BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO, TXNM ENERGY, INC. AND TROY PARENTCO LLC FOR APPROVAL OF AN ACQUISITION AND MERGER OF TROY MERGER SUB INC. WITH TXNM ENERGY, INC.; APPROVAL OF A GENERAL DIVERSIFICATION PLAN; AND ALL OTHER AUTHORIZATIONS AND APPROVALS REQUIRED TO CONSUMMATE AND IMPLEMENT THIS TRANSACTION	)	
PUBLIC SERVICE COMPANY OF NEW MEXICO, TXNM ENERGY, INC. AND TROY PARENTCO LLC,	)	**Case No. 25-00___-UT**
JOINT APPLICANTS.	)	

DIRECT TESTIMONY AND EXHIBITS

OF

ERIC L. TALLEY

August 25, 2025

NMPRC CASE NO. 25-00_____-UT
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ERIC L. TALLEY

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SELF AFFIRMATION

DIRECT TESTIMONY OF
ERIC L. TALLEY
CASE NO. 25-____-UT

I. INTRODUCTION AND PURPOSE OF TESTIMONY

Q. Please state your name, position, and business address.

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

I have taught numerous classes over the course of my 30-year academic career in the areas of mergers and acquisitions, corporate finance, corporate law, corporate governance, economic analysis of law, business ethics, valuation, contracts, statistics, law and economics, behavioral law and economics, machine learning and law, risk arbitrage, and game theory. On two occasions (2017 and 2022), I have received the Willis L.M. Reese Award for Excellence in Teaching from the graduating class of Columbia Law School.

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

I frequently speak both to academic audiences and to professional associations, including attorneys, utilities regulators, judges, and corporate directors. I have many times been retained to provide training sessions for practitioners, judges, and regulators regarding governance and valuation practices. In particular, I have for the last 17 years conducted training on valuation and finance for state utilities regulators and their staff, typically organized by the Institute for Regulatory Law and Economics, sponsored by University of Colorado and Northwestern University.

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

I have conducted research and published dozens of articles in areas pertaining to corporate valuation, corporate governance, economic analysis of law, bargaining theory, auction design, business judgment and ethics, fiduciary duties, corporate opportunities, securities market regulation, and related topics. My publications have appeared in refereed journals, law reviews, and edited volumes, and I am a referee for a number of academic journals in my field. Many of my recent publications have focused on the architecture and structure of legal texts, including (but not limited to) large transactional documents such as mergers and acquisitions ("M&A") agreements. On multiple occasions, my published scholarship

has been designated as one of the "Ten Best Corporate and Securities Articles of the Year" by the Corporate Practice Commentator.

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

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

Q. Will you receive compensation for appearing in this case?

A. With respect to this matter, I am being compensated at my usual and customary rate of $1,750 per hour. I have been assisted in this matter by staff from Cornerstone Research, who worked under my direction, and for which I receive related compensation.

Q. Will the amount of compensation you receive for appearing in this case depend in any way on the responses you provide in your testimony?

A. No.

Q. What is the purpose of your direct testimony?

A. The purpose of my direct testimony is to support the Joint Application that is the subject of this proceeding ("Joint Application").[1] I address issues including (i) the market environment for TXNM and PNM, (ii) the roles of private equity funds and private infrastructure funds in financial markets, (iii) benefits of private capital and infrastructure fund ownership, and (iv) long-term capital investment approaches and goals of investors.

Q. Briefly summarize your conclusions on these issues.

A. Nothing about the proposed Acquisition's structure or funding, nor anything about private infrastructure fund ownership as contemplated by this Acquisition, should cause concern; to the contrary, as I describe later in my testimony, I believe this form of ownership carries distinct benefits for PNM and for the State of New Mexico. The Commission will be able to regulate PNM just as it does today. The post-Acquisition structure is increasingly common in the utilities sector and should not make PNM more difficult to regulate. The funding of the Acquisition appears reasonable and conservative, and the financial strength

[1] The Transaction that is the subject of the Joint Application will be accomplished through a merger involving TXNM, the Blackstone Infrastructure subsidiary Troy ParentCo LLC ("Troy"), and Troy's subsidiary Troy Merger Sub Inc. ("Troy Merger Sub") (the "Acquisition"). Troy Merger Sub will be merged into TXNM, and the separate corporate existence of Troy Merger Sub will cease. As the surviving corporation, TXNM will be a direct subsidiary of Troy. Troy is indirectly majority owned by Blackstone Infrastructure Partners L.P. and its parallel funds and accounts (collectively, "BIP") and Blackstone Infrastructure Strategies L.P. and its parallel funds and accounts (collectively, "BXINFRA" and, together with BIP, the "Blackstone Infrastructure Funds"). The Blackstone Infrastructure Funds are controlled by Blackstone Infrastructure Management. The entities comprising Blackstone Infrastructure Management are, in turn, indirectly controlled by Blackstone Inc. ("Blackstone"). Blackstone is a publicly traded investment firm listed on the New York Stock Exchange ("NYSE") with the ticker "BX." Witness Sherman describes this Blackstone organizational structure in more detail in his testimony. See also diagram provided as Exhibit A to the Joint Application. "Blackstone Infrastructure," a term I use throughout my testimony, is an umbrella term that refers to Blackstone Infrastructure Management and the funds and accounts directly or indirectly controlled by them, including the Blackstone Infrastructure Funds. *See* Joint Application.

of PNM is further bolstered by proposed protections offered by the Joint Applicants. Ownership by private capital investors, such as a private infrastructure fund, is merely a type of ownership. Such an ownership structure is entirely compatible with utility operation and regulation.

II. ACQUISITION SETTING AND STRUCTURING

Q. Please describe the market environment for TXNM energy and PNM prior to the Acquisition.

A. TXNM is the holding company of two regulated electric utilities, PNM and Texas-New Mexico Power Company ("TNMP"), a Texas corporation.[2] TXNM's common shares are listed on the NYSE with the ticker "TXNM."[3] As of May 16, 2025, *i.e.*, the trading day prior to the announcement of the proposed Acquisition, TXNM had a market capitalization of $4.9 billion and a total enterprise value ("EV") of $10.8 billion.[4] JA Exhibit ELT-2 shows the daily price of TXNM's common shares for the five years prior to May 16, 2025.

TXNM reported total 2024 assets of $11.2 billion, of which $7.4 billion were associated with PNM.[5] JA Exhibit ELT-3 shows TXNM and PNM assets in each of the last five years. As shown in the chart, the 2024 assets for TXNM and PNM represented year-over-year

[2] TXNM Energy, Inc., SEC Schedule DEFM14A, Proxy Statement, filed on July 21, 2025 ("Proxy Statement"), pp. 27, 112. The Proxy Statement is Attachment D to the Joint Application.
[3] Proxy Statement, p. 27.
[4] LSEG Workspace.
[5] JA Exhibit ELT-3. *See also* TXNM Energy, Inc., SEC Form 10-K for period ended December 31, 2024, filed on February 28, 2025 ("TXNM 2024 10-K"), pp. B-15, B-22.

increases of 9% and 9%, respectively, as well as 7% and 6% compound annual growth rates ("CAGR") over the last five years, respectively.

In 2024, TXNM had total revenues of $2.0 billion and operating income of $462 million.[6] JA Exhibit ELT-4 shows TXNM's revenues and operating income for each of the last five years. As shown in the chart, the 2024 revenues (operating income) represented a 2% (52%) year-over-year increase and a 5% (10%) CAGR over the last five years. TXNM reported 2024 net earnings of $2.67 per diluted share.[7] JA Exhibit ELT-5 shows diluted net earnings per share for each of the last five years.

In 2024, PNM had total revenues of $1.4 billion and operating income of $291 million.[8] JA Exhibit ELT-6 shows PNM's revenues and operating income for each of the last five years. As shown in the chart, the 2024 revenues (operating income) represented a -2% (89%) year-over-year change and a 4% (6%) CAGR over the last five years.

In total, TXNM serves more than 800,000 residential, commercial, and industrial customers in New Mexico and Texas.[9] Through TNMP, TXNM has ~9,700 miles of transmission and distribution lines in Texas where it serves more than 260,000 customers across small to medium sized communities (mostly populations < 50,000) in three non-contiguous areas of Texas.[10]

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[6] JA Exhibit ELT-4.
[7] JA Exhibit ELT-5. *See also* TXNM 2024 10-K, p. B-45.
[8] JA Exhibit ELT-6.
[9] Proxy Statement, p. 27.
[10] TXNM 2024 10-K, p. A-2; "At a Glance," *TXNM Energy*, https://www.txnmenergy.com/about-us/at-a-glance.aspx.

PNM has ~15,000 miles of transmission and distribution lines in New Mexico where it serves approximately 550,000 customers across "a large area of north-central New Mexico, including the cities of Albuquerque, Rio Rancho, and Santa Fe, and certain areas of southern New Mexico as well as 9 sovereign nations."[11]

According to an investor presentation from March 2025, TXNM estimated that its 2025–2029 capital investment plan would require total capital expenditures of $7.8 billion.[12] The 2025–2029 capital investment plan includes capital expenditures needed to transform PNM's grid "to support New Mexico's clean energy goals while maintaining customer reliability and affordability."[13] In total, $3.4 billion of the expected 2025–2029 capital expenditures are associated with PNM.[14]

The expected capital investments as measured against multiple metrics are substantial. The total expected TXNM capital expenditures of $7.8 billion over the next five years (2025–2029) represent a 63% increase relative to the prior five years (2020–2024).[15] The total TXNM capital expenditures of $7.8 billion represent 72% of TXNM's EV,[16] 159% of

[11] TXNM 2024 10-K, p. A-3; "At a Glance," *TXNM Energy*, https://www.txnmenergy.com/about-us/at-a-glance.aspx.
[12] *See* "Investor Meetings," *TXNM Energy*, March 11–12, 2025, https://www.txnmenergy.com/site-services/pdf-viewer ("March 2025 Investor Presentation"), pp. 4, 7.
[13] March 2025 Investor Presentation, p. 4.
[14] March 2025 Investor Presentation, pp. 7, 18.
[15] Calculated as $7.8 billion / $4.8 billion. Total capital expenditures for 2020–2024, as measured by "[a]dditions to utility and non-utility plant" as recorded in TXNM's financial statements, were $4.8 billion. *See* TXNM 2024 10-K, p. B-13; PNM Resources, Inc., SEC Form 10-K for period ended December 31, 2023, filed on February 29, 2024 ("TXNM 2023 10-K"), p. B-13; PNM Resources, Inc., SEC Form 10-K for period ended December 31, 2022, filed on February 28, 2023 ("TXNM 2022 10-K"), p. B-13.
[16] Calculated as $7.8 billion / $10.8 billion. Based on TXNM's EV as of May 16, 2025, *i.e.*, the trading day prior to the announcement of the proposed Transaction.

TXNM's market capitalization,[17] 70% of TXNM's 2024 total assets,[18] and 390% of TXNM's 2024 total revenues.[19] The total PNM capital expenditures of $3.4 billion represent 46% of PNM's 2024 total assets[20] and 243% of PNM's 2024 total revenues.[21] TXNM's expected capital investments are large in isolation and also substantial in relation to those of TXNM's industry peers. According to capital expenditure data analyzed by Prof. Damodaran as of January 2025,[22] companies in the "power" industry (which includes TXNM in Prof. Damodaran's data) have an average net capital expenditure ("net capex")[23] to revenue ratio of 24% and an average net capex to EBIT[24] ratio of 136%.[25] TXNM's forecasts imply that, over the next five years, TXNM's net capex ratios will be substantially *above* the industry averages. As shown in JA Exhibits 7.A–B, between 2025 and 2029, TXNM's forecasts imply that its net capex to revenue ratio will range from 35% to 43% and that its net capex to EBIT ratio will range from 140% to 206%.

In order to fund this substantial 2025–2029 capital investment plan, TXNM estimated that it would need to raise an additional $1.3 billion in equity capital.[26] This is equivalent to a

[17] Calculated as $7.8 billion / $4.9 billion. Based on TXNM's market capitalization as of May 16, 2025, *i.e.*, the trading day prior to the announcement of the proposed Transaction.
[18] Calculated as $7.8 billion / $11.2 billion.
[19] Calculated as $7.8 billion / $2.0 billion.
[20] Calculated as $3.4 billion / $7.4 billion.
[21] Calculated as $3.4 billion / $1.4 billion.
[22] Aswath Damodaran, "Capital Expenditures by Sector (US)," *NYU Stern School of Business*, January 2025, https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/capex.html.
[23] Net capex represents capital expenditures net of depreciation and amortization.
[24] EBIT is shorthand for earnings before interest and taxes. Prof. Damodaran's analysis uses an after-tax measure of EBIT calculated as EBIT * (1-t), where t is the effective tax rate.
[25] Aswath Damodaran, "Capital Expenditures by Sector (US)," *NYU Stern School of Business*, January 2025, https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/capex.html.
[26] *See* March 2025 Investor Presentation, p. 9.

sizable 27% of TXNM's market capitalization[27] and, according to the testimony of Witness Tarry, represents more than double the amount of equity that TXNM issued in the prior ten years.[28] I will return to this point later in my testimony, when I address some of the challenges and costs associated with secondary stock offerings.

Q. Please describe the role of private capital investment funds and private infrastructure funds in financial markets.

A. Private capital markets represent markets for investments in privately-held equity, debt, and real estate, in contrast to, *e.g.*, stock, bond, and real estate investment trust ("REIT") securities that are publicly traded on domestic and international exchanges. Although smaller than global public securities markets, the size of private capital markets is significant and continues to grow. According to S&P Global, "[p]rivate markets are experiencing significant growth and transformation, fueling investments in infrastructure, energy transition, and more."[29] By the end of 2023, global private market assets under management ("AUM") had grown to ~$12 trillion, up from $10 trillion just two years prior, with S&P Global projecting further growth to reach $18 trillion by 2027. As of 2023, more than 60% of global private market AUM (~$7.3 trillion) was invested in North America.[30]

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[27] Calculated as $1.3 billion / $4.9 billion. Based on TXNM's market capitalization as of May 16, 2025, *i.e.*, the trading day prior to the announcement of the proposed Transaction.
[28] As Mr. Tarry notes in his testimony, TXNM has raised $589 million through equity offerings in the past 10 years.
[29] "Private Markets – A Growing, Alternative Asset Class," *S&P Global*, https://www.spglobal.com/en/research-insights/market-insights/private-markets.
[30] "Private Markets – A Growing, Alternative Asset Class," *S&P Global*, https://www.spglobal.com/en/research-insights/market-insights/private-markets.

Amongst the various classes of private-market assets noted above, equity investments comprise the largest share, with global 2023 AUM of ~$5 trillion.[31] According to Morgan Stanley, private equity "can be defined as equity or equity-like investments made into private companies or assets (i.e., not publicly traded or listed on a stock exchange)" and "private equity fund managers, also known as general partners (GPs), are analogous to the managers of mutual funds, with a key difference being that these general partners construct portfolios of privately held, rather than publicly traded, companies or assets."[32] Private equity funds typically hold their investments over multi-year periods, with terminal dates varying by fund.[33]

Within the category of private investments in equity, moreover, there are many variations. One such variation involves time: While some funds are explicitly time limited, holding their investments over a specified number of years (varying by fund), others are "evergreen" funds, which means they are open-ended and do not have a prescribed terminal date (as is the case with mutual funds which invest in publicly traded equities). Such open-ended funds have the ability to raise additional equity investments from both new and existing investors.[34]

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[31] "Private Markets – A Growing, Alternative Asset Class," *S&P Global*, https://www.spglobal.com/en/research-insights/market-insights/private-markets; Hugh MacArthur et al., "Private Equity Outlook 2025: Is a Recovery Starting to Take Shape?" *Bain & Company*, March 3, 2025, https://www.bain.com/insights/outlook-is-a-recovery-starting-to-take-shape-global-private-equity-report-2025/.

[32] "An Introduction to Private Equity Basics," *Morgan Stanley*, October 11, 2024, https://www.morganstanley.com/im/en-us/individual-investor/insights/articles/introduction-to-private-equity-basics.html.

[33] "An Introduction to Private Equity Basics," *Morgan Stanley*, October 11, 2024, https://www.morganstanley.com/im/en-us/individual-investor/insights/articles/introduction-to-private-equity-basics.html.

[34] "The Compelling Case for an Allocation to Semi-Liquid Evergreen Private Equity," *Morgan Stanley*, March 11, 2025, https://www.morganstanley.com/im/en-us/individual-investor/insights/articles/evergreen-private-equity-funds.html.

A recent report from consulting firm Bain & Company shows that global private equity assets under management have increased ~7x over the last 20 years (CAGR 11%).[35] In the U.S., a Morgan Stanley analysis shows that, over the last 25 years (*i.e.*, since 2000), the number of private equity-backed companies has increased ~5x from just under 2,000 to almost 12,000.[36] Over the same time period, the number of publicly listed companies in the U.S. has *decreased* by more than 40%.[37] While public markets remain substantially larger—the total market capitalization of publicly listed companies in the U.S. alone was $62 trillion in 2024—private capital markets continue to expand rapidly, and private equity is a key asset class for the economy and American investors.[38]

[35] Hugh MacArthur et al., "Private Equity Outlook 2025: Is a Recovery Starting to Take Shape?" *Bain & Company*, March 3, 2025, https://www.bain.com/insights/outlook-is-a-recovery-starting-to-take-shape-global-private-equity-report-2025/.
[36] "The Compelling Case for an Allocation to Semi-Liquid Evergreen Private Equity," *Morgan Stanley*, March 11, 2025, https://www.morganstanley.com/im/en-us/individual-investor/insights/articles/evergreen-private-equity-funds.html.
[37] "Listed Domestic Companies, Total - United States," *World Bank Group*, https://data.worldbank.org/indicator/CM.MKT.LDOM.NO?locations=US. The data shows that the number of listed domestic companies in the U.S. peaked at just over 8,000 in 1996, before falling to ~6,900 by 2000. By 2024, the number had decreased by another ~40% to ~4,000.
[38] "Market Capitalization of Listed Domestic Companies (Current US$) – United States," *World Bank Group*, https://data.worldbank.org/indicator/CM.MKT.LCAP.CD?locations=US.

Investments in private capital funds are often relatively illiquid as compared to public market assets such as mutual funds, and "[h]istorically, private equity has been associated primarily with institutional investors and family offices that meet certain requirements for wealth, income, or financial knowledge (i.e., qualified purchasers) and that can tolerate illiquidity and a relatively long investment horizon."[39] The ability to invest in private capital assets is increasingly becoming available to retail investors. For instance, in partnership with investment management firm Capital Group, KKR recently announced plans to create a "series of hybrid funds that will invest in both publicly and privately traded assets" that will "target mass-affluent clients, or those who invest between $100,000 and $1 million."[40] In addition, retail investors seeking exposure to the performance of private equity assets can invest in publicly traded shares of certain private equity investment management companies such as Blackstone.[41] A recent presidential executive order, moreover, could also facilitate access to private capital assets for individual retirement account investors (such as through defined contribution plans, often referred to as "401(k)" plans).[42]

Another source of variation within the category of private investments in equity is industry focus. Infrastructure funds, such as the Blackstone Infrastructure Funds, focus on assets

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[39] "An Introduction to Private Equity Basics," *Morgan Stanley*, October 11, 2024, https://www.morganstanley.com/im/en-us/individual-investor/insights/articles/introduction-to-private-equity-basics.html.

[40] Justin Baer, "American Funds Parent Launching Partnership With KKR to Move Into Private Assets," *The Wall Street Journal*, May 23, 2024, https://www.wsj.com/finance/investing/american-funds-parent-launching-partnership-with-kkr-to-move-into-private-assets-114430d0.

[41] Blackstone was one of the first major private equity investment management firms to go public. Since Blackstone's 2007 initial public offering ("IPO"), several other major private equity investment management companies have also gone public, including KKR (2010), Apollo Global (2011), The Carlyle Group (2012), EQT (2019), Bridgepoint (2021), and TPG (2022). *See* "Ringing in Big Changes: PE Firms Weigh IPOs in 2024," *Pitchbook*, December 14, 2023, https://pitchbook.com/news/articles/private-equity-ipos-weekend-pitch.

[42] Jennifer A. Dlouhy and Allison McNeely, "Trump Signs Order Easing Path for Private Assets in 401(k)s," *Bloomberg*, August 7, 2025, https://www.bloomberg.com/news/articles/2025-08-07/trump-to-sign-order-easing-path-for-private-assets-in-401-k-s.

that are essential for economic and social activity including: (i) public-private partnership assets, such as hospitals and toll roads, (ii) regulated utilities, such as gas and electric utilities as well as water and waste facilities, and (iii) renewable energy assets, such as wind power plants, solar power stations, and battery storage facilities.[43] While infrastructure companies and assets differ in their risk-return characteristics,[44] relative to traditional private equity funds which typically target a fund internal rate of return ("IRR") between 20% and 25%,[45] private infrastructure funds typically target lower returns (with target fund IRRs of 6% to 15%).[46] Infrastructure funds' lower but more stable returns are nonetheless valuable to investors because of their relative safety and low correlation to other asset classes.

[43] Maria Surina, "Powering the Future: Infrastructure Trends, Performance, and Portfolio Impact," *Cambridge Associates*, July 2025, https://www.cambridgeassociates.com/insight/powering-the-future-infrastructure-trends-performance-and-portfolio-impact/.

[44] Based on their risk-return characteristics, infrastructure companies and assets can be classified as either "core," "core-plus," "value-add," or "opportunistic." Core infrastructure investments have modest capital appreciation profiles and stable predictable cash flows supported by long-term contracts. Core-plus infrastructure investments seek higher capital appreciation than core investments which may require some growth capital expenditures. Value-add infrastructure investments seek higher capital appreciation than core-plus investments and typically require substantial growth capital expenditures and/or operational improvements. Opportunistic infrastructure investments seek higher capital appreciation than value-add investments and typically require substantial growth capital expenditures and operational improvements to generate regular cash flows. *See, e.g.*, "Infrastructure: A Primer," *Hamilton Lane*, https://www.hamiltonlane.com/en-us/education/private-markets-education/infrastructure-primer.

[45] Paul Gompers et al., "What Do Private Equity Firms Say They Do?" *Journal of Financial Economics*, 121(3), 2016, pp. 449–476 ("Gompers et al. (2016)") at p. 450.

[46] "Infrastructure: A Primer," *Hamilton Lane*, https://www.hamiltonlane.com/en-us/education/private-markets-education/infrastructure-primer.

A recent article from Preqin, which is a leading provider of data on private capital markets, shows that 2024 global private infrastructure assets under management were ~$1.5 trillion. This figure represents an increase of almost ~3x over just the last 10 years (from less than $400 billion in 2014 to ~$1.5 trillion in 2024).[47] Concurrent with the rise in private infrastructure assets under management, according to a report from Deloitte, "[t]he US power sector is expected to require substantial and sustained capital investments over the next two to three decades to fund rising electricity needs" and "[e]lectric power companies and independent power producers are increasingly seeking private capital, such as private equity and infrastructure funds, to finance projects."[48] In other words, as private capital markets continue to expand rapidly, private infrastructure funds are becoming a key asset class for American investors and are also providing a vital source of capital in the utilities sector and the economy overall.

Q. Please summarize the pre and post-acquisition corporate structures of PNM and its parent companies.

A. Today, PNM is owned by TXNM, which is a holding company that owns two regulated utilities, PNM and TNMP.[49] TXNM common stock is traded on the NYSE and is owned, traded, and held by public shareholders of varying types, sizes, and configurations—both known and unknown. As of July 1, 2025, TXNM's five largest shareholders were the parent holding companies or subsidiaries of BlackRock, Inc., the Vanguard Group, Troy

[47] "Infrastructure in 2025: The Outlook for Fundraising, Deals, and Performance," *Preqin*, January 16, 2025, https://www.preqin.com/news/infrastructure-in-2025-the-outlook-for-fundraising-deals-and-performance.
[48] Marlene Motyka et al., "Funding the Growth in the US Power Sector," *Deloitte*, February 26, 2025, https://www.deloitte.com/us/en/insights/industry/power-and-utilities/funding-growth-in-us-power-sector.html.
[49] The respective structures discussed in this section are illustrated in diagrams provided as Joint Application, Ex. A.

TopCo LP ("Troy TopCo"),[50] FMR LLC, and T. Rowe Price Investment Management, Inc.[51] Collectively these large, professional investment managers hold approximately 40% of TXNM's common stock on behalf of their investors.[52] The remaining equity ownership is currently split amongst a vast number of other investors, both retail and institutional, whose identities are not disclosed in TXNM's filings.

Post-Acquisition, PNM would continue to be owned by TXNM. However, TXNM would become an indirect, wholly owned subsidiary of Troy, which itself would be indirectly wholly owned and controlled by Blackstone Infrastructure. Consistent with common private capital fund ownership structures, there would be some additional layers in the corporate structure so as to allow for flexibility over long holding periods and to ensure limited liability to the benefit of both the portfolio company and its private capital owner.[53] The Blackstone Infrastructure Funds, which I understand will remain the majority investors in Troy, have open-ended, perpetual capital structures, facilitating future capital raising and enabling a long-term investment approach, which are conducive to responsible utility stewardship and can create appreciable value both for investors and the New Mexico communities PNM serves.[54]

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[50] Concurrent with the signing of the Merger Agreement, TXNM entered into a Stock Purchase Agreement with Troy and Blackstone Infrastructure affiliate Troy TopCo, whereby TXNM sold Troy TopCo 8 million shares of TXNM common stock for aggregate consideration of $400 million, making Troy TopCo a holder of 7.59% of TXNM common stock as of July 1, 2025. *See* Proxy Statement, pp. A-1, 43, 105.
[51] Proxy Statement, p. 105.
[52] Proxy Statement, p. 105.
[53] Witness Sherman describes this Blackstone organizational structure in more detail in his testimony.
[54] *See* Joint Application. *See also* "Blackstone Infrastructure Partners Closes on $14Bn in Commitments in its Inaugural Fundraising Phase," *Blackstone*, June 18, 2019, https://www.blackstone.com/news/press/blackstone-infrastructure-partners-closes-on-14bn-in-commitments-in-its-inaugural-fundraising-phase/.

To effectuate the Acquisition, Troy Merger Sub, a direct, wholly owned subsidiary of Troy, was created for the sole purpose of entering into the Merger Agreement. Upon completion of the merger, Troy Merger Sub will cease to exist and TXNM will continue as the surviving corporation. As I will expand upon in more detail below, this type of transaction structure is referred to as a reverse triangular merger. Reverse triangular mergers are a common structure for M&A transactions in which acquirors wish to continue operating target companies as subsidiaries.[55] With the target corporation surviving the merger, the reverse triangular merger structure allows buyers to preserve, among other things, the target company's licenses, permits, contracts, and other agreements that might otherwise be terminated or require renegotiation under a direct acquisition.[56] Blackstone Infrastructure's use of the reverse triangular merger structure is consistent with its expressed goal of continuing to operate TXNM independently of its other portfolio companies, and it is neither surprising nor remarkable.

In short, PNM is at present owned by a publicly traded company with a vast number of stockholders who hold their investments in TXNM through investment accounts, mutual funds, and exchange traded funds ("ETFs"). Post-Acquisition, PNM would have several levels of upstream ownership leading to Blackstone Infrastructure Management, which will manage PNM on behalf of investors. While the Acquisition ostensibly adds additional layers in the corporate structure between PNM and its ultimate economic owners, both the transaction

[55] *See, e.g.*, Jose Soto, "What is a Reverse Triangular Merger?" *Surfside Capital Advisors*, October 24, 2024, https://www.surfcapadvisors.com/2024/10/24/what-is-a-reverse-triangular-merger/; "What is a Reverse Triangular Merger?" *Woodruff Sawyer*, September 3, 2021, https://woodruffsawyer.com/insights/spacs/reverse-triangle-merger.
[56] *See, e.g.*, Jose Soto, "What is a Reverse Triangular Merger?" *Surfside Capital Advisors*, October 24, 2024, https://www.surfcapadvisors.com/2024/10/24/what-is-a-reverse-triangular-merger/; "What is a Reverse Triangular Merger?" *Woodruff Sawyer*, September 3, 2021, https://woodruffsawyer.com/insights/spacs/reverse-triangle-merger.

structure and layers of associated entities are common in private capital ownership structures as they allow for flexibility over long holding periods and limited liability to the benefit of both the portfolio company and its private capital owners.

Q. Do you believe the structure of ownership of PNM post-acquisition would be more complex or difficult to regulate?

A. No. Right now, PNM is a wholly owned subsidiary of TXNM. The proposed Acquisition envisions that PNM's structure will be left intact as a wholly owned subsidiary of TXNM, and that its equity cushion will even be augmented further. The NMPRC's jurisdiction over PNM would remain unchanged, and PNM would remain bound by existing rules, regulations, and orders; PNM would also be bound by any additional regulatory requirements that the NMPRC might promulgate in the future. TXNM will remain the holding company of PNM (just as it is today), with both PNM's and TXNM's management teams and headquarters remaining in place after completion of the Acquisition.[57] Finally, as noted above, the equity ownership structure of TXNM will be simplified, with a single stockholder taking the place of the current population of public stockholders (whose number and characteristics are indeterminate).

Regardless of whether TXNM is publicly traded or a privately held entity, the NMPRC would continue to receive (and be able to request additional) information on PNM to fulfill its regulatory

[57] I understand that Troy, backed by Blackstone Infrastructure, has committed to keeping TXNM and PNM's headquarters in New Mexico as long as the companies are owned by Troy. The Joint Applicants' Regulatory Commitments are Exhibit B to the Joint Application.

mandate.[58] While, after consummation of the Acquisition, TXNM would no longer be subject to Securities and Exchange Commission ("SEC") reporting requirements, the lack of such reporting should not impede regulatory oversight as the purpose of regular SEC reporting is to ensure that investors in a company are aware of material information so they may make informed, rational investment decisions.[59] Securities laws were designed to protect investors; thus, companies are required to disclose information in their SEC filings that would be material to capital investors, not necessarily for other stakeholders (such as customers or regulators). While there may be overlap in the information that investors, customers, and regulatory bodies consider relevant, that is a byproduct of the disclosure requirements which are designed to protect investors. To address this disclosure mismatch, regulatory bodies such as the Federal Energy Regulatory Commission ("FERC") have specific reporting requirements for utilities above and beyond SEC filings so they may receive the more targeted information necessary to fulfill their regulatory mandates. As Mr. Monroy discusses in his testimony, PNM will continue to meet the FERC reporting requirements which are designed to ensure that regulators have the relevant information they need.

[58] I will note that numerous privately held investor-owned utilities have existed in the United States for many years; FERC and PRCs have been able to fulfill their regulatory duties regarding these utilities.

[59] Paul Munter, "Assessing Materiality: Focusing on the Reasonable Investor When Evaluating Errors," *U.S. Securities and Exchange Commission*, March 9, 2022, https://www.sec.gov/newsroom/speeches-statements/munter-statement-assessing-materiality-030922 ("Under our federal securities laws, public companies are required to disclose certain financial and other information to investors. The basic premise of this disclosure-based regulatory regime is that if investors have timely, accurate, and complete financial and other information, they can make informed, rational investment decisions….The Supreme Court has held that a fact is material if there is: 'a substantial likelihood that the ... fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.'").

I understand that TXNM and Blackstone Infrastructure will not issue any incremental debt resulting from the proposed Acquisition.[60] I further understand that Blackstone Infrastructure has already invested $400 million in common equity in TXNM "intended to provide TXNM financing necessary for the execution of TXNM's business plan during the interim period before the consummation of the merger."[61] Additionally, it is my understanding that Blackstone Infrastructure has also allowed TXNM to raise an additional $525 million in equity in order to "support TXNM's business plan, ongoing operations and growth," $200 million of which has already been raised by TXNM as of today's date (from investors not affiliated with Blackstone Infrastructure).[62]

My understanding is that PNM will continue to be held as a separate operating subsidiary without any funds, assets, or cash flows commingled with any Blackstone Infrastructure affiliates.[63] PNM will not engage in intercompany debt, lending, or cross-default provisions with other Blackstone Infrastructure affiliates and thus debt incurred by other affiliates of Blackstone Infrastructure will have no recourse to PNM's assets.[64] The proposed Acquisition does not appear to involve or contemplate the integration of PNM's operations with other operating entities.

[60] Witness Boyd discusses this in more detail in her testimony.
[61] Proxy Statement, p. 44. As noted above, concurrent with the signing of the Merger Agreement, Troy TopCo invested $400 million in newly issued TXNM shares. *See* Proxy Statement, pp. A-1, 43, 105.
[62] Witness Boyd discusses this in more detail in her testimony. *See also* Proxy Statement, p. 44. On June 24, 2025, TXNM entered into a Stock Purchase Agreement with Zimmer Partners, LP and issued common shares worth approximately $200 million. *See* TXNM Energy, Inc., SEC Form 8-K, filed on June 24, 2025, Item 1.01. *See also* Joint Application.
[63] *See* Joint Application, Ex. B.
[64] *See* Joint Application, Ex. B.

Moreover, I understand that Troy, backed by Blackstone Infrastructure, has committed to holding its investment in PNM for the long term, and in any event no less than a minimum of 10 years.[65] This is not surprising, given the perpetual, open-ended structures of the Blackstone Infrastructure Funds, and their concomitant alignment with long term investments. As I will discuss later in my testimony, one of the several benefits of private capital and private infrastructure fund ownership of companies such as electrical utilities is the alignment of the long-term investment horizon of a private infrastructure fund with the long-term investment needs of a portfolio company. Because the portfolio company does not need to consider the short-term stock price impacts of its capital and investment plans, it can plan for the long-term unburdened by the vagaries of stock market sentiment and shareholder activists, each of which can influence management investment and operational decision making in publicly traded companies such as TXNM.

Q. Is this transaction structure common among transactions involving public utilities?

A. My review of the documents in this case reveals a transaction structure, the reverse triangular merger, that is eminently unremarkable in the M&A space generally, and the utilities space in particular. It is, in fact, the principal transaction structure that I teach to my mergers and acquisitions students. For a variety of reasons, a buyer (often referred to as the "parent") will prefer to accomplish an acquisition through one or more special purpose entities ("SPEs")

[65] I understand that Troy is committed to holding a controlling interest in PNM for 10 years. As Troy serves as Blackstone Infrastructure's investment vehicle for TXNM, I understand that Blackstone Infrastructure cannot sell out of Troy without NMPRC approval, effectively committing Blackstone Infrastructure to a minimum 10 year holding period. *See* Joint Application, Ex. B.

sometimes known as "acquisition subs" or "catalysts" that are specially created for the express purpose of consummating the acquisition. The ultimate transaction is then formally executed and consummated as and between the target company and the acquisition sub(s), with the surviving post-acquisition entity becoming a wholly owned subsidiary of the parent.

The reason for this structure emanates principally from transaction cost management goals that have little to do with the issues surrounding this regulatory proceeding. Using an acquisition sub is typically the easiest and most expedient way to authorize the purchase from the buyer side, as well as to manage a variety of contractual issues of the target firm when its assets and liabilities are to remain intact with the surviving entity (as discussed above). There are often tax reasons to utilize specific SPE structures for effectuating an acquisition as well. I teach my students to expect the acquisition sub structure for most types of acquisitions, regardless of whether private capital buyers are involved or not.

In addition to the aforementioned rationales for consummating an acquisition through a catalyst, a final attribute that is important for this transaction comes through something known as "asset partitioning." Corporations, limited liability companies ("LLCs"), limited liability partnerships ("LLPs"), and other limited liability entities provide important buffers against systemic risks and liability flows that can unsettle an otherwise healthy business or set of businesses. It is critical, moreover, to appreciate that the benefits of limited liability run both ways. First, it shields an equity owner from cataclysmic liabilities incurred at the company level. But just as important, limited liability shields the *company* from cataclysmic liabilities incurred by the *owner and the*

owner's affiliate entities.[66] As a matter of corporate law, the general rule is that the operating company cannot be made to answer for debts or liabilities of its parent/affiliates, absent a showing that failure to allow such "corporate veil piercing" would permit a fraud or create an injustice (truly high bars, and rarely invoked). Moreover, the limited liability veil operates at each level of ownership in a company owned through a succession of intermediate entities. For example, if a parent holding company owned 100% of a direct subsidiary A, which itself, in turn, owned 100% of a "grandchild" subsidiary B, it would be extremely difficult for a creditor of the parent to access the assets of the grandchild subsidiary B under standard legal prescriptions of veil piercing. To do so, that creditor would have to navigate a successful "veil piercing" case twice over, first as between the parent and subsidiary A, and then as between subsidiary A and next subsidiary B. Consequently (and above and beyond the Regulatory Commitments discussed below), additional layers of ownership entities tend to insulate the operating company from the changes in fortune associated with the parent's other obligations (or those of other affiliates further up the ownership hierarchy).

As I will expand upon in more detail later in my testimony, the use of special purpose vehicles to consummate an acquisition transaction is overwhelmingly the favored structural choice in M&A transactions involving North American utilities companies. This is unsurprising, and it coheres with what I teach my students: that SPE structures are overwhelmingly likely in all types of mergers and acquisitions.

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[66] *See, e.g.*, Henry Hansmann and Reinier Kraakman, "The Essential Role of Organizational Law," *Yale Law Journal*, 110(3), 2000, pp. 387–440.

Q. Please describe the "ring-fencing" measures committed to by the joint applicants.

A. I have reviewed the Regulatory Commitments set forth in the Joint Application. In my opinion, and experience, these measures represent well-accepted vehicles for assuring the governance, operational, and financial independence of PNM from the other companies in the corporate structure. These include (*inter alia*) provisions that ensure: (i) that three members of the PNM board will be independent directors, two of whom will be New Mexico residents; (ii) the decision making authority of PNM's Board of Directors to set, among other things, PNM's dividend policy, debt issuance, capital expenditures, and operations and maintenance expenses; (iii) the ability of a majority of PNM's independent directors to prevent PNM from making dividends if doing so would trigger debt covenants; and (iv) that the PNM Board of Director compensation will not be tied to the performance—whether financial, operational, or other—performance of any entity other than PNM.[67] In addition, the Joint Applicants have committed to, among others: (i) not seeking recovery of transaction or transition costs related to the Acquisition from customers in PNM's rates; (ii) not seeking recovery in rates of any transaction acquisition premium; (iii) PNM, TXNM, and Troy abiding by Commission affiliate standards as they apply to PNM and maintain an arm's-length relationship with TXNM and Troy and its affiliates, consistent with any variance accepted by the Commission.; (iv) PNM maintaining standalone credit ratings from at least two organizations registered with the SEC; and (v) PNM maintaining accurate, appropriate, and detailed books, financial records and accounts, including checking and other bank accounts, and custodial and other securities separate and distinct from other entities.[68]

[67] *See* Joint Application, Ex. B.
[68] *See* Joint Application, Ex. B.

III. BENEFITS OF PRIVATE CAPITAL AND PRIVATE INFRASTRUCTURE FUND OWNERSHIP

Q. Does it appear to you that, as a policy matter, the State of New Mexico views private capital or private infrastructure fund investments as harmful or dangerous?

A. No. To the contrary, the State of New Mexico currently holds several significant private capital investments for the benefit of New Mexico citizens and retirees. According to its website, the New Mexico State Investment Council ("SIC"), which invests (among other things) the retirement funds for New Mexico state employees, has been consistently making investments in private capital funds since 1989. Currently, the SIC has a long-term allocation target of 13% for private equity investments and holds more than $4.5 billion in private equity assets, including private infrastructure funds.[69] The SIC states that it has invested in "hundreds of private companies, through dozens of managers and more than 100 limited partnerships."[70] Furthermore, the SIC's 2025 Annual Investment Plan specifically states that it will seek "[g]reater exposure to private market assets over publicly-traded assets" over the next seven to ten years.[71] In addition, the SIC has specifically placed its trust in Blackstone and Blackstone Infrastructure. In 2018, the SIC committed to a $100 million investment in the Blackstone Infrastructure Fund BIP, thus making New Mexico citizens direct beneficiaries of the Fund's investments, including the proposed

[69] These figures are current as of August 22, 2025. *See* "Private Equity Investments," *New Mexico State Investment Council*, https://www.sic.state.nm.us/investments/alternative-investments/private-equity-investments/.
[70] "Private Equity Investments," *New Mexico State Investment Council*, https://www.sic.state.nm.us/investments/alternative-investments/private-equity-investments/.
[71] "FY 2025 Annual Investment Plan," *New Mexico State Investment Council*, September 17, 2024, https://www.sic.state.nm.us/wp-content/uploads/2024/10/Annual-Investment-Plan-FY25.pdf.

investment in TXNM.[72] More recently, in 2022, the State of New Mexico and the SIC also committed to investing $175 million in other Blackstone private capital funds.[73] The fact that the State of New Mexico and the SIC view private capital and private infrastructure fund investments as desirable vehicles for investing, and accordingly have committed billions of dollars' worth of state retiree funds to investments in the space, stands as persuasive rebuttal to any categorical assertion that private capital structures or private infrastructure fund investments would be unacceptably risky or at odds with the state's public policy goals.

[72] "Minutes of the New Mexico State Investment Council Meeting," *New Mexico State Investment Council*, April 24, 2018, https://api.realfile.rtsclients.com/PublicFiles/7c4d03015a164367930068bfbb95f6a0/e2ec847a-24cf-4fcb-98b9-131514adbd28/4.24.2018%20-%20SIC%20Minutes.pdf ("April 24, 2018 SIC Meeting Minutes"), pp. 2–3. The April 24, 2018 SIC Meeting Minutes were obtained via the "2018" folder on the "Meeting Materials" tab of the New Mexico State Investment Council website at https://www.sic.state.nm.us/council-committees/meeting-materials/. The meeting minutes also indicate that the SIC had previously invested in four other Blackstone funds. *See* April 24, 2018 SIC Meeting Minutes, p. 2.

[73] "For the year ended December 31, 2022, seven new commitments were made totaling approximately $694MM: …3. $75MM Blackstone Real Estate Partners Asia III (Non-Core) 4. $100MM Blackstone Real Estate Partners X (Non-Core)[.]" "FY2024 Annual Investment Plan," *New Mexico State Investment Council*, June 2023, https://www.sic.state.nm.us/wp-content/uploads/2023/07/FY-2024-Annual-Investment-Plan-1.pdf-1.pdf.

Q. Do you find private capital or private infrastructure fund ownership of utilities to be unusual or new?

A. No. My understanding is that the proposed Acquisition represents a typical "going private" transaction, wherein the listed company TXNM and its subsidiary PNM are proposed to be sold under the statutory merger process to Troy. Troy is majority owned by the Blackstone Infrastructure Funds, which are perpetual private infrastructure funds (whose ultimate parent company is itself publicly traded on national securities markets).

Going private transactions are hardly new vehicles, and indeed the acquisitions market in general bears witness to a significant upturn in private capital transactions over the last quarter century (as discussed in more detail earlier in my testimony).[74] The utilities sector is no exception, and private capital ownership structures, including ownership by private infrastructure funds, have become far more common in recent years here, too. By way of comparison, and to get greater perspective on how private capital and private infrastructure fund acquisitions interact in this space, I consulted the FactSet database, which includes a widely used screening tool for assessing acquisition transactions, filterable by industry. Using a look-back period of 20 years,[75] I searched for completed North American acquisitions in the Utilities space (FactSet Industry code 4700) in which the target company was a public company. The database returned 116 such acquisitions, of which 33 (or 28

[74] *See, e.g.*, "The Compelling Case for an Allocation to Semi-Liquid Evergreen Private Equity," *Morgan Stanley*, March 11, 2025, https://www.morganstanley.com/im/en-us/individual-investor/insights/articles/evergreen-private-equity-funds.html.
[75] From July 31, 2025 (i.e., transactions announced between July 31, 2005 and July 31, 2025).

percent) were "going private" companies (and thus the buyer was not a public company). Looking at just the past ten years,[76] 39 percent of such acquisitions (19 out of 49) were "going private" companies.[77]

Consistent with these trends, as I will expand upon in more detail later in my testimony, it is my opinion that the combination of long-term investment horizons as well as the willingness and ability to deploy capital for long-term value creation makes evergreen private infrastructure funds like the Blackstone Infrastructure Funds particularly well-suited to steward infrastructure companies such as electric utilities.

Q. Were the transactions in the FactSet database comparable in structure and transaction value to the joint applicants' proposed acquisition of TXNM?

A. Yes, looking at data from acquisitions announced in the past ten years, the going private transactions in this space had an average EV of $2.6 billion (at closing), and a median EV of $1.1 billion (again at closing), with a maximum EV of $16.0 billion and a minimum of $2 million. This robust population of going private transactions, moreover, is quite comparable to (if perhaps slightly smaller than) non-going private acquisitions, which had an average EV of $5.7 billion, and a median EV of $5.7 billion, with a maximum EV of

[76] From July 31, 2025 (i.e., transactions announced between July 31, 2015 and July 31, 2025).
[77] Looking at the population of 33 utilities going-private acquisitions in the past 20 years, 11 (33 percent) appear to have been purchased by infrastructure funds. The prevalence of infrastructure funds has increased over the last decade, with 8 of the 11 transactions occurring in the past 10 years.

$26.0 billion and a minimum of $38 million. The proposed Acquisition, which is currently projected to close at an EV of approximately $12 billion, fits comfortably within FactSet's population of precedent transactions.[78]

I note further that the use of special purpose vehicles to consummate an acquisition transaction is overwhelmingly the favored structural choice for the utilities deals in the FactSet database. Indeed, of the 11 going private deals announced in the past ten years where FactSet specifically reports on deal structure, *all of them* used a structure that involves a special purpose entity (like the proposed Acquisition, all were "reverse triangular mergers"). Moreover, among the entire collection of utilities acquisitions (public or private), 30 of the 31 acquisitions for which FactSet reports the deal structure utilized an SPE catalyst to consummate the transaction (again, all 30 of these were "reverse triangular mergers"). This simply confirms what I teach my students: SPE structures are overwhelmingly likely in all types of mergers and acquisitions.

Q. Would you expect that a transition from being publicly traded to privately held would negatively impact reliability for PNM's customers?

A. No. As an initial matter, and as observed above, Blackstone Infrastructure's ultimate parent, Blackstone, is itself a publicly traded company that makes quarterly and annual

[78] FactSet; TXNM Press Release, "TXNM Energy Enters Agreement to be Acquired by Blackstone Infrastructure," May 19, 2025, https://www.txnmenergy.com/~/media/Files/P/PNM-Resources/press-release/Acquisition%20Investor%20Release.pdf. Note that whereas TXNM's press release refers to an EV of $11.5 billion, the FactSet database reflects a $12.6 billion enterprise value.

reports to the SEC. Consistent with the above testimony regarding the regulatory oversight of electric utilities that is exercised by NMPRC, FERC, and others regardless of whether an electric utility is publicly listed or privately held, I would not expect that the proposed Acquisition will negatively impact reliability for PNM's customers.

There is empirical support for this expectation. Using data from the U.S. Energy Information Administration ("EIA") on common reliability statistics—SAIDI,[79] SAIFI,[80] and CAIDI[81]—I have conducted a statistical analysis that compares the reliability performance of electric utilities that are publicly listed and those that are owned by private capital investors.[82] As summarized in JA Exhibits ELT-8.A–B, across these metrics and

[79] SAIDI is shorthand for System Average Interruption Duration Index, which measures the average cumulative outage duration per customer. *See* "Frequently Asked Questions (FAQs): Does EIA Have Information on Unplanned Disruptions or Outages of U.S. Energy Infrastructure?" *U.S. Energy Information Administration*, https://www.eia.gov/tools/faqs/faq.php?id=1194&t=1.

[80] SAIFI is shorthand for System Average Interruption Frequency Index, which measures the average number of electrical interruptions per customer. *See* "Frequently Asked Questions (FAQs): Does EIA Have Information on Unplanned Disruptions or Outages of U.S. Energy Infrastructure?" *U.S. Energy Information Administration*, https://www.eia.gov/tools/faqs/faq.php?id=1194&t=1.

[81] CAIDI is shorthand for Customer Average Interruption Duration Index, which measures the average number of minutes taken to restore power after an interruption. *See* "Frequently Asked Questions (FAQs): Does EIA Have Information on Unplanned Disruptions or Outages of U.S. Energy Infrastructure?" *U.S. Energy Information Administration*, https://www.eia.gov/tools/faqs/faq.php?id=1194&t=1.

[82] The analysis compares averages by ownership type for each reliability statistic across all utilities with data available for each year between 2013 and 2023. Utilities that are owned by private investors include, but are not limited to, utilities owned by private infrastructure funds. The analysis is based on data reported at the utility provider and state level for 180 investor-owned utilities. For any particular utility in a particular state, data may be available in each or some of the years analyzed. Each reliability statistic can be reported with or without so-called Major Event Days ("MED"). For utilities using the Institute of Electrical and Electronics Engineers ("IEEE") standard, a MED is any day that exceeds a daily SAIDI threshold called Tmed. For utilities not using the IEEE standard, MEDs are self-determined by the reporting utility. *See* "Form EIA-861 Annual Electric Power Industry Report Instructions," *U.S. Energy Information Administration*, https://www.eia.gov/survey/form/eia_861/instructions.pdf; Joseph H. Eto, "Reliability/Resilience-Based Metrics and Planning," *Grid Modernization Lab Consortium of the U.S Department of Energy*, March 4, 2020, https://eta-

the years analyzed, there does not appear to be any meaningful difference in the reliability of electric utilities that are publicly listed and private capital-owned. In fact, across the few metric-year combinations for which there are statistically significant differences in reliability, the electric utilities that were owned by private capital exhibited *better* reliability records than those that were publicly traded. Based on this evidence, there is no basis to conclude that private capital ownership of electric utilities negatively impacts reliability.

Furthermore, the NMPRC has authority to regulate and supervise utilities in the State of New Mexico, regardless of whether the utility is owned by a publicly listed company or private capital owned.[83] As such, the NMPRC will be able to continue actively monitoring PNM's reliability metrics and will have the ability to conduct investigations and demand remediations as it deems necessary.

publications.lbl.gov/sites/default/files/5_-_eto_reliability_and_resilience_based_planning_4.pdf. The average reliability statistics by ownership type in each year were compared using the t-test, a standard statistical test used to compare averages across two groups. *See, e.g.*, Adam Hayes, "T-Test: What It Is with Multiple Formulas and When to Use Them," *Investopedia*, May 31, 2025, https://www.investopedia.com/terms/t/t-test.asp ("A t-test is used to determine if there is a statistically significant difference between the means of two population samples. It is used in statistics for hypothesis testing and can indicate whether differences between two populations are meaningful or random.").

[83] *See* New Mexico Statutes § 62-6-4 (2024). *See also*, Hannah Grover, "PRC Approves New Reliability Metrics Rule," *New Mexico Political Reporter*, August 9, 2024, https://nmpoliticalreport.com/2024/08/09/prc-approves-new-reliability-metrics-rule/.

Q. Are there any advantages to private capital and private infrastructure fund ownership structures?

A. Yes. There are distinct advantages of private capital and private infrastructure fund ownership structures that publicly traded ownership cannot offer, especially with respect to long-term investments. And in my opinion, such economic advantages have substantially driven the increased popularity of the private capital asset class as well as the significant growth in the past decade of private infrastructure funds.

First, as discussed earlier in my testimony, private capital funds and private infrastructure funds typically hold their investments over multi-year periods—in other words, private capital is *patient* capital, with a view to long-term value creation.[84] Even when a private capital fund has a stated termination date, the dynamics of market practices have induced longer-term thinking.[85] Furthermore, as noted above, certain private capital funds and private infrastructure funds, including the Blackstone Infrastructure Funds, are so-called "perpetual" or "evergreen" funds, which means that the funds do not have an end date, can

[84] *See, e.g.*, "Infrastructure: A Primer," *Hamilton Lane*, https://www.hamiltonlane.com/en-us/education/private-markets-education/infrastructure-primer, which states that typical holding periods for "core" and "core-plus" infrastructure investments range from at least five years to ten or more years.

[85] For example, a study by Kastiel and Nili (2023) documents the growing prevalence of so-called "continuation funds," whereby private capital funds "hold on to assets beyond the typical fund term and, instead of selling the assets to third parties, sell them to their own newly established fund." *See* Kobi Kastiel and Yaron Nili, "The Rise of Private Equity Continuation Funds," George J. Stigler Center for the Study of the Economy & the State Working Paper No. 340, 2023, p. i.

hold investments even longer than traditional private equity funds, and have the ability to raise additional equity investments from both new and existing investors.[86]

Second, private capital investments—such as investments by private infrastructure funds—often lead to better and more attentively managed companies over the long term. Much of modern financial economics is predicated around structuring companies to minimize problems that can occur when those who control a firm are not coterminous with its owners (including stockholders and other stakeholders).[87] When this gulf between ownership and control is appreciable, a variety of value destroying behaviors can manifest.[88] In widely-held, publicly traded companies, these sorts of "agency costs" are unavoidable, since small investors have little time or inclination to keep close tabs on management.[89] By contrast, in closely-held companies, such as portfolio companies of private capital funds and private

[86] Per TXNM's press release announcing the Proposed Transaction, "Blackstone Infrastructure has perpetual capital with no obligation to sell its investments, and is focused on long-term, multi-decade partnerships with the companies and communities in which it invests." *See, e.g.*, TXNM Press Release, "TXNM Energy Enters Agreement to be Acquired by Blackstone Infrastructure," May 19, 2025, https://www.txnmenergy.com/~/media/Files/P/PNM-Resources/press-release/Acquisition%20Investor%20Release.pdf.

[87] *See, e.g.*, Ivo Welch, *Corporate Finance*, Fifth Edition (IAW, 2022), https://corpfin.ivo-welch.info/read/ ("Welch (2022)"), Chapter 13, pp. 32–34 ("Another kind of bias arises when one individual has to act on behalf of others. This is called an agency problem or moral hazard. For example, it occurs in situations in which the owner of a project has to ask someone else with more information and divergent interests to execute it. … In a small company with one owner and one employee, agency conflicts are less severe than they are in big corporations with their many layers of management and disengaged owners.").

[88] *See, e.g.*, Welch (2022), Chapter 13, pp. 33–34 ("Agency problems exist up and down the corporate ladder. … For example, division managers may like to have their own secretaries or even request private airplanes. Thus, they are likely to overstate the usefulness of the project 'administrative assistance' or 'private plane transportation.' … [M]anagers often prefer not to maximize profits, but instead focus on maximizing sales. … [Managers] may not want to take a risky but positive-NPV [value creating] project because they may get fired if it fails — and may not be rewarded enough if it succeeds.").

[89] *See, e.g.*, Welch (2022), Chapter 13, p. 34.

infrastructure funds, ownership is more concentrated and agency costs present far less of a concern.[90]

Another, and highly relevant, example of value destroying behaviors documented in the academic literature is short-termism. Short-termism involves decisions intended to maximize near-term profits or share prices (which are often beneficial for management compensation) at the expense of long-term value creation.[91] For instance, consider an electric utility company that throttles back its investments in grid modernization in order to boost its short-term cash flows, only to see that its cash flows (and valuation) decrease over the longer term as the increasingly outdated grid has more frequent outages and incurs ever higher maintenance and repair costs.

[90] *See, e.g.*, Welch (2022), Chapter 13, pp. 37–38 ("A very important aspect of managing moral hazard in firms is how firm owners (shareholders and creditors) deal with their firms — what rights they have. This is called corporate governance. … Fortunately, corporate governance works pretty well for small and growing firms — and especially in private equity firms, whose business it is to run their own portfolio firms under tight supervision").
[91] For example, Graham et al. (2005) found that the vast majority (78%) of executives surveyed by the authors "admit[ted] that they would sacrifice a small, moderate or large amount of value to achieve a smoother earnings path." *See* John R. Graham et al., "The Economic Implications of Corporate Financial Reporting," *Journal of Accounting and Economics*, 40(1-3), 2005, pp. 3–73 ("Graham et al. (2005)") at p. 47.

Short-termism frustrates a central market efficiency tenet of modern finance, which is that a company should make all investments that have a positive net present value ("NPV"),[92] *i.e.*, investments for which the return implied by future cash flows exceeds the investment's cost of capital.[93] An NPV analysis considers the value of the present and future cash flows (both outlays and inflows) that a project is expected to produce, discounted to today's dollars with an appropriate risk-adjusted discount rate. As I will expand upon in more detail later in my testimony, a business unconstrained by other factors should invest capital in all projects that produce a positive NPV.[94] Thus, a CEO who decides (or is compelled) to adopt a short-termist mindset is defying this capital budgeting norm and failing to act as an effective steward. As I will also expand upon in more detail later in my testimony, publicly listed companies can attract the attention of activist investors who may demand short-termist capital budgeting decisions that negatively impact long-term value creation and corporate sustainability. In the case of TXNM, there is always a possibility that at some future point its public shareholders could decide to pressure the Board of Directors and management team to reduce or postpone its capital plans, if for example, the company underperforms or there is a change in the political climate.

[92] *See, e.g.*, Welch (2022), Chapter 2, pp. 18–19 ("The net present value (NPV) of an investment is the present value of all its future cash flows minus the present value of its costs. … NPV is the most important method for determining the value of projects. It is a cornerstone of finance.").
[93] *See, e.g.*, Welch (2022), Chapter 13, p. 2 ("A project creates value for the firm if its internal (expected!) rate of return exceeds its cost of capital. This is what makes it a positive NPV project.").
[94] *See, e.g.*, Welch (2022), Chapter 2, p. 1 ("The firm should take all projects that have positive net present values and reject all projects that have negative net present values."), p. 20 ("Taking positive NPV projects increases the value of the firm. Taking negative NPV projects decreases the value of the firm").

In many situations, the longer and more patient time horizons of private capital and private infrastructure fund investors are well positioned to overcome conventional ownership-versus-control hurdles such as short-termism, and therefore also best positioned for long-term stewardship. This is all the more true for "evergreen" or perpetual private infrastructure funds such as the Blackstone Infrastructure Funds, which can hold investments over a long time period with no obligation to sell their investments at a particular point in time (if at all). In my opinion, the combination of long-term investment horizons as well as the willingness and ability to deploy capital for long-term value creation makes private infrastructure funds especially well-suited for stewardship of infrastructure companies such as electric utilities, which often find themselves needing large upfront capital investments (*e.g.*, for grid modernization or new transmission lines) that will benefit both customers and investors in the long-term. As described above, both TXNM and PNM are in this position today as the necessary capital expenditures of $7.8 billion at the TXNM company level over the next five years (2025–2029) represent a 63% increase relative to the prior five years (2020–2024).

Advantages of private infrastructure fund ownership are also documented by empirical findings in the academic literature. For example, Howell et al. (2024) study "infrastructure privatization in a modern, global context, focusing on airports" in order to examine "[w]hat ownership model leads to the most efficient operation of these crucial assets."[95]

[95] *See* Sabrina Howell et al., "All Clear for Takeoff: Evidence from Airports on the Effects of Infrastructure Privatization," European Corporate Governance Institute Working Paper, 2024 ("Howell et al. (2024)"), p. 1.

Specifically, the authors "examine not only private vs. public ownership, but also the type of private ownership, and ask whether ownership changes yield improvements in service quality and financial performance."[96] The study considers four ownership types for privatized airports globally: partial government, domestic private, foreign private, and private infrastructure funds. The authors find that, whereas "[p]rivatization in general does not improve performance," the "results suggest that when infrastructure funds acquire airports, they increase volume, quality, and efficiency."[97] For example, the authors find that private infrastructure fund ownership is associated with (i) "expansions in terminal size, suggesting that capital investment enables performance improvements," (ii) "improve[d] airport quality," as evidenced by reductions in flight cancellation rates and increased chances of winning awards for airport excellence, and (iii) "much larger increases in the number of airlines and low-cost carriers when the airport has a state-owned flag carrier, suggesting it creates value in part by reducing the flag carrier's pre-existing rents."[98]

[96] *See* Howell et al. (2024), p. 1.
[97] *See* Howell et al. (2024), Abstract, p. 5 ("In contrast, under non-[infrastructure fund] private ownership there are either no average improvements or strong pre-trends in event studies, pointing to a targeting mechanism. One argument for privatization focuses on political catering at government-owned firms, which may lead to excessive employment and poor investment choices at the expense of performance (Shleifer and Vishny, 1994; Boycko et al., 1996). Another view is based on managerial incentives; the firm will not operate efficiently if incentives to maximize profit are insufficiently high-powered (Vickers and Yarrow, 1988). Overall, our evidence is more consistent with the latter view, suggesting that while government ownership is not obviously inferior to private ownership in the airport setting, the high-powered incentives and access to capital that come with investor-owned infrastructure funds add value.").
[98] *See* Howell et al. (2024), p. 4.

Q. How do private capital and private infrastructure fund ownership structures compare to publicly traded entities in this regard?

A. Publicly traded firm management (which by hypothesis has limited ownership stake) typically has more attenuated ties to the long-term viability of the firm. Consequently, rather than stewarding the company in a manner consistent with long-term growth, managers of publicly-held firms may be pressured to engineer and manage the short-term stock price. A key reason for this short-term focus is the nature of public securities markets, where equity ownership is mediated through anonymous market transactions and can attract short-term activists purchasing appreciable stakes in order to pressure the company to enhance their own immediate liquidity (e.g., through dividend payments, share repurchases, and divestment of longer-term assets such as R&D capacity). Such activist investors, moreover, are not especially interested in underwriting the types of investments that will, over the long term, enhance the quality, dependability, and profitability of the firm down the road. Their more typical *modus operandi* instead is to purchase, pressure, extract, and cash out of ownership blocks in quick succession (often measured in months rather than years).[99] Moreover, the academic literature has documented substantial

[99] *See, e.g.*, "Activist Investor," *Corporate Finance Institute*, https://corporatefinanceinstitute.com/resources/equities/activist-investor/ ("An activist investor is an individual or institutional investor that seeks to acquire a controlling interest in a target company by gaining seats on the company's board of directors."). The article identifies three types of activist investors: (i) individual activist investors, (ii) private equity firms, and (iii) hedge funds (which "can take the approach of an individual activist investor or can act like private equity firms"). Individual activist investors and private equity firms are both "activist" investors in so far as both "are looking to make significant changes to the target company and unlock perceived hidden value within the target company." Individual activist investors "are usually well known within the finance industry and use their influence to make structural changes to a company's strategy. For example, if an

spillover effects of activism, whereby short-termism afflicts not only issuers targeted by activists, but also non-targeted peer companies, whose managers rationally infer that they may become the next target, and thus similarly prioritize short-term horizons.[100]

Private capital and private infrastructure fund structures are significantly more resistant to these problems. As discussed above, by concentrating ownership within a smaller group of investors (not public securities markets), the private capital and private infrastructure fund structures sharpen the tie between the firm's long-term health and managerial incentives.[101] Consequently, portfolio company executives must work closely with the

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individual activist does not believe management is allocating capital properly, they can use their influence over the board of directors to push for different capital allocation." Examples of individual activist investors identified in the article include Bill Ackman (Pershing Capital) and Carl Icahn (Icahn Enterprises). Individual activist investors "may be able to add value for current shareholders by guiding management actions to the shareholders' best interests." However, "[i]ndividual activist shareholders may not share the same interests or goals as other shareholders and, therefore, may destroy shareholder value. For example, an activist shareholder may only prefer a short-term holding time horizon[.] They will influence management to make decisions that benefit the company in the short term to the detriment of shareholders with a long-term holding time horizon." By comparison, private equity firms "use capital from various investors who are willing to invest large amounts of capital for an extended period of time" and "usually will take control of a public company with the intention of taking it private." The articles notes that "[p]rivate equity firms give many companies and startups access to liquidity and capital in situations where they might [not] be able to access to conventional financing. Additionally, private equity firms may provide value for current investors of a company that is underperforming in the public markets, allowing the company to steer away from the scrutiny of the public market."

[100] *See, e.g.*, Nickolay Gantchev et al., "Governance Under the Gun: Spillover Effects of Hedge Fund Activism," *Review of Finance*, 23(6), 2019, pp. 1031–1068 ("Gantchev et al. (2019)"). *See also* Rachelle C. Sampson and Yuan Shi, "Are U.S. Firms Becoming More Short-Term Oriented? Evidence of Shifting Firm Time Horizons from Implied Discount Rates, 1980–2013," *Strategic Management Journal*, 44(1), 2023, pp. 231–263 ("Sampson and Shi (2023)") at p. 249 ("Finally, the threat of shareholder activism has been shown to lead firms to focus on short-term returns (Fos, 2017; Qi, 2015). Given that a common objective of activists is to increase stock prices in the near term, this often leads to cost cutting and divestitures that grow stock prices in the short-term at the expense of longer-term investment and revenue growth (see, e.g., Bratton, 2010). … Fos (2017) shows that, when the likelihood of shareholder activism increases (i.e., the threat of a proxy contest), firms change their behavior, increasing leverage, dividend and share repurchases while decreasing cash reserves as well as investment in R&D and capital. Firm performance appears to be affected as a result; Qi (2015) finds that an increasing shareholder activism threat dampens firm innovative outcomes. Whether activists become engaged because a firm is underperforming or because activists are seeking a short-term payoff, the threat of activism strongly points to firm preferences for short-term payoffs.").

[101] *See, e.g.*, Welch (2022), Chapter 13, pp. 32–38.

fund's investment management team and investors to make strategic, investment, and operational decisions that bolster the firm's long-term value; as I discuss above, PNM has significant near-term capital needs through 2029 (representing 46% of PNM's 2024 total assets and 243% of PNM's 2024 total revenues) to fulfill New Mexico's long term clean energy goals. A concentrated ownership better aligns managerial incentives with long-term company objectives and performance.

Furthermore, as discussed above, compared to public securities market ownership—or even other types of private equity capital—private infrastructure funds have a particularly long-term focus, with typical holding periods for "core" investments that can exceed ten years.[102] This orientation is especially manifest in "evergreen" or perpetual private infrastructure funds such as the Blackstone Infrastructure Funds, which can hold investments over a long time period with no obligation to sell investments at a pre-specified point in time (or even at all).[103] The alignment of long-term investment horizons between private infrastructure funds and infrastructure portfolio companies, combined with the sharpened ties between the firm's long-term health and managerial incentives, means that private capital and private infrastructure fund ownership structures are often best positioned for effective long-term stewardship. These factors also mean that private capital

[102] *See, e.g.*, "Infrastructure: A Primer," *Hamilton Lane*, https://www.hamiltonlane.com/en-us/education/private-markets-education/infrastructure-primer, which states that typical holding periods for "core" infrastructure investments range from at least seven years to ten or more years.
[103] As discussed above, I understand that Troy, backed by Blackstone Infrastructure, has committed to holding its investment in PNM for the long term, and in any event no less than a minimum of 10 years. *See* Joint Application, Ex. B.

and private infrastructure fund ownership structures act as effective deterrents of shareholder activists who would threaten to mount control contests as a means to extract liquidity from the company through significant reductions in capital investment, disbursements, debt recapitalizations, and divestments of long-term assets.

Q. Are activist investor campaigns a concern for publicly traded utilities like TXNM?

A. Yes. Whereas, historically, regulatory restrictions shielded publicly traded utilities from activist campaigns, changes in the industry structure and regulation have ushered in an increase in activist campaigns. At the end of 2024, a study by FTI Consulting identified the utilities sector as the sector most vulnerable to shareholder activism campaigns.[104]

The past half decade bears witness to numerous examples of activist investors acquiring stakes in public utilities leading to actions which may have extracted short-term benefits for shareholders, but potentially at the expense of long-term goals and general public welfare. Those examples, moreover, are cautionary tales even to managers of yet-to-be-targeted public companies, who rationally fear future activist engagements (and may therefore attempt to preempt them).[105] It is consequently instructive to understand how common and widespread activism has become in the utilities space.

[104] Jason Frankl et al., "The Activism Vulnerability Report," *Harvard Law School Forum on Corporate Governance*, December 18, 2024, https://corpgov.law.harvard.edu/2024/12/18/the-activism-vulnerability-report-4/.
[105] *See, e.g.*, Gantchev et al. (2019).

In 2020, the activist investor Elliott Management Corp. ("Elliott") acquired a stake in Evergy, Inc. ("Evergy"), and acquired two seats on its Board of Directors.[106] According to Evergy, while Elliott was, among other things, pushing for Evergy to "significantly increase its capex over the Company's current plan," Elliott was also arguing that Evergy should "cut investments in operations and maintenance (O&M) to help offset this increase."[107] Public interest groups filed protests with FERC that Elliott and another hedge fund, Bluescape Energy Partners, had gained control of a powerful committee on Evergy's Board of Directors, enabling them to control Evergy's investment decisions for the benefit of their holdings in Evergy and other portfolio companies.[108]

In 2021, Elliott also acquired a stake in Duke Energy ("Duke") and attempted to have the company split into three regionally focused publicly traded utilities. According to Elliott, a separation of Duke into multiple companies would create $12–15 billion in near-term shareholder value as a lack of management attention, among other things, had led to "Duke's rate base growth in each of its three service areas lag[ging] that of its closest

[106] Evergy Press Release, "Evergy Announces Agreement with Elliott Management," March 3, 2020, https://newsroom.evergy.com/2020-03-03-Evergy-Announces-Agreement-with-Elliott-Management.
[107] Evergy Press Release, "Evergy Affirms Board and Management's Focus on Delivering Long-Term Value Creation and Serving Stakeholders' Best Interests," January 21, 2020, https://newsroom.evergy.com/news-releases?item=122384.
[108] CWA Press Release, "CWA, Public Citizen Protest Lack of Transparency Between Evergy and Two Major Hedge Funds," November 12, 2021, https://cwa-union.org/news/releases/cwa-public-citizen-protest-lack-of-transparency-between-evergy-and-two-major-hedge.

regional peers."[109] In a letter to investors, Duke stated that, at the start of its campaign, Elliott had "proposed a preferential equity scheme in which the company would issue up to $7 billion of deeply discounted equity to Elliott and its hedge fund allies, which would materially dilute Duke's existing shareholders."[110] Duke further stated that Elliott was "attempt[ing] to push its short-term agenda at the expense of long-term shareholder value as well as the interests of Duke Energy's employees and the communities it serves" and that Duke's "largest investors, as well as analysts, public officials, and other stakeholders were near universal in their rejection of [Elliott's] unsound plan" to split up the company.[111]

In 2021, the activist investor Carl Icahn announced his intention to invest in FirstEnergy, Corp. ("FirstEnergy").[112] A month later FirstEnergy entered into an agreement with Mr. Icahn under which it immediately added two board members affiliated with his company Icahn Capital to its Board of Directors.[113] In 2024, Mr. Icahn started an activist campaign against American Electrical Power Inc. ("AEP") with the goal of "optimiz[ing] the value

[109] Elliot Investment Management Press Release, "Elliott Investment Management Sends Letter to Board of Directors of Duke Energy Corporation," *PR Newswire*, May 17, 2021, https://www.prnewswire.com/news-releases/elliott-investment-management-sends-letter-to-board-of-directors-of-duke-energy-corporation-301292688.html.
[110] Duke Energy Press Release, "Duke Energy Responds to Elliott Management's Latest Letter," July 19, 2021, https://news.duke-energy.com/releases/duke-energy-responds-to-elliott-managements-latest-letter.
[111] Duke Energy Press Release, "Duke Energy Responds to Elliott Management's Latest Letter," July 19, 2021, https://news.duke-energy.com/releases/duke-energy-responds-to-elliott-managements-latest-letter.
[112] Scott Deveau and Brian Eckhouse, "FirstEnergy Climbs as Icahn Plans to Take Stake in Utility," *Bloomberg*, February 18, 2021, https://www.bloomberg.com/news/articles/2021-02-18/firstenergy-climbs-as-icahn-plans-to-take-stake-in-utility.
[113] FirstEnergy Press Release, "FirstEnergy Announces Agreement with Icahn Capital," March 16, 2021, https://www.firstenergycorp.com/newsroom/news_articles/firstenergy-announces-agreement-with-icahn-capital.html.

and performance of AEP's high quality regulated electric utility business for the benefit of all of AEP's stakeholders."[114] AEP settled Mr. Icahn's demands by adding two representatives from Icahn Capital to its Board of Directors; the CEO of AEP was fired by the company shortly thereafter.[115]

In 2025, Elliott purchased a 5% stake in German utility company RWE AG, stating that it welcomed "RWE's decision to reduce its 2025-2030 investment programme by [EUR] 10 billion" and encouraged the company to "significantly increase and accelerate [its] ongoing share buyback programme" instead.[116] Even major oil companies are not immune to activist campaigns. In 2025, Elliott has also purchased a 5% stake in BP, a GBP ~75 billion ($95 billion) oil major.[117] Similar to its demands to RWE, Elliot put pressure on BP to limit its spending on renewable energy and sell off parts of its green business.[118] In another common activist investor tactic, Elliott also encouraged BP to cut its labor costs, "identif[ying] tens of thousands of BP support staff globally" for potential cost cuts.[119]

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[114] AEP Press Release, "AEP Appoints Two New Directors," February 12, 2024, https://www.aep.com/news/stories/view/9352/AEP-Appoints-Two-New-Directors/.
[115] Josh Saul, "After Making a Deal with Activist Investor Carl Icahn, Utility AEP Cuts its CEO Loose," *Fortune*, February 27, 2024, https://fortune.com/2024/02/27/deal-activist-icahn-aep-ceo/.
[116] Elliott Advisors (UK) Limited Press Release, "Elliott Statement on RWE AG," *PR Newswire*, March 24, 2025, https://www.prnewswire.com/news-releases/elliott-statement-on-rwe-ag-302408664.html.
[117] Malcolm Moore et al., "Elliott Builds £3.8bn Stake in BP and Seeks Big Asset Sales," *Financial Times*, February 13, 2025, https://www.ft.com/content/25cd4cac-631f-467c-a372-00d0fdb2dfe0. The article notes that Elliott "has become BP's third-largest shareholder after building a near-5 per cent stake worth almost £3.8bn." This would imply a total value for BP of approximately GBP 76 billion (based on GBP 3.8 billion / 0.05). Based on the GBP/USD exchange rate on February 13, 2025, of 1.2565, GBP 76 billion was equivalent to approximately $95 billion. *See* LSEG Workspace.
[118] Malcolm Moore et al., "Elliott Builds £3.8bn Stake in BP and Seeks Big Asset Sales," *Financial Times*, February 13, 2025, https://www.ft.com/content/25cd4cac-631f-467c-a372-00d0fdb2dfe0.
[119] Malcolm Moore and Emma Dunkley, "BP to Report on Cost Cuts as Activist Investor Elliott Steps Up Pressure," *Financial Times*, August 3, 2025, https://www.ft.com/content/4f3bb631-4069-4035-96eb-99acf6aaea5a.

Elliott's campaign against BP is ongoing as of the date of this testimony, and is emblematic of the risks public companies face from activist investors motivated by short-term profits. In short, the utilities sector has become a succulent target for activist investors, in large part because utilities often must commit capital to hard assets that may not yield positive cash flows for long periods of time. Throttling back such investment plans is an easy way for an activist investor to augur immediate cash flows and share prices; doing so, however, impairs the company's long-term objectives and capital requirements as a result of higher future costs from a lack of investment today. And, because activism has documented spillover effects, it can and does affect corporate decision making even for not-yet targeted companies. As noted above, it is well-established in the finance literature that the mere *threat* of activist campaigns can influence decision making.[120]

Q. Are private infrastructure funds an effective counter-measure to activist-fed short-termism in the utilities sector?

A. Yes. Because of the long-term nature of their investment horizons and holding periods, private infrastructure funds like Blackstone Infrastructure can be an effective answer to activist-fed short-termism in the utilities sector. Whereas activist investors typically target investment holding periods of less than 6 months and seek quick returns, as discussed above, private infrastructure funds are a source of long-term stable stewardship and capital

[120] *See, e.g.*, Gantchev et al. (2019); Sampson and Shi (2023).

for their portfolio companies. For example, after FirstEnergy was targeted by Icahn Capital in 2021, the Blackstone Infrastructure Fund BIP invested $1 billion in newly issued FirstEnergy equity and joined FirstEnergy's Board of Directors. The capital provided by BIP and its co-investors strengthened FirstEnergy's credit profile while allowing it to continue investing in strategic capital expenditures necessary to improve its grid reliability, modernize the company's transmission systems, and move towards its carbon neutral goals.[121] As of the date of this testimony, BIP continues to hold its investment in FirstEnergy and I understand has no incipient plans to divest its holdings.

Q. Do publicly traded companies enjoy an advantage over private entities in raising additional equity capital to underwrite investments, since they can simply sell more stock into the open market?

A. Not necessarily. While publicly traded companies can indeed access public securities markets to make secondary (or "seasoned") equity offerings, there are several direct and indirect limitations on the practical ability to access such markets in order to sell additional stock.

First, access to a source of capital requires motivation to access it. As explained above, activist-fed short termism threats frequently undermine the motivation of public-company

[121] FirstEnergy Press Release, "FirstEnergy Announces Transformative $3.4 Billion of Equity Financings, Introduces Long-Term Earnings Growth Rate of 6-8%," November 7, 2021, https://www.firstenergycorp.com/newsroom/news_articles/firstenergy-announces-transformative--3-4-billion-of-equity-fina.html.

managers to commit capital to assets with low liquidity and a long payback period, potentially painting a proverbial target on their backs for activists.

Second, all corporate charters are required to impose a cap on the total number of shares authorized to be issued, and if that limitation needs to be lifted in order to sell more shares, the decision to do so would have to be submitted to a vote of the stockholders to amend the charter. While this is not a significant impediment for privately held companies (which have a comparatively modest number of stockholders), publicly traded companies must proceed by issuing a public proxy solicitation, noticing/convening of a stockholders meeting, ensuring a quorum of stockholders is present, and obtaining a majority vote of *all* outstanding votable shares.[122]

Third, even if a company has sufficient headroom to issue more shares, a secondary offering typically imposes "flotation costs" associated with retaining financial, legal, and marketing professionals to help underwrite and execute the offering. Such flotation costs represent an additional cost of accessing public capital markets through seasoned offerings (estimated to be around five percent of the proceeds).[123]

Fourth, the announcement of a secondary offering can invite adverse effects on the issuer's public stock price (especially for smaller issuers, such as TXNM). There is an established

[122] *See* New Mexico Statutes Chapter 53 - Corporations § 53-13-2 (requiring an "affirmative vote of the holders of a majority of the shares entitled to vote thereon").
[123] *See* Alexander W. Butler et al., "Stock Market Liquidity and the Cost of Issuing Equity," *Journal of Financial and Quantitative Analysis*, Vol, 40(2), 2005, pp. 331–348.

theoretical and empirical literature in finance showing that attempts to raise additional equity capital through seasoned offerings can send adverse signals to market participants (*e.g.*, about the issuer's limited internal funds, the quality of the project, the threat of dilution, etc.), which can—and often do—cause the stock price to decline.[124] Both market conditions and the size of the offering can further affect the cost and feasibility of accessing funds in public markets. In adverse market conditions, companies may have to delay planned capital raises and capital expenditure investments when doing so would be prohibitively expensive.[125] Moreover, a sizeable dilution through a secondary offering can both exacerbate adverse market inferences and worsen the market for a company's shares. As discussed above, TXNM has estimated prior to the Acquisition that it will need to raise $1.3 billion in equity from 2025 to 2029 (equivalent to 27% of TXNM's market capitalization), in part to finance the capital expenditures necessary to achieve the State of New Mexico's ambitious green energy plans.[126] This sum is sufficiently large as to induce

[124] *See, e.g.*, Stewart C. Myers and Nicholas S. Majluf, "Corporate Financing and Investment Decisions When Firms Have Information That Investors Do Not Have," *Journal of Financial Economics*, 13(2), 1984, pp. 187–221 at p. 220 ("When managers have superior information, and stock is issued to finance investment, stock price will fall, other things equal."); Greg Filbeck and Patricia Hatfield, "Public Utility Companies: Institutional Ownership and the Share Price Response to New Equity Issues," *Journal of Financial and Strategic Decisions*, 12(2), 1999, pp. 31–38 at p. 35 ("Table 2 shows the share price response to new equity offerings by public utility companies. The two-day announcement period abnormal return is -0.50796 percent (Z value of -5.63) which is statistically significant at the one percent level. Sixty percent of the sample experienced negative returns during the two-day announcement period. These results are consistent with previous studies that have documented significant share price responses to the announcement of new equity offerings and consistent with Asquith and Mullins (1986), Masulis and Korwar (1986), Bowyer and Yawitz (1980), and Pettway and Radcliffe (1985)."); Greg Filbeck et al., "Stock-Price Reaction to Equity Issues of Utilities: The Influence of Regulatory Climate," *Managerial and Decision Economics*, 18(7-8), 1997, pp. 731–745 at p. 731 ("We examine the stock-price reaction to the announcements of new equity of utilities ... Using an event-study method ... The main findings are: (1) the reaffirmation that the price reaction of stocks of utilities is negative.").

[125] While private capital firms are not entirely insulated from such swings, they are better able to access and retain capital in unfavorable market conditions, as discussed below.

[126] March 2025 Investor Presentation, pp. 4, 9.

TXNM to disclose to its investors the risk that if market conditions worsened and precluded cheap access to the secondary offering market, the company would seek to improve cash flows by instead *reducing* capital expenditures.[127]

Significantly, the price discounts in seasoned offerings affect not only the new stock sold in the offering, but also any already-outstanding shares, a shock that itself can attract short-termist activist investors eager to countermand long-term capital investment plans in favor of cash distributions. Moreover, in my experience, utilities routinely attempt to pass such pricing discounts (along with flotation costs) through to customers via the rate setting process in the form of higher returns on equity.[128]

For utilities owned by private infrastructure funds, there are different (and frequently less costly/risky) ways to raise additional equity capital. For example, private infrastructure funds—I understand including those involved here—typically have the contractual right to issue mandatory capital calls on their existing investors, thereby obviating the need to "coax" public market participants into purchasing additional shares (often at the cost of a market-wide pricing discount as discussed above). Moreover, private infrastructure funds—I understand including those involved here—typically have the ability to raise additional equity investments from new investors, either through participation in the fund or the creation of a new one to co-invest. In either case, the effort to raise additional equity

[127] *See* TXNM 2024 10-K, p. A-46.
[128] For example, under the well-known discounted cash flow ("DCF") approach to assessing appropriate risk adjusted returns, a sudden discount in market price mechanically translates into a higher imputed risk adjusted rate of return, and flotation costs are typically (if somewhat controversially) added on top of that.

funding does not bear appreciable flotation costs and does not run the risk of inviting a discount in the public stock price.

Q. Is the instant transaction's capital structure sufficiently protective of PNM?

A. Yes, in my opinion the Acquisition's capital structure is sufficiently protective of PNM. As previously mentioned, I understand that TXNM and Blackstone Infrastructure will not issue any incremental debt as a result of the Acquisition or engage in what is sometimes referred to as "financial engineering."[129] Further, as noted above, private infrastructure funds in general target relatively lower returns (target fund IRRs of 6% to 15%) than traditional private equity funds (which typically target fund IRRs between 20% and 25%).[130] Moreover, the Blackstone Infrastructure Funds target "core" and "core-plus" infrastructure investments, such as TXNM, which are on the lower end of the infrastructure risk-return continuum.[131] Based on my review of the documents in this case, I have not

[129] Financial engineering, or enhancing equity returns through the use of debt, has historically been a common private capital investment strategy to increase investment returns. I note, however, that since 2008, even for traditional private equity funds, leverage has been replaced by operational improvements as the main contributor to private equity fund returns. *See* Andrew Snyder et al., "Evolving Drivers of Private Equity Value Creation," *CAIS*, March 7, 2023, https://www.caisgroup.com/articles/evolving-drivers-of-private-equity-value-creation.
[130] *See, e.g.*, "Infrastructure: A Primer," *Hamilton Lane*, https://www.hamiltonlane.com/en-us/education/private-markets-education/infrastructure-primer; Gompers et al. (2016), p. 450.
[131] Core infrastructure investments have modest capital appreciation profiles and stable predictable cash flows supported by long-term contracts. Core-plus infrastructure investments seek higher capital appreciation than core investments which may require some growth capital expenditures. *See* "Infrastructure: A Primer," *Hamilton Lane*, https://www.hamiltonlane.com/en-us/education/private-markets-education/infrastructure-primer. *See also* Blackstone Inc., SEC Form 10-K for period ended December 31, 2024, filed on February 28, 2025, p. 9 ("BIP targets a diversified mix of core+, core and public-private partnership investments across all infrastructure sectors, including energy infrastructure, transportation, digital infrastructure and water and waste."). *See also* Blackstone Infrastructure Strategies L.P., SEC Form 10-K for period ended December 31, 2024, filed on March 7, 2025, p. 7

seen any indication that Blackstone Infrastructure is seeking to increase TXNM's debt load or engage in "financial engineering" to enhance its return from the investment.

As discussed above, Blackstone Infrastructure has already invested $400 million in newly issued TXNM shares and has further committed to allow TXNM to issue an additional $525 million in new equity prior to the Acquisition closing ($200 million of which has already been raised by TXNM as of the date of this testimony). As also noted above, PNM would remain a separate operating subsidiary without any commingling of funds, assets, or cash flows with any Blackstone Infrastructure affiliates. I also understand that Troy, backed by Blackstone Infrastructure, has committed that PNM will, at a minimum, fund PNM's $3.4 billion capital budget from 2025 to 2029.[132] PNM will also be unable (with the exception of tax distributions and unless otherwise approved by the Commission) (i) to pay dividends in excess of its net income as calculated under Generally Accepted Accounting Principles ("GAAP") or (ii) to pay any dividends if its credit rating is below investment grade.[133]

("BXINFRA intends to primarily make infrastructure investments within the Core+ or Core space, leveraging the talent and investment capabilities of Blackstone's Infrastructure Platform, however, we may invest in any type of infrastructure investments.").

[132] *See* Joint Application, Ex. B.

[133] *See* Joint Application, Ex. B.

Q. What are the long-term capital investment approaches and goals of investors?

A. All investors (whether in public capital markets or private markets) make investments based on the risk-return characteristics promised by that investment. This is also true of business investments in capital projects. As a general matter, and as discussed earlier in my testimony, a business that is not otherwise constrained will assess each capital investment project in terms of its NPV (net present value). Any project that yields a positive NPV is worth pursuing, while any project offering a negative NPV should be rejected. This "NPV" rule is stated in practice in a variety of ways, but it invariably leads to the outcome stated above: A business unconstrained by other factors should invest capital in all projects that produce a positive NPV, evaluated at the appropriate risk-adjusted discount rate. The NPV rule is closely related (and usually identical) to another capital budgeting rule of thumb based on *internal rates of return* (or IRR). The IRR of an investment project is the rate of return for which the project is a "break even" proposition in present value terms.[134] In other words, the IRR is the hypothetical rate at which a project's present value is precisely zero. Under an "IRR rule" to capital budgeting, the investor will determine the IRR for a given project and then compare that rate to the risk-adjusted "hurdle rate" that the investor requires in order to justify making an investment.

[134] *See, e.g.*, Welch (2022), Chapter 4, pp. 5–6, 10 ("There is another common capital-budgeting method, which often leads to the same recommendations as the NPV rule. This method is useful because it does so through a different route and often provides good intuition about the project. … The internal rate of return (IRR) is the quantity, which, given a complete set of cash flows, solves the NPV formula set to zero. … The IRR capital-budgeting rule states that if and only if an investment project's IRR (a characteristic of project cash flows) is above the appropriate discount rate (i.e., the cost of capital quoted like a required interest rate) for the project, then the project should be taken.").

If the IRR exceeds that hurdle rate, the investor will pursue the project. The NPV rule and the IRR rule for capital budgeting are closely related. When the investor's hurdle rate is set at the risk-adjusted market rate of return, in fact, the NPV rule and the IRR rule produce identical answers. And, in competitive market settings, active capital participants will use the risk-adjusted market rate as its IRR.[135]

When engaged in capital budgeting decisions for the long term, the appropriate risk-adjusted rate is pegged against long term rates of return. For example, the capital asset pricing model establishes how to add an appropriate risk premium on top of a "risk free" rate (usually represented by US treasuries). Because US treasuries of different tenors have different annualized rates, it is important to match the term of the project with the appropriate rate. A long-term capital investment should be valued using long term rates as the benchmark.

As noted above, the NPV rule (or IRR rule) is a capital budgeting criterion that works for any capital investment project, so long as the investor is unconstrained by other factors. One such constraint might be time horizons. An investor who cares only about short-term horizons, may pressure management to pass up investment opportunities that offer positive NPV but only over a longer term (possibly with limited liquidity until then). Consider an

[135] For certain types of projects that have atypical cash flow patterns, the computation of IRR may generate several candidates. However, when those candidates are appropriately interpreted, the IRR rule and the NPV rule typically render identical results. *See e.g.,* Welch (2022), Chapter 4, p. 12.

investment project that requires outlays of $100 for five years with a payoff of $1000 in year six. A CEO of a publicly traded company may be worried about quarterly cash flows and concerns that poor short-term results will attract activist investors who seek to shut down such long-term, value positive projects and instead redirect such payments into distributions. As discussed above, that CEO may pass up a lucrative long-term project for fear of short-term activism.[136]

Another potential constraint on the NPV/IRR rule is mutual exclusivity. In some cases, a business may face an artificial constraint on the number of projects it can undertake (limited by rule, sources of capital, geography or other forces). In such a scenario, where the investor can choose only one project, she will pursue the one with the highest NPV (even if both offer a positive NPV).[137] Should the constraint become relaxed subsequently, the investor would of course want to pursue both projects. Indeed, when there are no external constraints and sufficient sources of capital, the investor will undertake *every* positive NPV investment that is available, either directly or through investment vehicles / subsidiaries.

[136] *See. e.g.*, Graham et al. (2005), p. 47.
[137] Significantly, in this case the IRR rule can become unreliable. This can happen when one project with a very small scale has a high IRR while a much larger (but mutually exclusive) project carries a slightly lower IRR. The second project may be the one worth pursuing because it can achieve larger aggregate scale (and thus a larger NPV or firm value). *See* Welch (2022), Chapter 4, p. 13.

Q. Once a utility becomes a portfolio company of a private infrastructure fund, does it risk losing out needed investment funds through competition with other portfolio companies in the fund?

A. No. So long as the constraints noted above do not bind, the logic of the NPV / IRR rule continues to hold even for a private infrastructure fund which makes investment decisions across a collection of held subsidiaries. Each project will be evaluated on its own NPV terms, and those with positive NPV will be worth underwriting. In fact, as compared to publicly traded ownership, this foundational logic may hold more strongly for many types of private capital investor ownership, including the ownership structure contemplated in this proposed acquisition. Unlike many types of private capital funds with specified time horizons (such as five years), the Blackstone Infrastructure Funds are "evergreen" funds with no specified payout date for investors.[138] This factor minimizes the risk that short-termist thinking will pervade investment decisions at PNM in order to achieve quick liquidity for impatient investors. In contrast, PNM's parent company is a public company, which means it must remain ever vigilant about short-term activist investors seeking to unlock liquidity at the expense of long-term investments.

Second, because of its significant size and experience, Blackstone Infrastructure has access to considerable sources of outside capital to help underwrite positive-NPV investments (at PNM and elsewhere). That access significantly allays any material concerns one might

[138] Hugh MacArthur et al., "Are Longer Holding Periods the Wave of the Future in Private Equity?," *Bain & Company*, April 2018, https://www.bain.com/insights/are-longer-holding-periods-the-wave-of-the-future-in-private-equity-forbes/; "Blackstone Infrastructure Partners Overview," *Pitchbook*, https://pitchbook.com/profiles/fund/15978-34F#overview.

have about PNM's projects being "elbowed out" by another portfolio company. Accepted capital budgeting rules strongly prescribe that PNM should receive funding for any worthwhile project (as should any sister portfolio company) either through internal cash flows generated by PNM, investment by Blackstone Infrastructure, or outside fundraising.

In fact, the economies of scale and scope that appear likely to result after the proposed merger (e.g., through cost sharing, common services, etc.) will tend to push down many of the operating and administrative costs that PNM now faces, and as a result the new structure will drive up NPVs and IRRs of candidate projects. The end result would be possibly to induce just as much if not more capital investment, both on the extensive margin and the intensive margin.

Finally, as noted above, I understand that Troy, backed by Blackstone Infrastructure, has committed that PNM will, at a minimum, fund PNM's $3.4 billion capital budget from 2025 to 2029.[139]

Q. Would you expect that a transition from being publicly traded to privately held would negatively impact rates paid by PNM's customers?

A. No. Protecting ratepayers is exactly what public regulatory commissions are there to ensure. Given the regulatory constraints placed upon electric utilities (irrespective of

[139] *See* Joint Application, Ex. B.

ownership structure), I would not expect that the proposed Acquisition would negatively impact prices for PNM's customers. Private capital investor-owned utilities, like publicly traded utilities, must submit rate request applications to their respective PRCs for approval. While planned increases in capital expenditures—such as the 2025–2029 capital plan announced prior to the Acquisition—could affect future rates as they become folded into the regulatory rate base, that is a byproduct of the capital expenditures alone, and not the utility's ownership structure. I thus would not expect that, all else equal, a transition from being publicly traded to privately held by itself would increase rates.[140] Indeed, the NMPRC will continue to regulate PNM and determine the allowable return on equity ("ROE") the company may earn.

Available evidence corroborates this expectation and suggests that public utilities commissions (including NMPRC) are indeed up to the task. S&P Capital ("S&P") collects data on the rates and ROEs requested and authorized for electrical utilities throughout the US.[141] As shown in JA Exhibits ELT-9.A–B, across these investment categories and the years analyzed, there appears to be little difference in either the ROEs requested or

[140] In fact, I understand that Troy, backed by Blackstone Infrastructure, has committed to apply rate credits to New Mexico customers' bills over the next four years in an amount that totals more than $100 million. As such, holding constant the expected level of capital expenditures, it is possible that in isolation the Transaction could lead to future rates for PNM's customers being lower than they would be if TXNM were to remain a publicly listed company.
[141] S&P collects data on both past and pending rate cases. *See, e.g.*, Lisa Fontanella, "US Energy Utilities Seek Almost $24B in Pending Rate Cases," *S&P Global*, October 11, 2023, https://www.spglobal.com/market-intelligence/en/news-insights/research/us-energy-utilities-seek-almost-24b-in-pending-rate-cases.

authorized for electric utilities when publicly listed and when owned by private capital.[142] These analyses show that, on average, utilities owned by private capital investors actually had slightly *lower* authorized and requested ROEs than those of publicly listed utilities.[143] Statistical analysis confirms these findings. Specifically, using the S&P data, I compared the mean level of ROEs authorized by PRCs for electrical utilities that are publicly listed and those that are owned by private capital.[144] I also conducted a statistical analysis that compares the mean level of requested ROEs by electrical utilities that are publicly listed and those that are owned by private capital.[145] These analyses result in statistically significant differences for both average authorized and requested ROEs, with private capital owned utilities exhibiting *lower* averages than their publicly listed counterparts.[146] This result is not surprising given that (in my estimation) regulatory commissions have the same job to do regardless of a utility's ownership structure, and they tend to do it well. There does not appear to be evidence that private capital owned utilities request or receive above market-level ROEs or that PRCs allow private capital owned utilities to charge their

[142] JA Exhibit ELT-9.A shows the authorized ROEs from 2013 to 2023 by ownership type for the utilities that both had authorized ROEs between 2013 and 2023 and were present in the EIA Reliability data. JA Exhibit ELT-9.B shows the requested ROEs from past rate cases from 2013 to 2023 by ownership type for the utilities that both had requested ROEs between 2013 and 2023 and were present in the EIA Reliability data.
[143] JA Exhibits ELT-9.A–B display a line of best fit, calculated using the ordinary least squares model, for the publicly listed and private capital owned utilities, respectively. In both exhibits, the line of best fit for private capital owned utilities is below than that of publicly listed utilities, i.e. they have lower ROEs.
[144] The average authorized ROEs were compared using the t-test, a standard statistical test used to compare averages across two groups.
[145] The average requested ROEs were compared using the t-test, a standard statistical test used to compare averages across two groups.
[146] *See* JA Exhibits ELT-9.A–B.

ratepayers more. In fact, the evidence would suggest that private capital owned utilities are more efficient and better managed, allowing for cost savings to ratepayers.

IV. CONCLUSIONS

Q. Please summarize your conclusion.

A. Nothing about the proposed Acquisition's structure or funding, nor anything about private infrastructure fund ownership as contemplated by this Acquisition, should cause concern. To the contrary, private infrastructure fund ownership carries distinct and durable benefits for PNM and for New Mexico. The combination of long-term investment horizons as well as the willingness and ability to commit capital over an extended period makes evergreen private infrastructure funds like the Blackstone Infrastructure Funds particularly well-suited for stewardship of capital-intensive infrastructure companies such as electric utilities. More generally, and for many of the same reasons, private capital ownership structures are becoming increasingly common across the utilities sector.

The Commission will be able to regulate PNM just as it does today. The post-Acquisition structure should not make PNM more difficult to regulate. Based on my empirical analysis, there is no basis to conclude that private capital ownership impedes the reliability of electrical utilities nor that private capital owned utilities submit or are authorized higher ROEs.

The funding of the Acquisition appears reasonable and conservative, and the financial strength of PNM is further bolstered by proposed protections offered by the Joint Applicants. It is my opinion that the proposed Acquisition will benefit PNM, its rate payers, and the State of New Mexico.

Q. Does this conclude your direct testimony?

A. Yes.

GCG#534078

Résumé of Eric L. Talley

JA Exhibit ELT-1

Is contained in the following 17 pages.

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Professional/Employment

2025-Pres.	**Marc and Eva Stern Professor of Law and Business,** Columbia Law School, New York, NY.
2017-Pres.	**Faculty Co-Director,** Millstein Center for Global Markets and Corporate Ownership, Columbia Law School, New York, NY.
2015-25	**Isidor and Seville Sulzbacher Professor of Law,** Columbia Law School, New York, NY.
2016-Pres.	**Affiliated Expert,** Cornerstone Research, New York, NY.
2025	**Visiting Professor,** Stanford Law School, Stanford California.
2025	**Visiting Research Fellow,** European University Institute, Florence Italy.
2018, 2021, 2024	**Visiting Professor,** ETH Zurich (Gerzensee Study Center), Switzerland.
2016	**Visiting Professor,** Buchmann Faculty of Law, Tel Aviv University.
2009-2015	**Arthur and Rosalinde Gilbert Foundation Chair in Law, Business and the Economy,** UC Berkeley School of Law, Berkeley, CA.
2006-2014	**Faculty Co-Director,** Berkeley Center for Law, Business and the Economy, UC Berkeley School of Law, Berkeley, CA.
2006-2009	**Professor of Law,** UC Berkeley School of Law, Berkeley, CA.
2004-2015	**Senior Economist**, RAND Corporation, Santa Monica, CA, Institute for Civil Justice (Affiliated adjunct staff).
2011	**Visiting Professor**, University of Chicago School of Law, Chicago IL.
2008-2009	**Robert B. and Candice J. Haas Visiting Professor in Corporate Finance and Law,** Harvard Law School, Cambridge, MA.

2006	**Commentator**, *Marketplace* Radio; American Public Media. Weekly slot on national public radio program discussing business and legal affairs.
2005-2006	**Visiting Professor,** UC Berkeley School of Law. Co-Director, Berkeley Center for Law, Business and the Economy.
2005-2006	**Ivadelle & Theodore Johnson Chair in Law and Business,** University of Southern California, Gould School of Law.
2005-2006	**Professor of Finance and Business Economics,** USC Marshall School of Business.
2000-2005	**Professor of Law,** Univ. of Southern California Law School. (Director, USC Center in Law Economics & Organization, 2002-2004; Director, USC/Caltech Olin Center for Study of Law & Rational Choice, 2002-2004).
2003 (Spr.)	**Visiting Research Fellow,** Institute for Civil Justice, RAND Corporation, Santa Monica, CA.
2001-2003	**Visiting Professor,** California Institute of Technology, Department of Humanities and Social Sciences.
2000 (Aut.)	**Visiting Professor and Alfred P. Sloan Research Fellow,** Georgetown University Law Center.
1997-2000	**Associate Professor of Law,** University of Southern Cal. Law School.
1995-1997	**Assistant Professor of Law,** University of Southern Cal. Law School.
1993-94	**Contract Specialist,** Brown & Bain, Palo Alto, CA (non-practicing consultant).
1993	**Summer Associate,** Brown & Bain, Palo Alto, CA.
1993	**Lecturer,** Stanford University. Intermediate microeconomics.
1990, 1992	**Instructor,** Stanford Law School. Taught two seminars for law faculty on the fundamentals of economic analysis and game theory.

Education

Ph.D./J.D.	**Stanford University Dept. of Economics & Stanford Law School.** 1989-95, 1999. Doctoral Dissertation Committee: Paul R. Milgrom (chair; 2020 Nobel Prize recipient); Ian Ayres; A. Mitchell Polinsky.
B.A.	**University of California, San Diego.** 1984-88. Magna Cum Laude. Majors: economics and political science; minor: mathematics.
High School	**Los Alamos High School,** Los Alamos, NM. 1981-84.

Courses Taught

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

Books

· CORPORATE FINANCE AND LAW (Edward Elgar Publishing Ltd.) (Advanced Introduction Series, under contract).

· EXPERIMENTAL LAW AND ECONOMICS (Edward Elgar Publishing Ltd., 2008) (co-edited with Jennifer Arlen).

Articles, Chapters, Blog Posts and Occasional Pieces

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- *Debt Textualism and Creditor-on-Creditor Violence: A Modest Plea to Keep the Faith,* 171 U. PENN. L. REV. 1975 (2023) (with Sneha Pandya).

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- *Cleaning Corporate Governance,* 170 U. PENN. L. REV. 1 (2021) (with Jens Frankenreiter, Cathy Hwang & Yaron Nili) (lead article). *Corporate Practice Commentator* designation as one of the "Top Ten Corporate and Securities Articles of 2022."

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- *Patently Risky: Framing, Innovation and Entrepreneurial Preference,* 34 HARVARD J. LAW & TECH. 192 (2020) (with Elizabeth Hoffman, David Schwartz & Matthew Spitzer).

- *Liability Design for Autonomous Vehicles and Human-Driven Vehicles: A Hierarchical Game-Theoretic Approach, 118* TRANSP. RES. (Pt. C) *1* (2020) (with Xuan Di & Xu Chen).

- *Long-Term Bias,* 2020 COLUMBIA BUS. LAW REV. 104 (2020) (with Michal Barzuza) (featured on the Harvard Law School Forum on Corporate Governance).

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- *Cataclysmic Liability Risk Among Big-Four Auditors,* 106 COLUM. L. REV. 1641 (2006).

- *On the Private Provision of Corporate Law* (with Gillian Hadfield), 22 J. LAW, ECON. & ORG 414 (2006).

- *Expectations and Legal Doctrine, in* PARADOXES AND INCONSISTENCIES IN THE LAW 183-204 (O. Perez & G. Taubner, eds. 2006).

- Bargaining in the Shadow of Different Regimes (with Ian Ayres), *in* Ian Ayres, OPTIONAL LAW (2005).

- *Unregulable Defenses and the Perils of Shareholder Choice* (with Jennifer Arlen)*,* 152 U. PENN. L. REV. 577 (2003). *Corporate Practice Commentator* designation as author of one of the "Top Ten Corporate and Securities Articles of 2004."

- *Endowment Effects and Corporate Agency Relationships,* 31 J. LEGAL. STUD. 1 (2002) (with Jennifer Arlen and Matt Spitzer).

- *On the Demise of Shareholder Primacy (or, Murder on the James Trains Express),* 75 SO. CAL. L. REV. 1211 (2002).

- *Securities Fraud Class Actions: 70 Years Young, in* RAND Review (2004), at 42.

- *Playing Favorites with Shareholders,* 75 SO. CALIF. L. REV. 276 (2002) (with Stephen Choi) (*reprinted in* 44 CORPORATE PRACTICE COMMENTATOR 235 (2002)).

- *Law and Economics (Theory of), in* THE OXFORD COMPANION TO AMERICAN LAW (David S. Clark, ed.) (2002).

- *Your (Increasingly) Legal Options,* USC LAW 45 (Fall 2001).

- *The Corporate Opportunity Doctrine, in* 2001 USC INSTITUTE FOR CORPORATE COUNSEL: READING MATERIALS (2001) (with Mira Hashmall).

- *Disclosure Norms,* 149 U. PENN. L. REV. 1955 (2001).

- *A Theory of Legal Presumptions* 16 J. L. ECON. & ORG. 1 (2000) (with Antonio Bernardo & Ivo Welch).

- *Judicial Auditing,* 29 J. LEGAL STUD. 649 (2000) (with Matthew Spitzer).

- *Taking the "I" Out of "Team": Intra-Firm Monitoring and the Content of Fiduciary Duties,* 24 J. CORP. LAW 1001 (1999).

- *Precedential Cascades: An Appraisal,* 73 SO. CAL. L. REV. 87 (1999).

- *Turning Servile Opportunities to Gold: A Strategic Analysis of the Corporate Opportunities Doctrine,* 108 YALE L. J. 277 (1998). *Corporate Practice Commentator* designation as author of one of the "Top Ten Corporate and Securities Articles of 1999."

- *Interdisciplinary Gap-Filling: Game Theory and the Law,* 22 J. LAW & SOC. INQ. 1055 (1997) (review essay).

- *Investment Policy and Exit-Exchange Offers within Financially Distressed Firms*, 51 J. FINANCE 871 (1996) (with Antonio Bernardo).

- *Liability-Based Fee Shifting Rules and Settlement Mechanisms Under Incomplete Information,* 71 CHI.-KENT L. REV. 461 (1995).

- *Distinguishing Between Consensual and Non-consensual Advantages of Liability Rules*, 105 YALE L. J. 235 (1995) (with Ian Ayres).

- *Solomonic Bargaining: Dividing a Legal Entitlement to Facilitate Coasean Trade*, 104 YALE L.J. 1027 (1995) (with Ian Ayres).

- *Contract Renegotiation, Mechanism Design and the Liquidated Damages Doctrine,* 46 STAN. L. REV. 1195 (1994).

- BARGAINING UNDER INCOMPLETE INFORMATION AND THE DESIGN OF LEGAL RULES, Doctoral Dissertation, Stanford University (1999).

Submitted Papers, Working Papers and Works-in-Progress

- *Fix the Price or Price the Fix? Resolving the Sequencing Puzzle in Corporate Contracting* (with Joshua Higbee, Matthew Jennejohn & Cree Jones) (working paper 2025) (available at SSRN: https://ssrn.com/abstract=5159164).

- *Our Misguided Faith in Corporate Voting* (with Ben Johnson & Jennifer Juergens) (2024).

- *Is There Politics In Money? M&A Contracting and Regulatory Risk* (with Reilly Steel) (working paper 2024)

- *Efficient Liability Assignment in Hub and Spoke Networks* (with Jiyoung Kim) (2023)

- *COVID-19 as a Force Majeure in Corporate Transactions* (with Julian Nyarko & Matt Jennejohn).

- *The Utility of Finance* (2017) (with Shlomit Azgad-Tromer). *Available at https://ssrn.com/abstract=2994314.*

- *A Machine Learning Classifier for Corporate Opportunity Waivers* (2016) (with Gabriel Rauterberg) *Available at https://ssrn.com/abstract=2849491*

- *Financial Regulation and the World's Most Important Number: LIBOR Reporting Behavior during the Credit Crisis* (2013)

- *Optimal Liability for Terrorism* (with Darius Lakdawalla) (2005)

- *Uncorporated Professionals* (with John Romley) (2004) (available for download at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=587982).

- *Equilibrium Expectations and Legal Doctrine* (2005).

- *The Impact of Regulation and Litigation on Small Business and Entrepreneurship: An Overview*, RAND Working Paper WR-317-ICJ (2006) (with Lloyd Dixon, Susan M. Gates, Kanika Kapur, and Seth A. Seabury).

- *Criteria Used to Define a Small Business in Determining Thresholds for the Application of Federal Statutes,* RAND Working Paper WR-292-ICJ (2005) (with Ryan Keefe and Susan M. Gates).

- *A Defense of Shareholder Favoritism* (with Stephen Choi 2002).

- *Incentives, Investment, and the Legal Protection of Trade Secrets* (with Gillian Lester, 2001).

- *Corporate Governance, Executive Compensation and Securities Litigation* (May 2004) (with Gudrun Johnsen).

- *Private Information, Self-Serving Biases, and Optimal Settlement Mechanisms: Theory and Evidence* (November 2003) (with Seth Seabury).

- *Trade Secrets and Mutual Investments* (with Gillian Lester) USC Law School Working Paper # 00-15; Georgetown Law and Economics Research Paper No. 246406 (Oct. 2000).

- *A Note on Presumptions with Sequential Litigation,* USC Olin Working Paper # 99-9 (with Antonio Bernardo) (1999).

- *Property Rights, Liability Rules, and Coasean Bargaining Mechanisms under Incomplete Information,* Stanford Olin Working Paper # 108 (1994).

Funding/Grants

- Securities and Exchange Commission Grant to study investment advisors and broker dealers, RAND Corporation, 1/2007-3/2008; $280,000 (research staff, task director).

- Ewing Marion Kauffman Foundation, 3-year support grant to fund RAND Center for the Study of Small Business Regulation and Litigation; 11/03-10/06; $1,500,000 (co-PI).

- John Olin Foundation, 3-year support grant to fund USC/Caltech Program in Law and Rational Choice, 6/02-6/05; $300,000 (PI).

- University of Southern California, 3-year Seed Money Grant to Implement USC Center in Law, Economics and Organization, 7/00-6/03; $800,000 (co-PI).

- University of Southern California Zumberge Junior Fac. Award, 8/97-6/98; $30,000 (PI).

Endowed Presentations and Notable Addresses

- Keynote Address: The Renewed (and Wild) Race in Corporate Law (Case Western Reserve School of Law 2025).

- Delaware Judicial Retreat (October 2024) (Invited presentation on corporate law and governance before Delaware Court of Chancery and Supreme Court at annual Judicial Retreat).

- Commencement Address, Columbia Law School Class of 2022 (faculty speaker and recipient of Willis L. M. Reese Prize for Excellence in Teaching) (*Peerless*) (Available at https://ssrn.com/abstract=4116830).

- Delaware Judicial Retreat (October 2020) (Invited presentation on corporate law and governance before Delaware Court of Chancery and Supreme Court at annual Judicial Retreat).

- Keynote Address, Michigan State University Law Review symposium, Lansing MI (April 2020).

- Delaware Judicial Retreat (October 2018) (Invited presentation on corporate law and governance before Delaware Court of Chancery and Supreme Court at annual Judicial Retreat).

- Keynote Address, Conference on Empirical Legal Studies East Asia (CELSEA), Taipei, Taiwan (June 2017).

- Commencement Address, Columbia Law School Class of 2017 (faculty speaker and recipient of Willis L. M. Reese Prize for Excellence in Teaching) (*Triumphs of Commission*) (available at https://ssrn.com/abstract=2970477)

- Fifty-Ninth Annual John R. Coen Lecture, University of Colorado at Boulder, March 2016 (*Is the Law a Driverless Car? Assessing How (or Whether) the Data Analytics Revolution Will Transform the Legal Profession)* (available at http://lawweb.colorado.edu/events/details.jsp?id=6629).

- Commencement Address, UC Berkeley LLM Graduation (elected faculty speaker) (2011).

- Chair Installation Address, Rosalinde & Arthur Gilbert Chair in Law, Business and the Economy, UC Berkeley School of Law, April 2009.

- Twenty-Fifth Annual Francis G. Pileggi Distinguished Lecture in Law, Delaware Journal of Corporate Law, Widener University, October 2008.

- Ninth Annual Distinguished Speaker Series, McGeorge Law School, University of the Pacific, November 2001 (*Common Agency in Fiduciary Law*).

Awards and Service

- Elected to the American Academy of Arts and Sciences (2024).

- Elected Research Member, European Corporate Governance Institute (2022).

- Willis L.M. Reese Prize for Excellence in Teaching, Columbia Law School (2022).

- Willis L.M. Reese Prize for Excellence in Teaching, Columbia Law School (2017).

- *Corporate Practice Commentator* commendation for "Ten Best Corporate and Securities Articles written in 2022 (for *Cleaning Corporate Governance*). 5/23

- *Corporate Practice Commentator* commendation for "Ten Best Corporate and Securities Articles written in 2017 (for *Contracting out of the Fiduciary Duty of Loyalty: An Empirical Analysis of Corporate Opportunity Waivers*). 5/18

- *Corporate Practice Commentator* commendation for "Ten Best Corporate and Securities Articles written in 2016 (for *Corporate Inversions and the Unbundling of Regulatory Competition*). 5/17

- *Corporate Practice Commentator* commendation for "Ten Best Corporate and Securities Articles written in 2009 (for *Going Private Decisions and the Sarbanes Oxley Act of 2002: A Cross-Country Analysis*). 4/10

- *Corporate Practice Commentator* commendation for "Ten Best Corporate and Securities Articles written in 2004 (for *Unregulable Defenses and the Perils of Shareholder Choice)*. 4/05.

- *Corporate Practice Commentator* commendation for "Ten Best Corporate and Securities Articles written in 1999" (for *Turning Servile Opportunities to Gold: A Strategic Analysis of the Corporate Opportunities Doctrine)*. 3/00.

- Board Member, Ira M. Millstein Center for Global Markets and Corporate Ownership (2017-Present); Executive Committee Member (2020-Present).

- Board of Directors, Society for Empirical Legal Scholars (SELS) (2009-2022) (Immediate Past Chair, 2019-2022; Chair Elect, 2015-2019; Immediate Past President, 2014-15; President 2013-14; Vice President 2012-13).

- Board of Directors, American Law and Economics Association (Elected member; three-year term: June 2016-May 2019).

- Executive Committee, Data Science Institute, Columbia University (2015-Present)

- Program Committee, American Law and Economics Association Annual 2017 Conference (June 2016 – May 2017).

- University of California System-wide Committee on Academic Personnel (UCAP) (2014-2015).

- UC Berkeley Campus Budget and Interdepartmental Relations Committee (Budget Committee) (2011-2014; Chair, 2013-14; ex officio 2014-2015).

- UC Berkeley Academic Senate Divisional Council (DIVCO) (2013-14).

- UC Berkeley Academic Planning and Resource Allocation Committee (CAPRA) (2013-14).

- Legal Education Advisory Board, BARBRI, Inc., August 2013-15.

- Board of Directors, American Law and Economics Association (Elected member; three-year term: June 2005-May 2008).

- Elected Member, Dean's Faculty Advisory Committee, UC Berkeley School of Law (2010 – 2013).

- Chair, Dean Search Committee, Haas Business School, UC Berkeley (2007-2008).

- Member, National Science Foundation Law and Social Science Grant Evaluation Panel (2008 - 2010).

- Program Committee, American Law and Economics Association Annual 2006 Conference (with D. Rubinfeld, and K. Pastor) (November 2005 – May 2006).

- Chair, Administration and Finance Committee (Elected), USC Law School 2004-05.

- Finance Committee, University of Southern California Board of Trustees (faculty representative), 2004-05.

- Representative, Faculty Senate, University of Southern California 2004-05.

- Board Treasurer, The Growing Place Early Childhood Education Center Board of Directors (non-profit) 2004-05.

- Board of Directors, The Growing Place Early Childhood Education Center Board of Directors (non-profit), 2002-2005.

- Chair, Faculty Appointments Committee, USC Law School 2003.

- Chair, AALS Section in Law and Economics, 2004-05.

- Chair, AALS Section in Contracts, 2007-08.

- Chair, Faculty Handbook Committee, University of Southern California, 2002-03. Oversaw reorganization of faculty handbook (approved by USC Faculty Senate, 2004).

- Alfred P. Sloan Foundation Research Fellowship, Georgetown Law Center. 9/00-12/00.

- Zumberge Junior Faculty Research Award, USC. 7/97 - 7/99.

- Centennial Teaching Award, Stanford University. 6/95.

- Articles Editor, *Stanford Law Review* 1993-94 (Volume 46).

- Outstanding Teaching Assistant Award in Economics. 3/94; 6/94; 12/94.

- Hellman Prize for Outstanding Law-Review Note, *Stanford Law Review.* 5/94

- Fellow, Stanford Center for Conflict and Negotiation. 11/92-10/93

- Goldsmith Award for Outstanding Paper in Dispute Resolution. 4/93

- Hilmer Oehlmann, Jr. Prize for excellence in legal research and writing. 5/92

- John Olin Foundation Fellowship in law and economics. 4/94; 6/94; 6/92

- Phi Beta Kappa

- Departmental Honors in both economics and political science, University of California, San Diego. Graduated Magna Cum Laude from Revelle College. 12/88

Professional Affiliations

- Elected Member, American Academy of Arts & Sciences.
- Elected Research Member, European Corporate Governance Institute.
- Member, American Law and Economics Association; Society for Empirical Legal Studies.
- Referee, *American Economic Review; Rand Journal of Economics; Journal of Law, Economics & Organization; Journal of Legal Studies; Review of Economic Studies; International Review of Law and Economics; International Economic Review; Journal of Law and Economics.*

Consulting/Testimony (Last 4 Years)

- In re Joint Application for Approval to Acquire New Mexico Gas Company, Inc. By Saturn Utilities Holdco, LLC Case No. 24-00266-UT (New Mexico Regulation Public Commission) (2025). Designated as expert in private ownership structures and M&A market practices.
- SVB Financial Group v. Federal Deposit Insurance Corporation 5:24-cv-01321-BLF (2025). Designated as consulting expert in corporate structures and risk oversight.
- Hecate Holdings Inc. v. Repsol Renewables N.A. C.A. No. 2024-0928-KSJM (2024). Served as expert in acquisition bargaining, efficient contract design and practice, and options pricing structure.
- FourWorld Event Opportunities Fund et al. HomeStar InvestCo AB (T 7674-22) (Stockholm District Court, Sweden 2024). Served as expert in valuation of appraisal proceeding of Swedish public company). Submitted report and gave live testimony.
- Massoumi v. Ganju, et al. (NY Sup. Court) (654289/2020) (2023). Served as expert analyzing corporate governance and disclosure in leadership contest).
- Javice v. JP Morgan Chase Bank (Delaware Chancery Court) (CA 2022-1179-KSJM) (2023). Served as a consulting expert analyzing contractual indemnification / advancement provisions in M&A agreements.
- Politan Capital Management LP v. Masimo Corp. (Delaware Chancery Court) (CA 2022-0948-NAC) (2023). Served as testifying expert analyzing corporate governance and shareholder voting dynamics related to an advance-notice bylaw of a public company.
- Alterra America Insurance Co. et al v. National Football League (Supreme Court of New York, New York County, Index No. 652813/2012) (2022). Served as consulting expert

analyzing economic aspects of concussion settlement liability as between unincorporated league and member teams using.

- Edison Electric Institute (EEI). Deliver in-depth lectures on economics, finance, and ROE estimation to US-based utilities regulators (commissioners and staff) (2020-Pres.).

- Institute for Regulatory Law and Economics (IRLE). Deliver in-depth lectures on economics, finance, and ROE estimation to US-based utilities regulators (commissioners and staff) (2008-Pres.).

- Sears Holding Corporation, et al. v. Lampert, et al., Case No. 19-08250 (RDD) (Bankr. S.D.N.Y.) (2021-22). Served as consulting expert on corporate governance in relation to several spin-off and loan transactions.

Students/Advisees

- Reilly Steel, Columbia Law School (JD), Millstein Fellow (2017-18); Clerk to Hon. Leo Strine (Del.) (2018-19); Doctoral Candidate, Princeton Politics Department; Academic Fellow & Post-Doctoral Fellow, Columbia Law Schol (2024-26); Associate Professor of Law, Columbia Law School.

- Jens Frankenreiter, Columbia Law School Post-Doctoral Fellow (2018-19); Assistant Professor of Law, Washington University St. Louis.

- Julian Nyarko, Columbia Law School Post-Doctoral Fellow (2019-21); Assistant Professor of Law, Stanford Law School.

- Sarath Sanga, UC Berkeley Economics Department (PhD); Yale Law School (JD), Professor of Law, Northwestern University Law School.

- Surajeet Chakravarty, USC Economics Department (PhD), Associate Professor, University of Exeter Business School.

- Svetlana Pevnitskaya, USC Economics Department (PhD), Associate Professor of Economics, Florida State University.

- Kathryn Zeiler, Caltech, Social Science (PhD) / USC Law (JD), Professor of Law, Boston University

- Jingfeng Lu, USC Economics Department (PhD), Professor of Economics, National University of Singapore Department of Economics.

- Brian Broughman, UC Berkeley JSP Program (PhD), Professor of Law, Vanderbilt university.

- Michael Gilbert, UC Berkeley JSP Program (PhD), Professor of Law, University of Virginia.

- Andrew Hayashi, UC Berkeley JD / PhD (Economics), Professor of Law, University of Virginia.

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

Personal

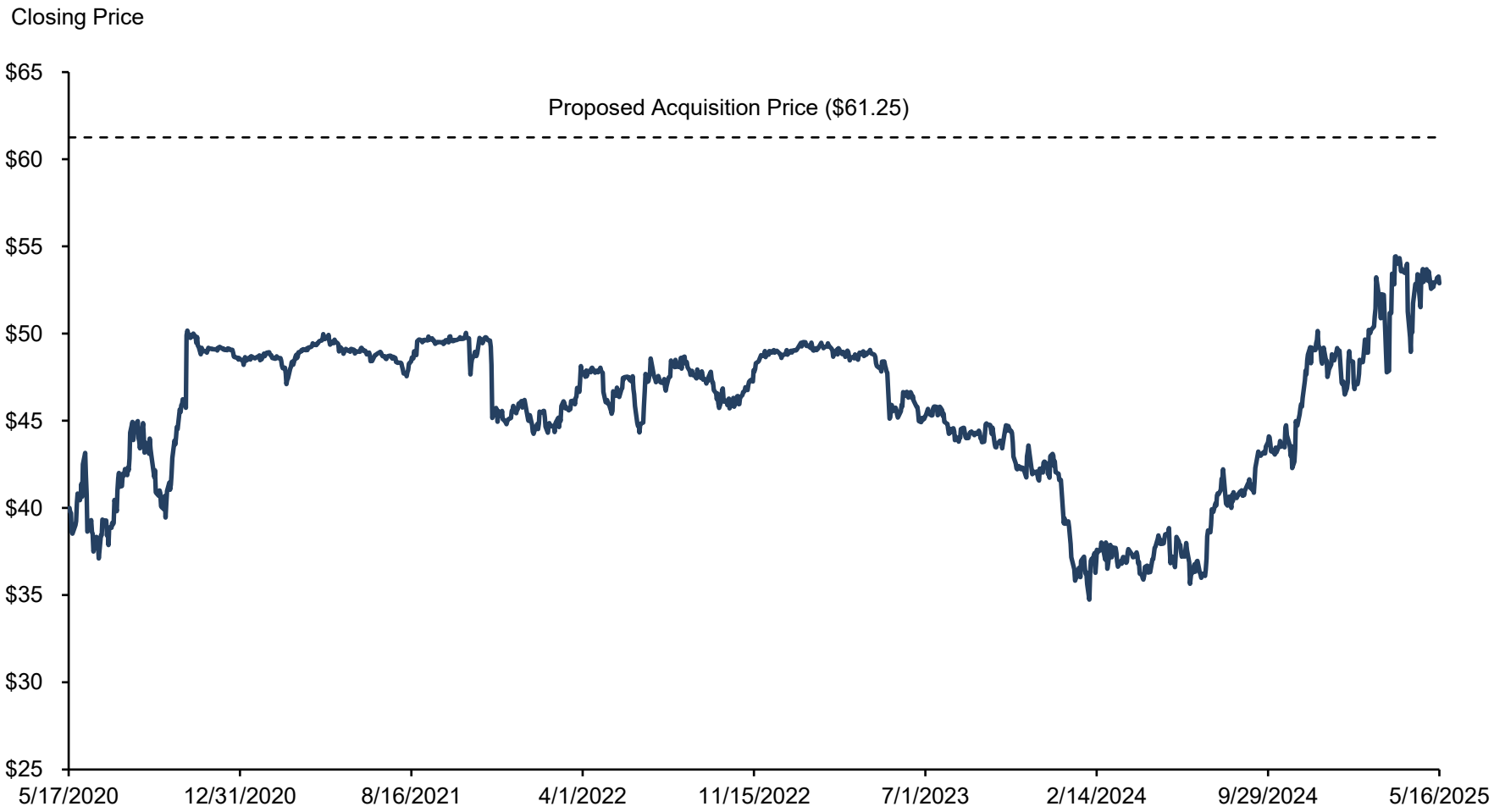
- Date of Birth: 26 March, 1966.
- Married (since 1998) to Gillian Lester, Dean Emerita, Columbia Law School.
- Two children.
- Hobbies include cycling, hiking, classical/jazz guitar, and skiing.

TXNM Closing Stock Price

JA Exhibit ELT-2

Is contained in the following 1 page.

TXNM Energy, Inc.
Closing Stock Price
5/17/2020–5/16/2025



Source: *LSEG Workspace*

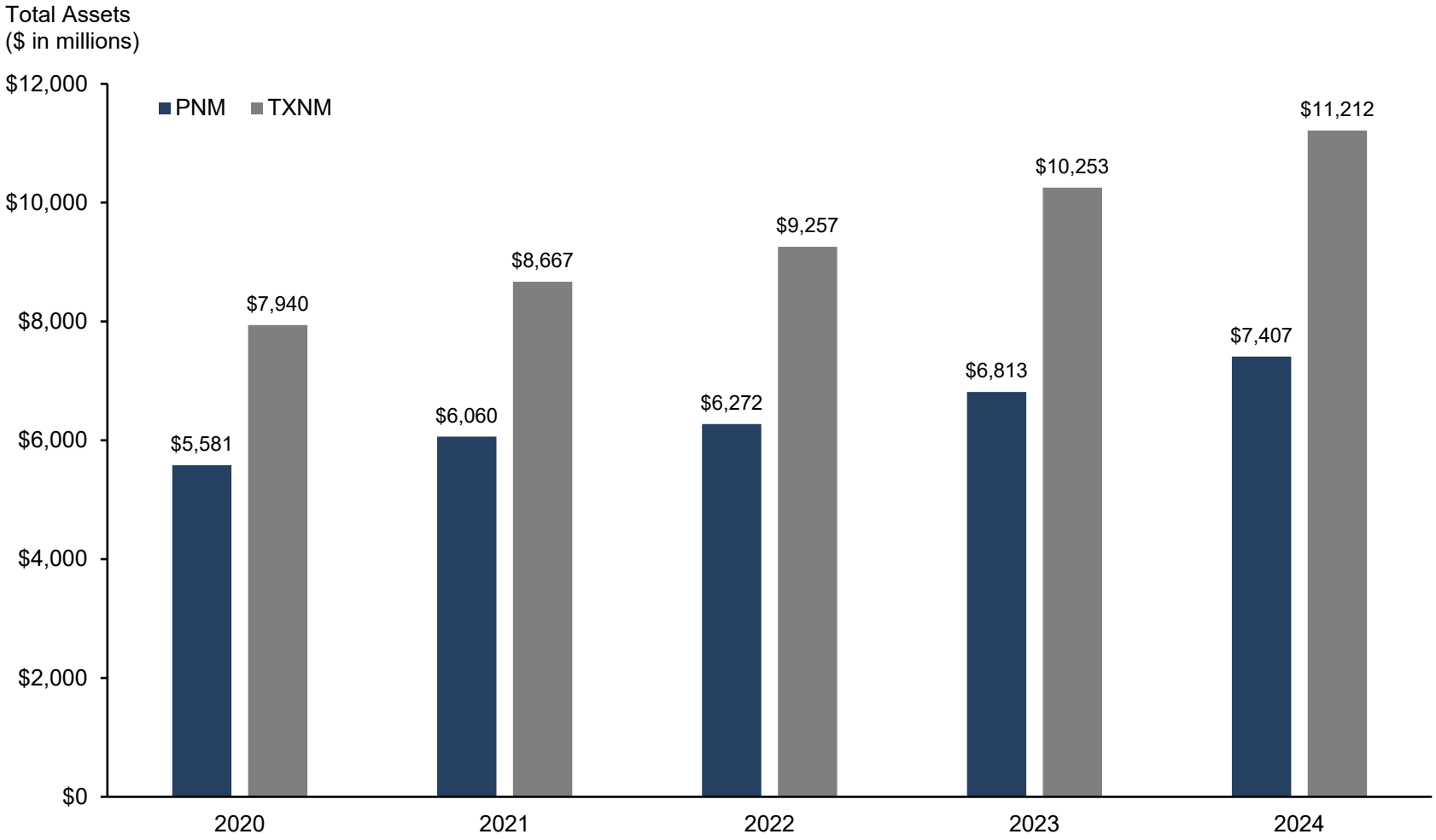
Note: May 16, 2025 was the trading day prior to the announcement of the proposed Acquisition on May 19, 2025.

TXNM and PNM Total Assets

JA Exhibit ELT-3

Is contained in the following 1 page.

TXNM Energy, Inc. and PNM Energy, Inc.
Total Assets
2020–2024



Source: *LSEG Workspace*; SEC Form 10-K Filings

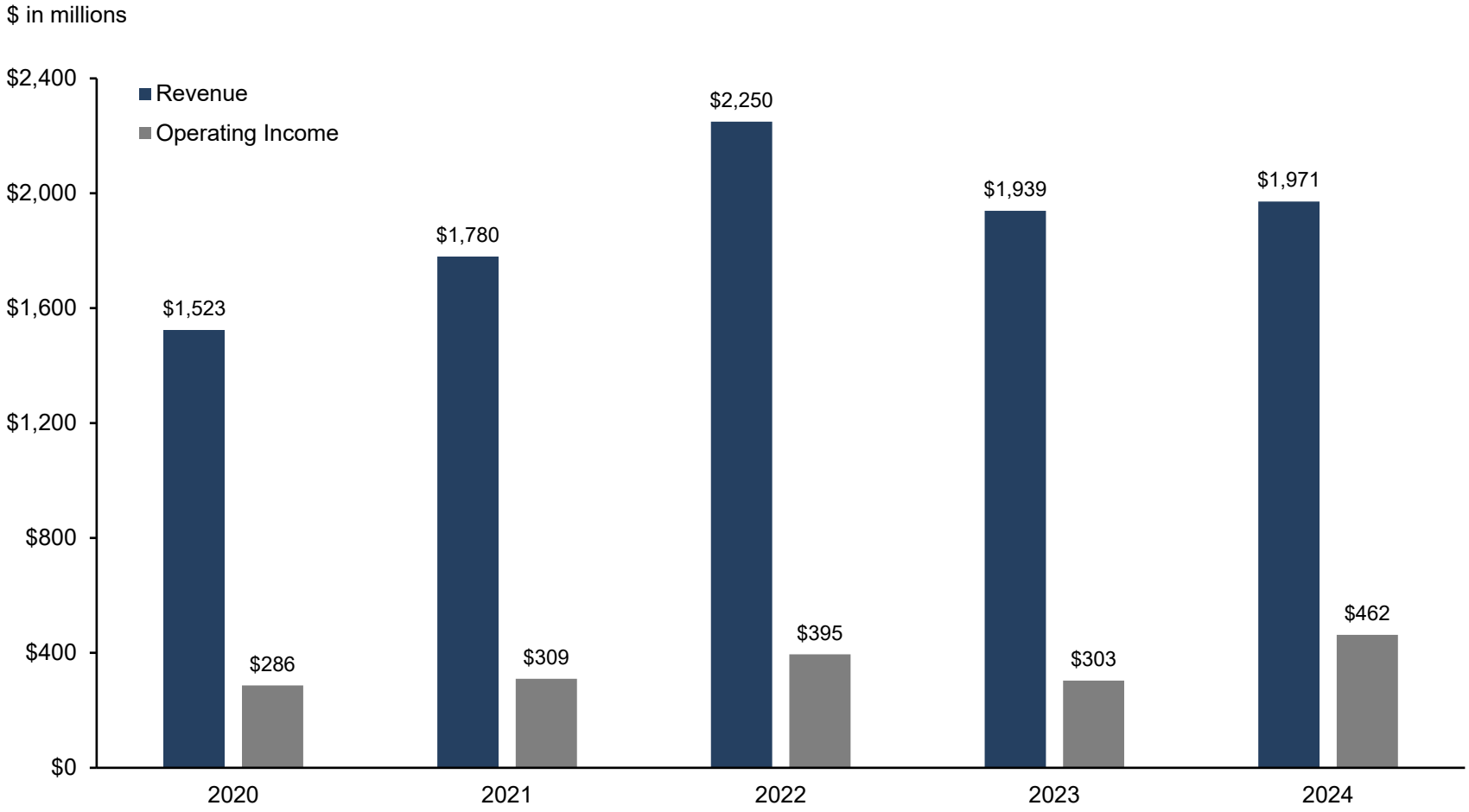
Note: TXNM total assets represent the sum of the total assets of its two subsidiaries, PNM and TNMP, and Corporate and Other assets reported by TXNM in SEC Form-10K filings.

TXNM Revenue and Operating Income

JA Exhibit ELT-4

Is contained in the following 1 page.

TXNM Energy, Inc.
Revenue and Operating Income
2020–2024



Source: *LSEG Workspace*; SEC Form 10-K filings

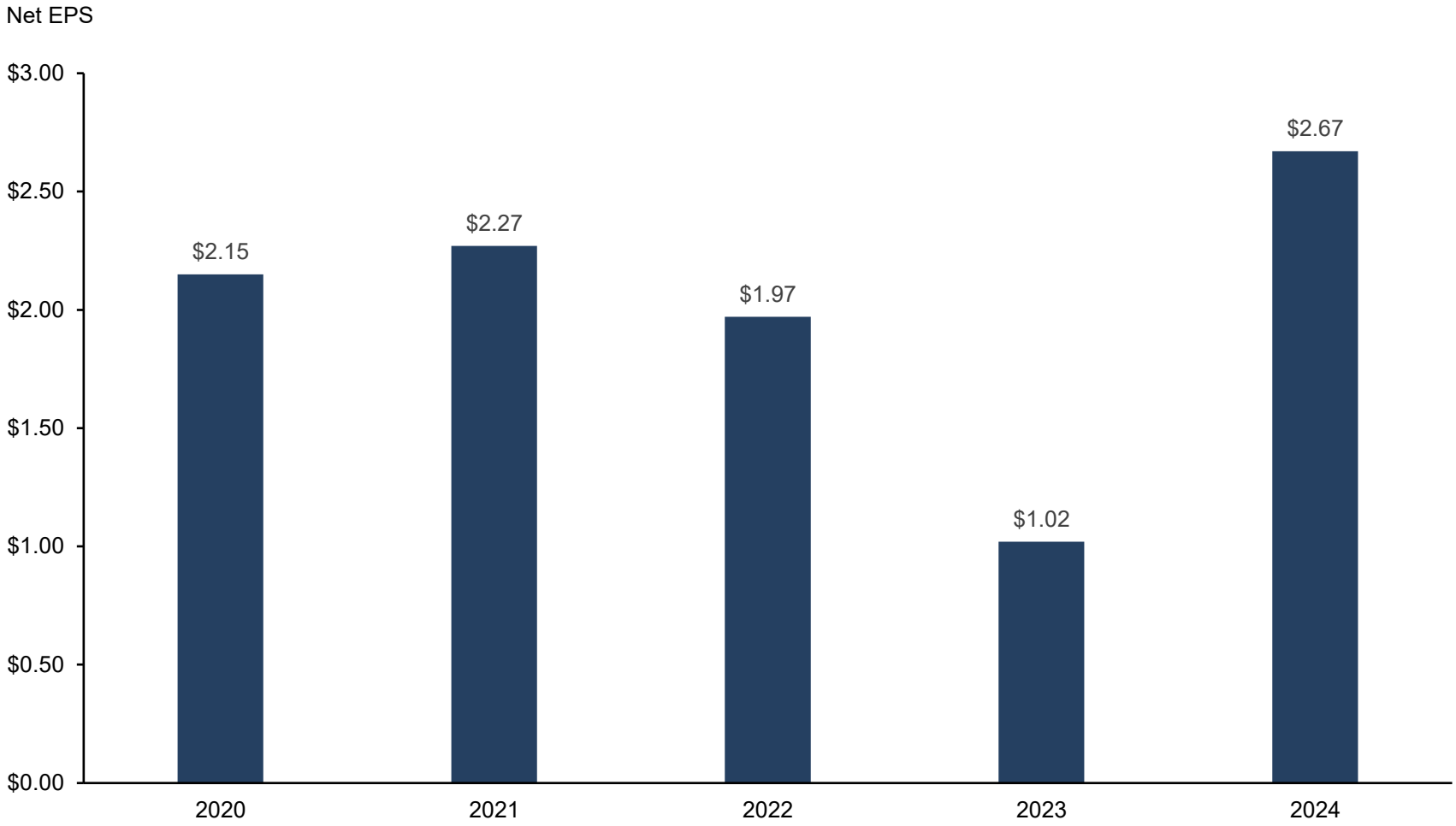
Note: Operating income represents the income from operations before non-recurring income/expense, which is equivalent to the sum of operating income and regulatory disallowances reported in TXNM's SEC Form 10-K filings.

TXNM Net Earnings Per Share

JA Exhibit ELT-5

Is contained in the following 1 page.

TXNM Energy, Inc.
Net Earnings Per Share
2020–2024



Source: *LSEG Workspace*; SEC Form 10-K filings

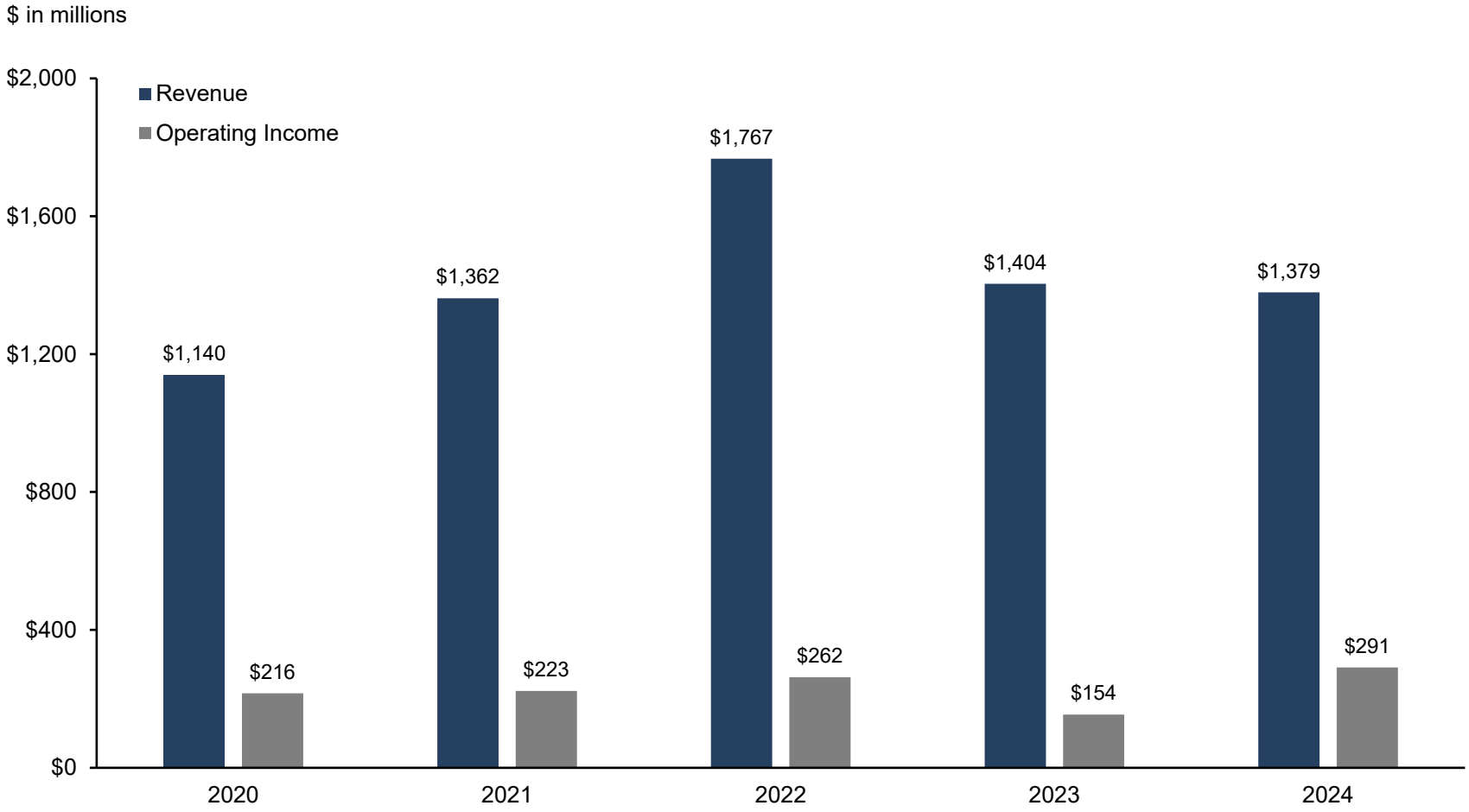
Note: Net earnings per share ("EPS") is the diluted net earnings per share of common stock reported by TXNM in SEC Form 10-K filings.

PNM Revenue and Operating Income

JA Exhibit ELT-6

Is contained in the following 1 page.

PNM Energy, Inc.
Revenue and Operating Income
2020–2024



Source: *LSEG Workspace*; SEC Form 10-K filings

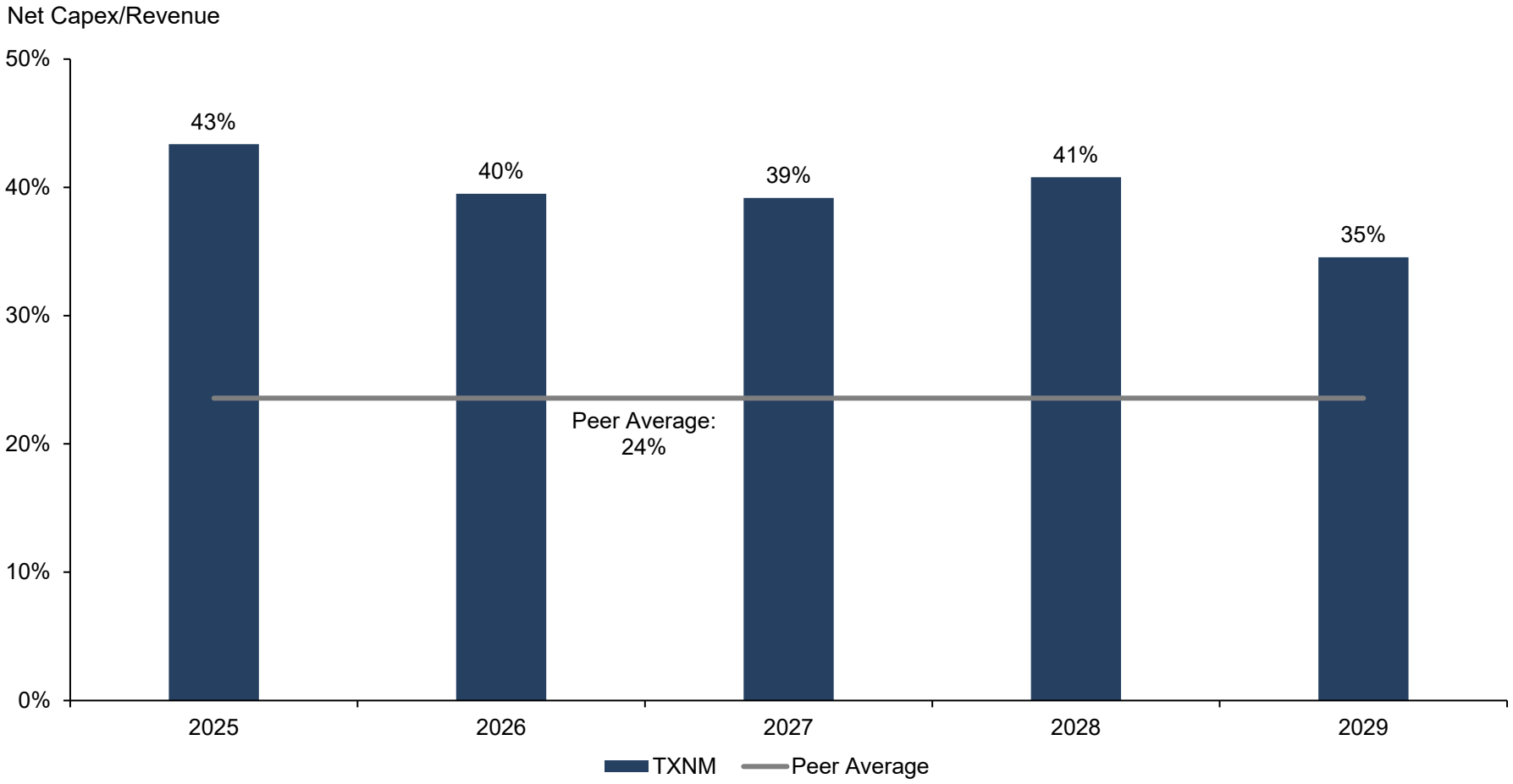
Note: Operating income represents the income from operations before non-recurring income/expense, which is equivalent to the sum of operating income and regulatory disallowances reported for PNM in TXNM's SEC Form 10-K filings.

TXNM Forecasted Net Capex Ratios

JA Exhibit ELT-7 A-B

Is contained in the following 2 pages.

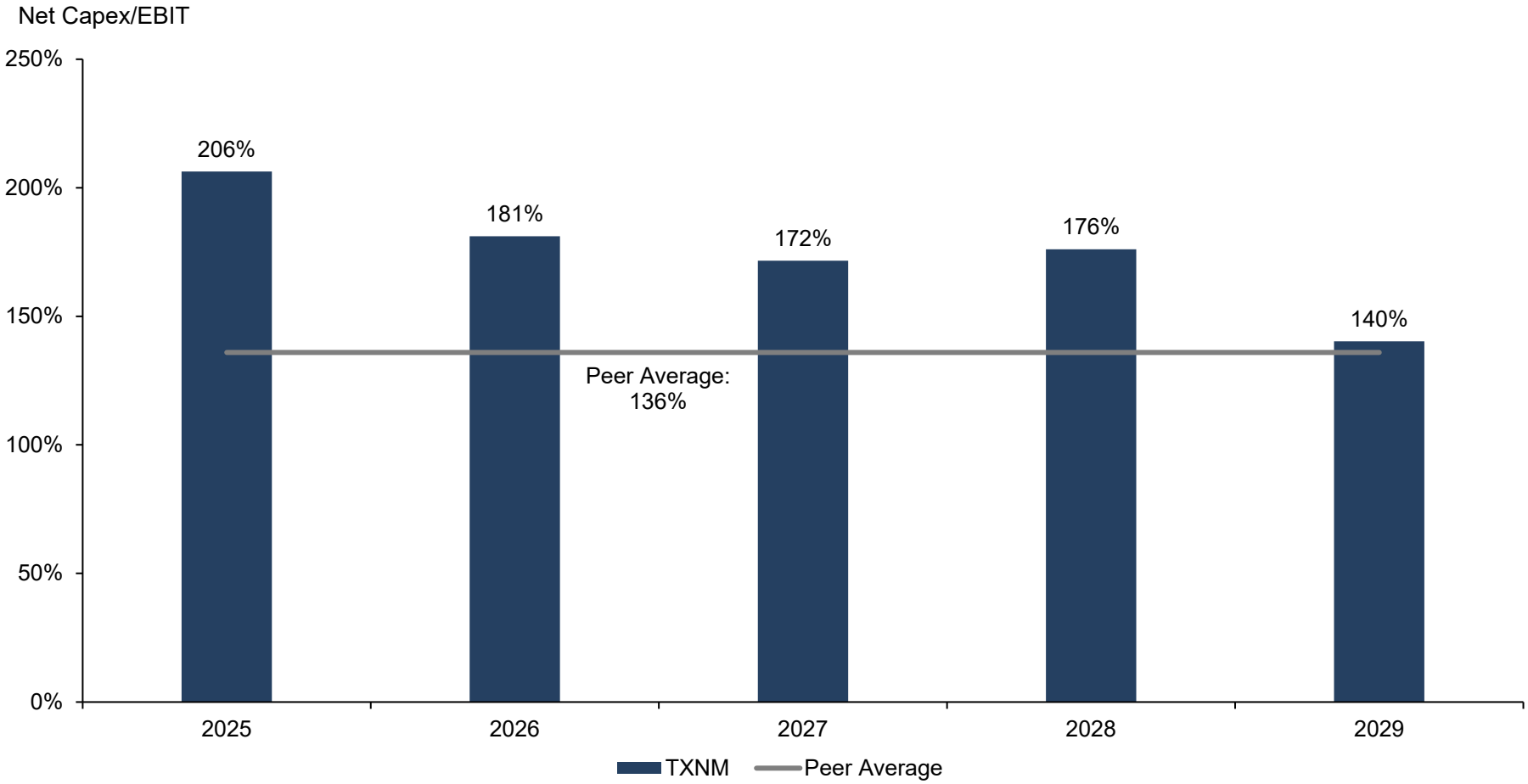
TXNM Energy, Inc. and Industry Peers
Forecasted Net Capex to Revenue Ratio
2025–2029



Source: Aswath Damodaran, "Capital Expenditures by Sector (US)," *NYU Stern School of Business*, January 2025, https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/capex.html; TXNM 2024 10-K; Proxy Statement; March 2025 Investor Presentation

Note: Companies in the "power" industry, which includes TXNM in Prof. Damodaran's data, have an average net capex to revenue ratio as of January 2025 of 24% (plotted for all years).

TXNM Energy, Inc. and Industry Peers
Forecasted Net Capex to EBIT Ratio
2025–2029



Source: Aswath Damodaran, "Capital Expenditures by Sector (US)," *NYU Stern School of Business*, January 2025, https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/capex.html; TXNM 2024 10-K; Proxy Statement; March 2025 Investor Presentation

Note: Companies in the "power" industry, which includes TXNM in Prof. Damodaran's data, have an average net capex to EBIT ratio as of January 2025 of 136% (plotted for all years). EBIT is shorthand for earnings before interest and taxes. Prof. Damodaran's analysis uses an after-tax measure of EBIT calculated as EBIT * (1-t), where t is the effective tax rate. TXNM's 2024 effective tax rate of 7.68% is assumed for all years.

Statistical Significance Test Results of Reliability Data by Ownership Type

JA Exhibit ELT-8 A-B

Is contained in the following 2 pages.

U.S. Energy Information Administration

Statistical Significance Test Results of Reliability Data by Ownership Type[1]

2013–2023

	SAIDI[2]		SAIFI[3]		CAIDI[4]	
	With MED	Without MED	With MED	Without MED	With MED	Without MED
2013	–	–	–	–	–	–
2014	–	–	–	–	–	–
2015	–	–	–	–	–	–
2016	–	–	–	–	Private > Public	–
2017	–	–	–	–	Private > Public	–
2018	Private > Public	–	–	–	Private > Public	Private > Public
2019	–	Private > Public	–	–	–	Private > Public
2020	–	–	–	–	–	–
2021	Private > Public	–	–	–	Private > Public	–
2022	–	–	–	–	–	–
2023	–	–	–	–	–	–

Source: U.S. Energy Information Administration ("EIA") Reliability Data; *FactSet*

Note:
[1] A two-tailed t-test was performed to test whether the reliability metrics of publicly listed and private capital owned utilities were statistically different at the 95% confidence level. "–" indicates tests where the p-value >= 0.05 and no significant difference was found. In tests where the p-value < 0.05, the table indicates the ownership group which exhibited better performance for a given reliability metric. Reliability data from the EIA is reported at the utility provider and state level. Metrics can be reported with or without Major Event Days ("MED"). For utilities using the Institute of Electrical and Electronics Engineers ("IEEE") standard, a MED is any day that exceeds a daily SAIDI threshold called Tmed. For utilities not using the IEEE standard, MEDs are self-determined by the reporting utility. Utilities using IEEE standards are included in this analysis. In addition, the analysis includes utilities reporting under an "other" standard that excludes inactive accounts and considers momentary interruptions to be at most 5 minutes, in accordance with IEEE standards. Utilities owned by Berkshire Hathaway are classified as private capital owned utilities. Results are robust to the exclusion of utilities owned by Berkshire Hathaway.
[2] System Average Interruption Duration Index ("SAIDI") measures the average cumulative outage duration per customer.
[3] System Average Interruption Frequency Index ("SAIFI") measures the average number of electrical interruptions per customer.
[4] Customer Average Interruption Duration Index ("CAIDI") measures the average number of minutes taken to restore power after an interruption.

U.S. Energy Information Administration

Differences in Average Reliability Metrics by Ownership Type[1]

2013–2023

	SAIDI[2]		SAIFI[3]		CAIDI[4]	
	With MED	Without MED	With MED	Without MED	With MED	Without MED
2013	-14.34	-2.25	0.11	-0.02	105.34	-4.25
2014	-58.17	-7.57	-0.15	-0.18	-19.44	7.46
2015	55.30	-8.10	0.12	-0.11	-0.90	2.11
2016	-70.76	-11.98	0.19	-0.03	**-37.53 ***	-4.56
2017	-89.67	0.42	0.13	0.13	**-58.50 ***	-10.82
2018	**-241.74 ***	-23.64	0.01	0.00	**-108.31 ***	**-15.64 ***
2019	2.91	**-30.43 ***	0.12	-0.10	-18.03	**-12.99 ***
2020	-42.30	-0.60	0.22	0.06	-39.83	-4.94
2021	**-201.16 ***	-13.69	0.20	0.04	**-91.95 ***	-5.17
2022	-13.46	-15.32	0.06	-0.02	-35.82	-5.87
2023	26.46	-14.40	0.15	-0.04	-48.02	-9.79

Source: U.S. Energy Information Administration ("EIA") Reliability Data; *FactSet*

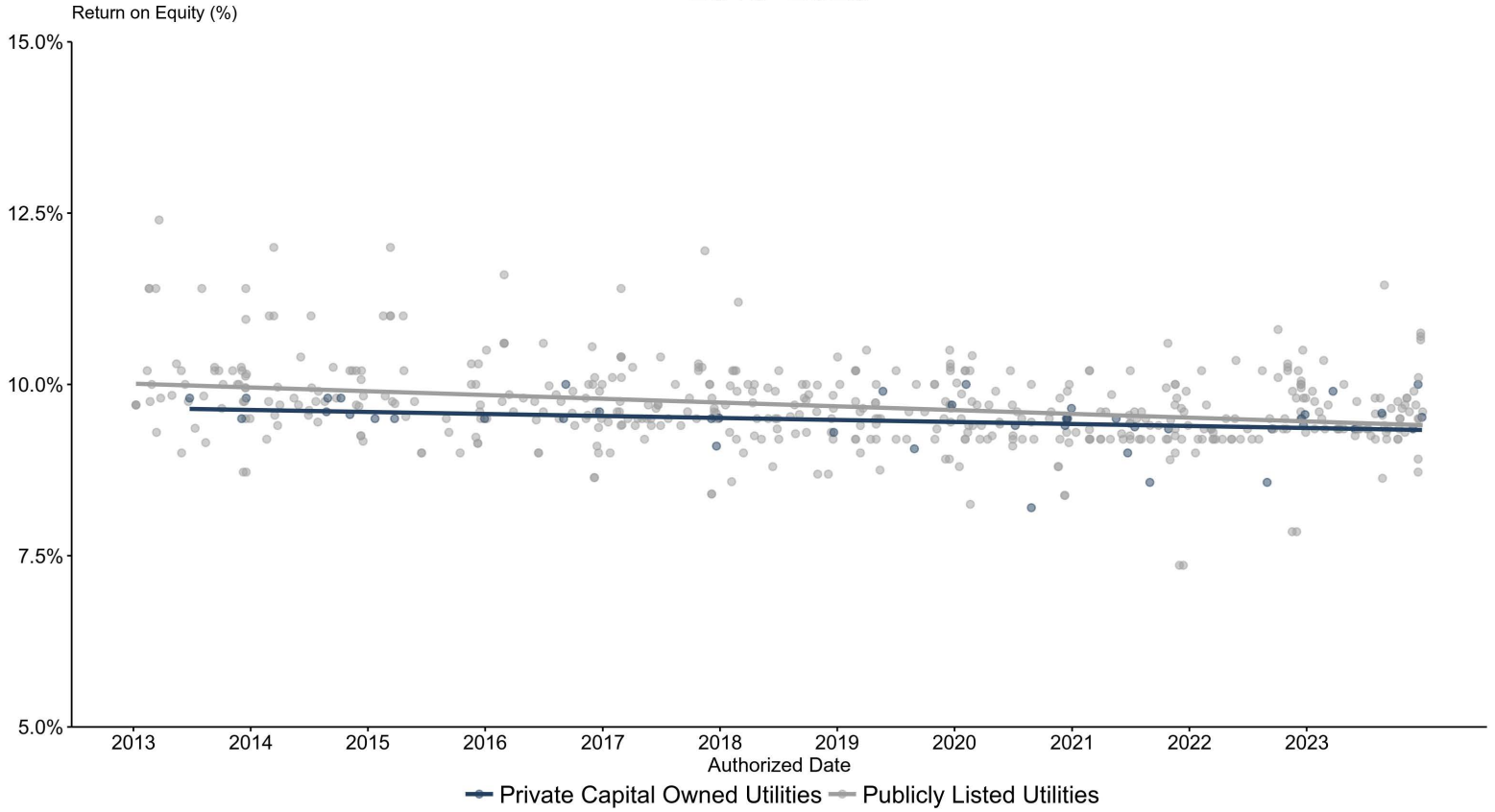
Note:
[1] Differences in reliability metric averages (private capital owned - publicly listed) are displayed. A two-tailed t-test was performed to test whether the reliability metrics of publicly listed and private capital owned utilities were statistically different at the 95% confidence level. "*" represents cases where p-value < 0.05 and the result was found to be statistically significant. Reliability data from the EIA is reported at the utility provider and state level. Metrics can be reported with or without Major Event Days ("MED"). For utilities using the Institute of Electrical and Electronics Engineers ("IEEE") standard, a MED is any day that exceeds a daily SAIDI threshold called Tmed. For utilities not using the IEEE standard, MEDs are self-determined by the reporting utility. Utilities using IEEE standards are included in this analysis. In addition, the analysis includes utilities reporting under an "other" standard that excludes inactive accounts and considers momentary interruptions to be at most 5 minutes, in accordance with IEEE standards. Utilities owned by Berkshire Hathaway are classified as private capital owned utilities. Results are robust to the exclusion of utilities owned by Berkshire Hathaway.
[2] System Average Interruption Duration Index ("SAIDI") measures the average cumulative outage duration per customer.
[3] System Average Interruption Frequency Index ("SAIFI") measures the average number of electrical interruptions per customer.
[4] Customer Average Interruption Duration Index ("CAIDI") measures the average number of minutes taken to restore power after an interruption.

Rate Case Return on Equity Percentages by Ownership Type

JA Exhibit ELT-9 A-B

Is contained in the following 2 pages.

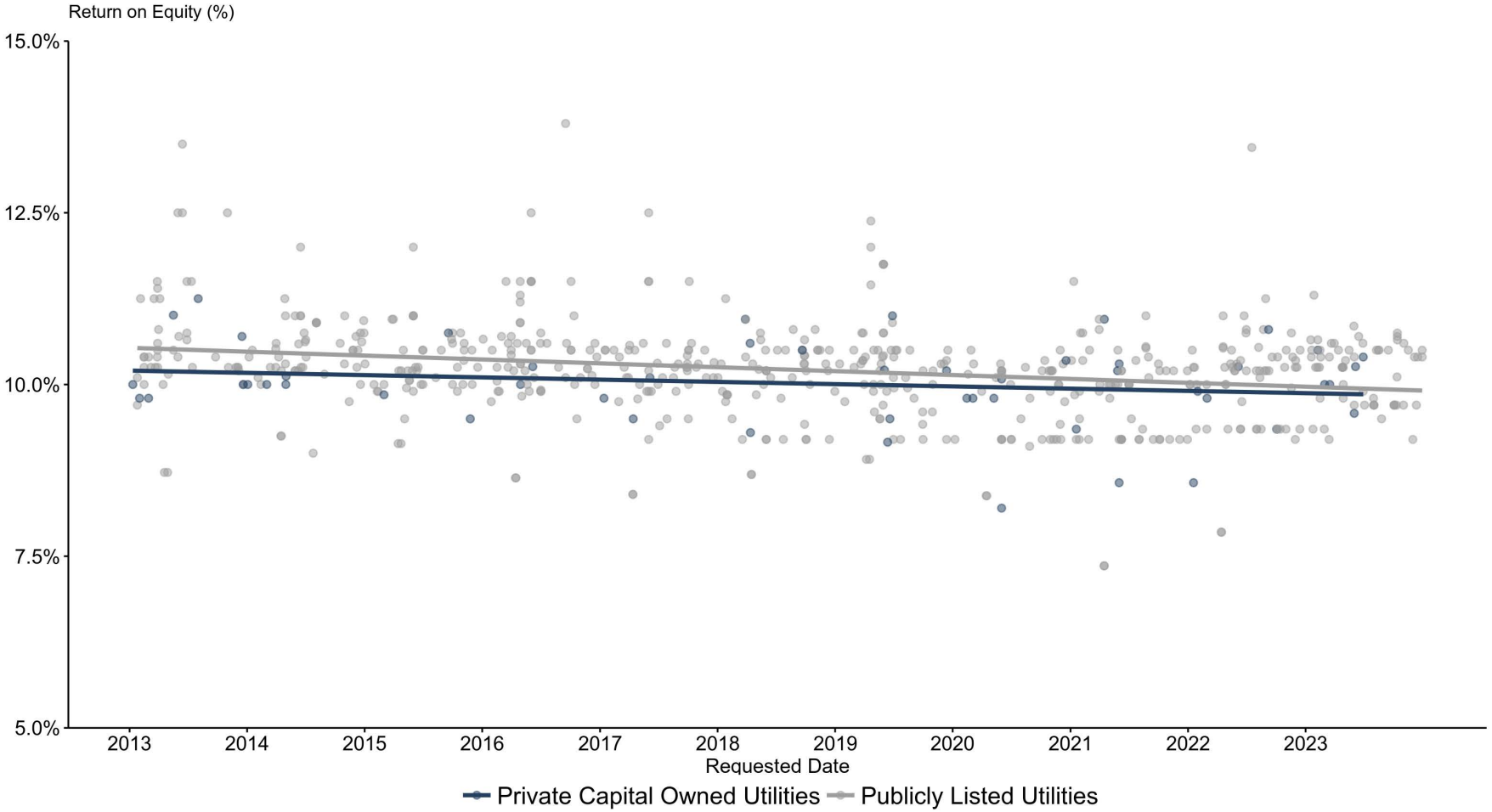
S&P Capital IQ Rate Case History
Authorized Return on Equity Percentage
2013–2023



Source: S&P Capital IQ Rate Case History; *FactSet*

Note: The chart plots the authorized return on equity and a line of best fit, calculated using the ordinary least squares model, for the private capital owned and publicly listed utilities present in the EIA reliability data from 2013 to 2023. Utilities owned by Berkshire Hathaway are classified as private capital owned utilities. A two-tailed t-test with a t-statistic of 3.45 (p-value 0.001) indicates that the average authorized return on equity percentage of private capital owned utilities is statistically lower than that of publicly listed utilities at the 95% confidence level. Results are robust to the exclusion of utilities owned by Berkshire Hathaway.

S&P Capital IQ Rate Case History
Requested Return on Equity Percentage
2013–2023



Source: S&P Capital IQ Rate Case History; *FactSet*

Note: The chart plots the requested return on equity and a line of best fit, calculated using the ordinary least squares model, for the private capital owned and publicly listed utilities present in the EIA reliability data from 2013 to 2023. Utilities owned by Berkshire Hathaway are classified as private capital owned utilities. A two-tailed t-test with a t-statistic of 2.15 (p-value 0.036) indicates that the average requested return on equity percentage of private capital owned utilities is statistically lower than that of publicly listed utilities at the 95% confidence level. Results are robust to the exclusion of utilities owned by Berkshire Hathaway.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO, TXNM ENERGY, INC. AND TROY PARENTCO LLC FOR APPROVAL OF AN ACQUISITION AND MERGER OF TROY MERGER SUB INC. WITH TXNM ENERGY, INC.; APPROVAL OF A GENERAL DIVERSIFICATION PLAN; AND ALL OTHER AUTHORIZATIONS AND APPROVALS REQUIRED TO CONSUMMATE AND IMPLEMENT THIS TRANSACTION	**Case No. 25-00___-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO, TXNM ENERGY, INC. AND TROY PARENTCO LLC,	
JOINT APPLICANTS.	

SELF AFFIRMATION

In accordance with 1.2.2.35(A)(3) NMAC and Rule 1-011(B) NMRA, **ERIC L. TALLEY, Marc and Eva Stern Professor of Law and Business and the Faculty Co-Director of the Millstein Center for Global Markets and Corporate Ownership at Columbia University,** upon penalty of perjury under the laws of the State of New Mexico, affirms and states: I have read the foregoing **Direct Testimony and Exhibits of Eric L. Talley** and it is true and correct based on my personal knowledge and belief.

DATED this 25th day of August, 2025.

/s/ *Eric L. Talley*___
ERIC L. TALLEY