreements for BCP Infrastructure Funds, Saturn Utilities Aggregator LP, and Saturn Utilities Topco LP;
    - Exhibit BR-4 - Private Placement Memorandum for BCP Infrastructure II, LP and BCP Infrastructure Fund II-A, LLP;
    - Exhibit BR-8(D) and Exhibit BR-16(C) - Identity of Lenders and Terms;
    - Exhibit BR-12 - Life Cycle Status of Each BCP Infrastructure Fund;
    - Exhibit BR-14 - Waterfall Distribution for BCP Infrastructure Funds;
    - Exhibit BR-15 - Purchase and Sale Agreement and Exhibit BR 16(A) – List of Sponsors;
    - Exhibit BR-16(B) - Debt Commitment Letter;
    - Exhibit BR-16(D) - Limited Guarantee;
    - Exhibit BR-16(G) - Seller Disclosure Letter; and,

- Exhibit BR-16(H) - Equity Commitment Letter.

7. After conducting an *in camera* review of these documents and information and evaluating the arguments of BCP Applicants in light of New Mexico law, the Hearing Examiners determined that the documents and information in question must be disclosed publicly, issuing the Order Denying BCP Applicants' Motion for Confidentiality and Denying NMGC's Motion for Confidentiality on April 3, 2025.[1]
8. On April 7, 2025, BCP Applicants filed BCP Applicants' Emergency Motion for Stay of or Limited Amendment to the Hearing Examiners' Order Denying BCP Applicants' Motion for Confidentiality and Denying NMGC's Motion for Confidentiality, attached as Exhibit C, and their Motion for Interlocutory Appeal.
9. In these motions, the BCP Applicants assert that public disclosure of these documents and information would cause irreparable harm and therefore seek a stay of the order requiring public disclosure and an interlocutory appeal to the Commission.
10. On April 7, BCP Applicants filed an unredacted copy of BR-12, the Life Cycle Status of Each BCP Infrastructure Fund. On the same date, Emera filed Emera Inc.'s and New Mexico Gas Company, Inc.'s Notice of Compliance with April 3, 2025, Order Denying BCP Applicants' Motion for Confidentiality and NMGC's Motion for Confidentiality
11. On April 7, 2025, the Hearing Examiners issued an order amending the Protective Order, to protect claimed confidential material during any Commission rehearing, reconsideration, or interlocutory appeal of the confidentiality determination.

[1] Hearing Examiners are able to assist the Commission with any *in camera* review of the information and documents subject to BCP Applicant's Motion for Interlocutory Appeal.

Consequently, no information subject to the BCP Applicant's current claims of confidentiality has been disclosed publicly.

12. On April 8, 2025, the Hearing Examiners issued an Order Setting Response and Reply Deadlines to BCP Applicants' Motion for Interlocutory Appeal, attached as Exhibit D, requiring that any response to the BCP Applicants' Motion for Interlocutory Appeal shall be filed by April 11, 2025, and that BCP Applicants' may file a reply to any response to its Motion for Interlocutory Appeal by April 15. 2025.
13. On April 11, 2025, intervenors in this proceeding, namely, Western Resource Advocates, New Energy Economy, the New Mexico Department of Justice, Coalition for Clean Affordable Energy, and Prosperity Works, filed a Joint Response in Opposition to BCP Applicants' Motion for Interlocutory Appeal, in support of the Order Denying Confidentiality and in opposition to the Motion for Interlocutory Appeal, attached as Exhibit E. On the same day, Commission Staff filed Staff's Response to Order Setting Response Deadlines to BCP Applicants' Motion for Interlocutory Appeal in support of the Order Denying Confidentiality and in opposition to the Motion for Interlocutory Appeal, attached as Exhibit F.
14. BCP Applicants, on April 15, 2025, filed a Reply in Support of Their Motion for Interlocutory Appeal, attached as Exhibit G, arguing that an Interlocutory Appeal was appropriate to avoid irreparable harm and, on the merits, that the documents and information in question are trade secrets, entitling them to confidential treatment.

I. Discussion

In issuing the Order Denying Confidentiality, the Hearing Examiners relied on the fundamental and explicit principles of the public interest inherent to the Public Utility Act ("PUA")[2] and the transactions that it governs, including the present proposed acquisition of NMGC by BCP Applicants. The Hearing Examiners determined that the proposed acquisition is affected with the public interest, specifically, that the design of the BCP Infrastructure Funds and that structure of the debt and equity of the acquiring company, Saturn Utilities Holdco, will likely directly impact the capital structure of NMGC and its rate-payers, and that because of the probability and directness of these impacts, required the disclosure of the documents that BCP Applicants seek to withhold from public disclosure.

Moreover, the Hearing Examiners did not find that the BCP Applicants met the burden to establish that the documents and information subject to their claim are indeed trade secrets. The BCP Applicants, in their Request for Confidentially, reiterated, mostly in verbatim fashion, the same conclusory reasoning for a diversity of documents and information. Such verbatim reiteration and the lack of specific detail of how the disclosure would harm BCP Applicants deprived the arguments of their persuasiveness and ability to meet the burden, specifically to explain with particularity the injury which would result from disclosure of the information for which protection is sought.[3]

Yet, even if the documents and information were *arguendo*, trade secrets, the Hearing Examiners determined that the Commission is not prohibited from disclosing them to the public. Firstly, the Uniform Trade Secrets Act ("UTSA") nowhere stipulates that a state agency, such as

[2] NMSA 1978, § 62-3-1 (1967, as amended through 2008).
[3] New Mexico Administrative Code ("NMAC") 1.2.2.8(B)(1)(c).

the Commission, is prohibited from disclosing trade secrets. Rather, the UTSA provides definitions of what constitutes a trade secret and causes of action in the case that such secrets are misappropriated. Specifically, it defines 'misappropriation' as acquisition or disclosure by 'improper means,' i.e., theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means.[4] BCP Applicants have not been able to cite to any provision of the UTSA that restrains the Commission from requiring public disclosure of documents and information that would constitute trade secrets.

With respect to the Inspection of Public Records Act ("IPRA"), the BCP Applicants likewise have consistently misstated the law. That Act states that every person has a right to inspect public records of this state except [*inter alia*]…trade secrets.[5] The Act does not state that if a document or record is a trade secret that the Commission cannot require public disclosure. It merely states that if some document, information, or record, is determined to be a trade secret, that an individual does not have a positive and affirmative right to view such materials.

In reaching their determination, the Hearing Examiners also reviewed the factual record and context surrounding the documents which BCP Applicants are moving to withhold from public disclosure. In doing so, they determined that the structures and details articulated and included in the documents in question would bear directly on the financial health of NMGC and its ability to provide reasonable and proper services at fair, just and reasonable rates to the end that capital and investment may be encouraged and attracted, so as to provide for the construction, development and extension, without unnecessary duplication and economic waste, of proper plants and facilities

[4] NMSA 1978, § 57-3A-2 (1989).
[5] NMSA 1978, § 14-2-1 (1941, as amended through 2023).

and demand-side resources for the rendition of service to the general public and to industry. Consequently, the Hearing Examiners determined that the public interest and its right to know the details of these foundational proprietary and financial structures found within the documents in question should be established so that it could have all the critical and pertinent information available to participate fully in this proceeding.

Given its critical importance to the state and its monopoly status, the proposed financial entanglements of NMGC and its upstream holding companies take on a significant public interest. As will be demonstrated below, the BCP Applicant's strategy and proposed structure of the transaction explicitly and unequivocally bears upon the capital structure of not only the midstream and downstream holding companies, but also NMGC itself.

The Public Utility Act ("PUA") declares, foundationally, in its first sentence, that public utilities are "affected with the public interest," given their rendition of essential services to a large number of the general public, that their financing involves large sums of money, and that the development and extension their business directly affects the development, growth and expansion of the general welfare, business and industry of the state.[6]

The legal and statutory principle of the public interest is a longstanding pillar of public utility regulation and was articulated by the U.S. Supreme Court in 1876, in *Munn v. Illinois*, 94 U.S. 113. There, the Court, in describing the public interest in the context of utility regulation, held

[6] NMSA 1978, § 62-3-1 (1967, as amended through 2008).

"that when private property is 'affected with a public interest, it ceases to be *juris privati* only'" and "is subject to public regulation." *Id*. at 126, 129–30 (1876). In doing so, the Court established a bright line distinction between transactions occurring solely between private entities and those that involved regulated public utilities, and thereby laid the foundation for the concept of the regulatory compact.

In the current proceeding, Joint Applicants, and BCP Applicants in particular, seek approval from the Commission for the sale and purchase of NMGC, New Mexico's largest public natural gas distribution utility that operates with monopoly status in its service area, twenty-seven (27) of the thirty-three (33) counties of the state, and maintaining 12,000 miles of pipeline and serving 540,000 customers.[7] Private entities that wish to acquire public utility monopolies, using private credit, as in the case of the current proposed transaction, should be aware of such principles, and the possibility that certain information will require public disclosure, especially given the significant and tangible extent to which the BCP Infrastructure Funds and the entities and terms underlying the PSA will likely have on the financial status of the NMGC, post-closing, and its 540,000 rate-payers.

In proposing the sale and purchase of NMGC, BCP Applicants have structured direct proprietary and managerial relationships between the BCP Infrastructure Funds and Saturn Utilities Holdco, the acquisition company (the 'vehicle' that is purchasing NMGC). In their Joint Application, BCP Applicants say as much, stating that BCP Infrastructure II GP will "hold a *de*

[7] https://www.nmgco.com/en/about_us (accessed April 14, 2025).

minimis amount of ownership in Saturn [Utilities] Holdco."[8] From a managerial perspective, Jeffery M. Baudier is not only a Senior Managing Director of BCP Partners Management, "involved in all aspects of the firm's investment activities,"[9] and on the management team of the BCP Infrastructure Funds,[10] he is also the President of Saturn Utilities Holdco.[11] This management and proprietary participation at both Fund and Holdco levels demonstrates that the BCP Infrastructure Funds will not be passive investors, but will be coordinating management and financial oversight of the target company, NMGC.

In consideration of the foregoing, it is highly likely that BCP Partners Management and the management of the BCP Infrastructure Funds will have a direct impact on the financial position of NMGC and the rates that will be proposed and possibly approved, as is detailed in the unredacted portions of the Private Placement Memorandum ("PPM"). The explicit and deeply engaged strategies of BCP Partners Management and the management of the BCP Infrastructure Funds, and their self-described track record regarding 'value creation' in their portfolio companies bear upon the three principles established and founded in the first provision of the PUA, the regulatory compact, and the acquisition of NMGC.

Furthermore, at the Holdco level, the Hearing Examiners also determined that the information and documents related to the Purchase and Sale Agreement ("PSA") (Exhibit BR-16(A)), which governs the proposed purchase of NMGC, by Saturn Utilities Holdco, are vital to

[8] Joint Application of Joint Applicants for the Acquisition of New Mexico Gas Company ("Joint Application"), at 4.
[9] https://www.bernhardcapital.com/our-team/ (accessed April 14, 2025).
[10] Supplemental Testimony of Jeffery M. Baudier ("Supp. Testimony"), Exhibit BR-4 Unredacted with Confidential Material, at 41.
[11] *I.d.*, at 2.

the public interest.[12] The PSA outlines, among other terms and conditions, the manner in which Saturn Utilities Holdco will be capitalized, specifically with respect to the acquisition of both debt and equity in order to effect the purchase of NMGC.

While the PSA was filed with the Joint Application, the financial Sponsors of the transaction were redacted, and the supporting documentation specifically referred to in the PSA and upon which the execution of the PSA depends, namely, the Equity Commitment Letter (Exhibit BR-16(H)), the Debt Commitment Letter (Exhibit BR-16(B)), and the Limited Guarantee (Exhibit BR-16(D)), were not included.[13] Without public disclosure, the public will not be aware of who has contributed equity to Saturn Utilities Holdco, who its creditors are, the terms of those loans, nor the parties or the terms of the guarantees, and that information will remain secret. Notable also is that the $250 million in debt that Saturn Utilities Holdco will acquire will be on the private market.[14] If a public company were acquiring NMGC, this information would be known publicly.

With respect to the legal basis for the BCP Applicants' Motion for Interlocutory Appeal, the Commission's Rules of Procedure state that the:

> [C]ommission does not favor interlocutory appeals from the rulings of a presiding officer and expects that appeals will be taken only in extraordinary circumstances. The movant in any such appeal bears the burden of establishing grounds for review and reversal of a ruling of the presiding officer made in the course of the proceeding.[15]

BCP Applicants claim that the extraordinary circumstances are such that they either defy a Commission order or disclose the trade secrets publicly and consequently suffer irreparable

[12] Joint Application, PSA Exhibit JMB-2.
[13] PSA Exhibit JMB-2, at 6.
[14] Joint Application, Direct Testimony of Jeffery M. Baudier ("Baudier Direct"), at 23.
[15] NMAC 1.2.2.31(A)(2).

harm.[16] In their Motion for Interlocutory Appeal, the BCP Applicants address the nature of the documents and information in question and subject to the Order Denying Confidentiality and provide reasons why public disclosure would create permanent injury.[17]

The Hearing Examiners, while having determined that the nature of the documents and information require public disclosure, nevertheless are cognizant of the position and considerations of the BCP Applicants and proceed with an abundance of caution and therefore determine that an Interlocutory Appeal is here permitted under NMAC 1.2.2.31(B)(1)(b), finding here that circumstances exist which make prompt commission review of the contested ruling necessary to prevent irreparable harm to any person.

IT IS THEREFORE ORDERED:

A. The BCP Applicants' Motion for Interlocutory Appeal is granted and the BCP Applicants' Interlocutory Appeal is permitted.

B. This Order is effective immediately.

ISSUED under the seal of the Commission at Santa Fe, New Mexico this 18th day of April, 2025.

[16] Motion for Interlocutory Appeal, at 5.
[17] *Id.*, at 4.

NEW MEXICO PUBLIC REGULATION COMMISSION

Elizabeth C. Hurst

Elizabeth C. Hurst
Hearing Examiner
elizabeth.hurst@prc.nm.gov

/s/ Patrick Schaefer
[Electronically signed]
Patrick Schaefer
Hearing Examiner
patrick.schaefer@prc.nm.gov

EXHIBIT A

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

EXHIBIT A

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

ORDER DENYING BCP APPLICANTS' MOTION FOR CONFIDENTIALITY AND DENYING NMGC'S MOTION FOR CONFIDENTIALITY

THESE MATTERS come before the Hearing Examiners upon the filing of BCP Applicants' Request for Confidential Treatment of Bench Request Responses ("BCP Applicants' Motion for Confidentiality"), BCP Applicants' Notice of Submission of Confidential Material for In Camera Review, and Emera Inc. ("Emera") and New Mexico Gas Company, Inc.'s ("NMGC") Claim of Confidentiality Request ("NMGC Motion for Confidentiality") on March 4, 2025, with the New Mexico Public Regulation Commission ("NMPRC or Commission"). Having been fully advised in the premises and having conducted an In Camera review of the documents at issue, the Hearing Examiners **FIND** and **CONCLUDE**:

1. BCP Applicants'[1] Motion for Confidentiality requests that the Hearing Examiners issue an order determining that certain documents and information provided in response to the Hearing Examiners' Bench Requests to Joint Applicants ("Bench Requests"), dated February 19, 2025, are not subject to public disclosure and will be accorded confidential treatment. BCP Applicants included in their Motion the Self-

[1] The BCP Applicants include 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, collectively referred to as 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").

Affirmed Statement of Jeffrey M. Baudier, attached as Exhibit A, describing the claimed Confidential Material the BCP Applicants are submitting in response to the Bench Request, namely:

> Exhibit BR-3 - Limited Partnership Agreements for BCP Infrastructure Funds, Saturn Utilities Aggregator LP, and Saturn Utilities Topco, LP
>
> Exhibit BR-4 - Private Placement Memorandum ("PPM") for BCP Infrastructure II, LP, and BCP Infrastructure Fund II-A, LP
>
> Exhibit BR-8(D) and Exhibit BR-16(C) - Identity of Lenders and Terms
>
> Exhibit BR-12 - Life Cycle Status of Each BCP Infrastructure Fund
>
> Exhibit BR-14 - Waterfall Distribution for BCP Infrastructure Funds
>
> Exhibit BR-15 - Purchase and Sale Agreement ("PSA") and Exhibit BR 16(A) – List of Sponsors
>
> Exhibit BR-16(B) - Debt Commitment Letter pursuant to the PSA
>
> Exhibit BR-16(D) - Limited Guarantee pursuant to the PSA
>
> Exhibit BR-16(H) - Equity Commitment Letter pursuant to the PSA.

BCP Applicants allege that these documents contain trade secret information that would cause competitive harm to the BCP Applicants if publicly disclosed. Accordingly, the BCP Applicants respectfully request that the Confidential Material described herein remain confidential, pursuant to the terms of the Protective Order. BCP Applicants argue that the information is protected from disclosure under the Commission's rules,[2] the Public Utility Act ("PUA"),[3] IPRA,[4] the Uniform Trade Secrets Act ("TSA"),[5] the New Mexico Rules of Civil Procedure,[6] the New Mexico Rules of Evidence,[7] and the Securities Act of 1933, including Regulation D, U.S. Securities and Exchange Commission ("SEC") Rule 506(b).

[2] 1.2.2.8(B) NMAC.
[3] NMSA 1978, § 62-6-1 *et seq*.
[4] NMSA 1978, § 14-2-1 *et seq*.
[5] NMSA 1978, § 57-3A-1 *et seq*.
[6.] Rule 1-026(C)(8) NMRA.
[7] Rule 11-508 NMRA.

2. On March 4, 2025, BCP Applicants filed BCP Applicants' Notice of Submission of Confidential Material for *in camera* review. The items were provided to those parties who signed the nondisclosure agreement, and e-mails containing a link to a secure server were submitted to the Hearing Examiners.[8]

3. On March 4, 2025, Emera and NMGC filed a Motion for Confidentiality requesting that the Commission allow the policy limit amount for cyber liability insurance contained within the Seller Disclosure Letter provided in response to BR 16(G) be treated as confidential. An Electronically submitted Affirmation of Michael R. Barrett asserted that disclosure of the cyber liability policy limit could harm Emera and NMGC by encouraging increased cyber attacks.

4. Section K(3)(C) of the Protective Order issued in this case provides that within seven (7) days of the request seeking confidential treat of the Confidential Material or as otherwise ordered, Staff shall, and any intervenor may, file a response addressing the legal and factual merits of each confidentiality claim, including Staff's or the party's position on whether the Confidential Material is in fact confidential. Any factual assertions in the response shall be supported by a verifying affidavit. Staff failed to file the required response, and no intervenor chose to file a response.

I. INTRODUCTION

BCP Applicants seek to acquire NMGC through the purchase of TECO Energy, LLC. TECO Energy, LLC, owns all the shares of New Mexico Gas Intermediate ("NMGI"), which, in turn, owns all the shares of NMGC. NMGC is the State of New Mexico's largest public natural gas utility with over 500,000 customers. BCP Applicants are comprised of a variety of stacked, integrated, and financially interwoven

[8] After initial difficulty receiving and accessing the late filed documents, and with the assistance of the NMPRC Information Technology Division, the Hearing Examiners were able on March 6, 2025, to access the documents referenced in #1 plus a document referenced in BR-16(G) claimed by Emera and NMGC to be confidential.

limited partnerships ("LPs") and limited liability companies ("LLCs"), the BCP Infrastructure Funds and the Saturn Companies, all of which have only been created within the last twelve (12) months, with "no balance sheets, income statements, cash flow statements, debt-to-equity ratios, or long-term or short-term debt obligations."[9] Additionally, it is the BCP Infrastructure Funds that will seek third-party funding, not the Saturn Companies. Mr. Baudier states that "[b]ecause third-party investment will be made at the BCP Infrastructure Funds level, and not at Saturn Utilities Aggregator, LP or Saturn Utilities Topco, LP, the latter do not have [Private Placement Memoranda] associated with them. The sole investors in the latter will be their respective parent entities, leading up ultimately to the BCP Infrastructure Funds."[10] The information and documents subject to the Bench Request relate to the precise financial, proprietary, and managerial character and relationships between the BCP Applicants and, ultimately, NMGC.

A. Structural Relationship Between BCP Applicants

In the Supplemental Testimony and Exhibits of Jeffrey M. Baudier, in the BCP Applicants' Response to February 19, 2025, Hearing Examiners' Bench Request, Mr. Baudier provides critical information not disclosed in the Joint Application of Joint Applicants for the Acquisition of New Mexico Gas Company Inc. ("Joint Application") regarding the complex and reciprocal proprietary and financial relationship between the BCP Applicants.[11]

For example, not only will BCP Infrastructure Fund II GP, LP, be the General Partner of both BCP Infrastructure Fund II, LP, and BCP Infrastructure Fund II-A, LP, simultaneously, it will also be the General Partner of Saturn Aggregator GP, LLC, and Saturn Utilities Topco GP, LLC. Meanwhile, BCP Infrastructure

[9] Supplemental Testimony and Exhibits of Jeffrey M. Baudier in Response to February 19, 2025 Hearing Examiners' Bench Request ("Supplemental Testimony"), p. 13.

[10] *Id.* p. 10.

[11] *Id.* p. 11-12 and p. 19-20.

Fund II, LP, and BCP Infrastructure Fund II-A, LP, will, in turn, be Limited Partners of Saturn Aggregator GP, LLC, and Saturn Utilities Topco GP, LLC.[12]

Additionally, BCP Applicants in their Supplemental Testimony also provide more detail not initially provided in the Joint Application concerning the relationship between the upstream BCP Infrastructure Funds and the downstream Saturn Utilities Aggregator, LP, and Saturn Utilities Topco, LP, and the relationship of Saturn Utilities Topco, LP, to Saturn Utilities, LLC, and Saturn Utilities Holdco, LLC, ("Buyer"), the ultimate entity that will acquire equity and debt financing to purchase TECO Energy, LLC, and consequently NMGC.[13]

B. Purchase and Sale Agreement and Related Documents

The Purchase and Sale Agreement ("PSA"), provided on a redacted basis in the Joint Application, and its attendant commitment, guarantee, and seller disclosure documentation, upon which the execution of the PSA is conditions, sets out the principal and foundational terms for the proposed purchase of TECO Energy, LLC, by Saturn Utilities Holdco, LLC. In particular, the PSA highlights the central roles that the transactions Sponsors will exercise and states that certain Sponsors will be committing equity to Buyer, Saturn Utilities Holdco, LLC, to purchase TECO Energy.[14] This commitment is formalized in the Equity Commitment Letter. Further, the PSA states that Sponsors are also entering into a Limited Guarantee with Sellers with respect to the performance by Buyer of certain of its obligations under the PSA.[15] The PSA also states that Buyer has provided to Seller a Debt Commitment Letter wherein the financial institutions

[12] *Id.*

[13] *Id.*

[14] Joint Application, JA Exhibit JMB-2, Purchase and Sale Agreement ("PSA"), p. 6, "Sponsors…are entering into that certain Equity Commitment Letter (as defined below) with Buyer.

[15] *Id. "*Sponsors are entering into that certain limited guarantee with Sellers (the "Limited Guarantee") with respect to the performance by Buyer of certain of its obligations hereunder…"

and the terms of the debt financing provided to Buyer for the transaction are stipulated.[16] Finally, the PSA is conditioned on the terms within a Seller Disclosure Letter where the Seller provides information relating to assets, liabilities, permits, contracts, employee benefits, legal proceedings, taxes, real property, liens, leases, subsidiaries, insurance, and financial statements, among other information.[17]

While Joint Applicants did provide a copy of the PSA in the Joint Application, it was redacted to exclude the identity of the Sponsors of the transaction.[18] Nor did the Joint Applicants provide in the Joint Application copies of the Equity and Debt Commitment Letters, the Limited Guarantee, or the Seller Disclosure Letter.

C. Private Placement Memoranda and Limited Partnership Agreements

A Private Placement Memorandum ("PPM"), as described by Mr. Baudier in his testimony in the Supplemental Information, "is a disclosure document to provide certain information about an investment opportunity, including the structure and risks of the investment opportunity. The PPM is analogous to a prospectus for a public offering of securities."[19] Generally, a PPM also sets forth information about the management team, strategy, and life cycle (duration of the investment), that govern the investment. In the proposed transaction to acquire NMGC, the BCP Applicants rely on the use of several Limited Partnerships,

[16] *Id.* p. 53-54, "Project Saturn – Saturn Utilities Holdco, LLC Debt Commitment Letter… by and between Saturn Utilities Holdco, LLC and each of the financial institutions party thereto… to provide, subject to the terms and conditions therein, debt financing in the aggregate amount set forth therein for the purpose of funding the transactions contemplated by this Agreement."

[17] *See, generally,* PSA, Art. IV.

[18] Joint Application, JA Exhibit JMB-2, p. 6.

[19] Supplemental Testimony and Exhibits of Jeffrey M. Baudier in Response to February 19, 2025 Hearing Examiners' Bench Request ("Supplemental Testimony"), p. 10.

two of which seek to attract capital investments according to a PPM, specifically, the upstream BCP Infrastructure Fund II, LP, and BCP Infrastructure Fund II-A, LP.[20]

BCP Applicants intend to utilize not only these two LPs, namely, the BCP Infrastructure Fund II, LP, and BCP Infrastructure Fund II-A, LP, (as well as the BCP Infrastructure Fund II GP, LP), but also the Saturn Utilities Aggregator, LP, and the Saturn Utilities Topco, LP, to realize the ultimate acquisition of NMGC. All of these LPs are governed by a Limited Partnership Agreement ("LPA"). An LPA is a contract that generally outlines and determines the roles of General and Limited Partners, capital contributions, sharing of profit and loss, management fees, management and decision-making, executive officers, and the dissolution of the partnership, among other fundamental matters relating to the partnership.[21]

BCP Applicants did not include copies of these documents in their Joint Application, but do provide, subsequent to the Bench Request, the Limited Partnership Agreements for Saturn Utilities Aggregator, LP, and Saturn Utilities Topco, LP, on a confidential basis. BCP Applicants did not submit the actual LPA for BCP Infrastructure Fund II, GP, LP, BCP Infrastructure Fund II, LP, or BCP Infrastructure Fund II-A, LP, stating that "they have not been finalized."[22] BCP Applicants did provide a type of draft LPA for these LPs, stating that the final agreements would be "substantially in the form." as the attached confidential Exhibit BR-3(1).[23]

[20] *Id.* p. 10.
[21] *See, generally,* J. Brooke Hern, Limited Partner, Maximum Effect: Rethinking the Risk of Investing in Delaware Limited Partnerships, 51 SMU L. Rev. 195, 196 (1997) and a 1B West's Legal Forms, Business Organizations § 28:1 (3d ed.).
[22] *Id.* p. 9.
[23] *Id.*

II. APPLICABLE LAW

In considering the BCP Applicants' Motion, the Commission must consider a variety of statutes and rules that govern the Commission and its actions, several of which are identified by the BCP Applicants. Specifically, the Commission must here apply the Public Utility Act ("PUA"),[24] the Commission's Rules of Procedure,[25] the Open Meetings Act,[26] the Inspection of Public Records Act ("IPRA"), the Uniform Trade Secrets Act ("UTSA").[27] While these legal tenets are considered individually, the Commission must also consider how they interact with each other and impact upon the Commission's duties, obligations, and responsibilities.

A. The Public Utility Act

The foundation of the PUA rests upon the public interest. The Act's Declaration of Policy states that:

> A. Public utilities […] are affected with the public interest in that, among other things:
>
> (1) a substantial portion of public c utilities' business and activities involves the rendition of essential public services to a large number of the general public;
>
> (2) public utilities' financing involves the investment of large sums of money, including capital obtained from many members of the general public; and,
>
> (3) the development and extension of public utilities' business directly affects the development, growth and expansion of the general welfare, business and industry of the state.[28]

[24] NMSA 1978, § 62-10-5 (1941).
[25] 1.2.2.8. NMAC.
[26] NMSA 1978, §§ 10-15-1 to 4 (1997, as amended through 2013).
[27] NMSA 1978, §§ 57-3A-1 to -7 (1989).
[28] NMSA 1978, § 62-3-1 (1967, as amended through 2008).

In this context of public interest, Section 62-10-5 PUA[29] requires that all hearings of the Public Regulation Commission ("Commission") "shall be public."[30] So, Section 62-6-17(C), while authorizing the use of protective orders, also stipulates that the Commission may order the disclosure of information determined to be confidential or proprietary if the Commission determines that the information is material and relevant to a proceeding:

> The commission shall determine the materiality and relevancy of the books, records, accounts or documents to any matter before the commission and determine whether such books, records, accounts or documents contain confidential or proprietary information. If the commission determines such books, records, accounts or documents contain confidential or proprietary information that is material and relevant to the proceeding, it shall determine whether the public interest requires that such books, records, accounts or documents be produced in any hearing or investigation held under the Public Utility Act or that an abstract of or the extraction of specific information from such books, records, accounts or documents be produced for use in any such hearing or investigation.[31]

Within the scope of the PUA, the New Mexico Administrative Code (NMAC) at 1.2.2.8(A) establishes the Commission's policy "to allow full and complete access to public records in accordance with the Inspection of Public Records Act, Section 14-2-1 NMSA 1978 *et seq*." and provides that, "[e]xcept when the commission or presiding officer directs otherwise, all pleadings, orders, communications,

[29] *See* § 62-13-1 (2008) (specifying statutes under the PUA).

[30] NMSA 1978, § 62-10-5 (1995, as amended through 1998).

[31] NMSA 1978, § 62-6-17(C). *See e.g.*, Order Regarding Protective Order, Case No. 2353 (July 30,1991). The Order, issued prior to the 1993 amendment to NMSA 1978, 62-6-17, adopted the following balancing test:

> [T]he Commission should consider the extent to which the hearing must be closed, the amount of documents needing protection, and the relationship of these documents to the major issues in the proceeding. By considering these important elements, the Commission will satisfy the legislative policy of public hearings. The Commission should also balance the interests favoring disclosure against the interests favoring nondisclosure. Consideration should be given to potential harm done to the public or private interests if disclosure is made, or if it is not made. Substantial harm to a competitive position is certainly a relevant consideration.

exhibits, or other documents shall become matters of public record as of the day and time of their filing."[32] At the same time, Subsection B of 1.2.2.8 NMAC allows a moving party to seek a protective order to withhold information from public view. This Subsection stipulates that the moving party bears the burden "of establishing their right, if any, to such protection"[33] and permits the Commission to issue protective orders upon that party's showing that "protection is consistent with the Inspection of Public Records Act, including protectable trade secrets."[34]

B. Open Meetings Act

The Commission must also consider the ramifications of the Open Meetings Act before approving the sealing of material and relevant evidence. That Act reiterates the state's commitment to a policy of expansive and robust access to information involved in the decisions and actions taken by the government. It states that:

> [i]n recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.[35]

While the Open Meetings Act does not specifically apply to a government entity's obligation to withhold confidential information from public view and consideration, it does have ramifications for the Commission's decision-making responsibilities. Deliberations by the Commission are governed by the

[32] 1.2.2.8(A) NMAC
[33] 1.2.2.8(B)(1) NMAC.
[34] 1.2.2.8(B)(3) NMAC.
[35] NMSA 1978, 10-15-1(A) (1953, as amended through 2013).

Open Meetings Act, and those deliberations are generally conducted in open session. Additionally, the Commission's final decision must be in writing and, at a minimum, contain findings of ultimate fact.

Any decision to treat information as confidential may limit the Commission's ability to discuss the information in public session and include the information in its decisions. If the information is considered confidential, the discussion of the information must be conducted in closed session at the evidentiary heating and in the Commission's deliberations, and the Recommended Decision and Final Order must avoid or redact all references to this information.

C. Inspection of Public Records Act

The stated purpose of the New Mexico Inspection of Public Records Act ("IPRA") is that all persons are entitled to the "greatest possible information" regarding the affairs of govern:

> Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.[36]

And, while the Act declares that "[e]very person has a right to inspect public records of this state, except" for records that fall within twelve defined exceptions, it does not follow that the state is prohibited from releasing (or that it must withhold) those types of excepted documents, but only, rather, that an individual does not have an attendant affirmative right to inspect.

[36] NMSA 1978, § 14-2-5.

In view of these principles, the New Mexico Supreme Court has held in interpreting the IPRA that "there is strong public policy favoring access to public records." *City of Las Cruces v. Public Employee Labor Relations Board*, 1996-NMSC-024, ¶ 8, 121 N.M. 688, 917 P.2d 451. In other cases, the Supreme Court has held that the citizens of New Mexico have a fundamental right to have access to public records:

> a citizen has a fundamental right to have access to public records. The citizen's right know is the rule and secrecy is the exception. Where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed.[37]

And, in evaluating requests for access to public records pursuant to the IPRA,

> each inquiry starts with the presumption that public policy favors the right of inspection. To overcome this presumption, a public entity seeking to withhold public records bears the burden of proving why their disclosure would be prejudicial to the public interest.[38]

So, while there is a process for exempting records that could constitute trade secrets from disclosure, the moving party nevertheless bears the burden, consistent with the PUA and NMAC 1.2.2.8, cited above.

D. Uniform Trade Secrets Act

Trade secrets are exempt from an individual's affirmative right to disclosure under IPRA pursuant to the catch-all "as otherwise provided by law" in Section 14-2-1(A)(8).[39] The Uniform Trade Secrets Act

[37] *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 34, 90 N.M. 790, 568 P.2d 1236. *See City of Farmington v. Daily Times*, 2009-NMCA-057, ¶¶ 9-10, 146 N.M. 349, 210 P.3d 246.

[38] *Board of County Commissioners of Doña Ana County v. Las Cruces Sun-News*, 2003-NMCA-012, ¶ 11, 134 N.M. 283, 76 P.3d 36 (citing *Newsome*, 1977-NMSC-076, ¶ 35).

[39] As the text of the statute unambiguously states, the trade secrets provision in Section 14-2-1(A)(6) of the IPRA applies solely to public hospitals, restricting public access to the "trade secrets, attorney attorney-client privileged information and long-range or strategic business plans of *public hospitals* discussed in a properly closed meeting." (emphasis added). *See* Inspection of Public Records Compliance Guide, Office of New Mexico Attorney General Hector Balderas (8th ed. 2015), p. 13 (construing the "Public Hospital Records" exception under NMSA 1978, § 14-2-1(A)(6)).

("UTSA"), as codified in New Mexico at NMSA 1978, §§ 57-3A-1 to -7 (1989), establishes a two-prong test for information to qualify as a trade secret:

> 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.[40]

This test has been used to determine whether information or documents constitute trade secrets where the interested and moving party bears the burden, as under the PUA, NMAC 1.2.2.8, and IPRA. In the 2007 *"Pincheira"* opinion,[41] the Court of Appeals recognized "a strong public policy in New Mexico of supporting the confidentiality of trade secrets."[42] In affirming the Court of Appeals' decision in *Pincheira I* to vacate a default judgment and define the procedure for protecting asserted trade secrets during discovery, the Supreme Court observed in *Pincheira II* that a trade secret is "one of the most elusive and difficult concepts in the law to define."[43]

The Restatement (Third) of Unfair Competition defines a trade secret as "any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others."[44] In determining whether certain information

[40] NMSA 1978, § 57-3A-2(D).

[41] *Pincheira v. Allstate Ins. Co*., 2007-NMCA-094, ¶ 34, 142 N.M. 283,291, 164 P.3d 982, 990) (*Pincheira* I).

[42] *Pincheira I,* 2007-NMCA-094, ¶ 34.

[43] *Pincheira v. Allstate Ins. Co.,* 2008-NMSC-049, ¶ 34, 144 N.M. 601,190 P.2d 322 *(Pincheira II)* (quoting *Learning Curve Toys, Inc. v. PlayWood Toys, lnc.* 342 F.3d 714, 723 (7t~ Cir. 2003).

[44] *Restatement (Third) of Unfair Competition §* 39.

constitutes a trade secret, courts often look to the following six factors set forth in the *Restatement (First) of Torts:*

> (1) the extent to which the information is known outside of [the] business; (2) the extent to which it is known by employees and others involved in [the] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.[45]

In *Pincheira II, the* Supreme Court noted that the six factors "provide helpful guidance to determine whether the information in a given case constitutes 'trade secrets' within the definition of the [UTSA]."[46] However, neither the Supreme Court nor the Court of Appeals has analyzed the six factors nor, to date, has either court analyzed the interplay between IPRA and the UTSA in a reported opinion.

In sum, a party seeking to preclude disclosure of trade secrets under the UTSA, as under the Commission's Rules of Procedure,[47] bears the burden of showing "that the information in fact constitutes a trade secret, that disclosure would harm movant's competitive position and that the asserted harm outweighs presumption of public access. With respect to proof of competitive harm, vague and conclusory allegations will not suffice .... Movant must prove that disclosure would work a clearly defined and serious injury to the party seeking closure."[48] Stated slightly differently but to the same effect, "[t]he party seeking protection from disclosure has the burden of making a particular and specific demonstration of fact, as distinguished

[45] *Restatement (First) of Torts*, § 757 cmt. b (1939).

[46] 2008-NMSC-049, ¶ 19 (quoting *BasieArn. Inc. v Shatila*, 133 Idaho 726, 992 P.2d 175, 184 (1999) (itself quoting *Optic Graphics, Inc. v. Agee*, 770, 591 A.2d 578, 585, (Md. App. 1991)). *See Pineheiro I*, 2007-NMCA, 094, ¶ 31.

[47] See 1.2.2.8 NMAC.

[48] *Encyclopedia Brown Productions, Ltd. v. Home Box Office*, Inc., 26 F. Supp. 2d 606, 613 (S.D.N.Y. 1998) (internal citation omitted; quoting *Turick v. Yamaha Motor Corp*., 12l F.R.D. 32, 35 (S.D.N.Y. 1988) (quoting in turn *United States v. IBM*, 67 F.R.D. 40, 46 (S.D.N.Y. 1975)). *See also Pincheira II*, 2008-NMSC-049, ¶ 39 n.3 (good cause under Rule 1-026(C)(7) NMRA, "requires a specific showing that 'disclosure will work a clearly defined and serious injury to the party seeking closure'") (quoting *Krahling v. Executive Life Ins. Co.*, 1998-NMCA-071, ¶ 15, 125 N.M. 228, 959 P.2d 562).

from general, conclusory statements revealing some injustice, prejudice, or consequential harm that will result if protection is denied."[49]

Finally, in determining whether a document containing one or more trade secrets is entitled to protection from public access, the UTSA must be read *in pari materia* with IPRA to balance the public policies underlying each body of law.[50] In fact, pursuant to a 2018 amendment, the IPRA now expressly cross-references the definition of "trade secret" set forth in the UTSA.[51]

E. The Protective Order

The Protective Order in the instant proceeding, consistent with the requirements in NMAC 1.2.2.8, requires that a party seeking to protect confidential material overcome the burden of the presumption of public disclosure, namely, to: provide an affidavit that satisfies the claimant's burden of making a prima facie showing that protection is appropriate; establish the legal basis for protection; state whether the public interest requires use of the Confidential Material; and explain whether an abstract or extraction of the information can be used as an alternative.[52]

---

[49] *In re Parmalat Securities Litigation*, 258 F.R.D. 236, 244 (S.D.N.Y. 2009) (quoting *Blum v. Schlegel*, 150 F.R.D. 38, 41 (W.D.N.Y. 1993)).

[50] *See e.g., New Mexico Industrial Consumers v. NMPRC*, 2007-NMSC-053, ¶ 20, 142 N.M. 533, 168 P.3d 105 ("...we strive to read related statutes in harmony so as to give effect to all provisions: In ascertaining legislative intent, the provisions of a statute must be read together with other statutes *in pari materia* under the presumption that the legislature acted with full knowledge of relevant statutory authority and common law.... Thus, two statutes covering the same subject matter should be harmonized and construed together *when possible*, in a way that facilitates their operation and the achievement of their goals") (quoting *State ex rel. Quintana v. Schnedar*, 115 N.M. 573,575-76, 855 P.2d 562, 564-65 (1993) (emphasis in original).

[51] *See* NMSA 1978, § 14-2-6(H).

[52] *See* Protective Order ¶ K(3)(b), K(1)(c) requiring an affidavit consistent with 1.2.2.8(B)(1) NMAC, and requiring the following information with respect to each document marked Confidential Material:

(1) the date the Confidential Material was prepared;
(2) the author of the Confidential Material;
(3) a list of all persons, other than the disclosing party and its representatives, in possession of the Confidential Material;
(4) the subject matter of the Confidential Material;

III. BCP Applicants' Documents and Position

BCP Applicants assert that the documents provided in response to Bench Requests, namely, Exhibit BR-3 - Limited Partnership Agreements for BCP Infrastructure Funds, Saturn Utilities Aggregator LP, and Saturn Utilities Topco, LP; Exhibit BR-4 - Private Placement Memorandum ("PPM") for BCP Infrastructure II, LP, and BCP Infrastructure Fund II-A, LP; Exhibit BR-8(D) and Exhibit BR-16(C) - Identity of Lenders and Terms; Exhibit BR-12 - Life Cycle Status of Each BCP Infrastructure Fund; Exhibit BR-14 - Waterfall Distribution for BCP Infrastructure Funds; Exhibit BR-15 - Purchase and Sale Agreement ("PSA") and Exhibit BR 16(A) – List of Sponsors; Exhibit BR-16(B) - Debt Commitment Letter pursuant to the PSA; Exhibit BR-16(D) - Limited Guarantee pursuant to the PSA; Exhibit BR-16(H) - Equity Commitment Letter pursuant to the PSA "contain trade secret information that would cause competitive harm to the BCP Applicants if publicly disclosed."[53]

BCB Applicants allege that these exhibits include detailed information regarding the specific terms that have been confidentially offered to private investors with respect to the transaction and are trade secrets that do not require public disclosure and are protected from disclosure under New Mexico law. In doing so, BCP Applicants refer to a paragraph from *Pincheira II* that establishes when the burden of establishing a trade secret is met, but not that the law requires such documents as in the present case should be withheld from public disclosure.[54]

---

(5) a description of the contents of the Confidential Material;
(6) the number of pages which the Confidential Material comprises;
(7) how the Confidential Material was acquired; and
(8) the basis for all claims of confidentiality, including a showing that each document marked Confidential Material comes within one or more of the exceptions to the general disclosure requirement of the IPRA. (NMSA 1978, §§ 14-2-1(A) – (H) (2019)).

[53] BCP Applicants' Request for Confidential Treatment of Bench Request Responses ("BCP Applicants' Motion for Confidentiality"), p. 2.

[54] See, *e.g.*, *Pincheira v. Allstate Insurance Co*., 2008-NMSC-049, ¶¶ 49, 74, 144 N.M. 601 (holding that the defendant met its burden of showing that the information contained in the document was a trade secret

The BCP Applicants, in the supporting affidavit, make the following assertions regarding the trade secret status of the requested documents:

Exhibit BR-3 - Limited Partnership Agreements for BCP Infrastructure Funds, Saturn Utilities Aggregator LP, and Saturn Utilities Topco LP

- The information being designated as Confidential Material and redacted from the public version of the exhibit is trade secret information. It relates to the specific approach the BCP Applicants and BCP Management have taken to structuring certain elements of the execution of this Transaction.[55]
- The BCP Applicants and BCP Management derive independent economic value from these terms not being known or readily ascertainable by proper means by competing investment management entities and investment funds. If competing investment management entities and investment funds knew or were able to readily ascertain the information, then they would be able to leverage it and obtain economic value from their ability to compete with, strategize against, and market against the BCP Applicants and BCP Management.[56]

with an affidavit explaining "the type of information contained in the document, how [the defendant] uses that information in its business, how the information would be useful to competitors, and how the [d]efendant kept the information secret").

[55] Supplemental Information, Affidavit, p. 3.

[56] *Id.*

Exhibit BR-4 - Private Placement Memorandum ("PPM") for BCP Infrastructure II, LP and BCP Infrastructure Fund II-A, LLP

- The information being designated as Confidential Material and redacted from the public version of the exhibit is trade secret information. It relates to the specific approach the BCP Applicants and BCP Management have taken to structuring certain elements of the execution of this Transaction.[57]
- The BCP Applicants and BCP Management derive independent economic value from these terms not being known or readily ascertainable by proper means by competing investment management entities and investment funds. If competing investment management entities and investment funds knew or were able to readily ascertain the information, then they would be able to leverage it and obtain economic value from their ability to compete with, strategize against, and market against the BCP Applicants and BCP Management.[58]

Exhibit BR-8(D) and Exhibit BR-16(C) - Identity of Lenders and Terms

- The information being designated as Confidential Material and redacted from the public version of the exhibit is trade secret information. It relates to the specific approach the BCP Applicants and BCP Management have taken to structuring certain elements of the Transaction – in particular, its financing.[59]
- The BCP Applicants and BCP Management derive independent economic value from these terms not being known or readily ascertainable by proper means by competing investment management entities and investment funds, nor being known by other lenders who are not involved in this

[57] *Id.* p. 6.
[58] *Id.*
[59] *Id.* p. 8.

Transaction. If competing investment management entities and investment funds knew or were able to readily ascertain the information, then they would be able to leverage it and obtain economic value from their ability to compete with, strategize against, and market against the BCP Applicants and BCP Management.[60]

Exhibit BR-12 - Life Cycle Status of Each BCP Infrastructure Fund

- The information being designated as Confidential Material and redacted from the public version of the exhibit is trade secret information. It relates to the specific approach the BCP Applicants and BCP Management have taken to structuring certain elements of the BCP Infrastructure Funds related to their investors.[61]
- The BCP Applicants and BCP Management derive independent economic value from these terms not being known or readily ascertainable by proper means by competing investment management entities and investment funds. If competing investment management entities and investment funds knew or were able to readily ascertain the information, then they would be able to leverage it and obtain economic value from their ability to compete with, strategize against, and market against the BCP Applicants and BCP Management.[62]

[60] *Id.*
[61] *Id.* p. 10.
[62] *Id.*

Exhibit BR-14 - Waterfall Distribution for BCP Infrastructure Funds

- The information being designated as Confidential Material and redacted from the public version of the exhibit is trade secret information. It relates to the specific approach the BCP Applicants and BCP Management have taken to structuring certain elements of the execution of this Transaction.[63]
- The BCP Applicants and BCP Management derive independent economic value from these terms not being known or readily ascertainable by proper means by competing investment management entities and investment funds. If competing investment management entities and investment funds knew or were able to readily ascertain the information, then they would be able to leverage it and obtain economic value from their ability to compete with, strategize against, and market against the BCP Applicants and BCP Management.[64]

Exhibit BR-15 - Purchase and Sale Agreement ("PSA") and Exhibit BR 16(A) – List of Sponsors

- The information being designated as Confidential Material and redacted from the public version of the exhibit is trade secret information. It relates to the specific approach the BCP Applicants and BCP Management have taken to structuring certain elements of the execution of this Transaction.[65]
- The BCP Applicants and BCP Management derive independent economic value from these terms not being known or readily ascertainable by proper means by competing investment management entities and investment funds. If competing investment management entities and investment funds

[63] *Id.* p. 12.
[64] *Id.*
[65] *Id.* p. 14.

knew or were able to readily ascertain the information, then they would be able to leverage it and obtain economic value from their ability to compete with, strategize against, and market against the BCP Applicants and BCP Management.[66]

Exhibit BR-16(B) - Debt Commitment Letter

- The information being designated as Confidential Material and redacted from the public version of the exhibit is trade secret information. It relates to the specific approach the BCP Applicants and BCP Management have taken to structuring certain elements of the execution of this Transaction.[67]
- The BCP Applicants and BCP Management derive independent economic value from these terms not being known or readily ascertainable by proper means by competing investment management entities and investment funds, nor by lenders who are not involved in the transaction. If competing investment management entities and investment funds or lenders knew or were able to readily ascertain the information, then they would be able to leverage it and obtain economic value from their ability to compete with, strategize against, and market against the BCP Applicants and BCP Management.[68]

[66] *Id.*
[67] *Id.* p. 15.
[68] *Id.*

Exhibit BR-16(D) - Limited Guarantee

- The information being designated as Confidential Material and redacted from the public version of the exhibit is trade secret information. It relates to the specific approach the BCP Applicants and BCP Management have taken to structuring certain elements of the execution of this Transaction.[69]
- The BCP Applicants and BCP Management derive independent economic value from these terms not being known or readily ascertainable by proper means by competing investment management entities and investment funds. If competing investment management entities and investment funds knew or were able to readily ascertain the information, then they would be able to leverage it and obtain economic value from their ability to compete with, strategize against, and market against the BCP Applicants and BCP Management.[70]

Exhibit BR-16(H) - Equity Commitment Letter

- The information being designated as Confidential Material and redacted from the public version of the exhibit is trade secret information. It relates to the specific approach the BCP Applicants and BCP Management have taken to structuring certain elements of the execution of this Transaction.[71]
- The BCP Applicants and BCP Management derive independent economic value from these terms not being known or readily ascertainable by proper means by competing investment management entities and investment funds. If competing investment management entities and investment funds knew or were able to readily ascertain the information, then they would be able to leverage it and

[69] *Id.* p. 16.
[70] *Id.* p. 17.
[71] *Id.* p. 18.

obtain economic value from their ability to compete with, strategize against, and market against the BCP Applicants and BCP Management.[72]

In reviewing the BCP Applicants' assertions regarding the broad range of documents and information and the reasons for which they seek to withhold disclosure from the public, it is apparent that the supporting reasons for each are verbatim or almost verbatim restatements, with the exception of some slight variations in additional justification.

BCP Applicants also claim that publicly disclosing the requested information and documentation related to Exhibit BR-3 - Limited Partnership Agreements for BCP Infrastructure Funds, Saturn Utilities Aggregator LP, and Saturn Utilities Topco LP, Exhibit BR-4 - Private Placement Memorandum for BCP Infrastructure II, LP and BCP Infrastructure Fund II-A, LLP, Exhibit BR-12 - Life Cycle Status of Each BCP Infrastructure Fund, Exhibit BR-14 - Waterfall Distribution for BCP Infrastructure Funds would turn their private offering, to invest in the funds which will control the assets purchasing and ultimately owning NMGC, into a public offering, thus triggering the jurisdiction of the Securities and Exchange Commission ("SEC"), thereby materially altering and adversely impacting their business model.

BCP Applicants, according to this reasoning, provide the same verbatim argument:

> BCP offers interests in its Funds pursuant to the "private placement" exemption contained in the Securities Act, including Regulation D, and similar exemptions contained in state "blue sky" laws which prohibits an issuer of privately placed securities (*i.e.*, BCP) from engaging in any form of general solicitation or general advertising in connection with the private placement of securities. The SEC takes a broad view of what constitutes general solicitation or advertising for a private securities offering under Rule 506(b), including any advertisement, article, notice, or other communication published in any newspaper, magazine or other media (such as a website) or broadcast over television, radio or the internet. Therefore, any public disclosure of any of the requested documentation related to the fund materially increases the risk that the SEC could take the view that BCP engaged in a public solicitation and therefore violated the Securities Act.[73]

[72] *Id.*
[73] *Id*. p. 4, 7, 10, 12.

IV. RULING

The Hearing Examiners, having reviewed the laws which govern the Commission, this proceeding, and the instant question, find that the public has a strong and foundational interest in transparency and the ability to access and review the documents which concern the acquisition of the state's largest natural gas utility. The PUA and the Commission's Procedural Rules mitigate in favor of the public's participation in and full awareness of the proceedings before the Commission and only allow the withholding of information and documents on an exceptional basis, and there subject to the procedure set out in NMAC 1.2.2.8. Furthermore, the policy and intent of IPRA is that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees."[74] As with the PUA, IPRA provides, on an exceptional basis, that individuals do not have an affirmative right to access certain information and documents, such as those determined to be trade secrets.

In the instant proceeding, a series of newly formed companies, the BCP Applicants, many of which only exist to facilitate the acquisition of NMGC, exist in a complex, interwoven, and proprietary relationship to one another. The assemblage of these companies together forms the vehicle which is specifically designed to acquire, hold, and ultimately sell NMGC, ideally at a profit. The documents which the BCP Applicants are moving to withhold from public view provide unique insight into how both the transaction and post-closing dynamics may and will affect NMGC. Without the ability to review these documents, the public would have no other way of knowing under what terms NMGC is being acquired and who possesses a financial or proprietary interest in the company. The criticality of the documents and information to the transaction are affected with the public interest.

[74] NMSA 1978, § 14-2-5.

While the BCP Applicants rely on a variety of statutes and rules to argue that the information and documents in question should be withheld from the public, these arguments are misplaced. Firstly, the BCP Applicants read the provisions of IPRA to require the confidentiality of records that are determined to be trade secrets. But, even if, arguendo, the documents and information provided pursuant to the Bench Request are Trade Secrets, IPRA determines that an individual does not have an affirmative, positive right to inspection, as the individual does with other non-excepted records. IPRA does not restrain or prohibit the Commission from disclosing trade secrets held as a public record.

Here, BCP Applicants routinely misstate the law, using the same or virtually the same statement to assert their point for each of the documents referenced in their Motion. In multiple instances they write that "The public interest does not require public disclosure of this information, as it constitutes a trade secret or otherwise confidential commercial information that is entitled to protection from public disclosure under New Mexico law. *See, e.g.*, *Pincheira*, 2008-NMSC-049, ¶¶ 49."[75] The paragraph cited from this ruling, though, does not say what the BCP Applicants are asserting, namely, that trade secrets are entitled to protection from public disclosure and that the public interest does not require disclosure. Rather, the paragraph in question merely states refers to the sufficiency of an affidavit required to justify an evidentiary hearing on whether the information constituted a trade secret. *Pincheira II*, 2008-NMSC-049, ¶¶ 49, states the following:

> In this case, the record shows that Defendant made a good faith claim that the information it sought could be a trade secret, justifying an evidentiary hearing on the trade secret status of the McKinsey documents. *See Pincheira II*, 2007–NMCA–094, ¶ 52, 142 N.M. 283, 164 P.3d 982. The affidavit describes the type of information contained in the document, how Defendant uses that information in its business, how the information would be useful to competitors, and how Defendant kept the information secret.

[75] Supplemental Information, Motion at p. 6, 8, 10, 12, 14, 15-16, 17.

This paragraph from the Supreme Court's ruling does not state that if something is a trade secret that it is not in the public interest and therefore disclosure is not required.

Moreover, withholding documents and information from public disclosure also creates inefficiencies and complicates the procedures of the Commission under the Open Meetings Act. When dealing with confidential documents in the course of a public procedure, the Commission must make accommodation for pleadings, witnesses, hearings, and deliberations in Executive Session that are closed off from the public, bifurcating and obscuring the Commission's proceedings from the public.

Finally, even if trade secrets were categorically and absolutely exempt from public disclosure, the BCP Applicants have not met their burden under the Commission's Procedural Rules. The relevant rule, NMAC 1.2.2.8(B)(1)(c), states that the affidavit shall "explain with particularity the injury which would result from disclosure of the information for which protection is sought." In the affidavit provided by the BCP Applicants, the alleged injuries are vague, conclusory, and not particular to an identified secret. Indeed, as demonstrated above, the BCP Applicants repeated, often verbatim, the same general harms that would result if the documents and information were not withheld from the public. The BCP Applicants also argue that any disclosure would constitute a harm because it violates the Securities Act of 1933 and , by essentially turning the private offerings in the BCP Infrastructure Funds into public offerings. This argument is unpersuasive as it is not easily conceivable that the SEC would find disclosure of these documents by the state, pursuant to the public interest, to constitute a public offering.[76]

[76] One of the conditions of SEC Rule 506(b) is that a securities issuer relying upon the Rule providing exemption from the requirements attending to public offerings does not engage in "any form of general solicitation or general advertising" to market securities. Whether a transaction involves "any form of general solicitation or general advertising" is a facts and circumstances analysis. Public disclosure by a the Commission, a government agency would not constitute solicitation or advertising.

The Hearing Examiners also note that the BCP Applicants apparently did not attempt to determine whether or not its motion would be opposed, as required by NMAC 1.2.2.12(E)(1). The motion was silent as to whether any party opposed or did not oppose the motion. If a motion is not opposed, it shall state so and be accompanied by a proposed order, NMAC 1.2.2.12(E)(2). Opposed motions hall state affirmatively that concurrence of other parties and staff has been requested but denied or shall state why no request for concurrence was made, NMAC 1.2.2.12(E)(3).

V. Emera and NMGC Document

The Hearing Examiners now address an additional claim of confidentiality filed in a Motion by Emera Inc. and NMGC', relating to one portion of BCP Applicants' Response to BR-16(G), the Seller's Disclosure Letter. NMGC's Motion for Confidentiality requests that the Commission allow the policy limit amount for cyber liability insurance contained within the Seller's Disclosure Letter be kept confidential. They argued that the cyber liability policy limit amount should be protected as a trade secret under New Mexico law.[77]

Emera Inc. and NMGC included the Affirmation of Michael R. Barrett ("Barrett Affirmation") to their pleading. According to Mr. Barrett's Affirmation, Emera Inc. has not disclosed this information publicly and has limited access to this information to parties that have non-disclosure obligations to Emera.[78] Public disclosure of the cyber liability policy limit amount could harm Emera and NMGC. Public disclosure could encourage increased cyber attacks on both Emera and NMGC in order to attempt to effectuate a ransom situation. Such a situation could cause service disruptions to customers and financial harm to Emera Inc. and NMGC.[79]

[77] NMSA 1978, § 14-2-1(F), 14-2-6(I).
[78] Emera Inc. and New Mexico Gas Company, Inc.'s Claim of Confidentiality, Barrett Affirmation, p. 2-3, 9(c).
[79] *Id.* p. 2.

Alternatively, Emera and NMGC argue that the cyber liability insurance policy limit amount should be protected from public disclosure as information akin to information technology system vulnerability information. Disclosing policy limits of this insurance coverage, they allege, could cause heightened cyber-attacks and attempts to find and exploit information technology system vulnerabilities.[80] Emera Inc. and NMGC also assert that the cyber liability policy limit information does not have any bearing on the post-closing governance or management of NMGC or the Commission's regulation of NMGC or its affiliates. They conclude that accordingly, the public interest will not be compromised by allowing this information to remain confidential.

Consistent with the exposition of the applicable law cited above in the review of the BCP Applicants' Motion for Confidentiality, the Hearing Examiners reiterate the substantial statutory and policy foundations in the PUA, the Commission's Procedural Rules, IPRA, and that Open Meetings Act that require as full and unfettered access to public records, documents, and information, as possible.

At the same time, the Hearing Examiners look to the test under the UTSA, as applied in *Pincheira II*, and cited above, to determine if the information subject to the claim of confidentiality constitutes a trade secret. To reiterate, that test states that:

> D. A 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.

[80] *Id.*

In the present case, to satisfy the test, the amount of the insurance policy would have to be information that derives independent economic value from not being generally known. This conceptualization, under the first prong of the test, would effectively transform the amount of the policy into some kind of asset or commodity possessed by Emera Inc. and NMGC. It is hard to imagine that because the policy amount is currently not widely known that it creates an independent economic value for the companies. Conceivably, the companies possess many assets that are not widely known and that are still not trade secrets. Furthermore, the numerical value of the insurance policy does not align with the non-exclusive list of assets in the test that constitute a trade secret, such as a formula, pattern, compilation, program, device, method, technique or process.

Consequently, Emera Inc. and NMGC have failed to satisfy the burden that the numeric dollar amount of the cybersecurity insurance policy should be withheld from the public and remain confidential. This determination on the failure to satisfy the trade secret test is also viewed in light of the strong presumption for disclosure of public documents cited and discussed above in response the BCP Applicants' Motion for Confidentiality.

Finally, the Hearing Examiners also note Emera Inc.'s and NMGC's lack of compliance with NMAC 1.2.2.12, requiring that moving parties make efforts to determine whether or not the motion will be opposed or not, and if so, the respective statements and attachments therein required.

IT IS THEREFORE ORDERED THAT:

A. BCP Applicants' Request for Confidential Treatment for the following documents is **DENIED**:

> Exhibit BR-3 - Limited Partnership Agreements for BCP Infrastructure Funds, Saturn Utilities Aggregator LP, and Saturn Utilities Topco, LP

Exhibit BR-4 - Private Placement Memorandum ("PPM") for BCP Infrastructure II, LP, and BCP Infrastructure Fund II-A, LP

Exhibit BR-8(D) and Exhibit BR-16(C) - Identity of Lenders and Terms

Exhibit BR-12 - Life Cycle Status of Each BCP Infrastructure Fund

Exhibit BR-14 - Waterfall Distribution for BCP Infrastructure Funds

Exhibit BR-15 - Purchase and Sale Agreement ("PSA") and Exhibit BR 16(A) – List of Sponsors

Exhibit BR-16(B) - Debt Commitment Letter pursuant to the PSA

Exhibit BR-16(D) - Limited Guarantee pursuant to the PSA

Exhibit BR-16(H) - Equity Commitment Letter pursuant to the PSA.

B. Emera Request for Confidential Treatment for the amount of cyber liability insurance contained within the Seller Disclosure Letter provided in response to BR 16(G) is **DENIED**.

C. BCP Applicants shall file the unredacted documents with the Commission by April 7, 2025.

ISSUED under the seal of the Commission at Santa Fe, New Mexico this 3rd day of April 2025.

NEW MEXICO PUBLIC REGULATION COMMISSION

Elizabeth Hurst
Hearing Examiner
elizabeth.hurst@prc.nm.gov

NEW MEXICO PUBLIC REGULATION COMMISSION

Patrick Schaefer
Hearing Examiner
patrick.schaefer@prc.nm.gov

EXHIBIT B

BEFORE THE NEW MEXICO REGULATION PUBLIC COMMISSION

EXHIBIT B

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

BCP APPLICANTS' MOTION FOR INTERLOCUTORY APPEAL

The BCP Applicants hereby move, pursuant to 1.2.2.31 NMAC, for an interlocutory appeal of the Hearing Examiners' Order Denying BCP Applicants' Motion for Confidentiality and Denying NMGC's Motion for Confidentiality (the "Order"), which denied the BCP Applicants' Request for Confidential Treatment of Bench Request Responses ("Request") (this filing, the "Motion").[1] The BCP Applicants additionally ask that, for the reasons set forth below, the Hearing Examiners revise their own ruling and grant the Request without the need for an interlocutory appeal. This Motion does not apply to Exhibit BR-12, which the BCP Applicants are now filing publicly. The BCP Applicants consulted with the other parties regarding this motion, and the NMGC Applicants support, the County of Los Alamos has not responded, and all other parties oppose.

The Order denied BCP Applicants' Request for Confidential Treatment largely on the basis of the public's strong interest in transparency, particularly where the acquisition of the state's largest natural gas utility, New Mexico Gas Company Inc. ("NMGC"), is concerned.[2] According

[1] The Order was not as to a "motion," but the Order repeatedly describes the BCP Applicants' filing as one. The Order was, rather, in response to the "BCP Applicants' Request for Confidential Treatment of Bench Request Responses." This distinction between a "request," which is what the BCP Applicants properly made pursuant to the Protective Order (which requires a "request" not a "motion") and a "motion" has procedural consequence, specifically as to the requirement to consult with other parties.

[2] Order at 24.

to the Hearing Examiners, the public has a right to inspect documents that provide "unique insight" into the terms of the transaction, the identity of the entities with a financial interest in the company, and the impact of the transaction on NMGC.[3]

The BCP Applicants do not dispute the public's interest in transparency—or in this transaction. But the public's interest in reviewing and accessing information is not unbounded. The Inspection of Public Records Act ("IPRA") states that every person has a right to inspect public records *except for* certain categories of records, including records involving trade secrets[4]—the very kinds of records at issue here. In these circumstances, confidential treatment is mandatory. There is no balancing of interests to be done. And as the Hearing Examiners recognize, there is a "strong," public policy in New Mexico supporting the confidentiality of trade secrets. Moreover, the information at issue here appears to largely consist of information that does not appear to have been filed at all – even confidentially – in prior transactions involving approved applications by private equity investment funds.

Based on prior proceedings, it does not appear that the public interest necessarily compels disclosure of materials such as those at issue. To single out one document in particular that was put at issue in a prior case, no prior applicant has been required to file, nor has chosen to file, a private placement memorandum (even confidentially). The hearing examiner in the transaction in which IIF US Holding 2 LP ("IIF") was involved in the acquisition of El Paso Electric Company ordered the filing of the IIF private placement memorandum, but subsequently ordered that it did not need to be filed, even confidentially, but instead was ultimately subject only to a live, *in camera*

[3] *Id*.
[4] NMSA § 14-2-1(A).

review.[5] In contrast, the BCP Applicants have provided far greater transparency by making a public filing of their private placement memorandum with only limited redactions and providing it in its entirety on a confidential basis. Based on Commission precedent, it does not appear that there is a public interest that requires public disclosure.

BCP Applicants do not lightly seek interlocutory appeal, and fully appreciate that the Commission only takes such appeals in extraordinary circumstances. But such extraordinary circumstances are present here. Based on Commission precedent and applicable law, publication of the relevant information is inappropriate and would cause lasting harm to BCP Applicants.[6] The BCP Applicants' proposed redactions narrowly target trade secret information and thus comprise only a small portion of the documents BCP Applicants filed.[7] As stated in the Request and the underlying Self-Affirmed Statement of Jeffrey M. Baudier, the redacted information sets forth specific elements of the acquisition—facts that have economic value due to their secrecy and that would cause irreparable harm to the BCP Applicants were they disclosed. Competitors and counterparties, were they to gain access to such information, could leverage it to their benefit—and BCP Applicants' detriment—in future transactions with or against BCP Applicants. Importantly, the Examiners' Order does not dispute the trade secret nature of this information.

---

[5] *In the Matter of the Joint Application of El Paso Electric Company, Sun Jupiter Holdings LLC, and IIF US Holding 2 LP, for Approval of the Acquisition of El Paso Electric Company by Sun Jupiter Holdings LLC and IIF US Holding 2 LP; Approval of a General Diversification Plan; and All Other Authorizations and Approvals Required to Consummate and Implement This Transaction*, Case No. 19-00234-UT *IIF-EPE*, Order Relating to Confidentiality of Private Placement Memorandum, Document # 1182922 (September 23, 2019) (referred to herein as *IIF-EPE*). *See also in the Matter of the Applications of Public Service Company of New Mexico and New Mexico Gas Company, Inc. for the Abandonment, Purchase and Sale of Gas Utility Assets and Services and for Related Authorizations and Variances*, Case No. 08-00078-UT (referred to herein as *Lindsay Goldberg / Continental - NMGC*).

[6] Based on a more limited review dockets involving publicly traded acquirers, it does not appear that equivalent documents like articles of incorporation, bylaws, financing agreements, or initial public offering prospectuses were provided.

[7] In fact, the BCP Applicants have filed publicly, with only limited (or no) redactions, a substantial amount of documents and information that were never filed *at all* in prior proceedings on the two private equity acquisition applications that were ultimately approved by the Commission. A table comparing the information for which the BCP Applicants seek confidential, trade secret protection (and the documents in which they are contained) with what was provided in the other two proceedings is provided below at pages 14-15.

The question before the Commission is thus whether the law requires that the Commission compel the online publication of BCP Applicants' trade secret information so that any member of the general public—including, and especially, BCP Applicants' competitors—may review that information.[8] The BCP Applicants submit that it does not, and ask that the Hearing Examiners either grant this motion for an interlocutory appeal to the Commission, or reconsider and reverse the Order so as to grant the Request.

I. Legal Standard

Rule 1.2.2.31 of the NMAC governs appeals from the rulings of a presiding officer. In accordance with Rule 1.2.2.31(B)(1), an interlocutory appeal is appropriate if either (1) the ruling involves a "controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal to the commission from the ruling may materially advance the ultimate disposition of the proceeding" or (2) circumstances exist "which make prompt commission review of the contested ruling necessary to prevent irreparable harm to any person." The movant of an interlocutory appeal bears the burden of establishing grounds for review and reversal. *Id.*

II. Argument

An interlocutory appeal is both appropriate and necessary in this case given the risk of irreparable harm to the BCP Applicants.

A. Irreparable Harm If Not Promptly Addressed

Rule 1.2.2.31(B)(1)(a) acknowledges that the Commission will only take interlocutory appeals "in extraordinary circumstances." Those circumstances are present here. The Hearing

[8] Currently, approximately 50 individuals have access to the redacted information, including parties to the proceeding who have signed confidentiality agreements such as the Hearing Examiners and the Commissioners, and individuals in nine governmental and non-governmental groups.

Examiners' Order threatens to place BCP Applicants in an impossible position: publicly disclose certain confidential and proprietary trade secret information, which would advantage BCP Applicants' competitors and irreparably harm BCP Applicants' commercial interests (*see infra*), or defy a court order. Such are precisely the type of "extraordinary circumstances" that warrant interlocutory review, and that distinguish this case from those in which the Commission denied review. Take, *In the Matter of Public Service Company of New Mexico*, for example. In that case, the NMPRC found that no extraordinary circumstance existed because the relevant issue was resolved through a clarification that rendered the appeal effectively moot. *In the Matter of the Application of Pub. Serv. Co. of New Mexico for Revision of Its Retail Elec. Rates Pursuant to Advice Notice No. 595 Pub. Serv. Co. of New Mexico, Applicant.*, No. 22-00270-UT, 2023 WL 2070278, at *3 (Feb. 10, 2023); *see also 2024 N.M. PUC LEXIS 56*, *71, 2024 N.M. PUC LEXIS 56 (finding no extraordinary circumstances where Hearing Examiner addressed concerns of parties with further explanation of Paragraph in question). There was thus no continuing legal harm or statutory infringement once the clarification was issued. In this case, by contrast, the Order's violation of BCP Applicants' statutory rights is ongoing and cannot be remedied by a simple clarification. The infringement of a public right embedded in a state law elevates this matter beyond routine proceedings and clearly constitutes an extraordinary circumstance.

Rule 1.2.2.31(B) also requires the movant to show that Commission review is necessary to prevent irreparable harm. *See* NMPRC 1.2.2.31(B)(1)(b). BCP Applicants have made that showing as well. The BCP Applicants have made a clear and substantiated showing that the limited information at issue—specifically, the redacted portions—constitutes trade secret material under applicable law.

1. The BCP Applicants have established that the confidential materials are subject to trade secret protection.

The Hearing Examiners distilled three categories of Confidential Materials in the BCP Applicants' Request for Confidential Treatment: (1) the Purchase and Sale Agreement and Related Documents; (2) the BCP Applicants' Private Placement Memorandum and Limited Partnership Agreements; and (3) documents detailing the relationship between the BCP Applicants. As set forth below, each of these categories – and the other materials in the Request for Confidential Treatment – contains competitively-sensitive information that (1) derives independent economic value from not being generally known or readily ascertainable by others who could gain value from its use, and (2) is subject to reasonable efforts to maintain its secrecy. The Order determines, in part, that the documents should not be accorded confidential treatment because the BCP Applicants have provided a similar basis for each request. But as discussed below, that is because the documents *are* similar—they contain similar confidential information. But this does not mean that BCP Applicants' explanations somehow lack merit (and no party argued as much). All of the BCP Applicants' limited redactions warrant trade secret protection under New Mexico law and should be accorded confidential treatment.[9]

a. The Purchase and Sale Agreement and Related Documents disclose detailed, negotiated pricing and financing terms of the proposed acquisition that, if publicly disclosed, subject the BCP Applicants' to competitive harm.

First, the Purchase and Sale Agreement (BR-15), Equity Commitment Letter (BR-16(H)), Debt Commitment Letter (BR-16(B)), and Limited Guarantee (BR-16(D)) contain specific pricing and financing information about the proposed transaction that "derives independent economic value from not being generally known or readily ascertainable by others who could gain value from its use." [10]

[9] NMSA 1978, § 57-3A-2(D); *see also Pincheira v. Allstate Ins. Co.*, 2007-NMCA-094, ¶ 55.
[10] *Id.*

This information includes how much money the BCP Applicants and their partners have agreed to invest (different from the sale price of NMGC),[11] how the funding will be structured, which lenders are involved and how much each is providing,[12] what happens if a party defaults,[13] how risks and costs are divided, when either party can terminate the transaction, and what fees and interest rates apply to the financing.[14]

Under New Mexico law, one of the "defining characteristics" of a trade secret is economic value.[15] And the value of a trade secret need not be large, only "more than trivial."[16] Here, if this information is publicly disclosed, competitors and counterparties would receive a competitive advantage over the BCP Applicants that is much greater than "trivial." For example, the redacted loan documents tell lenders what the BCP Applicants are willing to pay to borrow money, including interest rates, fees, and repayment timing.[17] If lenders or competitors of the BCP Applicants ascertain certain terms to which the BCP Applicants have agreed here, they could insist on similar – or more favorable – terms going forward. [18]

Additionally, the BCP Applicants took reasonable steps to "maintain the secrecy" of the sensitive information in the PSA and related documents, meeting the second prong of New Mexico's "trade secret" analysis.[19] That is, the BCP Applicants only shared the agreements on a confidential basis, pursuant to the Commission's Protective Order, or for *in camera* review.

---

[11] *See* Redaction Log at BR-16(H), pp. 3–4; Self-Affirmed Statement of Jeffrey M. Baudier in Support of Request for Confidential Treatment (Apr. 4, 2025) ("Baudier Aff."), ¶¶ 6(g), (h), & (i).
[12] *Id.* BR-16(C), p. 1.
[13] *Id.* BR-16(D), p. 2; Baudier Aff., ¶ 6(h).
[14] *Id.* BR-16(B), pp. 2–3; BR-15, pp. 4–6; Baudier Aff., ¶6(g).
[15] *Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶ 43, 144 N.M. 601.
[16] *Id.* (citing Restatement (Third) of Unfair Competition
[17] *See* BR-16(B), pp. 2–3; Baudier Aff., ¶6(g).
[18] *See McDonnell Douglas Corp. v. U.S. Dept. of the Air Force*, 375 F.3d 1182, 1189 (D.C. Cir. 2004) ("Simply put, release of the option year prices in the present contract would likely cause [plaintiff] substantial competitive harm because it would significantly increase the probability [plaintiff's] competitors would underbid it in the event the [defendant] rebids the contract.").
[19] NMSA 1978, § 57-3A-2(D); *see also Pincheira v. Allstate Ins. Co.*, 2007-NMCA-094, ¶ 55.

Importantly, the redactions themselves are targeted, and only protect a narrow subset of commercially sensitive terms, not entire documents.[20]

The Hearing Examiners concluded that specific, redacted materials should be publicly disclosed simply because they are potentially relevant.[21] But that is not the standard for determining trade secret protection. Confidential business terms do not lose protection just because they may be relevant. The Commission must protect trade secrets unless disclosing them "will tend to conceal fraud or otherwise work an injustice."[22] No one has even attempted to make that showing here. Moreover, no party objected to designating these materials as confidential, opposed the Request for Confidential Treatment, or filed a motion to compel discovery. Thus, the Commission should accept Mr. Baudier's unrebutted supporting testimony and grant the BCP Applicants' Request for Confidential Treatment as to the first category of materials.

b. The Private Placement Memorandum and Limited Partnership Agreements contain sensitive business terms that qualify as trade secrets.

Like the transactional documents discussed above, the second category of Confidential Materials includes the Private Placement Memorandum (Ex. BR-4) and Limited Partnership Agreements (Ex. BR-3). These materials meet both prongs of New Mexico's definition of a "trade secret" in that (1) the information has real economic value because it is not publicly known, and (2) the BCP Applicants have taken steps to keep it confidential.[23]

First, these materials derive independent commercial value from not being generally known because they explain how the BCP Applicants raise and manage money from investors.

[20] *Id*.
[21] *See* Order Denying Request for Confidential Treatment at 11, NMPRC Case No. 24-00266-UT (Mar. 22, 2024) ("Because these agreements relate to the Proposed Transaction, their contents should be disclosed.").
[22] Rule 11-508(A) NMRA.
[23] *See* NMSA 1978, § 57-3A-2(D); *see also* Rule 11-508(A) NMRA.

The redacted information includes the amounts investors agree to contribute, how profits and losses are shared, how decisions are made, and how the BCP Applicants are paid for managing the funds. If this information were made public, other investment firms could use it to replicate the BCP Applicants' business model or offer terms to compete with them. Investors could also use the details to evaluate the funds without agreeing to keep the information private – *something they would normally be required to do under federal securities laws*.[24] Because public disclosure of this information gives others a competitive business advantage, it "derives independent economic value from not being generally known or readily ascertainable by others who could gain value from its use."[25]

Next, the BCP Applicants have taken reasonable steps to keep this information confidential, satisfying the second prong of the trade secret test. The BCP Applicants do not release these documents publicly or make them available online. Outside of this proceeding, the BCP Applicants share them only with select investors who are bound by non-disclosure agreements. In this case, they provided the documents solely under the Commission's Protective Order. These measures fully satisfy New Mexico's requirement that a trade secret be subject to "reasonable efforts" to maintain its secrecy.[26] For these reasons, the Commission should grant the BCP Applicants' Request for Confidential Treatment as to the second category of materials.

c. Documents describing the BCP Applicants' organizational structure and financing relationships contain confidential business information that constitutes a trade secret and should be accorded confidential treatment.

The third category of information includes internal documents that describe the relationships among the BCP Applicants and their affiliates, including their financing sources and

[24] *See* 17 C.F.R. § 230.502(b)(2).
[25] NMSA 1978, § 57-3A-2(D); *see also Pincheira v. Allstate Ins. Co.*, 2007-NMCA-094, ¶ 55.
[26] *Id.*

intercompany arrangements. These materials – set forth in Exhibits BR-8(D), BR-12, BR-14, and BR-16(C) – reveal how the BCP Applicants structure their investments, raise capital, and allocate financial responsibility across entities. Like the other materials discussed above, they meet both prongs of New Mexico's trade-secret test and should be accorded confidential treatment.

First, this information derives significant economic value from not being publicly known. That is, it provides insight into how the BCP Applicants organize and fund their transactions, and identifies specific affiliates and partners, how much each is contributing to the transaction, and how returns and obligations are shared.[27] If competitors saw this information, they could imitate how the BCP Applicants structure and fund their investments, or use it to tailor competing offers that undercut the BCP Applicants in future negotiations. Some documents also reveal the names and roles of private lenders.[28] If made public, this could allow others to interfere with or exploit the BCP Applicants' private business relationships. Because the third category of materials contains sensitive business information that derives independent economic value from being kept private, it satisfies the first part of the trade secret standard.

Second, the BCP Applicants took deliberate steps to keep this information private. They shared it in this case only under the Commission's Protective Order, and the documents themselves are narrowly redacted to protect only the sensitive portions. These are precisely the types of "reasonable efforts" to maintain confidentiality that New Mexico law requires.

The Hearing Examiners offered no independent basis for requiring disclosure of these materials, and no party has offered any contrary evidence. Accordingly, the Commission should credit Mr. Baudier's sworn testimony that these documents reflect competitively sensitive

[27] *See* Redaction Log at BR-12, pp. 2–4; BR-14, pp. 1–2; Baudier Aff., ¶6(c), (e).
[28] *See* Redaction Log at BR-8(D), p. 1; BR-16(C), p. 1; Baudier Aff., ¶6(c).

structural information—and should grant the Request for Confidential Treatment as to this third category.

d. The remaining confidential materials likewise meet New Mexico's trade secret standard and should remain non-public.

In addition to the three categories of materials that the Hearing Examiners identified, the BCP Applicants' Request for Confidential Treatment includes several related materials that contain sensitive, non-public business information; namely, Exhibit BR-16(A). This exhibit identifies the individual firms and investors backing the BCP Applicants in this transaction—information that is not publicly available, and it has independent commercial value. If the identity of the BCP Applicants' sponsors were disclosed to their competitors, those competitors could target those same investors and determine the BCP Applicants' negotiation strategy. Additionally, the BCP Applicants treat this information as confidential, and the sponsors have not agreed for their information to be publicly disclosed. Accordingly, because the sponsor list gives others a business advantage and has been kept private, it meets both prongs of the trade secret test and should remain confidential. *See* NMSA 1978, § 57-3A-2(D).

As such, the information falls squarely within a recognized exception to the IRPA, which explicitly exempts trade secrets from public disclosure. Forcing disclosure of such information would not only contravene state law but would cause immediate and irreparable harm by compromising the confidentiality of proprietary data, potentially undermining competitive position, and chilling future cooperation with the Commission. Contrary to the Order's suggestion that confidentiality is discretionary, the statutory language is mandatory; once information is found to fall within the IPRA exception it must be withheld from public inspection. The Order's failure to recognize this mandatory protection amounts to legal error and exposes BCP Applicants to the

very harm the statute is designed to prevent. Prompt interlocutory review is therefore necessary to prevent the irreversible effects of disclosure and to ensure compliance with the IPRA.

The Order suggests that issuing protection of trade secrets under 1.2.2.8 of the NMAC and in accordance with the IPRA is "permi[ssible]." But nothing about Rule 1.2.2.8 makes such a decision discretionary or permissible. The rule states that "[t]he commission shall permit any person to examine any . . . public record, unless subject to a protective order, or otherwise protectable under [IPRA]."[29] Further, it provides two options for how the Commission will handle the protectable documents or information. Neither option results in public disclosure. Rather, the Commission may "provide that the documents or information not be disclosed or that they be disclosed only in a designated manner to designated persons."[30] Accordingly, the Commission must protect from public disclosure information that is "protectable under IPRA."[31]

B. Commission Precedent Supports BCP Applicants

[29] 1.2.2.8(A) NMAC (emphasis added).
[30] 1.2.2.8(B)(3) NMAC (emphasis added).
[31] BCP Applicants further raise several statements in the Order that might reflect misunderstandings of the Application, the transaction, and the material that the BCP Applicants have filed. It is unclear whether the facts or opinions stated therein underpinned the Hearing Examiners' decision. While the BCP Applicants believe they should not inform the merits of their Request, the BCP Applicants wish to provide brief clarifications:

- The Order discusses the "Sponsors" and the entities that entered into the Equity Commitment Letter. Many of the redactions concern the identities of those entities. The Order seems to express concern that the identities are important to the Commission's—and perhaps public's—review of the documents. To be very clear, however, those entities will never have a direct or indirect ownership interest or managerial role in NMGC or any of the BCP Applicants, nor do they have any apparent relevance.
- The Order states that the Supplemental Testimony and Exhibits of Jeffrey M. Baudier ("Baudier Supplemental") provides "critical information not disclosed in the Joint Application." Yet that information—relating to the identity of certain partners in the transaction—was previously provided in the Joint Applicants' application package and then again at JA Exhibit Supplemental Information 2.
- The Order says that the Baudier Supplemental "also provide other additional detail not initially provided in the Joint Application," citing pages 11-12 and 19-20. While it is true that the Baudier Supplemental "adds detail," it is unclear how that has bearing on the Request because the fundamental points were previously provided.

The Order is also inconsistent with Commission precedent. Consideration of Commission precedent is useful, where, as here, documents or information comparable in substance or sensitivity to that which the BCP Applicants seek protection (with limited, non-comparable exceptions), appear to have been filed with the Commission, either publicly or confidentially, in prior proceedings. In particular, the Commission has previously approved *two acquisitions* by private equity investment funds, one of which was NMGC itself. Upon review of the two dockets, the *majority* of the information has not been provided in prior transactions. Moreover, the majority of the entire documents the BCP Applicants have filed in response to the Hearing Examiners' February 19, 2025 do not appear to have previously been filed or provided to the Commission at all, not even confidentially.

The below chart reflects whether, based on extensive review, a document was requested to and/or provided to the Commission, and if so, whether any disclosure limitations applied (*i.e.*, whether it was filed, filed with redactions, shown *in camera*, etc.).

	BCP Applicants	**Lindsay Goldberg / Continental – NMGC (Case No. 08-00078-UT)**	**IIFUS Holding 2 LP, etc. (Case No. 19-00234-UT)**
Limited Partnership Agreements	**Filed** with limited trade secret redactions from public version	**Not requested or provided**	**Not requested or provided**
Private Placement Memorandum	**Filed** with limited trade secret redactions from public version	**Not requested or provided**	**Requested, but only partially provided (and not filed)** (shown to parties and Hearing Examiner during live, in camera review, but not

	BCP Applicants	Lindsay Goldberg / Continental – NMGC (Case No. 08-00078-UT)	IIFUS Holding 2 LP, etc. (Case No. 19-00234-UT)
			filed—even confidentially)
Identity of Lenders and Terms	**Filed** as trade secret material	**Filed** (though it was only a five-year term lender with a variable rate)	**Partially provided** (provided one lender name, left other possible lenders open-ended, and a broad range of possible interest rate for the one identified lender, but no other terms)[32]
Life Cycle Status of Funds	**Filed** as trade secret material; now being provided publicly	**Not requested or provided**	**Filed**
Waterfall Distribution	**Filed** as trade secret material	**Not requested or provided**	**Not requested or provided**
Purchase and Sale Agreement / List of Sponsors	**Filed** with redaction of Sponsors and redaction of cyber insurance policy limit	**Partially provided,** (PSA was provided, but omitted most of the sponsors, who were not otherwise identified,[33] omitted all exhibits, and omitted all schedules)	**Filed** but without extensive information contained in BCP Applicants' PSA (PSA did not contain extensive information that would typically be contained in exhibits or schedules, and did not include insurance policy limits)

[32] Ex. D at 154 ("Debt Financing Sources," identifying one lender but not other entities who might provide debt financing); Ex. A at 86 (defining "Debt Financing Sources" to be "the financial institutions identified in the Debt Commitment Letter, together with the agents, arrangers, lenders and other entities that have committed to provide or arrange or otherwise entered into agreements in connection with all or any part of the Debt Financing and each other Person that commits to arrange or provide or otherwise provides the Debt Financing . . . ."); Ex. D at 28 (providing an interest rate range of: 1.125% to 2.875% plus a margin of 0.125% to 1.875%)

[33] *See id.* at 41 ("Lindsay Goldberg & Bessemer GP II LLC, the general partner of Lindsay Goldberg & Bessemer II L.P. and certain affiliated investment partnerships (collectively, the 'Funds'), has delivered a commitment letter on behalf of the Funds . . . .")

	BCP Applicants	Lindsay Goldberg / Continental – NMGC (Case No. 08-00078-UT)	IIFUS Holding 2 LP, etc. (Case No. 19-00234-UT)
Debt Commitment Letter	**Filed** with limited trade secret redactions from public version	**Not requested or provided**	**Not requested or provided**
Limited Guarantee	**Filed** with limited trade secret redactions from public version	**Not requested or provided**	**Not requested or provided**
Equity Commitment Letter	**Filed** with limited trade secret redactions from public version	**Not requested or provided**	**Filed** but did not contain anything even arguably trade secret
Management Agreement	**Filed** (public unredacted)	**Not requested or provided**	**Not requested or provided**

Further, the treatment of IIF's private placement memorandum by Hearing Examiner Glick in *IIF-EPE* is instructive and precedential. Hearing Examiner Glick ordered that IIF's private placement memorandum be filed.[34] The joint applicants in that proceeding moved to protect the IIF private placement memorandum from disclosure, asking not to file it at all (not even confidentially); instead, they suggested the possibility of a "pre-filing" live *in camera* inspection, which Hearing Examiner Glick granted.[35] In the order granting that approach, Hearing Examiner Glick directed that:

> A person afforded access to the [IIF] Private Placement Memorandum during the *in camera* inspection shall not discuss the contents of the Private Placement Memorandum with, or reveal, disclose, publish, or make known the contents of the Private Placement Memorandum to, anyone other than the other persons afforded access to the Private Placement Memorandum during the in camera inspection. No

[34] *IIF-EPE*, Procedural Order, Document # 1182437, ¶ E.2. (September 9, 2019).
[35] *IIF-EPE*, Order Relating to Confidentiality of Private Placement Memorandum, Document # 1182922 (September 23, 2019).

> person shall copy, photograph, film or otherwise reproduce the information in the Private Placement Memorandum without the written consent of the Joint Applicants.[36]

Meanwhile, no private placement memorandum was filed at all in *NMGC-Lindsay Goldberg*.

Yet, the BCP Applicants provided their entire Private Placement Memorandum on a confidential basis, as well as a version with minor redactions publicly, in an attempt to provide greater transparency. And in unprecedented fashion, the Order demands even more.

C. Ruling On Confidentiality Is Premature

Finally, the Order quotes the IPRA for the principle that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees."[i] That principle is misapplied—or at least prematurely applied—in the present context. First, applying that principle in the manner the Order applies it here would simply render the IPRA null. If it is as simple as the Order writes—that something that relates to a government or official act is to be made public—then the IPRA twelve exceptions to disclosure contained in IPRA would be rendered null and void. Notwithstanding the cited principle, the IPRA explicitly protects from public disclosure trade secret and other information required to be disclosed to the government.

Moreover, at the moment, there has been no determination that public officials are going to "act" on the information at issue. There is no pending question as to whether the Commission will be able to write a public order in this proceeding—the information at issue might prove entirely irrelevant to the Commission's ultimate action.

None of the categories of documents that the Order requires be publicly disclosed in unredacted form has ever been required to be disclosed in prior, precedent proceedings—nor have

[36] *Id.*

they ever even been required to be filed at all, even confidentially, in prior, precedent proceedings. The BCP Applicants have already provided a level of transparency that far exceeds that in any prior, precedent transaction before the Commission.

The information at issue is plainly not required for a Commission decision. It is, therefore, difficult to see a compelling public interest in requiring that it be disclosed to the public, including to the BCP Applicants' competitors. The BCP Applicants acknowledge that the EPE-IIF joint applicants represented that the IIF PPM did not reference the proposed EPE-IIF transaction, whereas the BCP Applicants' PPM does reference the present transaction. Even analogizing the proposed entity structure in this proceeding to one involving an acquisition by a publicly traded entity, the BCP Applicants' disclosures still far exceed anything provided in those precedent transactions.

III. Conclusion

For these reasons, the BCP Applicants respectfully request interlocutory appeal of the Hearing Examiners' Order. The BCP Applicants additionally ask that the Hearing Examiners revise their own ruling and grant the Request without the need for an interlocutory appeal.

Respectfully submitted,

HARDY MCLEAN LLC

/s/ Dana Hardy
Dana S. Hardy
Timothy B. Rode
125 Lincoln Ave., Ste. 223
Santa Fe, NM 87501
(505) 230-4410
dhardy@hardymclean.com
trode@hardymclean.com

MILLER STRATVERT P.A.
Richard L. Alvidrez
P.O. Box 25687
Albuquerque, NM 87125
Phone: (505) 842-1950
ralvidrez@mstlaw.com

WILKINSON BARKER KNAUER LLP
Raymond L. Gifford
2138 W. 32nd Ave., Suite 300
Denver, CO 80211
Phone: (303) 626-2350
rgifford@wbklaw.com

William DuBois
812 San Antonio Street, Suite 310
Austin, TX 78701
Phone: (737) 770-3412
wdubois@wbklaw.com

Attorneys for the BCP Applicants

EXHIBIT C

BEFORE THE NEW MEXICO REGULATION PUBLIC COMMISSION

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

EXHIBIT C

BCP APPLICANTS' EMERGENCY MOTION FOR STAY OF OR LIMITED AMENDMENT TO THE HEARING EXAMINERS' "ORDER DENYING BCP APPLICANTS' MOTION FOR CONFIDENTIALITY AND DENYING NMGC'S MOTION FOR CONFIDENTIALITY"

The BCP Applicants[1] hereby move that the Hearing Examiners stay the immediate effect of their "Order Denying BCP Applicants' Motion for Confidentiality and Denying NMGC's Motion for Confidentiality" (the "Order"),[2] or otherwise amend the Order such that it does not take effect until a final determination on a BCP Applicants' motion for an interlocutory appeal to the Commission from the Hearing Examiners' Order (which motion for interlocutory appeal will be filed today, and which the BCP Applicants ask be incorporated by reference upon filing), and any further proceedings related thereto (this being the "Motion for Stay"). There is one exception to the BCP Applicants' request: the BCP Applicants agree, having reviewed other Commission proceedings and further considered the level of competitive issues associated with the life cycle status of the funds, as compared to other information, to disclose the life cycle status of the funds and not seek further consideration of that information. The BCP Applicants have consulted the

[1] The BCP Applicants include 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"), together with BCP Infrastructure Fund II and BCP Infrastructure Fund II-A (collectively, 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.

[2] The BCP Applicants note that their request to which the Order responded was not styled as a "motion." The Order was, rather, in response to the "BCP Applicants' Request for Confidential Treatment of Bench Request Responses." The Protective Order called for a "request," not a motion." This distinction between a "request," which is what the BCP Applicants properly made pursuant to the Protective Order and a "motion" has procedural consequence, at least insofar as the BCP Applicants did not request the parties' positions as to a motion.

other parties regarding their positions on this Motion for Stay. As of the time of final preparation for filing, the Incorporated County of Los Alamos had not yet responded, the NMGC Applicants support, and all other parties oppose. The BCP Applicants further request that the Order be, at a minimum, stayed pending any response time on this Motion for Stay.

The Order requires that the BCP Applicants file the documents containing the Trade Secrets in unredacted form on April 7, 2025.[3] Compliance with the deadline will result in the public disclosure of the Trade Secrets thereby irreparably harming the BCP Applicants and Bernhard Capital Partners Management, LP ("BCP Management") and rendering a motion for interlocutory appeal moot. The only way to prevent irreparable harm to the BCP Applicants and BCP management, and preserve the right to an interlocutory appeal, is issuance of an emergency temporary stay of the Order, preventing the public disclosure of the Trade Secrets pending the outcome of this interlocutory appeal. The BCP Applicants respectfully request that the discussion in their motion for interlocutory appeal be incorporated by reference upon its filing.

I. The Applicable Standard

A stay of an administrative order pending appeal is generally governed by the standards set out in *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*,[4] where the New Mexico Court of Appeals articulated the four-part test to be applied by appellate courts in considering whether to stay a final order of an administrative agency. In order to demonstrate entitlement to a stay, an applicant must show (1) a likelihood that the applicant will prevail on the merits; (2) irreparable harm to the applicant; (3) evidence that no substantial harm will result to other interested persons; and (4) that no harm will ensue to the public interest. [5] In assessing motions to

[3] Order,¶ C at 30.
[4] 1986-NMCA-033, 105 N.M. 708 ("*Tenneco*").
[5] *Id.* ¶ 10.

stay orders pending appeal, the Commissions has analyzed the motions using the factors set forth in *Tenneco Oil*.[6]

The *Tenneco* Court confirmed the requirement that an applicant for a stay during the pendency of an administrative appeal must first exhaust its administrative remedies by applying for a stay before the agency involved.[7] The grant of an application for stay is not a matter of right but rather an exercise of discretion, and the propriety of its issuance is dependent upon the facts of each individual case.[8] An administrative order will not be stayed pending appeal where the applicant has not made a showing of each of the factors required to grant the stay; for example, the fact that an administrative order may cause injury or inconvenience to the applicant, without more, is insufficient to warrant a stay.[9] However, as detailed below, and (as to the merits) in the BCP Applicants motion for interlocutory appeal, the BCP Applicants satisfy all of the criteria necessary to justify a stay of the Order relating to public disclosure of the Trade Secrets pending the outcome of the present interlocutory appeal.

II. The BCP Applicants Meet the Standard for a Stay.

A. The BCP Applicants are likely to prevail on the merits.

As will be explained in greater detail in the motion for interlocutory appeal, the Order is based on several legal and factual errors which make it likely that the BCP Applicants will prevail

---

[6] *See e.g.*, *In The Matter Of The Filing Of Advice Notice No. 69 By Socorro Electric Cooperative, Inc. Socorro Electric Cooperative, Inc.,* Case No. 18-00383-UT, 2019 WL 6252271, *Order Denying SEC's Expedited Motion to Stay Pending Appea*l (NMPRC Oct. 30, 2019); *In The Matter Of The Application For Approval Of El Paso Electric Company's 2018 Renewable Energy Plan Pursuant To The Renewable Energy Act And 17.9.572 NMAC, And Revised Rate No. 38 - RPS Cost Rider*, Case No. 18-00109-UT, 2019 WL 6252288*, Order Granting the City of Las Cruces' Motion for Partial Stay of Commission Order Pending Appeal to the New Mexico Supreme Court*, (NMPRC Nov. 6, 2019); *In The Matter Of The Application Of New Mexico Gas Company, Inc. For Revisions To Its Rates, Rules, And Charges Pursuant To Advice Notice Nos. 70 And 71,* Case No. 18-00038-UT, 2019 WL 1620342, *Phase II Recommended Decision*, (NMPRC April 8, 2019)

[7] 1986-NMCA-033. ¶ 3.
[8] *Id.* ¶ 7.
[9] *Id.* ¶ 11.

on the merits in their interlocutory appeal. From a legal error perspective, the protection of trade secrets is mandatory, not discretionary in the way found in the Order. The Inspection of Public Records Act ("IPRA"), the Trade Secrets Act ("TSA"), the Commission's rules at 1.2.2.8 NMAC, and New Mexico Rule 11-508 all require protection of trade secrets. There is no balancing test or public interest exception allowing disclosure of trade secrets.

The Order mistakenly states that 1.2.2.8 NMAC "permits the Commission to issue protective orders upon [a] party's showing that 'protection is consistent with [IPRA], including protectable trade secrets." That suggests that the Hearing Examiners believe the confidential protection is discretionary on the part of the Commission under 1.2.2.8 NMAC. It is not, however, discretionary. Confidential protection is mandatory under the Commission's rules if information is protectable under IPRA.

1.2.2.8 NMAC states that "[t]he commission shall permit any person to examine any . . . public record, unless subject to a protective order, or otherwise protectable under [IPRA]" (emphasis added). Further, it provides two options for how the Commission will handle the protectable documents or information. Neither option is public disclosure. Rather, the Commission may "provide that the documents or information not be disclosed *or* that they be disclosed only in a designated manner to designated persons" (emphasis added). Accordingly, under the Commission's rules, the Commission must protect from public disclosure information that is "protectable under IPRA," which the BCP Applicants' trade secrets are, the only question is the method of protection. The BCP Applicants have already accepted that they "be disclosed only in a designated manner to designated persons."

The Order did not address the trade secret privilege under Rule 11-508 of the New Mexico Rules of Evidence, or adhere to the procedures required by the New Mexico Supreme Court in

Pincheira.[10] The only exceptions to the trade secret privilege are where the trade secrets are used to commit fraud or otherwise work and injustice, neither of which has been demonstrated in this case. *Pincheira* requires that the Commission take affirmative steps to protect against the public disclosure of trade secrets, which is the opposite of the ruling under the Order.

Contrary to the legal analysis under the Order, there is no "public interest" exception under the PUA or the Commission rules which allows the disclosure of trade secrets. With regard to factual errors, the Order's determination that the BCP Applicants failed to establish that the Trade Secrets in the documents in question are not trade secrets, the facts stated by the BCP Applicants as establishing this information as Trade Secrets are undisputed. The facts presented in the Baudier Statement establish that the information constitutes Trade Secrets under *Pincheira*. The Order asserts that the facts and competitive harms are repetitive; this, however, is simply because the usefulness of the information by competitors and/or counterparties is the same for essentially all of the information redacted. To the extent the information is not presented in a manner that is insufficiently clear, the BCP Applicants respectfully request the opportunity to restate.

Finally, the compelled public disclosure of the trade secret information would be inconsistent with how the Commission has required and treated information in prior proceedings on proposed acquisitions by private equity funds. Most of this information has not been provided in prior proceedings; or, in the case of the private placement memorandum, has not been filed and has only been subject to live, *in camera* review. This is set forth in greater detail in the motion for interlocutory appeal.

[10] [10] *Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶3, 144 N.M. 601 ("*Pincheira*").

B. The BCP Applicants will suffer irreparable harm unless a stay pending the interlocutory appeal is granted.

The Baudier Statement outlines the irreparable harm that will result from the public disclosure of the Trade Secrets. The nature of the irreparable harm is similar for each of the documents containing the Trade Secret Information.

As confirmed in the Baudier Statement, public disclosure of the Trade Secrets would harm the BCP Applicants and BCP Management and cause them competitive harm.[11] More specifically, if competing investment management entities and investments funds know or were able to readily ascertain the Trade Secrets, then they would be able to leverage it and obtain economic value from their ability to compete with, strategize against, and market against the BCP Applicants and BCP Management.[12] In addition the counter-parties to certain of the documents containing the Trade Secrets would obtain economic value from knowing how the BCP Applicants and BCP management structured the present transaction and would incorporate the information into their understanding of how the BCP Applicants and BCP Management could approach negotiation and undertake structuring a potential transaction.[13] The disclosure of the Trade Secret information could also subject the BCP Applicants and BCP Management to exposure under U.S. securities laws.[14] In addition, the lenders to the BCP Applicants and BCP Management could also be harmed and their competitors advantaged through disclosure of their participation to their competitors – for that reason, the lenders have their own claims to confidentiality of the Trade Secrets.[15] The harm stemming from the pubic disclosure of the Trade Secrets is undisputed.

[11] Baudier Statement, ¶ 4 at 2.
[12] Baudier Statement at 3, 6, 10, 12, 14, 15, 17 and 18.
[13] Baudier Statement at 3-4, 7, 8, 14, 15, 17 and 18.
[14] Baudier Statement at 4, 7, 10 and 13.
[15] Baudier Statement at 8-9.

C. The requested stay will not harm the other parties.

The BCP Applicants are only seeking a temporary stay of the disclosure of the Trade Secrets pending the resolution of the Motion for Interlocutory Appeal. In assessing potential harm to the other parties to this proceeding, it is significant that none of them objected to the protection against public disclosure of the Trade Secrets pursuant to BCP Applicants' Request. Moreover, counsel for all of the other parties have signed and filed confidentiality agreements pursuant to the Protective Order have been provided unredacted versions of the documents, including the Trade Secrets. Therefore, they are in no way deprived of any of the Trade Secrets information and will suffer no harm for the period the stay is in effect.

D. The requested stay will not harm the public interest.

A temporary stay will also not harm the public interest. As to the general public, even if the BCP Applicants are ultimately unsuccessful and publicly disclose the information, such disclosure would take place well within the comment period. The intervention period has already passed in any event.

Moreover, there is substantial representation of a broad array of stakeholders with existing access to the information. In addition to the Hearing Examiners and the Commissioners, nine governmental bodies and non-governmental groups – approximately 50 individuals – currently have access to the confidential material.

The practical question is not whether the parties can access the information. The question, rather, is whether the Commission will immediately compel that the BCP Applicants' trade secrets be published online so anyone – not only including, but rather especially, the BCP Applicants' competitors and counterparties – can access them.

Furthermore, as the New Mexico Supreme Court recognized in *Pincheira*, in enacting the TSA, the New Mexico Legislature "the legislature implicitly recognized the commercial importance of trade secrets and the corresponding need to protect them." [16] The requested stay will protect this important public interest pending a ruling on the Motion.

III. Conclusion

For the foregoing reasons (and reasons, as to the merits, stated in the BCP Applicants' motion for interlocutory appeal), a stay is warranted and the BCP Applicants respectfully request that one be granted immediately. As demonstrated above, all four of the elements under *Tenneco* have been satisfied. Therefore, a stay pending the outcome of the interlocutory appeal is warranted. The BCP Applicants further request, at a minimum, a stay pending any responses to this Motion for Stay.

In the alternative, the BCP Applicants respectfully request that the Hearing Examiners amend the Order such that it does not take effect until a final determination on the BCP Applicants' motion for an interlocutory appeal and any further proceedings related thereto.

Respectfully submitted,

HARDY MCLEAN LLC

/s/ Dana S. Hardy
Dana S. Hardy
Timothy B. Rode
125 Lincoln Ave., Ste. 223
Santa Fe, NM 87501
(505) 230-4410
dhardy@hardymclean.com
trode@hardymclean.com

[16] *Pincheira*, 2008-NMSC-049, ¶15.

MILLER STRATVERT P.A.
Richard L. Alvidrez
P.O. Box 25687
Albuquerque, NM 87125
Phone: (505) 842-1950
ralvidrez@mstlaw.com

WILKINSON BARKER KNAUER LLP
Raymond L. Gifford
2138 W. 32nd Ave., Suite 300
Denver, CO 80211
Phone: (303) 626-2350
rgifford@wbklaw.com

William DuBois
812 San Antonio Street, Suite 310
Austin, TX 78701
Phone: (737) 770-3412
wdubois@wbklaw.com

Attorneys for the BCP Applicants

EXHIBIT D

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

EXHIBIT D

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

ORDER SETTING RESPONSE AND REPLY DEADLINES TO BCP APPLICANTS' MOTION FOR INTERLOCUTORY APPEAL

THESE MATTERS come before the Hearing Examiners upon the BCP Applicants' Motion for Interlocutory Appeal filed with the New Mexico Public Regulation Commission ("NMPRC or Commission") on April 7, 2025. Being fully advised in the premises, the Hearing Examiners **FIND, CONCLUDE,** and **ORDER** that:

A. Any response to the BCP Applicants' Motion for Interlocutory Appeal shall be filed by April 11, 2025.

B. BCP Applicants' may file a reply to any response to its Motion for Interlocutory Appeal by April 15. 2025.

ISSUED under the seal of the Commission at Santa Fe, New Mexico this 8th day of April 2025.

NEW MEXICO PUBLIC REGULATION COMMISSION

Elizabeth C. Hurst

Elizabeth C. Hurst
Patrick Schaefer
Hearing Examiners
elizabeth.hurst@prc.nm.gov

EXHIBIT E

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

EXHIBIT E

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

JOINT RESPONSE IN OPPOSITION TO
BCP APPLICANTS' MOTION FOR INTERLOCUTORY APPEAL

COME NOW intervenors Western Resource Advocates, New Energy Economy, the New Mexico Department of Justice, Coalition for Clean Affordable Energy and Prosperity Works (collectively, Joint Respondents), and, pursuant to the April 8, 2025 *Order Setting Response and Reply Deadlines*, hereby respond in opposition to *BCP Applicants' Motion for Interlocutory Appeal* that was filed at the New Mexico Public Regulation Commission ("NMPRC" or "Commission") on April 7, 2025.

1. In its Motion for Interlocutory Appeal, BCP Applicants[1] are continuing their fight to prevent full public disclosure of documents relating to their proposed acquisition of New Mexico Gas Company ("NMGC"), the state's largest public utility that provides gas service to over 500,000 customers. The eleven (11) documents at issue were submitted *confidentially* on

[1] The BCP [Bernhard Capital Partners] Applicants include 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"), together with BCP Infrastructure Fund II and BCP Infrastructure Fund II-A (collectively, 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.

March 4, 2025 in response to the Bench Requests to Joint Applicants, issued by the Hearing Examiners on February 19, 2025. The "confidential" submission includes a redacted version of the Purchase and Sale Agreement between Emera and Saturn Utilities Holdco.[2] This submission was accompanied by *BCP Applicants' Request for Confidential Treatment of Bench Responses* ("*Request for Confidential Treatment*") filed that same day, on March 4, 2025. Confidential treatment was denied on April 3, 2025 when the Hearing Examiners issued their *Order Denying BCP Applicants' Motion for Confidentiality and Denying NMGC's Motion for Confidentiality*[3] ("*Order Denying Confidentiality*").

2. BCP Applicants filed the instant *Motion* on April 7, 2025, along with *BCP Applicants' Emergency Motion for Stay of or Limited Amendment to the Hearing Examiners' "Order Denying BCP Applicants' Motion for Confidentiality and Denying NMGC's Motion for Confidentiality."*[4] BCP Applicants seek interlocutory appeal of the *Order Denying Confidentiality*, and are thus asking the Commission to intervene and reverse the Hearing Examiners' ruling.

3. Joint Respondents oppose *BCP Applicants' Motion* because interlocutory appeals are disfavored by the Commission and BCP Applicants have not met their burden under the

[2] The eleven (11) documents listed in *BCP Applicants' Motion for Interlocutory Appeal* are: **(1)** Exhibit BR-3 - Limited Partnership Agreements for BCP Infrastructure Funds, Saturn Utilities Aggregator LP, and Saturn Utilities Topco LP; **(2)** Exhibit BR-4 - Private Placement Memorandum ("PPM") for BCP Infrastructure II, LP, and BCP Infrastructure Fund II-A, LLP; **(3)** Exhibit BR-8(D) and **(4)** Exhibit BR-16(C) - Identity of Lenders and Terms; **(5)** Exhibit BR-12 - Life Cycle Status of Each BCP Infrastructure Fund; **(6)** Exhibit BR-14 - Waterfall Distribution for BCP Infrastructure Funds; **(7)** Exhibit BR-15 - Purchase and Sale Agreement ("PSA"); **(8)** Exhibit BR 16(A) – List of Sponsors; **(9)** Exhibit BR-16(B) - Debt Commitment Letter pursuant to the PSA; **(10)** Exhibit BR-16(D) - Limited Guarantee pursuant to the PSA; and **(11)** Exhibit BR-16(H) - Equity Commitment Letter pursuant to the PSA. However Exhibit BR-12 was filed publicly in the docket on April 8, 2025 without a cover notice of compliance or other explanation.

[3] Emera and NMGC decided against pursuing their separate claim of confidentiality, also filed on March 4, 2025, for Exhibit 16(G) – Sellers Disclosure Letter and filed an unredacted copy on April 7, 2025. *See Emera Inc.'s and New Mexico Gas Company, inc.'s Notice of Compliance with April 3, 2025 Order Denying BCP Applicant's Motion for Confidentiality and NMGC's Motion for Confidentiality*.

[4] A stay was in effect granted by virtue of the *Order Amending Protective Order* issued by the Hearing Examiners on April 7, 2025 adding language to the original *Protective Order issued* on December 20, 2024 that requests for interlocutory appeal act as a stay.

Commission's rule of procedure that governs interlocutory review by the Commission of hearing examiner rulings which is as follows:

> The commission does not favor interlocutory appeals from the rulings of a presiding officer and expects that appeals will be taken only in extraordinary circumstances. The movant in any such appeal bears the burden of establishing grounds for review and reversal of a ruling of the presiding officer made in the course of the proceeding.

1.2.2.31(A)(2) NMAC. The rule further requires BCP Applicants to demonstrate either of the following

> (a) the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal to the commission from the ruling may materially advance the ultimate disposition of the proceeding; or
> (b) circumstances exist which make prompt commission review of the contested ruling necessary to prevent irreparable harm to any person.

1.2.2.31(B)(1) NMAC. BCP Applicants have not met their burden of establishing grounds for reversal by showing that either extraordinary circumstance or a controlling question of law or policy exist in the instant case.

4. BCP Applicants maintain that the documents they designate as confidential contain trade secret information that would cause competitive harm to BCP Applicants if publicly disclosed. However, BCP has failed to show that the information it is seeking to protect is either a trade secret or would cause irreparable harm if disclosed. For example, the claims of potential economic harm in BCP Applicants' Motion for Interlocutory Appeal have not been alleged with sufficient specificity to demonstrate that keeping ownership structure and investor identity a secret from NMGC customers and the general public at large is necessary to prevent economic harm that is irreparable.

5. Moreover, even if some of the documents contained information that constituted a trade secret, that is not the end of the inquiry.[5] Section 62-6-17(C) of the Public Utility Act establishes a two-step analysis for determining whether books, records, accounts, or documents claimed to be confidential should be withheld from public disclosure. First, the Commission must determine that the documents or records contain confidential or proprietary information that is material and relevant to the proceeding. Second, the Commission must determine whether the public interest requires that such documents nevertheless be produced during the proceeding. The documents at issue are material and relevant to the sale of NMGC. For one, they were identified or referenced in the Application and supporting documents. More importantly, they are necessary to determine whether the "complex, interwoven and proprietary relationship" amongst and between BCP Applicants, "many of which only exist to facilitate the acquisition of NMGC,"[6] could have an adverse and material effect on NMGC rates and service. The overwhelming public interest warrants public disclosure because the public has a right to "transparency and the ability to access and review the documents which concern the acquisition of the state's largest natural gas utility."[7]

6. BCP Applicants' allegations of harm and trade secret protection do not outweigh the public interest in disclosure and transparency. These Bench Requests sought further information about the transaction and the buyer for the record of this proceeding upon which the ultimate decision must be based. The public has a right to know and understand the basis and all relevant information that the Commission takes into consideration in reaching its ultimate determination. Furthermore, the Commission needs sufficient information about BCP Applicants

[5] NMPRC Case No. 18-00158-UT, *Order Removing Confidentiality Designation from Consent Agreement and Requiring PNM to File Supplemental Testimony* (issued September 11, 2018).
[6] *Order Denying BCP Applicants' Motion for Confidentiality* (issued April 3, 2025), p. 24.
[7] *Id*.

in order to determine which entity or entities become “public utility holding companies” by virtue of the Class II transaction and determine whether the general diversification plan needs to be amended accordingly.[8]

7. Finally, interlocutory appeal should be denied because BCP Applicants do not appear to be exercising reasonable care in designating documents as confidential. According to Joint Respondent New Energy Economy (“NEE”), they propounded their fifth set of discovery, attached as Exhibit A. In *Joint Applicant's (sic) Response to New Energy Economy's Fifth Set of Interrogatories and Requests for Production of Documents*, the Joint Applicants refer to "Exhibits BR-8(D) Confidential Redacted and to Exhibit BR-8(D) Confidential Unredacted" three times in Interrogatories NEE 5-7, 5-9, 5-10 and to Exhibit BR-16(D) Confidential Redacted and Confidential Unredacted" in NEE 5-10. The discovery probed legitimate areas of inquiry. When Joint Applicants filed their B*CP Applicants' Notice of Submission of Confidential Material for In Camera Review*, they stated on page 2 that "[c]opies of these documents are also being provided to parties who have signed the Confidentiality Agreement under the Protective Order." The Joint Applicants have chosen to finance this proposed transaction with $448,900,000 in equity, $250,000,000 of private debt and $550,000,000 of "portable debt." With so much debt at stake intervenors, the public and the Commission have a right to understand the financial structures that undergird this potential transaction. After the Hearing Examiners issued their *Order Denying Confidentiality*, the Joint Applicants filed Exhibit BR-12 on April 7, 2025, without a self affirmation, and as is plain, there is nothing in the statements contained in Exhibit BR-12 that could be considered "trade secrets" despite their original "confidential" designation. An additional

[8] NMPRC Case No. 19-00234-UT, Amended Certification of Stipulation (issued February 12, 2020).

example of a "confidential" designation concerns an agreement between BCP and a consultant lobbyist. Joint Applicants marked the documents confidential and redacted them. Only on April 10, 2025, Joint Applicants produced the document publicly and without redaction (less than 24 hours from the commencement of the deposition). At the deposition of BCP expert Jeffrey M. Baudier, NEE states that he testified that it was his belief that it was "typical" for BCP to deem this material a "trade secret" and hence "confidential" because the terms and scope are "not typically shared." These examples of over-designation are not consistent with law or Commission practice. In NMPRC Case No. 20-00222-UT, the Hearing Examiner and the Commission sanctioned Avangrid for its over-designation of documents as "confidential".[9] As the Hearing Examiners rightfully stated in the instant case, "The citizen's right know is the rule and secrecy is the exception."[10]

WHEREFORE, for the foregoing reasons, Joint Respondents urge the Hearing Examiners to find that interlocutory appeal should not be permitted and issue an order denying *BCP Applicants' Motion for Interlocutory Appeal*.

Respectfully submitted this 11th day of April, 2025.

WESTERN RESOURCE ADVOCATES

/s/ Cydney Beadles
Cydney Beadles
Attorney for Western Resource Advocates
141 East Palace Avenue, Suite 220
Santa Fe New Mexico 87501

[9] NMPRC Case No. 20-00222-UT, *Certification of Stipulation* (issued November 1, 2021), page 167; *Order on Certification of Stipulation* (issued December 8, 2021) at 11, ¶ 29.
[10] *Order Denying Confidentiality*, p. 12, *quoting State ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 34, 90 N.M. 790, 568 P.2d 1236.

505.231.7042
cydney.beadles@westernresources.org

NEW ENERGY ECONOMY

/s/ Mariel Nanasi
Mariel Nanasi
Attorney for New Energy Economy
300 East Marcy Street
Santa Fe, New Mexico 87501
505.469.4060
mariel@seedsbeneaththesnow.com

NEW MEXICO DEPARTMENT OF JUSTICE
RAÚL TORREZ, ATTORNEY GENERAL

/s/ Gideon Elliott
Gideon Elliot
Utilities Bureau Chief, Consumer Protection
Attorney for New Mexico Department of Justice
408 Galisteo Street
Santa Fe, New Mexico 87501
505.490.4865
gelliot@nmdoj.gov

COALITION FOR CLEAN AFFORDABLE ENERGY

/s/ Cara R. Lynch
Cara R. Lynch
3105 San Joaquin Avenue SE
Albuquerque, New Mexico 87106
505.977.3025
lynch.cara.nm@gmail.com

/s/ Charles de Saillan
Charles de Saillan
25 Wildflower Way
Santa Fe New Mexico 87506
505.819.9058
desaillan.ccae@gmail.com

Attorneys for Coalition for Clean Affordable Energy

PROSPERITY WORKS

/s/ Cara R. Lynch
Cara R. Lynch
Attorney for Prosperity Works
3105 San Joaquin Avenue SE
Albuquerque, New Mexico 87106
505.977.3025
lynch.cara.nm@gmail.com

Exhibit A

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**
JOINT APPLICANTS	)	

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Joint Applicants hereby respond to New Energy's Economy ("NEE") Fifth Set of Interrogatories and Requests for Production of Documents ("Interrogatories").

GENERAL OBJECTIONS*:*

Joint Applicants object to NEE's instructions and directions in the Interrogatories to the extent they seek to supplement or modify the requirements of 1.2.2.25 NMAC, et seq. or the Rules of Civil Procedure for the District Courts of New Mexico.

Joint Applicants object to the Interrogatories to the extent they seek information protected from disclosure by the attorney-client privilege or the work product doctrine. Rules 1-026 and 11-503 NMRA; 1.2.2.25(C) NMAC.

In responding to the Interrogatories Joint Applicants reserve all evidentiary objections to any responses or documents that may be offered in evidence at the hearing. Joint Applicants respond to the Interrogatories subject to, and without waiving, these objections.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

GENERAL RESPONSE

Service of this response document shall be via e-mail unless otherwise ordered. The exhibits referred to in this response will be posted and made accessible to the parties on NMGC's Microsoft SharePoint site for the 24-00266-UT Case. As used in these responses, "NMGC SharePoint" shall mean the web-based document management system administered by NMGC at 24-00266-UT NMGC Acquisition Case Site - Documents - All Documents as an electronic discovery database. Parties on the service list for this case have been granted access to the NMGC SharePoint site. If you are having problems with this site or need to make arrangements for access to the NMGC SharePoint site, please contact Brian Buffington at 505-697-3879 or brian.buffington@nmgco.com or Breann Pohl at 505-697-4426 or breann.pohl@nmgco.com. If you are unable to access the NMGC SharePoint site and need to review the exhibits, NMGC will also make them available for inspection and copying at NMGC's offices located at 7120 Wyoming, N.E., Suite 20, Albuquerque, New Mexico 87109, upon prior arrangement. Please contact Brian Buffington to make such arrangements for inspection.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

NEE INTERROGATORY 5-1:
State the precise amount of cash which will be used to purchase NMGC.

RESPONSE:
Jeffrey M. Baudier

As stated in the Direct Testimony of Jeffrey M. Baudier at page 23, Saturn Holdco intends to partially fund the purchase of the Equity Interests in TECO Energy, a holding company of NMGC, with $448,900,000 in equity. The purchase price under the Purchase and Sale Agreement is subject to the typical post-closing adjustments so the "precise" amount of cash due at the closing of the Proposed Transaction is unknown at this time. However, the cash due at closing should approximate the amount as set forth above.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

NEE INTERROGATORY 5-2:
State the precise amount of debt which will be used to purchase NMGC.

RESPONSE:
Jeffrey M. Baudier

As stated in the Direct Testimony of Jeffry M. Baudier at page 23, Saturn Holdco intends to partially fund the purchase of the Equity Interests in TECO Energy, a holding company of NMGC with $250,000,000 of private debt, which is non-recourse to NMGC, and the assumption of approximately $550,000,000 of portable debt currently held by NMGC. The precise amount of portable debt held by NMGC at the time of closing is presently unknown because the precise closing date is unknown at this time.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

NEE INTERROGATORY 5-7:
Identify all the sources of the debt which will be used to purchase NMGC.

RESPONSE:
Jeffrey M. Baudier

The details of the $250 million in private debt financing are described in the Supplemental Testimony and Exhibits of Jeffrey M. Baudier in Response to February 19, 2025 Hearing Examiners' Bench Request at page 18 and in Exhibits BR8(D) Confidential Redacted and Exhibit BR8(D) Confidential Unredacted.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

NEE INTERROGATORY 5-9:

State the expected terms of the debt issuances which will be used to purchase NMGC, including without limitation interest rate(s), lengths of issuances, and redemption and penalty terms.

RESPONSE:

Jeffrey M. Baudier

The details of the $250 million in private debt financing are described in the Supplemental Testimony and Exhibits of Jeffrey M. Baudier in Response to February 19, 2025 Hearing Examiners' Bench Request at page 18 and in Exhibits BR8(D) Confidential Redacted and Exhibit BR8(D) Confidential Unredacted.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

NEE INTERROGATORY 5-10:
Identify all entities which will guarantee repayment of the debt used to purchase NMGC.

RESPONSE:
Jeffrey M. Baudier

The details of the $250 million in private debt financing and the Limited Guarantee are described in the Supplemental Testimony and Exhibits of Jeffrey M. Baudier in Response to February 19, 2025 Hearing Examiners' Bench Request at pages 18 and 26 and in Exhibits BR8(D) Confidential Redacted and Exhibit BR8(D) Confidential Unredacted and Exhibit BR-16(D) Confidential Redacted and Confidential Unredacted.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

NEE INTERROGATORY 5-22:

How much will Joint Applicants pay in cash for the NMGC $1.25 B asset? What is Joint Applicants' best estimate on the total quarterly interest cost of coverage on that debt? What is Joint Applicants' best estimate of the monthly increase in costs to ratepayers as a result of that cost of coverage on debt? How would this payment on the total quarterly interest cost of coverage on that debt affect/increase the average residential ratepayer's bill? Please provide a detailed response.

RESPONSE:

Jeffrey M. Baudier

Due to the compound nature of this Interrogatory, Joint Applicants are responding in subparts as set forth below.

a. To clarify, and as described in the Direct Testimony of Jeffry M. Baudier at page 22, the full consideration for the purchase of the Equity Interests in TECO Enerrgy, a holding company of NMGC, is set forth in Section 2.2 of the Purchase and Sale Agreement, but the purchase price is approximately $1.252 billion, including the assumption of approximately $550 million of existing debt of NMGC and subject to customary post-closing adjustments. The cash portion of the purchase price is discussed in Joint Applicants' response to NEE Interrogatory 5-1 above.

b. The Joint Applicants are unable to determine to what the phrase "that debt" refers. Assuming that this phrase refers to the $250 million in private debt to be used to fund

a portion of the purchase of the Equity Interests in TECO Energy, the estimated quarterly interest costs are $3,650,000.00.

c. Because the $250 million in private debt will not be held by NMGC and is non-recourse to NMGC, there will be no increase in debt expense to NMGC customers as a result of this private debt.

d. Because the $250 million in private debt will not be held by NMGC and is non-recourse to NMGC, there will be no increase in NMGC customers' bills as a result of this private debt.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Respectfully submitted this 7th day of April 2025.

NEW MEXICO GAS COMPANY, INC.

/s/Nicole V. Strauser
NICOLE V. STRAUSER
Vice President and General Counsel
Robert J. Johnston
Dominic A. Martinez
P. O. Box 97500
Albuquerque, NM 87199-7500
Phone: (505) 697-3809
Fax: (505) 697-4482
nicole.strauser@nmgco.com
robert.johnston@nmgco.com
dominic.martinez@nmgco.com

JENNINGS HAUG KELEHER MCLEOD WATERFALL LLP

/s/Thomas M. Domme
Thomas M. Domme
Brian J. Haverly
Julianna T. Hopper
Post Office Box AA
Albuquerque, NM 87103
Telephone : (505) 346-4646
Fax: (505) 346-1345
tmd@jklawyers.com
bjh@jklawyers.com
jth@jklawyers.com
Attorneys for New Mexico Gas Company, Inc., New Mexico Gas Intermediate, Inc., TECO Energy LLC, TECO Holdings, Inc., Emera U.S. Holdings, Inc., and Emera Inc.

WILKINSON BARKER KNAUER LLP

/s/William DuBois
William DuBois
812 San Antonio Street Suite 310
Austin, TX 78701
Phone: (737) 770-3412
wdubois@wbklaw.com
Attorneys for the BCP Applicants

HARDY MCLEAN LLC

/s/ *Dana S. Hardy*
Dana S. Hardy
Jaclyn M. McLean
Timothy B. Rode
125 Lincoln Ave., Suite 223
Santa Fe, NM 87505
Phone: (505) 230-4226
dhardy@hardymclean.com
jmclean@hardymclean.com
trode@hardymclean.com
Attorneys for the BCP Applicants

ATTACHMENT E

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

ATTACHMENT E

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

JOINT RESPONSE IN OPPOSITION TO
BCP APPLICANTS' MOTION FOR INTERLOCUTORY APPEAL

COME NOW intervenors Western Resource Advocates, New Energy Economy, the New Mexico Department of Justice, Coalition for Clean Affordable Energy and Prosperity Works (collectively, Joint Respondents), and, pursuant to the April 8, 2025 *Order Setting Response and Reply Deadlines*, hereby respond in opposition to *BCP Applicants' Motion for Interlocutory Appeal* that was filed at the New Mexico Public Regulation Commission ("NMPRC" or "Commission") on April 7, 2025.

1. In its Motion for Interlocutory Appeal, BCP Applicants[1] are continuing their fight to prevent full public disclosure of documents relating to their proposed acquisition of New Mexico Gas Company ("NMGC"), the state's largest public utility that provides gas service to over 500,000 customers. The eleven (11) documents at issue were submitted *confidentially* on

[1] The BCP [Bernhard Capital Partners] Applicants include 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"), together with BCP Infrastructure Fund II and BCP Infrastructure Fund II-A (collectively, 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.

March 4, 2025 in response to the Bench Requests to Joint Applicants, issued by the Hearing Examiners on February 19, 2025. The "confidential" submission includes a redacted version of the Purchase and Sale Agreement between Emera and Saturn Utilities Holdco.[2] This submission was accompanied by *BCP Applicants' Request for Confidential Treatment of Bench Responses* ("*Request for Confidential Treatment*") filed that same day, on March 4, 2025. Confidential treatment was denied on April 3, 2025 when the Hearing Examiners issued their *Order Denying BCP Applicants' Motion for Confidentiality and Denying NMGC's Motion for Confidentiality*[3] ("*Order Denying Confidentiality*").

2. BCP Applicants filed the instant *Motion* on April 7, 2025, along with *BCP Applicants' Emergency Motion for Stay of or Limited Amendment to the Hearing Examiners' "Order Denying BCP Applicants' Motion for Confidentiality and Denying NMGC's Motion for Confidentiality."*[4] BCP Applicants seek interlocutory appeal of the *Order Denying Confidentiality*, and are thus asking the Commission to intervene and reverse the Hearing Examiners' ruling.

3. Joint Respondents oppose *BCP Applicants' Motion* because interlocutory appeals are disfavored by the Commission and BCP Applicants have not met their burden under the

[2] The eleven (11) documents listed in *BCP Applicants' Motion for Interlocutory Appeal* are: **(1)** Exhibit BR-3 - Limited Partnership Agreements for BCP Infrastructure Funds, Saturn Utilities Aggregator LP, and Saturn Utilities Topco LP; **(2)** Exhibit BR-4 - Private Placement Memorandum ("PPM") for BCP Infrastructure II, LP, and BCP Infrastructure Fund II-A, LLP; **(3)** Exhibit BR-8(D) and **(4)** Exhibit BR-16(C) - Identity of Lenders and Terms; **(5)** Exhibit BR-12 - Life Cycle Status of Each BCP Infrastructure Fund; **(6)** Exhibit BR-14 - Waterfall Distribution for BCP Infrastructure Funds; **(7)** Exhibit BR-15 - Purchase and Sale Agreement ("PSA"); **(8)** Exhibit BR 16(A) – List of Sponsors; **(9)** Exhibit BR-16(B) - Debt Commitment Letter pursuant to the PSA; **(10)** Exhibit BR-16(D) - Limited Guarantee pursuant to the PSA; and **(11)** Exhibit BR-16(H) - Equity Commitment Letter pursuant to the PSA. However Exhibit BR-12 was filed publicly in the docket on April 8, 2025 without a cover notice of compliance or other explanation.

[3] Emera and NMGC decided against pursuing their separate claim of confidentiality, also filed on March 4, 2025, for Exhibit 16(G) – Sellers Disclosure Letter and filed an unredacted copy on April 7, 2025. *See Emera Inc.'s and New Mexico Gas Company, inc.'s Notice of Compliance with April 3, 2025 Order Denying BCP Applicant's Motion for Confidentiality and NMGC's Motion for Confidentiality*.

[4] A stay was in effect granted by virtue of the *Order Amending Protective Order* issued by the Hearing Examiners on April 7, 2025 adding language to the original *Protective Order issued* on December 20, 2024 that requests for interlocutory appeal act as a stay.

Commission's rule of procedure that governs interlocutory review by the Commission of hearing examiner rulings which is as follows:

> The commission does not favor interlocutory appeals from the rulings of a presiding officer and expects that appeals will be taken only in extraordinary circumstances. The movant in any such appeal bears the burden of establishing grounds for review and reversal of a ruling of the presiding officer made in the course of the proceeding.

1.2.2.31(A)(2) NMAC. The rule further requires BCP Applicants to demonstrate either of the following

> (a) the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal to the commission from the ruling may materially advance the ultimate disposition of the proceeding; or
> (b) circumstances exist which make prompt commission review of the contested ruling necessary to prevent irreparable harm to any person.

1.2.2.31(B)(1) NMAC. BCP Applicants have not met their burden of establishing grounds for reversal by showing that either extraordinary circumstance or a controlling question of law or policy exist in the instant case.

4. BCP Applicants maintain that the documents they designate as confidential contain trade secret information that would cause competitive harm to BCP Applicants if publicly disclosed. However, BCP has failed to show that the information it is seeking to protect is either a trade secret or would cause irreparable harm if disclosed. For example, the claims of potential economic harm in BCP Applicants' Motion for Interlocutory Appeal have not been alleged with sufficient specificity to demonstrate that keeping ownership structure and investor identity a secret from NMGC customers and the general public at large is necessary to prevent economic harm that is irreparable.

5. Moreover, even if some of the documents contained information that constituted a trade secret, that is not the end of the inquiry.[5] Section 62-6-17(C) of the Public Utility Act establishes a two-step analysis for determining whether books, records, accounts, or documents claimed to be confidential should be withheld from public disclosure. First, the Commission must determine that the documents or records contain confidential or proprietary information that is material and relevant to the proceeding. Second, the Commission must determine whether the public interest requires that such documents nevertheless be produced during the proceeding. The documents at issue are material and relevant to the sale of NMGC. For one, they were identified or referenced in the Application and supporting documents. More importantly, they are necessary to determine whether the "complex, interwoven and proprietary relationship" amongst and between BCP Applicants, "many of which only exist to facilitate the acquisition of NMGC,"[6] could have an adverse and material effect on NMGC rates and service. The overwhelming public interest warrants public disclosure because the public has a right to "transparency and the ability to access and review the documents which concern the acquisition of the state's largest natural gas utility."[7]

6. BCP Applicants' allegations of harm and trade secret protection do not outweigh the public interest in disclosure and transparency. These Bench Requests sought further information about the transaction and the buyer for the record of this proceeding upon which the ultimate decision must be based. The public has a right to know and understand the basis and all relevant information that the Commission takes into consideration in reaching its ultimate determination. Furthermore, the Commission needs sufficient information about BCP Applicants

[5] NMPRC Case No. 18-00158-UT, *Order Removing Confidentiality Designation from Consent Agreement and Requiring PNM to File Supplemental Testimony* (issued September 11, 2018).
[6] *Order Denying BCP Applicants' Motion for Confidentiality* (issued April 3, 2025), p. 24.
[7] *Id*.

in order to determine which entity or entities become “public utility holding companies” by virtue of the Class II transaction and determine whether the general diversification plan needs to be amended accordingly.[8]

7. Finally, interlocutory appeal should be denied because BCP Applicants do not appear to be exercising reasonable care in designating documents as confidential. According to Joint Respondent New Energy Economy (“NEE”), they propounded their fifth set of discovery, attached as Exhibit A. In *Joint Applicant's (sic) Response to New Energy Economy's Fifth Set of Interrogatories and Requests for Production of Documents*, the Joint Applicants refer to "Exhibits BR-8(D) Confidential Redacted and to Exhibit BR-8(D) Confidential Unredacted" three times in Interrogatories NEE 5-7, 5-9, 5-10 and to Exhibit BR-16(D) Confidential Redacted and Confidential Unredacted" in NEE 5-10. The discovery probed legitimate areas of inquiry. When Joint Applicants filed their B*CP Applicants' Notice of Submission of Confidential Material for In Camera Review*, they stated on page 2 that "[c]opies of these documents are also being provided to parties who have signed the Confidentiality Agreement under the Protective Order." The Joint Applicants have chosen to finance this proposed transaction with $448,900,000 in equity, $250,000,000 of private debt and $550,000,000 of "portable debt." With so much debt at stake intervenors, the public and the Commission have a right to understand the financial structures that undergird this potential transaction. After the Hearing Examiners issued their *Order Denying Confidentiality*, the Joint Applicants filed Exhibit BR-12 on April 7, 2025, without a self affirmation, and as is plain, there is nothing in the statements contained in Exhibit BR-12 that could be considered "trade secrets" despite their original "confidential" designation. An additional

[8] NMPRC Case No. 19-00234-UT, Amended Certification of Stipulation (issued February 12, 2020).

example of a "confidential" designation concerns an agreement between BCP and a consultant lobbyist. Joint Applicants marked the documents confidential and redacted them. Only on April 10, 2025, Joint Applicants produced the document publicly and without redaction (less than 24 hours from the commencement of the deposition). At the deposition of BCP expert Jeffrey M. Baudier, NEE states that he testified that it was his belief that it was "typical" for BCP to deem this material a "trade secret" and hence "confidential" because the terms and scope are "not typically shared." These examples of over-designation are not consistent with law or Commission practice. In NMPRC Case No. 20-00222-UT, the Hearing Examiner and the Commission sanctioned Avangrid for its over-designation of documents as "confidential".[9] As the Hearing Examiners rightfully stated in the instant case, "The citizen's right know is the rule and secrecy is the exception."[10]

WHEREFORE, for the foregoing reasons, Joint Respondents urge the Hearing Examiners to find that interlocutory appeal should not be permitted and issue an order denying *BCP Applicants' Motion for Interlocutory Appeal*.

Respectfully submitted this 11th day of April, 2025.

WESTERN RESOURCE ADVOCATES

/s/ Cydney Beadles
Cydney Beadles
Attorney for Western Resource Advocates
141 East Palace Avenue, Suite 220
Santa Fe New Mexico 87501

[9] NMPRC Case No. 20-00222-UT, *Certification of Stipulation* (issued November 1, 2021), page 167; *Order on Certification of Stipulation* (issued December 8, 2021) at 11, ¶ 29.
[10] *Order Denying Confidentiality*, p. 12, *quoting State ex rel. Newsome v. Alarid*, 1977-NMSC-076, ¶ 34, 90 N.M. 790, 568 P.2d 1236.

505.231.7042
cydney.beadles@westernresources.org

NEW ENERGY ECONOMY

/s/ Mariel Nanasi
Mariel Nanasi
Attorney for New Energy Economy
300 East Marcy Street
Santa Fe, New Mexico 87501
505.469.4060
mariel@seedsbeneaththesnow.com

NEW MEXICO DEPARTMENT OF JUSTICE
RAÚL TORREZ, ATTORNEY GENERAL

/s/ Gideon Elliott
Gideon Elliot
Utilities Bureau Chief, Consumer Protection
Attorney for New Mexico Department of Justice
408 Galisteo Street
Santa Fe, New Mexico 87501
505.490.4865
gelliot@nmdoj.gov

COALITION FOR CLEAN AFFORDABLE ENERGY

/s/ Cara R. Lynch
Cara R. Lynch
3105 San Joaquin Avenue SE
Albuquerque, New Mexico 87106
505.977.3025
lynch.cara.nm@gmail.com

/s/ Charles de Saillan
Charles de Saillan
25 Wildflower Way
Santa Fe New Mexico 87506
505.819.9058
desaillan.ccae@gmail.com

Attorneys for Coalition for Clean Affordable Energy

PROSPERITY WORKS

/s/ Cara R. Lynch
Cara R. Lynch
Attorney for Prosperity Works
3105 San Joaquin Avenue SE
Albuquerque, New Mexico 87106
505.977.3025
lynch.cara.nm@gmail.com

Exhibit A

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**
JOINT APPLICANTS	)	

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Joint Applicants hereby respond to New Energy's Economy ("NEE") Fifth Set of Interrogatories and Requests for Production of Documents ("Interrogatories").

GENERAL OBJECTIONS*:*

Joint Applicants object to NEE's instructions and directions in the Interrogatories to the extent they seek to supplement or modify the requirements of 1.2.2.25 NMAC, et seq. or the Rules of Civil Procedure for the District Courts of New Mexico.

Joint Applicants object to the Interrogatories to the extent they seek information protected from disclosure by the attorney-client privilege or the work product doctrine. Rules 1-026 and 11-503 NMRA; 1.2.2.25(C) NMAC.

In responding to the Interrogatories Joint Applicants reserve all evidentiary objections to any responses or documents that may be offered in evidence at the hearing. Joint Applicants respond to the Interrogatories subject to, and without waiving, these objections.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

GENERAL RESPONSE

Service of this response document shall be via e-mail unless otherwise ordered. The exhibits referred to in this response will be posted and made accessible to the parties on NMGC's Microsoft SharePoint site for the 24-00266-UT Case. As used in these responses, "NMGC SharePoint" shall mean the web-based document management system administered by NMGC at 24-00266-UT NMGC Acquisition Case Site - Documents - All Documents as an electronic discovery database. Parties on the service list for this case have been granted access to the NMGC SharePoint site. If you are having problems with this site or need to make arrangements for access to the NMGC SharePoint site, please contact Brian Buffington at 505-697-3879 or brian.buffington@nmgco.com or Breann Pohl at 505-697-4426 or breann.pohl@nmgco.com. If you are unable to access the NMGC SharePoint site and need to review the exhibits, NMGC will also make them available for inspection and copying at NMGC's offices located at 7120 Wyoming, N.E., Suite 20, Albuquerque, New Mexico 87109, upon prior arrangement. Please contact Brian Buffington to make such arrangements for inspection.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

NEE INTERROGATORY 5-1:
State the precise amount of cash which will be used to purchase NMGC.

RESPONSE:
Jeffrey M. Baudier

As stated in the Direct Testimony of Jeffrey M. Baudier at page 23, Saturn Holdco intends to partially fund the purchase of the Equity Interests in TECO Energy, a holding company of NMGC, with $448,900,000 in equity. The purchase price under the Purchase and Sale Agreement is subject to the typical post-closing adjustments so the "precise" amount of cash due at the closing of the Proposed Transaction is unknown at this time. However, the cash due at closing should approximate the amount as set forth above.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

NEE INTERROGATORY 5-2:
State the precise amount of debt which will be used to purchase NMGC.

RESPONSE:
Jeffrey M. Baudier

As stated in the Direct Testimony of Jeffry M. Baudier at page 23, Saturn Holdco intends to partially fund the purchase of the Equity Interests in TECO Energy, a holding company of NMGC with $250,000,000 of private debt, which is non-recourse to NMGC, and the assumption of approximately $550,000,000 of portable debt currently held by NMGC. The precise amount of portable debt held by NMGC at the time of closing is presently unknown because the precise closing date is unknown at this time.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

NEE INTERROGATORY 5-7:
Identify all the sources of the debt which will be used to purchase NMGC.

RESPONSE:
Jeffrey M. Baudier

The details of the $250 million in private debt financing are described in the Supplemental Testimony and Exhibits of Jeffrey M. Baudier in Response to February 19, 2025 Hearing Examiners' Bench Request at page 18 and in Exhibits BR8(D) Confidential Redacted and Exhibit BR8(D) Confidential Unredacted.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

NEE INTERROGATORY 5-9:

State the expected terms of the debt issuances which will be used to purchase NMGC, including without limitation interest rate(s), lengths of issuances, and redemption and penalty terms.

RESPONSE:

Jeffrey M. Baudier

The details of the $250 million in private debt financing are described in the Supplemental Testimony and Exhibits of Jeffrey M. Baudier in Response to February 19, 2025 Hearing Examiners' Bench Request at page 18 and in Exhibits BR8(D) Confidential Redacted and Exhibit BR8(D) Confidential Unredacted.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

NEE INTERROGATORY 5-10:
Identify all entities which will guarantee repayment of the debt used to purchase NMGC.

RESPONSE:
Jeffrey M. Baudier

The details of the $250 million in private debt financing and the Limited Guarantee are described in the Supplemental Testimony and Exhibits of Jeffrey M. Baudier in Response to February 19, 2025 Hearing Examiners' Bench Request at pages 18 and 26 and in Exhibits BR8(D) Confidential Redacted and Exhibit BR8(D) Confidential Unredacted and Exhibit BR-16(D) Confidential Redacted and Confidential Unredacted.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

NEE INTERROGATORY 5-22:

How much will Joint Applicants pay in cash for the NMGC $1.25 B asset? What is Joint Applicants' best estimate on the total quarterly interest cost of coverage on that debt? What is Joint Applicants' best estimate of the monthly increase in costs to ratepayers as a result of that cost of coverage on debt? How would this payment on the total quarterly interest cost of coverage on that debt affect/increase the average residential ratepayer's bill? Please provide a detailed response.

RESPONSE:

Jeffrey M. Baudier

Due to the compound nature of this Interrogatory, Joint Applicants are responding in subparts as set forth below.

a. To clarify, and as described in the Direct Testimony of Jeffry M. Baudier at page 22, the full consideration for the purchase of the Equity Interests in TECO Enerrgy, a holding company of NMGC, is set forth in Section 2.2 of the Purchase and Sale Agreement, but the purchase price is approximately $1.252 billion, including the assumption of approximately $550 million of existing debt of NMGC and subject to customary post-closing adjustments. The cash portion of the purchase price is discussed in Joint Applicants' response to NEE Interrogatory 5-1 above.

b. The Joint Applicants are unable to determine to what the phrase "that debt" refers. Assuming that this phrase refers to the $250 million in private debt to be used to fund

a portion of the purchase of the Equity Interests in TECO Energy, the estimated quarterly interest costs are $3,650,000.00.

c. Because the $250 million in private debt will not be held by NMGC and is non-recourse to NMGC, there will be no increase in debt expense to NMGC customers as a result of this private debt.

d. Because the $250 million in private debt will not be held by NMGC and is non-recourse to NMGC, there will be no increase in NMGC customers' bills as a result of this private debt.

JOINT APPLICANT'S RESPONSE TO NEW ENERGY ECONOMY'S FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Respectfully submitted this 7th day of April 2025.

NEW MEXICO GAS COMPANY, INC.

/s/Nicole V. Strauser
NICOLE V. STRAUSER
Vice President and General Counsel
Robert J. Johnston
Dominic A. Martinez
P. O. Box 97500
Albuquerque, NM 87199-7500
Phone: (505) 697-3809
Fax: (505) 697-4482
nicole.strauser@nmgco.com
robert.johnston@nmgco.com
dominic.martinez@nmgco.com

JENNINGS HAUG KELEHER MCLEOD WATERFALL LLP

/s/Thomas M. Domme
Thomas M. Domme
Brian J. Haverly
Julianna T. Hopper
Post Office Box AA
Albuquerque, NM 87103
Telephone : (505) 346-4646
Fax: (505) 346-1345
tmd@jklawyers.com
bjh@jklawyers.com
jth@jklawyers.com
Attorneys for New Mexico Gas Company, Inc., New Mexico Gas Intermediate, Inc., TECO Energy LLC, TECO Holdings, Inc., Emera U.S. Holdings, Inc., and Emera Inc.

WILKINSON BARKER KNAUER LLP

/s/William DuBois
William DuBois
812 San Antonio Street Suite 310
Austin, TX 78701
Phone: (737) 770-3412
wdubois@wbklaw.com
Attorneys for the BCP Applicants

HARDY MCLEAN LLC

/s/ *Dana S. Hardy*
Dana S. Hardy
Jaclyn M. McLean
Timothy B. Rode
125 Lincoln Ave., Suite 223
Santa Fe, NM 87505
Phone: (505) 230-4226
dhardy@hardymclean.com
jmclean@hardymclean.com
trode@hardymclean.com
Attorneys for the BCP Applicants

EXHIBIT F

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**
JOINT APPLICANT	)	

EXHIBIT F

STAFF'S RESPONSE TO ORDER SETTING RESPONSE DEADLINES TO BCP APPLICANTS' MOTION FOR INTERLOCUTORY APPEAL

The Utility Division Staff ("Staff") of the New Mexico Public Regulation Commission ("Commission", "NMPRC" or "PRC"), files its Response pursuant to the Hearing Examiner's Order Setting Response and Reply Deadlines to BCP Applicants' Motion for Interlocutory Appeal ("Order Setting Response Deadlines") issued on April 8, 2025. Staff would show the Commission as follows:

1. On April 8, 2025, the Hearing Examiner issued the Order Setting Response Deadlines, in which Decretal Paragraph A. states: "Any response to the BCP Applicants' Motion for Interlocutory Appeal shall be filed by April 11, 2025."

2. The procedural background to the Order Setting Response Deadlines is that on March 4, 2025, BCP Applicants filed their Request for Confidential Treatment of Bench Request Responses ("BCP Applicants' Request for Confidential Treatment"); and their Notice of Submission of Confidential Material for In Camera Review. In addition, Emera Inc. ("Emera") and New Mexico Gas Company, Inc.'s ("NMGC") filed their Claim of Confidentiality Request ("NMGC Motion for Confidentiality").

3. BCP Applicants' Request for Confidential Treatment requested that the Hearing

Examiners issue an order determining that certain documents and information provided in response to the Hearing Examiners' Bench Requests to Joint Applicants ("Bench Requests"), dated February 19, 2025, are not subject to public disclosure and will be accorded confidential treatment.

4. On April 3, 2025, the Hearing Examiner issued an Order Denying BCP Applicants' Motion for Confidentiality and NMGC's Motion for Confidentiality ("Order") which ordered:

> A. BCP Applicants' Request for Confidential Treatment for the following documents is DENIED:
> Exhibit BR-3 - Limited Partnership Agreements for BCP Infrastructure Funds, Saturn Utilities Aggregator LP, and Saturn Utilities Topco, LP
> Exhibit BR-4 - Private Placement Memorandum ("PPM") for BCP Infrastructure II, LP, and BCP Infrastructure Fund II-A, LP
> Exhibit BR-8(D) and Exhibit BR-16(C) - Identity of Lenders and Terms
> Exhibit BR-12 - Life Cycle Status of Each BCP Infrastructure Fund
> Exhibit BR-14 - Waterfall Distribution for BCP Infrastructure Funds
> Exhibit BR-15 - Purchase and Sale Agreement ("PSA") and Exhibit BR 16(A) – List of Sponsors
> Exhibit BR-16(B) - Debt Commitment Letter pursuant to the PSA
> Exhibit BR-16(D) - Limited Guarantee pursuant to the PSA
> Exhibit BR-16(H) - Equity Commitment Letter pursuant to the PSA.
> B. Emera Request for Confidential Treatment for the amount of cyber liability insurance contained within the Seller Disclosure Letter provided in response to BR 16(G) is DENIED.
> C. BCP Applicants shall file the unredacted documents with the Commission by April 7, 2025.

5. On April 7, 2025, BCP Applicants' filed a Motion for Interlocutory Appeal from the Order claiming that the Order regarding the above referenced Exhibits, hereinafter referred to as the "Redacted Documents" would cause "irreparable harm" to them and that they should be granted an interlocutory appeal of the Order[1].

6. **Legal Standard- Interlocutory Appeals:** Rule 1.2.2.31 of the NMAC governs

[1] Except for Exhibit BR-12 which was filed simultaneously with the Motion for Interlocutory Appeal.

appeals from the rulings of a presiding officer. Rule 1.2.2.31(B)(1), states that an interlocutory appeal is appropriate if either (1) the ruling involves a "controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal to the commission from the ruling may materially advance the ultimate disposition of the proceeding" or (2) circumstances exist "which make prompt commission review of the contested ruling necessary to prevent irreparable harm to any person." The movant of an interlocutory appeal bears the burden of establishing grounds for review and reversal. *Id*.

7. **BCP's Motion for Interlocutory Appeal Claims Irreparable Harm Will be Caused by Public Disclosure of the Redacted Documents:** BCP Applicants assert that their Motion for Interlocutory Appeal should be granted to prevent "irreparable harm" that will be cause by the public disclosure of unredacted versions of the Redacted Documents.[2] In support of this assertion, BCP Applicants state the limited redactions should be given trade secret protection under New Mexico law and should be granted confidential treatment pursuant to NMSA 1978, § 57-3A-2(D); citing also to *Pincheira v. Allstate Ins. Co.*, 2007-NMCA-094, ¶ 55. Regarding all the Redacted Documents, BCP asserts that they disclose detailed, negotiated pricing and financing terms of the proposed acquisition that, if publicly disclosed, will subject the BCP Applicants' to competitive harm.[3] BCP asserts that the Redacted Documents contain specific pricing and financing information about the proposed transaction that "derives independent economic value from not being generally known or readily ascertainable by others who could gain value from its

[2] Motion for Interlocutory Appeal, pages 6,7,9,10 and 11.
[3] *Id*.

use."[4] More specifically, BCP asserts the Redacted Documents include how much money the BCP Applicants and their partners have agreed to invest (which is not the sale price of NMGC), how the funding will be structured, which lenders are involved and how much each is providing, what happens if a party defaults, how risks and costs are divided, when either party can terminate the transaction, and what fees and interest rates apply to the financing.[5] BCP Applicants assert the Redacted Documents are trade secrets because, under New Mexico law, one of the "defining characteristics" of a trade secret is economic value and the value of a trade secret need not be large, only "more than trivial."[6] In sum, BCP argue that, if this information is publicly disclosed, competitors and counterparties would receive a competitive advantage over the BCP Applicants that is much greater than "trivial."[7] For example, the redacted loan documents tell lenders what the BCP Applicants are willing to pay to borrow money, including interest rates, fees, and repayment timing. If lenders or competitors of the BCP Applicants were able to see the certain terms to which the BCP Applicants have agreed here, they could insist on similar– or more favorable – terms going forward.[8] The BCP Applicants claim they took reasonable steps to "maintain the secrecy" of the sensitive information in the PSA and related documents, meeting the second step in the New Mexico's "trade secret" analysis because they provided the agreements confidentially, pursuant to the Commission's Protective Order, or for *in camera* review.[9] Further, they claim the redactions

[4] Pincheira v. Allstate Ins. Co., 2007-NMCA-094, ¶ 55.
[5] Motion for Interlocutory Appeal, page 10, footnotes 27 and 28: "See Redaction Log at BR-12, pp. 2–4; BR-14, pp. 1–2; Baudier Aff., ¶6(c), (e). 28 See Redaction Log at BR-8(D), p. 1; BR-16(C), p. 1; Baudier Aff., ¶6(c)."
[6] Motion for Interlocutory Appeal, page 7, footnotes 15 and 16: "Pincheira v. Allstate Ins. Co., 2008-NMSC-049, ¶ 43, 144 N.M. 601. (citing Restatement (Third) of Unfair Competition."
[7] Id., page 7, footnote 18.
[8] Id. Page 7, footnote 19.
[9] NMSA 1978, § 57-3A-2(D) (2).

themselves are very limited, designed to redeact only commercially sensitive terms, not completely redacted documents.[10]. BCP Applicants conclude: "As such, the information falls squarely within a recognized exception to the IRPA, which explicitly exempts trade secrets from public disclosure. Forcing disclosure of such information would not only contravene state law but would cause immediate and irreparable harm by compromising the confidentiality of proprietary data, potentially undermining competitive position, and chilling future cooperation with the Commission. confidentiality is not discretionary, the statutory language is mandatory; once information is found to fall within the IPRA exception it must be withheld from public inspection. The Order's failure to recognize this mandatory protection amounts to legal error and exposes BCP Applicants to the very harm the statute is designed to prevent. Prompt interlocutory review is therefore necessary to prevent the irreversible effects of disclosure and to ensure compliance with the IPRA."[11]

8. **Staff's Response:** Staff concurs with the Hearing Examiners' Order which denied BCP Applicants' request for confidential treatment of the Redacted Documents. The Order presented a thorough examination of the "trade secrets" confidentiality issue, was well reasoned and was based upon a collective application of the Public Utility Act ("PUA"), the Commission's Rules of procedure, the Open Meetings Act, the Inspection of Public Records Act ("IPRA"), and the Uniform Trade Secrets Act ("UTSA"). As the Order explained, there are many reasons to deny the Motion for Interlocutory Appeal. First, BCP Applicants' have not met their burden of proof of "irreparable harm" to grant the Motion for Interlocutory Appeal set forth in 1.2.2.31

[10] *Id.* Page 8.
[11] *Id.* page 11.

NMAC. In addition, BCP Applicants have not met their burden to prove the Redacted Documents are "trade secrets" under the USTA. Third, BCP Applicants have not proven the Redacted Documents fit within the exception in IPRA.

9. The subject of trade secrets was thoroughly addressed in a Commission Order from 2018. Staff views the pertinent analysis in that Order to be comprehensively instructive and worth restating in consideration of the question now at hand:

> Trade secrets are exempt from disclosure under the IPRA pursuant to the catch-all "as otherwise provided by law" exception stated in Section 14-2-1(A)(8). The Uniform Trade Secrets Act (UTSA), as codified in New Mexico at NMSA 1978, §§ 57-3A-1 to -7 (1989), establishes a two-prong test for information to qualify as a trade secret:
>
> > 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.
>
> In the 2007 "*Pincheira I*" opinion [*Pincheira v. Allstate Ins. Co.*, 2007-NMCA-094, ¶ 34, 142 N.M. 283, 291, 164 P.3d 982, 990) *(Pincheira I)*], the Court of Appeals recognized "a strong public policy in New Mexico of supporting the confidentiality of trade secrets." In affirming the Court of Appeals' decision in *Pincheira I* to vacate a default judgment and define the procedure for protecting asserted trade secrets during discovery, the Supreme Court observed in *Pincheira II* [*Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶ 34, 144 N.M. 601, 190 P.2d 322 *(Pincheira II)* (quoting *Learning Curve Toys, Inc. v. Play Wood Toys, Inc.* 342 F.3d 714, 723 (7th Cir. 2003)] that a trade secret is "'one of the most elusive and difficult concepts in the law to define."' The Court observed that "[e]conomic value is one of the defining characteristics of a trade secret." The Court noted that, "[p]lacing a value on trade secrets is a difficult task, even after the information has been misappropriated and used by a competitor." Finally, referring to the

Restatement (Third) of Unfair Competition, the Court said that "[i]n determining whether a trade secret exists, we are concerned only with the fact of the information's value, not the computation of that value. The value does not need to be large, only 'more than trivial,' and it can be shown by circumstantial evidence such as the amount of resources invested in development of the information, efforts to protect its secrecy, and its use in the business."

The *Restatement (Third) of Unfair Competition* defines a trade secret as "any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others." In determining whether certain information constitutes a trade secret, courts often look to the following six factors set forth in the *Restatement (First) of Torts*:

> (1) the extent to which the information is known outside of [the] business; (2) the extent to which it is known by employees and others involved in [the] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

In *Pincheira II*, the Supreme Court noted that the six factors "'provide helpful guidance to determine whether the information in a given case constitutes 'trade secrets' within the definition of the [UTSA].'" However, neither the Supreme Court nor the Court of Appeals has analyzed the six factors nor, to date, has either court analyzed the interplay between IPRA and the UTSA in a reported opinion.

In sum, a party seeking to preclude disclosure of trade secrets bears the burden of showing "that the information in fact constitutes a trade secret, that disclosure would harm movant's competitive position and that the asserted harm outweighs the presumption of public access. With respect to proof of competitive harm, vague and conclusory allegations will not suffice …. Movant must prove that disclosure would work a clearly defined and serious injury to the party seeking closure."' Stated slightly differently but to the same effect, "'[t]he party seeking protection from disclosure has the burden of making a particular and specific demonstration of fact, as distinguished from general, conclusory statements revealing some injustice, prejudice, or consequential harm that will result if protection is denied."'

Finally, in determining whether a document containing one or more trade secrets is entitled to protection from public access, the UTSA must be read *in pari materia*

> with IPRA to balance the public policies underlying each body of law. In fact, pursuant to a 2018 amendment, the IPRA now expressly cross-references the definition of "trade secret" set forth in the UTSA.

See, In the Matter of Pub. Serv. Co. of New Mexico's Application for Approval of Its Renewable Energy Act Plan for 2019 & Proposed 2019 Rider Rate Under Rate Rider No. 36, Pub. Serv. Co. of New Mexico, Applicant., Case No. 18-00158-UT, Order Removing Confidentiality Designation from Consent Agreement and Requiring PNM to File Supplemental Testimony at *6–8 (Sept. 11, 2018) (citations omitted), 2018 WL 4405823.

10. Staff concludes, in view of the above extract of relevant authorities, *supra*, the assertions made by BCP Applicants in support of its request for confidential treatment are vague and conclusory. BCP Applicants have not fulfilled their burden to prove the Redacted Documents contain "trade secrets" because BCP Applicants' Affidavit makes general, vague statements of potential hypothetical harm to their competitive position. This does not amount to proving either a "trade secret" or, for that matter, proving actual irreparable harm that outweigh the presumption of public access. As the Order stated: "… the party seeking to claim confidentiality as a trade secrets under the UTSA, and the party seeking under Commission's Rules of Procedure,[12] bears the burden of showing "that the information in fact constitutes a trade secret, that disclosure would harm movant's competitive position and that the asserted harm outweighs presumption of public access. With respect to proof of competitive harm, vague and conclusory allegations will not suffice .... Movant must prove that disclosure would work a clearly defined and serious injury to the party seeking closure."[13] Stated slightly differently but to the same effect, "[t]he party seeking

[12] See 1.2.2.8 NMAC.

[13] Order, page 14. See footnote 48: "Encyclopedia Brown Productions, Ltd. v. Home Box Office, Inc., 26 F. Supp. 2d 606, 613 (S.D.N.Y.1998) (internal citation omitted; quoting Turick v. Yamaha Motor Corp., 12l F.R.D. 32, 35 (S.D.N.Y. 1988) (quoting in turn United States v. IBM, 67 F.R.D. 40, 46 (S.D.N.Y. 1975)). See also Pincheira II, 2008-NMSC049, ¶ 39 n.3 (good cause under Rule 1-026(C)(7) NMRA, "requires a specific showing that 'disclosure will work a clearly defined and serious injury to the party seeking closure'") (quoting Krahling v. Executive Life Ins.

protection from disclosure has the burden of making a particular and specific demonstration of fact, as distinguished from general, conclusory statements revealing some injustice, prejudice, or consequential harm that will result if protection is denied." Finally, in determining whether a document containing one or more trade secrets is entitled to protection from public access, the UTSA must be read in *pari materia* with IPRA to balance the public policies underlying each body of law. In fact, pursuant to a 2018 amendment, the IPRA now expressly cross-references the definition of "trade secret" set forth in the UTSA."[14]

11. Staff concurs with the Order's public policy reasons for denying confidentiality which are that: "…the public has a strong and foundational interest in transparency and the ability to access and review the documents which concern the acquisition of the state's largest natural gas utility. The PUA and the Commission's Procedural Rules mitigate in favor of the public's participation in and full awareness of the proceedings before the Commission and only allow the withholding of information and documents on an exceptional basis, and there subject to the procedure set out in NMAC 1.2.2.8. Furthermore, the policy and intent of IPRA is that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees." As with the PUA, IPRA provides, on an exceptional basis, that individuals do not have an affirmative right to access certain information and documents, such as those determined to be trade secrets…. In the instant proceeding, a series of newly formed companies, the BCP Applicants, many of which only exist to facilitate the acquisition of NMGC, exist in a complex, interwoven, and proprietary relationship to one another. The assemblage of these companies together forms the vehicle which is specifically designed to acquire, hold, and

Co., 1998-NMCA-071, ¶ 15, 125 N.M. 228, 959 P.2d 562)."

[14] Id. pages 14-15. See, footnote 49: "In re Parmalat Securities Litigation, 258 F.R.D. 236, 244 (S.D.N.Y. 2009) (quoting Blum v. Schlegel, 150 F.R.D. 38, 41 (W.D.N.Y. 1993))."

ultimately sell NMGC, ideally at a profit. The documents which the BCP Applicants are moving to withhold from public view provide unique insight into how both the transaction and post-closing dynamics may and will affect NMGC. Without the ability to review these documents, the public would have no other way of knowing under what terms NMGC is being acquired and who possesses a financial or proprietary interest in the company. The criticality of the documents and information to the transaction are affected with the public interest."[15]

12. Staff concurs with the Order finding that BCP's Affidavit also fails to fulfill their burden of proof under the Commission's procedural rule 1.2.2.8(B) (1)(c) NMAC: "Finally, even if trade secrets were categorically and absolutely exempt from public disclosure, the BCP Applicants have not met their burden under the Commission's Procedural Rules. The relevant rule, NMAC 1.2.2.8(B)(1)(c), states that the affidavit shall "explain with particularity the injury which would result from disclosure of the information for which protection is sought." In the affidavit provided by the BCP Applicants, the alleged injuries are vague, conclusory, and not particular to an identified secret. Indeed, as demonstrated above, the BCP Applicants repeated, often verbatim, the same general harms that would result if the documents and information were not withheld from the public."[16]

13. **Conclusion:** As stated by *Pinchera II, supra,* a party seeking to prevent disclosure of trade secrets bears the burden of showing "that the information in fact constitutes a trade secret, that disclosure would harm movant's competitive position and that the asserted harm outweighs the presumption of public access. With respect to proof of competitive harm, vague and conclusory

[15] Id. page 24. See, footnote 74: "NMSA 1978, § 14-2-5."
[16] Id., page 26.

allegations will not suffice …. Movant must prove that disclosure would work a clearly defined and serious injury to the party seeking closure." BCP Applicants' Motion for Interlocutory Appeal should not be granted because BCP did not fulfill its burden to prove that the Redacted Documents are "trade secrets" by attaching a conclusory Affidavit stating that is the case. Nor has BCP proven "irreparable harm" from public disclosure of the unredacted Redacted Documents, which is a necessary predicate under 1.2.2.31 NMAC for granting a Motion for Interlocutory Appeal.

Dated this 11th day of April, 2025.

Respectfully submitted,

/s/ Ryan Friedman
Staff Attorney, Legal Division
New Mexico Public Regulation Commission
Email: Ryan.Friedman@prc.nm.gov
Ph. 505-231-3669

EXHIBIT G

BEFORE THE NEW MEXICO REGULATION PUBLIC COMMISSION

EXHIBIT G

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

BCP APPLICANTS' REPLY IN SUPPORT OF THEIR MOTION FOR INTERLOCUTORY APPEAL

The BCP Applicants provide this Reply in Support of Their Motion for Interlocutory Appeal ("Reply"), replying to Staff's Response to Order Setting Response Deadlines to BCP Applicants' Motion for Interlocutory Appeal ("Staff Response") and the Joint Response in Opposition to BCP Applicants' Motion for Interlocutory Appeal (filed by Western Resource Advocates, New Energy Economy, the New Mexico Department of Justice, Coalition for Clean Affordable Energy, and Prosperity Works, the "Joint Response") (together, the "Responses") pursuant to the Hearing Examiners' Order Setting Response and Reply Deadlines to BCP Applicants' Motion for Interlocutory Appeal, issued April 8, 2025. [1]

The threshold question for the Hearing Examiners is whether "circumstances exist which make prompt commission review of the contested ruling necessary to prevent irreparable harm to any person."[2] In other words: if the BCP Applicants' position is correct, will the public disclosure required by the Order Denying BCP Applicants' Motion for Confidentiality and Denying NMGC's

[1] The "BCP Applicants" are BCP Infrastructure Fund II, LP; BCP Infrastructure Fund II-A, LP; BCP Infrastructure Fund II GP, LP; 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.

[2] 1.2.2.31.B(1)(b) NMAC.

Motion for Confidentiality (the "Order") cause them irreparable harm? The answer to that question is "yes." No party disputes that once trade secrets are released to the public, there is no remedy. If the redacted materials are posted on the Commission's website and made available to competitors and counterparties for the duration of this proceeding, then even a later ruling in the BCP Applicants' favor cannot claw that information back.

That is all that Rule 1.2.2.31(B)(1)(b) requires. The rule does not ask whether the BCP Applicants will ultimately prevail on the merits. It asks whether disclosure in the interim will cause irreparable harm if they do. As explained below and in BCP Applicants' Motion, it will. This alone justifies interlocutory review. Accordingly, an interlocutory appeal is appropriate under 1.2.2.31(B)(1) NMAC. The alternative basis for interlocutory appeal – under Rule 1.2.2.31(B)(1)(a) – is also justified and addressed below.

The BCP Applicants are correct on the merits: the materials at issue are trade secrets, and New Mexico law requires their protection. Both the New Mexico Uniform Trade Secrets Act ("TSA")[3] and the Inspection of Public Records Act ("IPRA")[4] bar public disclosure of information that meets the statutory definition of a trade secret. The BCP Applicants have met their burden of establishing that the redacted materials – *i.e.*, the Confidential Materials – qualify for trade secret protection. Once a party makes that showing, public disclosure is prohibited. Neither IPRA nor the TSA authorizes a balancing test, and neither provides an exception based on public interest or relevance.

Even if a balancing test applied – which it does not – the facts here weigh in favor of maintaining confidentiality, particularly at this early stage of the proceeding. In past cases where

[3] NMSA 1978, §§ 57-3A-1 to -7.

[4] NMSA 1978, § 14-2-1(A)(6).

the Commission emphasized the public interest in disclosure, the materials at issue directly affected customer rates or service, or were central to arguments on the merits. None of the material at issue here is analogous. No party has identified any particular relevance or public interest in the specific information the BCP Applicants seek to protect.[5]

Taken together, the Order and the Responses take the position that there is a generalized public interest in making all information related to the transaction or the BCP Applicants publicly available on the Commission's website. That is not a balancing test. It is a categorical (perhaps irrebuttable) presumption in favor of disclosure. If accepted, it would negate the protections afforded by the IPRA and the UTSA and render the Commission's own confidentiality procedures meaningless. A reasonable and lawful balancing analysis would preserve the confidentiality of genuine trade secret material. The BCP Applicants' Motion should be granted – either to authorize the interlocutory appeal or to directly reverse the Order.

I. The Motion Meets the Legal Standard for an Interlocutory Appeal.

Rule 1.2.2.31(B)(1) NMAC provides two independent grounds for granting interlocutory appeal: (1) when the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal to the commission from the ruling may materially advance the ultimate disposition of the proceeding; or (2) when circumstances exist which make prompt commission review of the contested ruling necessary to prevent irreparable harm to any person. As explained below, both standards support interlocutory review here.

[5] To the extent the Hearing Examiners have already made findings as to the materiality and relevance of specific material without a hearing or any dispute, the BCP Applicants respectfully request notice and an opportunity to respond to such findings.

A. The Interlocutory Appeal Is Warranted Under Rule 1.2.2.31(B)(1)(b) Because the Order Would Cause Irreparable Harm to the BCP Applicants.

Courts consistently recognize that public disclosure of trade secrets causes irreparable harm. The rationale is simple: disclosure is a bell that cannot be unrung. As the Second Circuit explained, "a trade secret once lost is, of course, lost forever."[6] The U.S. Supreme Court has echoed that principle, holding that "[i]f an individual discloses his trade secret to others who are under no obligation to protect the confidentiality of the information, or otherwise publicly discloses the secret, his property right is extinguished."[7]

Here, the Order compels the BCP Applicants to publicly release documents they have shown to contain trade secrets. Without interlocutory review, that material will be posted to the Commission's website – open to anyone, at any time – and will remain accessible throughout the proceeding and beyond. A final order may be months away. During that time, the BCP Applicants' competitors and counterparties will be free to access, download, and use the information as they see fit. Once disclosed, the Confidential Materials will lose their protected status and commercial value. This is precisely what the rule means by "irreparable harm".

---

[6] *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009); *see also Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1317 (noting that public disclosure of Monsanto's trade secrets "might well" cause irreparable harm to Monsanto); *Martinez v. Cont'l Tire the Americas, LLC*, 2023 WL 2914796, at *3 (D.N.M. Apr. 12, 2023) ("[D]isclosure of the trade secrets would result in irreparable harm to Defendant."); *Heaton v. Gonzales*, 2022 WL 772923, at *5 (D.N.M. Mar. 14, 2022) (holding that plaintiffs had established that confidential purchase prices were trade secrets, and that defendants had "proffered no evidence or argument that contradicts [plaintiffs'] affidavit"); *Restatement (Third) of Unfair Competition*, § 44 (Trade Secrets) ("In evaluating the possibility of irreparable harm in trade secret cases, the courts have recognized that the loss to a trade secret owner from the unauthorized use or disclosure of a trade secret is often difficult to remedy through a subsequent award of monetary relief.").

[7] *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1002 (1984) (explaining why trade secrets constitute a property right protected under the Fifth Amendment).

The Responses do not meaningfully challenge this showing. They offer no evidence rebutting Mr. Baudier's sworn affidavit,[8] and they do not engage with the BCP Applicants' document-by-document justifications in the Motion for Interlocutory Appeal. Nor do they identify any mechanism to remedy the competitive harm that would result if the redacted information becomes public.

At this stage, Rule 1.2.2.31(B)(1)(b) requires only a showing that prompt Commission review is necessary to prevent irreparable harm – not a final ruling on the merits. The BCP Applicants have met this standard. The Commission should grant interlocutory review on that basis.

B. The Interlocutory Appeal Is Also Warranted Under 1.2.2.31(B)(1)(a).

Both the UTSA and the IPRA categorically exempt trade secrets from disclosure, subject only to a narrow exception not present here. Once a party establishes that material qualifies as a trade secret under the TSA, New Mexico law prohibits disclosure unless the opposing party proves that non-disclosure would "conceal fraud or otherwise work injustice."[9] This is not a balancing test. New Mexico law does not allow the Commission to weigh the public's general interest in transparency against a party's statutory right to confidentiality.

Simply stated, this appeal presents a question of law with broad and recurring implications: once a party establishes that a document qualifies as a trade secret, does New Mexico law permit public disclosure absent fraud or injustice? It does not. This question goes to the heart of the statutory protections afforded under the TSA and IPRA. Its resolution will shape how the

[8] *See Heaton v. Gonzales*, 2022 WL 772923, at *5 (D.N.M. Mar. 14, 2022) (holding that plaintiffs had established that confidential purchase prices were trade secret where defendants had "proffered no evidence or argument that contradicts [plaintiffs'] affidavit").

[9] *Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶ 18, 144 N.M. 601.

Commission handles confidentiality determinations going forward. Prompt Commission review would materially advance the disposition of this case and clarify the governing legal standard. The merits of the BCP Applicants' arguments relative to those in the Responses and the Order are discussed below. For the purposes of determining whether an interlocutory appeal is merited, however, it is enough to recognize that there "is substantial ground for difference of opinion," which there is.

II. On the Merits, the Commission or Hearing Examiners Should Reverse the Order and Uphold Trade-Secret Protection for the Confidential Materials.

A. The BCP Applicants Have Established That the Confidential Materials Are Trade Secrets.

The BCP Applicants have met their burden of showing that the Confidential Materials qualify as trade secrets under New Mexico law. As detailed in the Motion for Interlocutory Appeal and in Mr. Baudier's sworn affidavit, this information is neither publicly available nor readily ascertainable by competitors. The BCP Applicants also demonstrated that this material derives independent economic value from remaining confidential. They have taken reasonable steps to protect that confidentiality – including targeted redactions, access restrictions, and formal designation under the Protective Order.

No one has offered a substantive reason to doubt that the Confidential Materials qualify for trade-secret protection. The Responses do not contest that competitors or counterparties would use the redacted information to the BCP Applicants' disadvantage. Nor does the Order. The only critiques offered are that the BCP Applicants' explanations lack sufficient specificity or repeat themes across documents. But those are not legal grounds for denying trade-secret protection. In *Heaton v. Gonzales*, the U.S. District Court for the District of New Mexico – applying *Pincheira* – held that unrebutted affidavit testimony from a company's director sufficed to establish trade-

secret protection, even where the opposing party characterized the testimony as "conclusory" and "self-serving."[10] The same result should follow here.

The Responses also fail to address how the same type of information was treated in past Commission proceedings. Consider private placement memoranda. In the *Lindsay Goldberg – New Mexico Gas Company* transaction, that document was not produced at all.[11] In the *El Paso Electric Co. – IIF US Holding 2 LP* transaction, the Commission accorded it extraordinary protection – it was reviewed *in camera* and never filed of record, even under seal.[12] The BCP Applicants, by contrast, filed their private placement memorandum in full, with limited redactions from the public version.

No party explains why this document – not filed in two comparable transactions – should now be published *in full* on the Commission's public docket, as opposed to with limited redactions as filed by the BCP Applicants. The Commission's own practice supports the BCP Applicants' position. The requested protection is not only reasonable and justified; it is consistent with prior treatment of materially identical documents. The Commission cannot and should not deviate from

[10] *See* 2022 WL 772923, at *5 (D.N.M. Mar. 14, 2022).

[11] *See also in the Matter of the Applications of Public Service Company of New Mexico and New Mexico Gas Company, Inc. for the Abandonment, Purchase and Sale of Gas Utility Assets and Services and for Related Authorizations and Variances*, Case No. 08-00078-UT (referred to herein as *Lindsay Goldberg / Continental - NMGC*).

[12] *In the Matter of the Joint Application of El Paso Electric Company, Sun Jupiter Holdings LLC, and IIF US Holding 2 LP, for Approval of the Acquisition of El Paso Electric Company by Sun Jupiter Holdings LLC and IIF US Holding 2 LP; Approval of a General Diversification Plan; and All Other Authorizations and Approvals Required to Consummate and Implement This Transaction*, Case No. 19-00234-UT *IIF-EPE*, Order Relating to Confidentiality of Private Placement Memorandum, Document # 1182922 (September 23, 2019) (referred to herein as *IIF-EPE*).

this practice "without sufficient prior notice of departure and without reasonable justification as reflected by the record."[13]

1. The BCP Applicants have met the standard for specificity. If Any Doubt Remains, the Hearing Examiners or the Commission Should Hold an Evidentiary Hearing.

The Responses assert – without any evidence – that the BCP Applicants failed to describe the materials' economic value or the resulting harm with sufficient specificity, dismissing the showing as "hypothetical." But the BCP Applicants' affidavit and supporting motion offer a more detailed justification than what the New Mexico Supreme Court accepted in *Pincheira*. There, the defendant's affidavit asserted that:

> [Defendant] believes its procedures for investigating, handling, adjusting, and evaluating casualty claims give [Defendant] an advantage in attracting and keeping policyholders which competitors do not share.
>
> ....
>
> [Defendant] believes these procedures give it a competitive edge with respect to procedures used by other insurance companies with which it competes, and provides a significant benefit to its shareholders and policyholders. This benefit, and the investment that created it, would be lost if these materials were obtained or disclosed to ... competitors.[14]

The affiant further stated that disclosure would destroy that benefit and the investment that created it. The Court credited those assertions as sufficient to justify trade-secret protection.

---

[13] *Matter of Rates & Charges of Mountain States Tel. & Tel. Co.*, 1986-NMSC-019, ¶ 25, 104 N.M. 36; *Hobbs Gas Co. v. New Mexico Pub. Serv. Comm'n*, 1993-NMSC-032, ¶ 7, 115 N.M. 678 ("[R]egulatory treatment which radically departs from past practice without proper notice will not be sustained.").

[14] Id. at 287-88 (quoting the affidavit in support of the assertion that the relevant documents were "confidential, proprietary, and trade secrets . . . .").

The affidavit in *Pincheira* also described the steps taken to maintain confidentiality, "including strict limiting of access, printing confidentiality notices on the documents, entering into agreements of non-dissemination with employees, and keeping the materials in secure locations."[15] Here, the BCP Applicants have made clearer and more specific showings, outlining the content of the redacted materials, explaining their commercial value, and describing the measures taken to protect them.

For example, as to the redactions to the Limited Partnership Agreements, Mr. Baudier explained that – putting aside any securities law issues – the redacted terms hold significant economic value precisely because they remain secret:

> The BCP Applicants and BCP Management derive independent economic value from these terms not being known or readily ascertainable by proper means by competing investment management entities and investment funds. If competing investment management entities and investment funds knew or were able to readily ascertain the information, then they would be able to leverage it and obtain economic value from their ability to compete with, strategize against, and market against the BCP Applicants and BCP Management.
>
> In addition, the BCP Applicants and BCP Management derive economic value from this information not being available to potential or actual future counterparties to transactions (i.e., potential sellers of assets, co-investors, merger partners, etc.). The counterparties would obtain economic value from knowing these elements of how the BCP Applicants and BCP Management structured the present transaction and would incorporate the information into their understanding of how the BCP Applicants and BCP Management could approach the negotiation and undertake structuring a potential transaction.
>
> The BCP Applicants and BCP Management work carefully to maintain the secrecy of the information, so as to avoid the competitive harm that would result. They narrowly limit disclosure and have only shared the information subject to confidentiality protections.

This showing is not only sufficient – it is unrebutted. As noted, in *Heaton v. Gonzales*, the court held that unrebutted affidavit testimony from a company's director was sufficient to establish

[15] Id.

trade-secret protection, even where the opposing party dismissed the testimony as "conclusory" and "self-serving".[16]

2. The repetition in the BCP Applicants' explanations of trade secret status is both warranted and appropriate.

As noted in the Motion, each redaction protects information that competitors and counterparties would use for the same purpose: to gain leverage. This common, commercial harm warrants a common rationale. Additionally, the BCP Applicants' decision to narrowly target their redactions may have created this perceived redundancy. Had they sought to protect a broader range of material, they might have offered more varied justifications. Instead, the BCP Applicants targeted a narrow set of terms, each posing the same strategic risk if disclosed. Competitors and counterparties could exploit that information in the same way. This consistent reasoning in the Request for Confidential Treatment reflects the BCP Applicants' focused, restrained approach to redactions.

B. Trade Secrets Are to Be Maintained Confidentially and Not Disclosed Pursuant to the IPRA and the UTSA, Without Application of a "Balancing Test."

Both the UTSA and the IPRA categorically exempt trade secrets from disclosure, subject only to a narrow exception not present here. Once a party establishes that material qualifies as a trade secret under the UTSA, New Mexico law prohibits disclosure unless the opposing party proves that non-disclosure would "conceal fraud or otherwise work injustice."[17] There is no balancing test that allows the UTSA's and the IPRA's protections to be disregarded.

[16] *See* 2022 WL 772923, at *5 (D.N.M. Mar. 14, 2022).

[17] *Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶ 18, 144 N.M. 601.

The Responses and the Order misapply this framework, asserting that the Commission may override statutory trade secret protection based on generalized concerns about transparency, public interest, or evidentiary relevance. Both Responses cite the same, single Hearing Examiner's Order, but it does not stand as precedent for the proposition that a balancing test controls.[18] As an initial matter, it is not clear what statutory law the *PNM 2018 Confidentiality Order* was applying. It was issued following the amendment to the IPRA to incorporate the UTSA's protection of trade secrets explicitly into the IPRA. However, the *PNM 2018 Confidentiality Order* at one point states that trade secrets were covered by the "catch-all" provision of the IPRA (not the amended version). At another, it correctly identifies that the IPRA was amended to include trade secrets. This confusion is echoed in the Order's erroneous citation to a pre-IPRA-amendment 2015 IPRA compliance guide for the proposition that the IPRA's express trade secret exemption "applies solely to public hospitals, restricting public access to the trade secrets, attorney-client privileged information, and long-range business plans of *public hospitals* discussed in properly closed meeting."[19] That is incorrect as a matter of law.[20]

All that said, the *PNM 2018 Confidentiality Order* did not ultimately apply a balancing test, contrary to the assertion of the Joint Response and the implication of the Staff Response.[21]

---

[18] *In the Matter of Pub. Serv. Co. of New Mexico's Application for Approval of Its Renewable Energy Act Plan for 2019 & Proposed 2019 Rider Rate Under Rate Rider No. 36*, Case No. 18-00158-UT, Order Removing Confidentiality Designation from Consent Agreement and Requiring PNM to File Supplemental Testimony at 20 (September 11, 2018) (hereinafter, "*PNM 2018 Confidentiality Order*").

[19] *See* Order at 12, n. 39 (emphasis in original).

[20] IPRA provides separate exemptions from disclosure for "trade secrets" on the one hand, and for "long-range or strategic business plans of public hospitals discussed in a properly closed meeting," on the other.

[21] Joint Response at ¶ 5 and n. 5; Staff Response at p. 6-8.

Notwithstanding its lengthy consideration of various statutes, it ultimately reached its conclusion on a factual finding that, given that PNM had "ample opportunity" to "prove up the trade secret claim," including a lengthy evidentiary hearing, PNM failed to establish its "inscrutable claim" to trade secret status and its claim failed.[22] Having held that, the *PNM 2018 Confidentiality Order* went on to opine that "even if the record could shed light on the trade secret claim, or the [document] contained any confidential information . . . the [document] is material and relevant to this proceeding and the public interest demands its disclosure . . . ."[23] That statement, however, (1) is dicta; and (2) does not clearly state that the Hearing Examiner would have disregarded trade secret protection if it had been present. Regardless, the opinion was not litigated before the Commission itself and is not controlling Commission precedent.

Staff quotes the *PNM 2018 Confidentiality Order*'s discussion of *Pincheira v. Allstate Ins. Co.* at length. To the extent, however, either Staff or the *PNM 2018 Confidentiality Order* interprets *Pincheira v. Allstate Ins. Co.* as authorizing disclosure based solely on the public interest, it misreads the decision. *Pincheira* confirms the privileged nature of trade secrets and the narrow exception to their disclosure to instances involving fraud or injustice.[24] *Pincheira* also requires a hearing where, as here, a *prima facie* showing has been made establishing a trades secret claims, which is disputed.[25] While the Hearing Examiner in the *PNM 2018 Confidentiality Order* opined that *Pincheira* does not apply to require Hearing Examiners to hold a hearing on a trade secret

[22] *PNM 2018 Confidentiality Order*, at 27.

[23] Id.

[24] *Pincheira*, 2008-NMSC-049, ¶ 40.

[25] *Pincheira*, 2008-NMSC-049, ¶ 3.

claim, the Hearing Examiner also opined that Hearing Examiners can "afford a closed hearing on a good faith trade secret claim in their discretion on a case-by-case basis . . . ."[26]

Staff cites other, inapposite case law from New York construing Rule 26 of the Federal Rules of Civil Procedure. Federal standards governing "confidential commercial information" under Rule 26 have no bearing on whether New Mexico law protects trade secrets under IPRA or the TSA. The Commission must follow New Mexico statutory law, not federal discovery standards or discretionary transparency norms.

While New Mexico has limited case law under the UTSA, its application in other jurisdictions reinforces that the UTSA protects trade secrets and that trade secrets are not subject to a balancing analysis. Rather, the law protects trade secrets, full-stop. For example, the New Hampshire Supreme Court squarely rejected an administrative agency's assertion that overriding public policy considerations can justify disclosure of trade secret information. *CaremarkPCS Health, LLC v. New Hampshire Dept. of Admin. Serv.*, 167 N.H. 583, 116 A.3d 1054 (2015). As it stated, "[w]ith the enactment of the UTSA, the legislature made the policy determination to prohibit the misappropriation of trade secrets . . . To the extent that the [administrative agency] argues that the legislature improperly balanced policy considerations, we observe that matters of public policy are reserved for the legislature, and we therefore leave to it the task of addressing the [agency's] concerns." *Id.* at 590-91 (internal quotations and citations omitted).

[26] Order Removing Confidentiality Designation, Case No. 18-00158-UT. Moreover, that Hearing Examiner had directly examined the claimant's expert witness on the trade secret issue. Arguably, the ruling that a hearing is not required after already having held the hearing is dicta.

Similarly, the Supreme Court of Washington has held that a public records law like IPRA "is simply an improper means to acquire knowledge of trade secret."[27] There, the court found that the UTSA precludes disclosure even when the public record law would not otherwise preclude disclosure.[28]

The plain text of New Mexico's statute suggests results consistent with these sister states. New Mexico's adaptation of the UTSA applies to every "person," a term that includes, *inter alia*, any "government, governmental subdivision or agency or any other legal or commercial entity." *See* NM ST § 57-3A-2(C). Accordingly, the New Mexico UTSA extends its protections even to actions by the Commission or Hearing Examiners. The IPRA does not demand any contrary result. *See* NM ST § 14-2-1 ("Every person has a right to inspect public records of this state except . . . trade secrets.").

Both the UTSA and the IPRA categorically exempt trade secrets from disclosure, subject only to a narrow exception not present here. Once a party establishes that material qualifies as a trade secret under the TSA, New Mexico law prohibits disclosure unless the opposing party proves

[27] *Progressive Animal Welfare Soc. V. University of Washington*, 125 Wash. 2d 243, 884 P.2d 592 (1994).

[28] *See also, e.g.*, *United Healthcare of Ga., Inc. v. Ga. Dept. of Community Health*, 293 Ga.App. 83, 90 (Ga. App. 2008) ("[W]e construe the trade secrets exemption found in [Georgia statutes] to mean that public records are exempt from disclosure if they constitute trades secrets, *even if* they are submitted to a public agency, so long as the submission was 'required by law.'"); *NY Tel. Co. v. Pub. Serv. Comm'n of NY*, 56 N.Y.2d 213, 220 (NY 1982) ("[N]o rationale is suggested why the [Public Service Commission] should not extend the same evidentiary privileges and protection to trade secrets that a court would in a judicial proceeding."); *Rankin Cnty v. Miss. Pub. Serv. Comm'n*, 393 So.3d 1031 (Miss. 2024) ("[U]tilities have the right to protect trade secrets or confidential commercial or financial information from public disclosure") (quotation to Mississippi statute omitted)

that non-disclosure would "conceal fraud or otherwise work injustice."[29] This is not a balancing test.

C. Application of a Balancing Test Would Still Merit Maintaining Confidentiality.

Even if a balancing test is in order – and it is not – then, to be a balancing test, it should weigh the importance to the general public of the specific information at issue. Prior Hearing Examiner orders on confidentiality that apparently weighed the public interest do not support public disclosure as to the material at issue in this matter.

Thus far, it does not appear that there has been any discernment as to the actual significance of any of the specific information at issue – only what amounts to a broad-based assertion that if something has some connection to the BCP Applicants then it must be publicly disclosed. Neither Response singles out any particular information as being material to a Commission order in this matter. The Order states generally that "[t]he documents which the BCP Applicants are moving to withhold from public view provide unique insight into how both the transaction and post-closing dynamics may and will affect NMGC."[30]

The Order and the Responses note various public material provided by the BCP Applicants. There is no discussion, however, of what unique insights into impacts to NMGC the redacted material provides. Nor is there any explanation of why or how the Hearing Examiners have already judged specific information relevant and material to the Commission's ultimate decision, without any dispute over relevance or a hearing. The BCP Applicants submit that none of the material at issue rises to that level. If the Hearing Examiners have made such a determination, then the BCP

[29] *Pincheira v. Allstate Ins. Co.,* 2008-NMSC-049, ¶ 18, 144 N.M. 601.

[30] Order at 24.

Applicants respectfully request notice of the fact determinations that have already been made and an opportunity to address both the actual relevance of the facts the Hearing Examiners have determined and their merits.

Neither Response contained any assertions as to the relevance or materiality, much less the centrality, of any particular information for which confidentiality is asserted. To the extent that parties assert in testimony that certain facts are relevant, the BCP Applicants will have the opportunity to respond in rebuttal; the BCP Applicants do not, based on the current procedural schedule, have an opportunity to respond to factual determinations by the Hearing Examiners prior to hearing.

1. Prior Hearing Examiner orders weighing the public interest as a consideration require closely tying the proposed-confidential material to matters *directly* impacting the public.

The Joint Response asserts that "[t]he public has a right to know and understand the basis and all relevant information that the Commission takes into consideration in reaching its ultimate determination."[31] Where Hearing Examiners have applied a balancing test and found that information should not be confidential, the information in question was central to the case, usually with a direct impact on customer rates.

The PNM 2018 Confidentiality Order is the sole case cited in either the Staff Response or the Joint Response (it was cited in both) for the proposition.[32] As discussed above, it does not actually hold that a balancing test applies. Nevertheless, even if one assumes *arguendo* that it is precedent for application of a balancing test, it still does not support disregarding the UTSA in the present matter. The material in dispute was a contractual "consent agreement"; the Hearing

[31] Joint Response, at 4.

[32] See Staff Response at 8, and Joint Response at 4.

Examiner described that the "consent agreement":

> alters the terms of the PPA [that was at issue in the case]. One of the very things that goes to the heart of PNM's case now before the Commission, the reasonableness of PNM's renewable energy plan, and for which PNM expects the ratepayers will ultimately pay, is something that PNM wants to hide from the public. Every dollar spent on this procurement is a ratepayer dollar. This is precisely why the fundamental right of citizen access to this sort of information is enshrined in New Mexico law. PNM should not be allowed to withhold this information from public view and consideration.[33]

The consent agreement at issue was so significant to the case that a substantial portion of the recommended decision (including even the decretal paragraphs) in the matter was devoted to it. There is nothing among the BCP Applicants' confidential material that is analogous.

In another Commission matter, the utility sought to protect the pricing information and contract terms for construction and operation of power plants by the utility and payment under a purchased power agreement.[34] The Commission initially found that disclosure outweighed any competitive harm because the information was needed for determination of the prudence of costs customers would be required to pay.[35] The Commission quoted with approval language used by a Hearing Examiner in an earlier case, itself quoting from a Nevada Public Utility Commission proceeding denying confidential treatment for the pricing information in a purchased power agreement:

---

[33] *PNM 2018 Confidentiality Order* at 27-28. Some information in that matter was still not required to be disclosed, because it contained "bank account numbers and other protected personal information excepted from disclosure under the IPRA." Id.

[34] *In the Matter of Southwestern Public Service Company's Application Requesting: (1) Issuance of a Certificate of Public Convenience and Necessity Authorizing Construction and Operation of Wind Generation and Associated Facilities, and Related Ratemaking Principles Including an Allowance for Funds Used During Construction for the Wind Generation and Associated Facilities; and (2) Approval of a Purchased Power Agreement to Obtain Wind-Generated Energy*, Case No. 17-00044-UT.

[35] Id. at ¶ 16-18.

> The pricing information indicates what ratepayers will be asked to pay. If the public is asked to pay for the costs of a contract for the production of electricity, the pricing information in the contract cannot be confidential commercial information, especially if the Commission is asked to review the contract to determine whether or not it is a prudent investment. The pricing information is an integral part of the prudency review in an integrated resource plan process. The public has a right to know what it will be asked to pay for during the review of these contracts; thus, it is public information.[36]

(The Commission later, however, granted trade secret protection for material in the same proceeding.)[37] That earlier matter itself concerned claims of confidentiality for a utility's O&M cost projections in a future test year rate case.[38] In yet another matter, also referenced by the Commission, the information at issue was part of a cost study relied upon by the utility.[39]

In each of those proceedings, the confidentiality dispute concerned information that was to be used directly to set customer rates and determine prudency of utility investments and expenditures that formed the basis for rates. There is no such information at issue here; none of the information involves costs to New Mexico Gas Company customers.

There has been no determination that public officials are going to "act" on the information at issue. There is no pending question as to whether the Commission will be able to write a public

---

[36] Id. at ¶ 18, citing Application of Public Service Company of New Mexico for Revision of Its Retail Electric Rates Pursuant to Advice Notice No. 513, Case No. 15-00261-UT, Order Denying PNM's Requests for Confidential Treatment (March 11, 2016), quoting *Application of Nevada Power Co. for Approval of its 2010-2029 Triennial Integrated Resource Plan*, No. 10-02009, 10-03022 & 10-03023, 2010 WL 3181346, ¶ 37 (Nev. PUC July 2, 2010).

[37] See Order

[38] Case No. 15-00261-UT at 8-9. Moreover, in that matter, the claims of potential competitive harm were not supported by affidavit.

[39] Id. at ¶ 19, citing *In the Matter of the Application of PNM Electric Services, a Division of Public Service Company of New Mexico, for approval to provide certain optional services on an experimental basis*, Transcript of Hearing March 6, 1996, Case No. 2668, at pp.155-156. 31 Id. at pp. 161-164. 32 Final Order issued on August 5, 1996, reaffirmed by the Order on Re-hearing issued on November 12, 1996, at pp. 2-3.

order in this proceeding—the information at issue might prove entirely irrelevant to the Commission's ultimate action.

2. The Responses have not explained why the treatment of the BCP Applicants' materials should differ so significantly from how analogous materials were treated in prior proceedings.

The Responses entirely ignored the BCP Applicants' discussion in their Motion regarding the contrast between treatment of material in prior cases versus the treatment of the BCP Applicants' material. They thereby appear to concede the point that the disparate treatment of the BCP Applicants' material is unwarranted.[40] It is unclear how the public interest demands the publication of the BCP Applicants' material when analogous material was not required to be filed, even confidentially.

III. Note Regarding Exhibit BR-12

As discussed in the Motion, the BCP Applicants did not include Exhibit BR-12 in the scope of the Motion. Accordingly, the BCP Applicants filed a public, unredacted version of Exhibit BR-12 on the date required by the Order, having explicitly not sought a stay of application of the Order to that exhibit.[41] The BCP Applicants recognize that the subject matter of Exhibit BR-12 is materially different than the other confidential materials. By complying with the Order as to that exhibit, the BCP Applicants recognize that they have, effectively and intentionally waived any trade secret protection of that information.

---

[40] *C.f. El Paso Elec. Co. v. New Mexico Pub. Regulation Comm'n*, 2023 WL 3166936, at *1 (N.M. May 1, 2023)

("[R]egulatory treatment which radically departs from past practice without proper notice will not be sustained.").

[41] The complaint in the Joint Response that Exhibit BR-12 was filed "without a self-affirmation" is misplaced. The exhibit was part of supplemental testimony. It is not Commission practice to require additional "self affirmations" for exhibits supported by testimony.

IV. Conclusion

For these reasons, the BCP Applicants respectfully request an interlocutory appeal of the Hearing Examiners' Order be permitted. The BCP Applicants additionally and alternatively ask that the Hearing Examiners revise their own ruling and grant the underlying Request for confidential treatment without the need for an interlocutory appeal.

Respectfully submitted,

HARDY MCLEAN LLC

/s/ Dana Hardy
Dana S. Hardy
Timothy B. Rode
125 Lincoln Ave., Ste. 223
Santa Fe, NM 87501
(505) 230-4410
dhardy@hardymclean.com
trode@hardymclean.com

MILLER STRATVERT P.A.
Richard L. Alvidrez
P.O. Box 25687
Albuquerque, NM 87125
Phone: (505) 842-1950
ralvidrez@mstlaw.com

WILKINSON BARKER KNAUER LLP
Raymond L. Gifford
2138 W. 32nd Ave., Suite 300
Denver, CO 80211
Phone: (303) 626-2350
rgifford@wbklaw.com

William DuBois
812 San Antonio Street, Suite 310
Austin, TX 78701
Phone: (737) 770-3412
wdubois@wbklaw.com

Attorneys for the BCP Applicants

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent via email a true and correct copy of the Hearing Examiners' order above, to the parties listed here.

NM Gas Company	
Thomas M. Domme	TMD@jkwlawyers.com;
Brian J. Haverly	BJH@jkwlawyers.com;
NMGC Regulatory	NMGCRegulatory@nmgco.com;
Raymond Gifford	RGifford@wbklaw.com;
Saturn Utilities, LLC	
Dana S. Hardy	DHardy@hardymclean.com;
Jaclyn M. McLean	JMclean@hardymclean.com;
Timothy B. Rode	TRode@hardymclean.com;
William DuBois	WDubois@wbklaw.com;
E. Baker	Ebaker@scottmadden.com;
Coalition for Clean Affordable Energy	
Charles De Saillan	Desaillan.ccae@gmail.com;
Cara R. Lynch	Lynch.Cara.NM@gmail.com;
Don Hancock	Sricdon@earthlink.net;
Mark Ewen	Mewen@indecon.com;
Angela Vitulli	AVitulli@indecon.com;
Jason Price	JPrice@indecon.com;
Stefani Penn	Spenn@indecon.com;
Federal Executive Agencies	
Jelani Freeman	Jelani.Freeman@hq.doe.gov;
Emily Medlyn	Emily.Medlyn@hq.doe.gov;
Dwight Etheridge	DEtheridge@exeterassociates.com;
Incorporated County of Los Alamos	
Daniel A. Najjar	DNajjar@virtuelaw.com;
Philo Shelton	Philo.Shelton@lacnm.us;
Thomas L. Wyman	Thomas.Wyman@lacnm.us;
New Mexico AREA	
Peter J. Gould	Peter@thegouldlawfirm.com;
Kelly Gould	Kelly@thegouldlawfirm.com;
Katrina Reid	office@thegouldlawfirm.com;
New Mexico Department of Justice	

Gideon Elliot	GElliot@nmdoj.gov;
Maria Oropeza	MOropeza@nmdoj.gov;
New Energy Economy	
Mariel Nanasi	Mariel@seedsbeneaththesnow.com;
Christopher Sandberg	CKSandberg@me.com;
Collin Poirot	CPoirot@jd18.law.harvard.edu;
NMPRC – Utilities Staff	
Ryan Friedman	Ryan.Friedman@prc.nm.gov;
Nicholas Rossi	Nicholas.Rossi@prc.nm.gov;
Naomi Velasquez	Naomi.Velasquez1@prc.nm.gov;
Bryce Zedalis	Bryce.Zedalis1@prc.nm.gov;
Jacqueline Ortiz	Jacqueline.Ortiz@prc.nm.gov;
Timothy Martinez	Timothy.Martinez@prc.nm.gov;
Daren Zigich	Daren.Zigich@prc.nm.gov;
Marc Tupler	Marc.Tupler@prc.nm.gov;
Larry Blank	LB@tahoeconomics.com;
Prosperity Works	
Cara R. Lynch	Lynch.Cara.nm@gmail.com;
Ona Porter	Ona@prosperityworks.net;
Western Resource Advocates	
Cydney Beadles	Cydney.Beadles@westernresources.org;
Anna Linden Weller	Annalinden.Weller@westernresources.org;
Caitlin Evans	Caitlin.Evans@westernresources.org;
Michael Kenney	Michael.Kenney@currentenergy.group;
Bradley Cebulko	BCebulko@currentenergy.group;
Meera Fickling	MFickling@currentenergy.group;

PRC General Counsel Division	
Scott Cameron	Scott.Cameron@prc.nm.gov;
LaurieAnn Santillanes	Laurieann.Santillanes@prc.nm.gov;
Alejandro Rettig y Martinez	Alejandro.Martinez@prc.nm.gov;
Russell Fisk	Russell.Fisk@prc.nm.gov;

Hearing Examiners Division	
Patrick Schaefer Co-Hearing Examiner	Patrick.Schaefer@prc.nm.gov;
Ana C. Kippenbrock, Law Clerk	Ana.Kippenbrock@prc.nm.gov;

DATED this April 18, 2025.

NEW MEXICO PUBLIC REGULATION COMMISSION

Ana Kippenbrock

Ana Kippenbrock, Law Clerk