BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION 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 ("JOINT APPLICATION")	**) Docket No. 25-00060-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO, TXNM ENERGY, INC. AND TROY PARENTCO LLC	
JOINT APPLICANTS.	

JOINT APPLICANTS' RESPONSE TO THE HEARING EXAMINERS' ORDER DIRECTING JOINT APPLICANTS TO SHOW CAUSE AND FOR OTHER RELIEF

APRIL 6, 2026

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Public Service Company of New Mexico ("PNM"), TXNM Energy Inc. ("TXNM"), and Troy ParentCo, LLC ("ParentCo") ("Joint Applicants") file this response to the Hearing Examiners' March 11, 2026 Order Directing Joint Applicants to Show Cause ("Order").

I. Background

Eleven months ago, Blackstone Infrastructure publicly announced that non-party Troy TopCo LLP ("TopCo") had agreed to invest $400 million in TXNM in exchange for approximately 7.5% of the shares of TXNM's common stock (the "Financing Transaction"). National and New Mexico news outlets shared the report across the nation,[1] and TXNM filed a Form 8-K with the SEC publicly disclosing the Financing Transaction and attaching a copy of the associated agreement (the "Stock Purchase Agreement").[2] As Source New Mexico wrote on May 19, 2025, Blackstone Infrastructure "plan[ned] to invest $400 million in TXNM through the purchase of 8 million newly issued shares at $50 apiece to support TXNM's plans for growth."[3] The purpose of the $400 million investment was to meet the near-term needs of TXNM and its subsidiaries, PNM and Texas New Mexico Power Company ("TNMP"), for equity to support capital and operating

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[1] Colin Kellaher, Blackstone Infrastructure to Buy TXNM Energy for $5.7 Billion, Wall St. J. (May 19, 2025), https://www.wsj.com/business/deals/blackstone-infrastructure-to-buy-txnm-energy-for-5-7-billion-fc1a779d; Lillian Federico and Jim Davis, Blackstone Purchase of TXNM Likely to Face Stringent Regulatory Scrutiny, S&P Global Market Intelligence (May 28, 2025), https://www.spglobal.com/market-intelligence/en/news-insights/research/blackstone-purchase-of-txnm-likely-to-face-stringent-regulatory-scrutiny; Jason Plautz, Blackstone to Acquire New Mexico Utility, E&E News (May 20, 2025), https://www.eenews.net/articles/blackstone-to-acquire-new-mexico-utility/; Blackstone to Acquire TXNM Energy in $11.5 Billion Deal, Yahoo Finance (May 20, 2025), https://finance.yahoo.com/news/blackstone-acquire-txnm-energy-11-092854571.html; Press Release, Blackstone, TXNM Energy Enters Agreement to Be Acquired by Blackstone Infrastructure (May 19, 2025), https://www.blackstone.com/news/press/txnm-energy-enters-agreement-to-be-acquired-by-blackstone-infrastructure/.

[2] TXNM Energy, Inc., Current Report (Form 8-K), at 5, Ex. 10.3 (May 19, 2025).

[3] *See* Source NM Staff, PNM Parent Company Announces $11.5B Proposed Sale to Blackstone Infrastructure, Source NM (May 19, 2025), https://sourcenm.com/briefs/pnm-parent-company-announces-11-5b-proposed-sale-to-blackstone-infrastructure/.

programs that required significant investment while maintaining credit ratings with rating agencies.[4]

Both the public SEC filing and the public announcements noted that the Financing Transaction would close in June 2025.[5] As these public disclosures reflected, TopCo's rights to vote the ~7.5% shares of TXNM were restricted. TopCo would not have governance rights or rights to: appoint anyone to TXNM's board of directors; elect or remove officers; or direct TXNM's policy or management. In addition, TopCo could not acquire any additional shares without TXNM's approval.

TXNM, PNM, and TopCo all believed, as they still do today, that NMSA 1978, Section 62-6-12 does not apply to the Financing Transaction. When the Financing Transaction closed in June 2025, TopCo paid $400 million to TXNM in exchange for the shares of common stock.

On August 25, 2025, PNM, TXNM, and Troy ParentCo LLP ("ParentCo") filed an application ("Application") seeking Commission approval for an approximately $11.5 billion acquisition, via merger, of TXNM ("Acquisition").[6] The Application includes the testimonies of

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[4] Direct Testimony of Joseph D. Tarry in Response to Show Cause Order ("Tarry Show Cause Order Testimony") at 3-7.

[5] TXNM Energy, Inc., Current Report (Form 8-K), at 5, Exhibit 99.1 (May 19, 2025); Press Release, Blackstone, TXNM Energy Enters Agreement to Be Acquired by Blackstone Infrastructure (May 19, 2025), https://www.blackstone.com/news/press/txnm-energy-enters-agreement-to-be-acquired-by-blackstone-infrastructure/; Press Release, TXNM Energy, Acquisition Investor Release (May 19, 2025), https://www.txnmenergy.com/~/media/Files/P/PNM-Resources/press-release/Acquisition%20Investor%20Release.pdf.

[6] The Acquisition was subsequently approved by the Federal Energy Regulatory Commission ("FERC"). *Troy ParentCo LLC*, 194 FERC ¶ 61,134, at ¶¶ 2, 25, 26, 44, 51 (2026) (finding the merger is "consistent with the public interest"; "no evidence that either state or federal regulation will be impaired by the Proposed Transaction"; "the Proposed Transaction will not have an adverse effect on rates"; and the merger will not adversely affect competition). The Public Utility Commission of Texas has also approved the Acquisition. *Application of Texas-New Mexico Power Co. and Troy ParentCo for Reg. Approvals*, Docket No. 58536, Order (Feb. 6, 2026).

seven witnesses who discuss the many reasons why the Acquisition by ParentCo would benefit New Mexicans. The Application repeatedly disclosed the Financing Transaction.[7] On February 6, 2026, nearly nine months after public announcement of the Financing Transaction, Prosperity Works filed a motion to show cause, asserting that the Financing Transaction violated NMSA Section 62-6-12(A)(3)(c).

This is the backdrop against which the Hearing Examiners issued the Order, which directs Joint Applicants to file a brief addressing: (1) whether Section 62-6-12 applies to the Financing Transaction; (2) the legal consequences if it does; and (3) "any other issues of law or fact necessary" for the Commission to make its determination.[8] The Hearing Examiners directed the Joint Applicants to include "all legal authority, statutory analysis, and factual evidence supporting their position."[9]

II. Summary of Argument

Prosperity Works' Motion asks the Hearing Examiners to take an unprecedented step of declaring the acquisition of a non-controlling investment in publicly traded common stock of a public company that owns a New Mexico public utility void. Movants cite Section 62-6-12, Subsection (A)(3), which requires Commission approval for "any person" to acquire the "stock" of a public utility or public utility holding company in any of five different circumstances, codified in five different subparts. Movants say one of those five subparts exists here: they allege TopCo's purchase of "stock" was "for purposes of" ParentCo's Acquisition of TXNM.

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[7] Application, at 10; *id.*, Ex. D, at 22, 30, 50-51, 54, A-1; *id.*, Ex. E, at A-1.

[8] The Order "does not constitute a final determination that Section 62-6-12 was violated or that the stock acquisition should be rendered void." Order at 8.

[9] Order at 9.

The first question posed by the Hearing Examiners is whether Section 62-6-12 applies to the Financing Transaction. It does not. Prosperity Works' "plain language" construction of Section 62-6-12(A)(3)(c) is so "plain" as to become simplistic and inconsistent with the statute as a whole. The most reasonable and logical construction of 62-6-12(A)(3), which reflects the regulatory purposes of the Public Utility Act ("PUA") of benefiting the public interest without imposing unnecessary costs and burdens, would read a "control" requirement into an understanding of Section A. Furthermore, the plain language reading urged by Prosperity Works would lead to absurd results requiring the Commission to consider voluminous approval requests and deterring investment in New Mexican public utilities.

In thinking this through, it helps to break down the aims of the separate subsections: Subsections (A)(1) - mergers and consolidations; (A)(2) - mergers and consolidations; and (A)(4) - sale of utility plant or property. These sections do not apply to the Financing Transaction. The only section that could be argued to apply is Subsection (A)(3) concerning the acquisition of "stock". That raises a question of statutory interpretation: how many shares of "stock" does a person need to acquire to trigger the prior-approval requirements of Subsection (3)?

Although Movants focus on only one of the five subparts—Subpart (c) ("for the purposes of any acquisition [of a public utility]"), the question is not so simple. That is because Subsection (A)(3) also requires, in Subparts (a) and (d), the Commission to approve any "stock" purchase by any person who is or is "associated [or] affiliated" with a "person subject to regulation or classified as a public utility or public utility holding company in any jurisdiction."[10] If any acquisition of shares of "stock", even a non-controlling number of shares, triggers Subsection (A)(3), then the

[10] NMSA 1978, § 62-6-12(A)(3)(a), (d).

large mutual or index funds that are, or are associated or affiliated with, public utilities or public utility holding companies would need Commission approval before purchasing a single share of TXNM (or any other company that owns a New Mexico public utility) on the open market (as required to track the various indexes they follow). Likewise, any member of management of any public utility in the United States (*i.e.*, a person "associated or affiliated" with a public utility "in any jurisdiction") would need prior Commission approval to receive a customary equity award of shares of stock of a public company that owns a New Mexico public utility or to acquire even a single share of any such public company on the open market. That would be absurd and serve no beneficial purpose under the Public Utility Act.

The Commission is confronted with three facially plausible interpretations. On one extreme, acquisition of the "stock" could mean acquiring any amount of shares of "stock"—no matter how marginal the number of shares is, even down to a single share. That is too broad. On the other hand, the acquisition of "stock" could be limited to mean acquiring "all of the shares of the stock"—meaning all of the shares of the company. That may be too narrow. So, if "stock" requires more than a single share, but less than all the shares, how much "stock" is required to seek Commission approval? There would be no way to determine if the statute applied to an acquisition of ~7.5% of TXNM's shares, as opposed to 0.5%, 5%, or 9%, or anything in between. Investors need predictability and certainty to avoid a situation where, like here, Movants seek to unwind an investment nearly a year after the fact in a manner that would have severe consequences for TXNM and its utilities' customers.

Fortunately, the text of the statute and its purpose offer a reasoned interpretation that harmonizes all five subparts of Subsection (A)(3) with the rest of Section 62-6-12 and the Public Utility Act more generally. The five subparts of Subsection (A)(3), like the remainder of Section

62-6-12, are designed to prevent a transfer of a controlling amount of stock without Commission approval. Without a controlling interest, neither Subsection (A)(3) nor any of its five subparts, including the one upon which Movants rely, would be triggered. TopCo did not acquire a controlling interest.

An alternative and independent basis also exists to reject Movants' position: Subpart (A)(3)(c) does not apply here because the Financing Transaction was for the purpose of investing in TXNM and resulted in TopCo owning TXNM shares irrespective of whether the Acquisition is approved, and therefore was not "for the purposes of any acquisition subject to the provisions of this section." When interpreting a phrase such as "for the purposes of," courts look to the "dominant" purpose of the transaction.[11] Here, from TopCo's perspective, the purpose of the Financing Transaction was for TopCo to purchase 7.5% of TXNM's shares at an attractive valuation (approximately $50/share) irrespective of whether the Acquisition closes.[12] And from TXNM's perspective, the Financing Transaction was intended and used to provide capital and operational funds for PNM and TNMP to the benefit of customers of both utilities while protecting TXNM's and PNM's credit ratings.[13] TopCo has now invested the money; TXNM has now spent

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[11] *United States v. Roney*, No. 3:24-cr-113, 2025 WL 2533193, at *10 (E.D. Va. Sept. 3, 2025) (interpreting, based on the weight of authority, the phrase "'for the purpose of' … to mean the 'dominant motive' behind the offense conduct").

[12] *See* Direct Testimony of Sebastien Sherman in Response to Show Cause Order ("Sherman Show Cause Order Testimony") at 6-7.

[13] Tarry Show Cause Order Testimony at 4 ("[M]y testimony makes it clear ... that the purpose and terms of the Financing Transaction were established to provide operational funds for PNM and TNMP to the benefit of customers of both utilities while protecting TXNM's and PNM's credit ratings.").

it on supporting its public utilities; and nothing about the Financing Transaction impacts the Acquisition.[14]

The Order also asks what happens if a violation did occur. Past Commission treatment of Section 62-6-12 provides a practical path forward here. Rather than declaring the Financing Transaction void—which would replace $400 million of TXNM equity with $400 million of TXNM debt, significantly impact TXNM's financial condition, create uncertainty surrounding future investment, and potentially increase the cost of debt to customers—the Commission can adopt one of the remedies laid out in Section IV below. These include retroactively approving the Financing Transaction or allowing the parties to restructure the Financing Transaction to avoid any potential issues under Subsection (A)(3). If the Commission approaches the application of Section 62-6-12 as it has in the past, there are pragmatic solutions available here that avoid the negative and tangled consequences of voiding the stock sale.

III. The Hearing Examiners should find that Section 62-6-12 does not apply to the Financing Transaction and did not require prior express authorization of the Commission.

A. New Mexico statutory analysis law disfavors reading the words of a statute in a vacuum, even when determining the "plain language."

In construing the language of a statute that appears beguilingly simple at first blush, a court's goal and guiding principle is to give effect to the intent of the Legislature.[15] In determining intent, courts look to the language used and generally give the statutory language its "ordinary and

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[14] *Id.* at 14; *see also id.* at 23 ("TXNM has already used the $400 million that resulted from this transaction. Specifically, among other things, this funding was used to pay down TXNM debt, to provide equity contributions and term loans to PNM and TNMP.").

[15] *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047; *see In re Portal*, 2002-NMSC-011, ¶ 5, 132 N.M. 171, 45 P.3d 891 ("Statutes are to be read in a way that facilitates their operation and the achievement of their goals." (internal quotation marks and citation omitted)).

plain meaning unless the [L]egislature indicates a different interpretation is necessary."[16] It is true that the language used in a statute is viewed as a strong indicator of legislative intent;[17] however, this does not end the inquiry.[18] Our Supreme Court has rejected formalistic and mechanical interpretation of statutory language.[19]

"In examining the provisions of the [statute], we adhere to Justice Montgomery's wise words of caution in applying the plain meaning rule, acknowledging that ambiguity may be lurking in even seemingly plain words if they conflict with the overall legislative intent."[20] The New Mexico Supreme Court has cautioned against the "beguiling simplicity" of the plain meaning rule, stating:

> [w]hile one part of the statute may appear absolutely clear and certain to the point of mathematical precision, lurking in another part of the enactment, or even in the same section, or in the history and background of the legislation, or in an apparent

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[16] *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 13, 121 N.M. 764, 918 P.2d 350; *Cooper v. Chevron USA, Inc*., 2002-NMSC-020, ¶ 16, 132 N.M. 382, 49 P.3d 61.

[17] *D'Avignon v. Graham*, 1991-NMCA-125, ¶ 11, 113 N.M. 129, 131, 823 P.2d 929, 931.

[18] *State v. Rivera*, 2004-NMSC-001, ¶¶ 11-14, 134 N.M. 768, 770–71, 82 P.3d 939, 941–42 ("Application of the plain meaning rule often does not end the analysis when construing a statute."); *see also Dewitt v. Rent-A-Center, Inc*., 2009-NMSC-032, ¶ 29, 146 N.M. 453, 212 P.3d 341 (observing that where the plain language of the Act is clear, our statutory construction inquiry should normally end, but considering other principles of statutory construction to the extent the language could be considered ambiguous); *Taylor v. Waste Mgmt. of New Mexico*, Inc., 2021-NMCA-026, ¶ 8, 489 P.3d 994, 997–98 ("In other words, while the existence of a plain meaning might normally end our inquiry, it may nevertheless be necessary to examine, inter alia, the history, background, and overall structure of the statutory provision being construed, as well as the purpose of the statute"); *Guiseppi v. Walling*, 144 F.2d 608, 624 (2d Cir.1944) ("There is no surer way to misread any document than to read it literally…As nearly as we can, we must put ourselves in the place of those who uttered the words, and try to divine how they would have dealt with the unforeseen situation; and, although their words are by far the most decisive evidence of what they would have done, they are by no means final.").

[19] *Cummings v. X-Ray Assocs. of N.M., P.C.*, 1996-NMSC-035, ¶ 45, 121 N.M. 821, 918 P.2d 1321 ("[The plain meaning] rule does not require a mechanical, literal interpretation of the statutory language.").

[20] *Baker*, 2013-NMSC-043, ¶ 11 ("The plain meaning rule's beguiling simplicity may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may give rise to legitimate differences of opinion concerning the statute's meaning." (internal brackets and ellipses removed)).

> conflict between the statutory wording and the overall legislative intent, there may be one or more provisions giving rise to genuine uncertainty as to what the legislature was trying to accomplish.[21]

The New Mexico Supreme Court has thus looked beyond the language of a statute where "even if not ambiguous in a strict legal sense, [it] is by no means a model of legislative clarity."[22] Essentially, the plain meaning rule is "not conclusive, and it must yield on occasion to an intention otherwise discerned in terms of equity, legislative history, or other sources."[23] The New Mexico Supreme Court has not relied upon the literal meaning of a statute when such an application would be absurd, unreasonable, or otherwise inappropriate.[24]

"In performing [the] task of statutory interpretation, not only do [New Mexico courts] look to the language of the statute at hand, [they] also consider the history and background of the statute."[25] Further, courts examine the overall structure of the statute and its function in the

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[21] *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 871 P.2d 1352.

[22] *Pirtle v. Legislative Council Comm. of New Mexico Legislature*, 2021-NMSC-026, ¶ 17, 492 P.3d 586; *see also State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 871 P.2d 1352 (recognizing that judicial interpretation to ascertain legislative intent is permitted if there is "any doubt" as to the meaning of statutory language); *Amdor v. Grisham*, 2025-NMSC-024, ¶ 30, 578 P.3d 971 ("If statutory language is doubtful, ambiguous, or an adherence to the literal use of the words would lead to injustice, absurdity, or contradiction, the court should reject the plain meaning rule in favor of construing the statute according to its obvious spirit or reason.").

[23] *Sims v. Sims*, 1996-NMSC-078, ¶ 21, 122 N.M. 618, 930 P.2d 153 (internal quotation marks and quoted authority omitted); *see also Cummings*, 1996–NMSC–035, ¶ 45, 121 N.M. 821, 918 P.2d 1321; *Eldridge v. Circle K Corp*., 1997-NMCA-022, ¶ 29, 123 N.M. 145, 934 P.2d 1074 ("[O]ur task is not to apply language literally when it would lead to counterproductive, inconsistent, and absurd results; we must harmonize the statutory language to achieve the overall legislative purpose.").

[24] *State v. Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M. 768, 82 P.3d 939 (citing *Helman,* 1994-NMSC-023, ¶ 19).

[25] *Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M. 768; *State v. Smith*, 2004-NMSC-032, ¶ 10, 136 N.M. 372, 98 P.3d 1022; *State v. Rivera*, 2004-NMSC-001, ¶ 11, 134 N.M. 768, 82 P.3d 939 ("Application of the plain meaning rule often does not end the analysis when construing a statute."); *see also Dewitt v. Rent-A-Center, Inc*., 2009-NMSC-032, ¶ 29, 146 N.M. 453, 212 P.3d 341 (observing that where the plain language of the Act is clear, our statutory

comprehensive legislative scheme.[26] In other words, "a statutory subsection may not be considered in a vacuum, but must be considered in reference to the statute as a whole and in reference to statutes dealing with the same general subject matter."[27] Finally, when a statute is ambiguous, a court may consider the clear policy implications of its various constructions.[28]

"A statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (*i.e.*, nonfrivolous) differences of opinion concerning the statute's meaning."[29] "If statutory language is doubtful, ambiguous, or an adherence to the literal use of the

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construction inquiry should normally end, but considering other principles of statutory construction to the extent the language could be considered ambiguous); *Taylor v. Waste Mgmt. of New Mexico*, Inc., 2021-NMCA-026, ¶ 8, 489 P.3d 994 ("In other words, while the existence of a plain meaning might normally end our inquiry, it may nevertheless be necessary to examine, inter alia, the history, background, and overall structure of the statutory provision being construed, as well as the purpose of the statute"); *Guiseppi v. Walling*, 144 F.2d 608, 624 (2d Cir.1944) ("There is no surer way to misread any document than to read it literally…As nearly as we can, we must put ourselves in the place of those who uttered the words, and try to divine how they would have dealt with the unforeseen situation; and, although their words are by far the most decisive evidence of what they would have done, they are by no means final.") (Hand, L., concurring); *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047; *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, ¶ 7, 149 N.M. 174, 246 P.3d 443(same); *see also In re Portal*, 2002-NMSC-011, ¶ 5, 132 N.M. 171, 45 P.3d 891 ("Statutes are to be read in a way that facilitates their operation and the achievement of their goals." (internal quotation marks and citation omitted)).

[26] *State v. Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M. 768, 82 P.3d 939; *Sims v. Sims*, 1996-NMSC-078, ¶ 21, 122 N.M. 618, 930 P.2d 153 ("When attempting to unravel a statutory meaning we begin with the presumption that the statutory scheme is comprehensive.").

[27] *State v. Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M. 768, 82 P.3d 939; *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 15, 309 P.3d 1047 ("We must examine Plaintiffs' interpretation in the context of the statute as a whole, including the purposes and consequences of the Act."); *Key v. Chrysler Motors Corp.,* 1996-NMSC-038, ¶ 14, 121 N.M. 764, 918 P.2d 350 ("[A]ll parts of a statute must be read together to ascertain legislative intent[,]" and "[w]e are to read the statute in its entirety and construe each part in connection with every other part to produce a harmonious whole." (citation omitted)).

[28] *State v. Smith*, 2004-NMSC-032, ¶ 14, 136 N.M. 372, 98 P.3d 1022, 1025.

[29] *State v. Smith*, 2004-NMSC-032, ¶ 9, 136 N.M. 372, 375, 98 P.3d 1022, 1025 (underlining added); *State v. Rivera*, 2004-NMSC-001, ¶ 11, 134 N.M. 768, 82 P.3d 939; *Gandydancer, LLC v. Rock House CGM, LLC*, 2019-NMSC-021, ¶ 13, 453 P.3d 434; *In re Grace H.*, 2014-NMSC-034, ¶ 34, 335 P.3d 746; *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 15, 309 P.3d 1047, 1051 ("If Plaintiffs' interpretation leads to absurdities, or if it conflicts with the

words would lead to injustice, absurdity, or contradiction, the court should reject the plain meaning rule in favor of construing the statute according to its obvious spirit or reason."[30]

The Commission has also adopted this same view, recognizing that "the plain meaning rule is shrouded in 'beguiling simplicity'" and "it is not always true that words in statutes convey the meaning the dictionary suggests they do."[31] The Commission has noted "the plain meaning rule tries to make simple that which frequently is not."[32] In *New Mexico Gas Co.*, the Commission held that despite "a plain language approach" of interpreting "public utility" in Section 62-8-12(A) that would clearly include gas utilities, a gas utility would not be considered a "public utility" under the Section where it would lead to absurd results and conflict with other statutes.[33] Relying on the New Mexico Supreme Court, the Commission adopted a different "legitimate (*i.e.* nonfrivolous)" interpretation based on a wholistic review of the statute and its purpose, and interpreted "public utility" to not include natural gas utilities.[34]

Legislature's purpose for enacting the [statute], then we cannot conclude that their interpretation reflects legislative intent.").

30 *Amdor v. Grisham*, 2025-NMSC-024, ¶ 30, 578 P.3d 971, 984.

31 NMPRC Case No. 20-00240-UT, *Recommended Decision* at 9-10 (June 10, 2021), approved by *Final Order on Petition for Declaratory Order* (Aug. 11, 2021) (citing *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346, 871 P.2d 1352).

32 *Id.* at 9-10 ("[A] host of factors may require an understanding of statutory terms that take the interpreter some distance from whatever might be thought of as a plain meaning interpretation").

33 *Id.* at 10-12.

34 *Id.* at 9 (underlining added).

B. Interpretation of Subsection (A)(3) requires looking beyond just the "plain meaning" of only the words of Subsection (A)(3)(c).

For all the differences in opinion about what Subsection (A)(3) means, no one has argued that it would be frivolous to interpret Subsection (A)(3) to apply only to acquisitions where a controlling amount of "stock" is acquired. In fact, in the 40 years since the current version of the statute was enacted, no one has ever proposed that the acquisition of a *non*-controlling amount of stock triggers Subsection (A)(3). The only cases that have arisen under Subsection (A)(3) centered on whether a controlling amount of stock was transferred.[35] Because there are legitimate, non-frivolous differences of opinion, the plain meaning rule does not provide a simple answer to the meaning of "stock" in Subsection (A)(3).

The requirement for a controlling interest in Subsection (A)(3) is confirmed by Subsection (B). All the relevant portions of Subsection (A)(3) concern "acquisition" of some sort. Subsection (B) also uses the term "acquisition", and states that "[a]ny consolidation, merger, acquisition, transaction resulting in control or exercise of control… is void."[36] Thus, Subsection (B) limits "acquisitions" to transactions "resulting in control or exercise of control." Read in this light, it makes sense that the Commission precedent over the last 40 years only consists of cases where control of a utility was transferred or otherwise acquired, and why there are no cases where the Commission investigated the transfer of less than a controlling interest of "stock." It would be arbitrary and capricious, and violate fundamental statutory interpretation law, to interpret

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[35] NMPRC Case No. 3832, resolved in full by NMPRC Case No. 03-00323-UT, *Order Granting Application for Approvals Relating to Agreement Regarding Sale of Stock*, (Oct. 17, 2003).

[36] Subsection B also discusses "other transaction[s] in contravention of this section," which is a reference to those transactions involving the sale of plant or property in Subsection (A)(4). "Other transactions" cannot mean "all transactions," because that would render the entire preceding list in Subsection B (which covers "consolidation[s], merger[s], acquisition[s]," and "transaction[s] resulting in control or exercise of control") mere surplusage.

"acquisition" to mean less than control in subsection (A)(3), while ignoring the fact that Legislature used "acquisition" only in the context of control in Subsection (B).[37]

C. If "stock" means something less than a controlling share, Subsection (3) leads to absurd results and undermines the legislative purpose.

1. *Absurd results would result from the lack of a clear threshold for Subsection (3)'s application.*

Where a plain meaning argument "leads to absurdities ... [and] conflicts with the Legislature's purpose for enacting the [statute]," that interpretation should be rejected.[38] If "stock" means "individual shares" as Movants propose, Subsection (3) would have absurd and arbitrary results. The necessary limitation can be found in Subsection B, which directs the consequences for acquisitions to those resulting in a transfer of control without receiving Commission approval.

Although Movants' arguments focus on a single subpart—Subpart (c)— the word "stock" is used in the lead-in language of Subsection (3), which applies to each of the five subparts (including Subpart (c)). As such, the Commission's interpretation of the word "stock" must apply equally to all five subparts.

If "stock" means a non-controlling amount of "individual shares" as Movants propose, then there is no reasoned difference between one share, a thousand shares, or a million shares. Subsection (3) would necessarily apply equally to all "stock" transactions that meet any one of its subparts, no matter how large or small. Nothing else in Subsection (3) of the statute offers any

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[37] *See Coal. for Clean Affordable Energy v. New Mexico Pub. Regulation Comm'n*, 2024-NMSC-016, ¶ 27, 549 P.3d 500, 511 (citing *State v. Jade G.*, 2007-NMSC-010, ¶ 28, 141 N.M. 284, 154 P.3d 659 (brackets, internal quotation marks, and citation omitted)) ("It is considered 'a normal rule of statutory construction to interpret identical words used in different parts of the same act as having the same meaning.'").

[38] *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 15, 309 P.3d 1047, 1051 ("If Plaintiffs' interpretation leads to absurdities, or if it conflicts with the Legislature's purpose for enacting [statute], then we cannot conclude that their interpretation reflects legislative intent.")

non-arbitrary distinction between an acquisition of 7.5% of shares from an acquisition of 1% or less of shares.

The lack of a minimum threshold on how many shares are sufficient to require Commission approval leads to absurd results under Subsection (3) as a whole. For example, subpart (a) would prohibit the acquisition of even a single share of TXNM or PNM by entities that are already public utility holding companies in other jurisdictions. Subpart (a) would also prohibit TXNM from acquiring additional shares of PNM stock as TXNM is already a public utility holding company. Subpart (d) would become impractically expansive, given that subpart (d) applies to "any person associated [or] affiliated" with a public utility or public utility holding company, from individual employees and management to corporate associates and affiliates.[39] A public utility's own employees acquiring stock as part of a customary employee long-term incentive program would require Commission approval each time the public utility, or its holding company, proposed to issue stock as part of its employee incentive program.

In addition, because at least 25% of TXNM's shares are held by shareholders that are, or are affiliated or associated with, public utility holding companies under state and federal law, such

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[39] For example, if the Subsection (3) were interpreted to mean any amount of "stock" it would imply that the type of person, rather than the nature of the transaction, would trigger approval under subsections (a) and (d):

> (3) [any amount of] stock of a public utility or public utility holding company may be acquired by:
>
> > (a) any person who prior to the acquisition of any such stock or part thereof is a person subject to regulation or classified as a public utility or public utility holding company in any jurisdiction; ....
> >
> > (d) any person associated, affiliated or acting in concert with any person described in Subparagraphs (a), (b) or (c) of this paragraph;

a finding would purport to void a large number of stock transactions under Subparts (a) and (d).[40] Such an expansive interpretation of Subsection (3) would also require the Commission to regulate daily trading of shares on the New York Stock Exchange and NASDAQ Stock Market. For example, many of the nation's leading mutual and index funds are, or are affiliated with, public utility holding companies. These index and mutual funds may purchase shares of TXNM on as frequently as a daily basis. But because they are, or are "affiliated" or "associated" with, public utility holding companies, those index and mutual funds would need to obtain the Commission's prior approval for *each* purchase, effectively prohibiting them from purchasing stock in any company that owns a New Mexico public utility. This would also interfere with the daily trading of shares on public markets and may be preempted by federal law, which provides that "no law, rule, regulation, or order, or other action of any State or any political subdivision thereof" shall "directly or indirectly prohibit, limit, or impose any conditions" on securities like TXNM's which are traded on the New York Stock Exchange.[41]

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[40] Sherman Show Cause Order Testimony at 13; *see* 42 U.S.C. § 16451(8)(A)(i) (defining a Public Utility Holding Company as a "company that directly or indirectly owns, controls, or holds with power to vote 10 percent or more of outstanding voting securities of a public-utility company ...."); *see also* NMSA 1978, § 62-3-3 (defining "public utility holding company" as "an affiliated interest that controls a public utility through the direct or indirect ownership of voting securities of that utility" and "control" as when "a person owns directly or indirectly has a beneficial interest in ten percent or more of voting securities of a person").

[41] 15 U.S.C. § 77r; *see generally Lindeen v. Sec. & Exch. Comm'n*, 825 F.3d 646, 650 (D.C. Cir. 2016) (holding that Section 77r "preempt[s], on a widespread basis, state registration and qualification regimes" for certain offerings); *Zuri-Invest AG v. Natwest Fin. Inc.*, 177 F. Supp. 2d 189, 193, n.3 (S.D.N.Y. 2001) (explaining that "registration and qualification" means imposing conditions or requiring approval). Another reason this interpretation would be pre-empted is because it would necessarily give the Commission jurisdiction to investigate any purchase of shares in a publicly traded public utility holding company operating a utility in New Mexico. After all, if someone named "Jane Smith" buys a thousand shares of TXNM stock, the only way to determine if she is "associated" or "affiliated" with a public utility or public utility holding company is to open an investigation.

The Commission has never applied the statute this way in the past, and it should not start now. There is no practical means of applying and enforcing the statute under Movants' interpretation.

2. *The Legislature's overarching purpose for the Public Utility Act would be undermined by the lack of a clear threshold for its application.*

If the subparts in Subsection (3) apply to any "stock" acquisition, no matter how big or small, it would not just lead to absurd results—it would undermine the purpose of the Public Utility Act. "It is the declared policy of the state that the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates and to the end that capital and investment may be encouraged and attracted so as to provide for the construction, development and extension, without unnecessary duplication and economic waste, of proper plants and facilities and demand-side resources for the rendition of service to the general public and to industry."[42] "The purpose of the PUA is to not only regulate, but to protect the interests of the utilities that come under its jurisdiction."[43] The Legislature has thus tasked the Commission to not only ensure fair just and reasonable rates, but also to ensure utilities are able to attract investment. A control limit is consistent with this directive and brings clarity to investors, while still ensuring the Commission can regulate the utility. Transactions that provide equity investments into the utility without transferring control should be welcomed by New Mexico.

The testimony of Suedeen Kelly discusses how, instead of protecting utilities and customers from the unauthorized takeover of a utility, as the statute appears to target, the broad

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[42] NMSA 1978, § 62-3-1(B).

[43] *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, ¶ 49, 120 N.M. 579, 904 P.2d 28.

interpretation of "stock" would drastically limit the availability and inflow of capital needed to serve customers.[44] The cost and expense associated with obtaining Commission approval would make New Mexico a less desirable and competitive place to invest than other states, many of which do not require similar approval for a non-controlling investment of less than ten percent of a public utility's shares.[45]

The broad interpretation of "stock" would also dramatically increase the administrative burden on the Commission. Requiring approval of every purchase of shares of stock by anyone that is, or is associated or affiliated with, a public utility holding company in any jurisdiction would require constant reporting and review of stock issuances, as well as purchases and sales in the public market. The Commission would need to docket cases and potentially hold hearings for "stock" transactions that are currently routine. The Legislature could not have intended this result.

In short, interpreting "stock" to mean "individual shares" would fall into the simplistic plain meaning trap that our Supreme Court and the Commission have warned against.

D. "Control" is the appropriate threshold for the amount of "stock" that must be acquired to trigger Subsection (3).

Rather than adopting the broad view of "stock," that word must be interpreted to have some non-arbitrary, well-reasoned interpretation consistent with the purpose and text of the statute. The other provisions in Section 62-6-12—and the Public Utility Act as a whole—point to the same

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[44] Kelly Show Cause Testimony at 6, 14-15, 17-18.

[45] *See, e.g.*, FPA Section 203 Supplemental Policy Statement, 120 FERC ¶ 61,060 at ¶ 57 (2007); Tex. Util. Code Ann. § 39.158 (requiring approval for transaction resulting in "more than 10 percent" of control); 4 Colo. Code Regs. § 723-3-3104 (requiring approval for transaction resulting in "a controlling interest in a utility"); 52 Pa. Code § 69.901 (requiring approval for transaction resulting in "control" and defining controls as "at least 20% of the voting interest"); Or. Rev. Stat. § 757.511 (requiring approval for transactions resulting in "power to exercise any substantial influence over the policies and actions of a public utility").

threshold: control. That would bring the certainty and predictability required to attract investment because, in keeping with federal regulation, the Public Utility Act defines a controlling interest as ten percent or greater of the stock and other voting securities.[46] Using this standard gives companies and investors clear guidance on when they need Commission approval under Subsection (3).

1. *The appropriate threshold of "control" is consistent with the purpose of the Public Utility Act as a whole.*

Section 62-6-12 as a whole is directed toward regulating transactions that result in a change in control of either a utility or a utility's holding company, and to transactions involving a substantial portion of a utility's assets. This is logical. The Public Utility Act is directed at regulating public utility rates and services. Other entities, such as affiliates and Public Utility Holding Companies, are subject to regulation only to the point that it may impact the regulated utility. The sale of shares of stock of a public utility holding company that amounts to less than a controlling amount has no possibility of adverse impact on the subsidiary utility. As such, there is no reason under New Mexico legal jurisprudence for the Commission to regulate transactions that do not impact the control of the utility.

Indeed, under the Public Utility Act, the issuance and trading of stock are securities transactions.[47] Under Section 62-6-6, the Commission only regulates the securities transactions of

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[46] NMSA 1978, § 62-3-3(A)(2) (direct or indirect ownership or beneficial interest in ten percent or more of voting securities). Section 62-3-3 also contemplates three other instances constituting "control": "(1) a person is an officer, director, partner, trustee or person of similar status or function; ... (3) a person has a level of ownership of securities other than voting securities that the commission establishes as creating a presumption of control; and (4) the possession of the power to direct or cause the direction of the management and policies of a person exists in fact, notwithstanding the lack of ownership of ten percent or more of the person's voting securities[.]"

[47] *See* NMSA 1978, § 62-3-3(F) ("'[S]ecurities' means stock, stock certificates, bonds, debentures, mortgages or deeds of trust or similar evidences of indebtedness issues, executed or assumed by a utility.").

a public utility and has no jurisdiction over the securities transactions of a public utility holding company such as TXNM.[48] In order to harmonize Section 62-6-12 with the limited scope of the Commission's jurisdiction, Section 62-6-12 more reasonably applies to the acquisition of "stock" that results in a change of ownership or control of the public utility holding company.

In the same vein, the Commission does not regulate debt issuances at a public utility holding company level, the Commission does not limit dividends issued at the public utility holding company, and the Commission does not determine the number of shares issued by a public utility holding company nor frequency of any such share issuances. The purchase of a non-controlling number of shares should be treated in the same way.

Thus, rather than applying Subsection (A)(3) to every purchase of shares of stock, the Commission should adopt the view that Subsection (A)(3) applies only to purchases of a controlling interest of shares of stock. This would further a clear regulatory purpose—preventing the takeover of a public utility without the Commission's approval.

2. *An established threshold of "control" is consistent with the purpose of the Section 62-6-12.*

The purpose of Section 62-6-12 is to regulate mergers, consolidations, acquisitions that result in a change in control, and material transactions relating to utility plant and property.[49] That explains why all the "stock" transactions in Section 62-6-12(A) are geared at the same thing:

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[48] *See* NMSA 1978, § 62-6-6 (power of a public utility is issue, assume or guarantee securities is special privilege subject to supervision and control of commission as set forth in Public Utility Act). Section 62-3-3 also separately defines "public utility" and "public utility holding company," bolstering this distinction. *See* NMSA 1978, § 62-3-3(G), § 62-3-3(N).

[49] Kelly Show Cause Testimony at 5-6, 9-10, 11-12.

preventing the transfer of a controlling interest.[50] Subsections (1) and (2) address voluntary mergers between two public utilities or a voluntary merger of a public utility or public utility holding company with another entity. If such transactions occur without prior authorization, they are void pursuant to Subsection B.

The intent of Subsection (A)(3) should likewise be read to address the situation when a controlling ownership interest of a utility or public utility holding company changes hands through a stock acquisition. Subpart (A)(3)(c), for example, is intended to require Commission approval before an acquisition of "stock" is undertaken individually by either another utility or public utility holding company, through the collective acquisition of stock by multiple persons or entities.[51] Applying a controlling-interest test to Subsection (A)(3) stock acquisitions is consistent with an understanding of Subsection (A) as a whole.

This interpretation provides consistency between Section 62-6-12(A) and (B), because it aligns the types of material transactions that require prior approval with the transactions that are void and of no effect if the transaction is unauthorized. If Movants are correct that the phrase "other transaction in contravention of the Section" can and should be applied to every part and subpart of the statute, there would be no need for the enumeration of transaction types in Subsection B because the preceding list ("Any consolidation, merger, acquisition, transaction resulting in control or exercise of control….") is superfluous under Movants' view. Under a reading that accounts for Subsection B's enumeration of transactions that should be void, the phrase "or other transaction in contravention of this section" more appropriately is limited to Subsection (A)(4), which addresses

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[50] Joint Applicants' prior briefing addresses these points in detail. To avoid duplicative argument here, Joint Applicants incorporate their prior briefing by reference.

[51] Kelly Show Cause Testimony at 9-12.

transactions involving utility plant or property rather than a change to the ongoing corporate concern or control.

3. *A threshold principle of "control" is consistent with the text of Section 62-6-12.*

In addition to the purpose of Section 62-6-12, the text of the statute itself supports that acquiring part of the stock is not the same as acquiring a controlling amount. Subsection B identifies that it is transactions that result in change of ownership or control of the company, or discrete transactions relating to a plant or substantial property, that are to be voided. The text of subsection (A)(3)(a) also uses the phrase "any such stock or part thereof," a further breakdown of the term "stock" not included in subsection (A)(3)(c). This signals that the Legislature used "stock" in the broadest sense of full controlling equity interests of a public utility or public utility holding company unless only a part was specified; otherwise, the language in (A)(3)(a) would be surplusage.

The omission of the phrase "or part thereof" from both the prefatory language in Subsection (A)(3) and in subsection (A)(3)(c) is informative. The prior version of the statute, enacted in 1983, stated that "any public utility may acquire the stock or any part thereof of any other public utility" only with Commission approval.[52] When the Legislature amended the statute in 1989, the Legislature retained the word "stock" as the threshold requirement to Subsection (A)(3). Although the Legislature could have included "or part thereof" in the prefatory language, the Legislature did not do so. The Legislature instead chose to only include the "part thereof" language in Subsection

[52] NMSA 1978, § 62-6-12(B) (1983) (emphasis added) ("With the express authorization of the commission, but not otherwise: ... any public utility may acquire the stock or any part thereof of any other public utility[.]").

(A)(3)(a). A broad interpretation that equates the word "stock" with individual shares would effectively insert the words "or part thereof" in the prefatory language, given that individual shares are only "part" of the stock. That is not the choice the Legislature made. The omission of "part thereof" from the prefatory language and from subsection (A)(3)(c) indicates that the Legislature intended to require at least a controlling interest in the "stock"—*i.e.*, more than "a part thereof"—to be transferred to trigger subsection (A)(3)(c). It follows that only a stock transaction by an affiliated person that results in the acquisition of a controlling interest or all of the stock would be void and of no effect.

For all these reasons, TXNM and TopCo have raised a legitimate (i.e., nonfrivolous) interpretation that Subsection (A)(3) is limited to an acquisition of a controlling share of "stock." Because this interpretation is consistent with the rest of the Public Utility Act, provides clear guidance to investors, avoids unduly burdening the Commission, and is neither ambiguous nor arbitrary, it should govern here. And because TopCo's ~7.5% interest was indisputably not a controlling amount of stock under that standard,[53] TopCo and TXNM did not violate the statute.

4. *Applying the "control" standard is consistent with similar inquiries the Commission has performed in the past.*

Interpreting the statute to focus on "control" as a threshold issue is also consistent with the Commission's past practices. Specifically, the Commission's inquiries related to ownership of utilities and utility holding companies has historically concentrated on determining the people or companies that *controlled* the utility. An example of this can be found in PRC Case No. 2541 involving Raton Natural Gas ("RNG"). While the case originally concerned gas cost recovery

[53] *See* Sherman Show Cause Order Testimony at 13-15; Tarry Show Cause Order Testimony at 18-19 (less than 10%, no control rights, etc.)

issues, it turned into an investigation of whether a Class II transaction had occurred and whether all of RNG's affiliates and public utility holding companies were properly identified in filings with the Commission. The record reflects that RNG had five owners: 1) Jack Peryatel who owned 30% of the stock; 2) Iris Peryatel who owned 19% of the stock, 3) Glenn Hatfield, Sr. who owned 36% of the stock, 4) Penny Reed who owned 7% of the stock; and 5) Patricia Link who owned 7% of the stock.[54] Crucially, in addition to ownership of a part of RNG's stock, Ms. Reed and Ms. Link also had special governance and management rights that, as discussed below, granted them control.

The Commission first analyzed the definition of "public utility holding company", which was defined in Section 62-3-3 as "an affiliated interest which controls a public utility through the direct or indirect ownership of voting securities of such public utility."[55] The Commission then turned to the definition of "affiliated interest" under Section 62-3-3(A). Section 62-3-3(A), much like it does today, provided examples of indications of control over a utility, including 10% ownership of the securities.[56] The Commission determined that Glenn Hatfield's ownership of 36% of RNG's shares made him both an affiliated interest and public utility holding company, and identified his ownership of more than 10% of the securities as the basis for the decision.[57] The Commission next determined that "by virtue of their separate or joint ownership of more than ten

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[54] Case No. 2542, *Order on Recommended Decision Regarding Class II Issue*, at 3, (Aug. 11, 1995).

[55] Case No. 2541, *Order on Recommended Decision Regarding Class II Issue*, at 9, (Aug. 11, 1995). The definition of "public utility holding company" is, other than a minor stylistic change from "which" to "that", the same language that is used to define public utility holding company today under NMSA 1978, § 62-3-3(N).

[56] *Id.* at 9.

[57] *Id*.

percent of the outstanding shares ..., Mr. and Mrs. Peryatel are likewise affiliated interests and holding companies with reference to RNG."[58]

As for the 7% stock ownership interests each held by Penny Reed and Patricia Link, the Commission held that was not dispositive because the record was not clear on what special management and governance rights they may have had. The Commission ordered the Hearing Examiner on remand to inquire as to whether either Ms. Reed or Ms. Link actually exercised control over RNG.[59] On remand, the evidence in the record demonstrated that Ms. Reed and Ms. Link were directors on the Boards of Directors of RNG, and were Vice Presidents of RNG.[60] In its Final Order, the Commission held that "based on the ownership *and control* exercised by Ms. Link and Ms. Reed, they are affiliates and public utility holding companies" of RNG.[61]

The inquiry conducted in Case 2541 is instructive here. First, the Commission was confronted with determining the meaning of "control" under the definition of a public utility holding company, much like the Commission must determine whether analyzing "control" as the threshold is appropriate under 62-6-12.[62] As control was not defined in the public utility holding company definition, just as it is not defined in 62-6-12, the Commission relied on the control provisions enumerated in 62-3-3(A). The Commission then determined that more than 10%

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[58] *Id.* at 10.

[59] *Id.* at 10.

[60] Case No. 2541, *Certification of Stipulation*, at 31, (April 7, 1998).

[61] Case No. 2541, *Final Order*, at 3, (July 6, 1998) (emphasis added).

[62] NMSA 1978, § 62-6-12(B) states in pertinent part "Any ... acquisition ... resulting in control or exercise of control ... without prior authorization of the Commission shall be void and of no effect." As each of Section 62-6-12(A)(3)(a) through (c) reference "acquisition", it follows that an "acquisition" must be tied to control or exercise of control.

ownership amounted to control over a utility, but recognized control could exist below 10% if there were other indicia of control such as board seats or officer positions.

In this case, TopCo owns around 7% of the shares of stock of TXNM, just like Ms. Link and Ms. Reed in Case No. 2541. But crucially, unlike Ms. Link and Ms. Reed did with RNG, TopCo does not have any special governance rights such as any board or officer positions. As noted, TopCo also has no right to elect or remove officers, no right to direct TXNM's policy or management, and no rights to even acquire additional shares without TXNM's approval.

E. Independently, the Financing Transaction did not violate Subpart (A)(3)(c) because it was not "for the purposes of" the Acquisition.

If a controlling amount of "stock" is required to trigger Subsection (A)(3), then the Commission need not reach subpart (A)(3)(c), the statute cited by Movants here that applies to "stock" acquired "for the purposes of any acquisition". But the Commission could assume, without deciding, that Movants are right about the meaning of "stock," because Subpart (c) does not apply.

As detailed in the testimony of Don Tarry and Sebastien Sherman, the Financing Transaction was not for the purposes of acquiring control of TXNM, i.e., the Acquisition, for which the Joint Applicants have sought prior approval. This is evident based on the reasons for the parties' entering into the Financing Transaction, the transaction's terms, and where things stand today.

First, "the phrase 'for the purpose of ... [the activity]'" unambiguously means that the defendant must have maintained the premises for the primary (dominant or significant) purpose of [the activity]."[63] A mere connection or secondary purpose is not enough to meet the standard. Instead, to satisfy this standard, the dominant purpose of the Financing Transaction must have been

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[63] *United States v. Roney*, No. 3:24-cr-113, slip op., 2025 WL 2533193, at *10 (E.D. Va. Sept. 3, 2025) (citing Fourth Circuit caselaw holding that "the Fourth Circuit … interpreted the phrase 'for the purpose of' … to mean the 'dominant motive' behind the offense conduct).

the Acquisition. Because the primary purpose of the Financing Transaction was not the Acquisition, this standard is not satisfied. Because the separate purposes, meaning and intent of the parties to the contracts is attested to in the Joint Applicants' Show Cause testimonies, the Commission should take that to be conclusive evidence that the purpose of the Financing Transaction is separate from the purpose of an acquisition under the statute, rather than reaching an alternative construct of the contract and the parties' agreement.[64]

As PNM witness Tarry testified, TXNM "needed to raise $850 million to fund operations for PNM and TNMP" for the 2025 Annual Operating Plan *regardless* of any acquisition.[65] TXNM needed money to operate.[66] And it needed money to maintain its credit rating.[67] Deals like the Financing Transaction are routine.[68] As just one example, for TXNM's latest round of funding, TXNM obtained a $200 million stock purchase from another investor, Zimmer.[69] The Financing Transaction contained similar terms and a similar exchange—cash for stock—but Zimmer, like TopCo, did not buy the stock to acquire TXNM.

Second, "[t]he purpose, meaning and intent of the parties to a contract is to be deduced from the language employed by them; and where such language is not ambiguous, it is

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64 *See, e.g., ConocoPhillips Co. v. Lyons,* 2013-NMSC-009, ¶ 23, 299 P.3d 844, 852.

65 Tarry Show Cause Order Testimony at 4, 6.

66 *See id.* at 4-5.

67 *See id.* at 5, 15.

68 *See id*. at 11.

69 *Id.* at 14-16.

conclusive."[70] The Stock Purchase Agreement and the Merger Agreement specifically and unambiguously provide that the Financing Transaction and the Acquisition "are separate transactions."[71] The terms of the Financing Transaction and the Acquisition "are not intended to, and in no way, modify or supplement the terms of [the other] Agreement."[72] The funds from the Financing Transaction went to support TXNM's "general corporate purposes,"[73] not the Acquisition. And if the Acquisition does not close, agreements for both the Financing Transaction and the Acquisition are clear that TopCo would continue to be a non-controlling shareholder of TXNM—the Financing Transaction will not change.

Finally, and most simply, the Financing Transaction was not "for the purposes of" the Acquisition because the deal closed, the funds and shares changed hands, and TXNM spent the money, but the Acquisition has yet to take place. The Financing Transaction served its purpose—which was to support TXNM's operations and credit rating—without the Acquisition (or, for that matter, any type of acquisition) occurring. TXNM has spent the money to support the service that PNM provides to customers.

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[70] *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, ¶ 23, 299 P.3d 844, 852; *see also Brown v. Am. Bank of Commerce*, 1968-NMSC-096, ¶ 12, 79 N.M. 222, 441 P.2d 751 ("where the terms of the contract are clear, the intent must be ascertained from the language used.").

[71] *See* Merger Agreement, Application Exhibit E at page 78 of 85 and Stock Purchase Agreement, Attachment 1 at Section 10.3 (Stock Purchase Agreement and Merger Agreement are being entered into simultaneously but are separate transactions).

[72] *See* Stock Purchase Agreement § 10.3; Merger Agreement § Section 5.

[73] Stock Purchase Agreement § 5.6.

IV. Even if the Commission finds the Financing Transaction is void, it does not impact the validity of the Merger Agreement.

Even if the Financing Transaction were void, it would not impact the Merger Agreement or change the Joint Applicants' request for prior approval of the Acquisition.

First, no amendments or modifications would be required to the Merger Agreement as the operative provisions of the Merger Agreement are wholly unaffected by the Financing Transaction.[74] Because they are separate legal documents, voiding one contract does not void or affect the legal validity of the second contract. The Joint Applicants have properly sought approval of the Acquisition of all of TXNM's stock pursuant to Section 62-6-12 and the Application should be considered on its merits.

Second, TXNM's shareholder vote in favor of the Acquisition remains valid. The Proxy Statement presented a specific question for shareholders to consider, and provided a range of information, including but not limited to background facts regarding TXNM's need to raise equity and TopCo's purchase of $400 million. The proposal presented to shareholders in the Proxy Statement was Proposal 1 – Approve the Merger Agreement.[75] The Proxy Statement accurately informed shareholders that if the Acquisition was completed, each share of stock (other than those owned by the Joint Applicants and their affiliated interests) would be sold for $61.25 in cash.[76] The results for Proposal 1 were approximately 99.6% of voted shares voted in favor of the

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[74] The Merger Agreement is an independent contract that is not conditioned on the Financing Transaction. See Proxy Statement, Application Exhibit D at 197 of 214 ("This Agreement and the Stock Purchase Agreement are being entered into simultaneously but are separate transactions"). The terms of the Merger Agreement and the Stock Purchase Agreement "are not intended to, and in no way, modify or supplement the terms of [the other] Agreement." See Stock Purchase Agreement § 10.3; Merger Agreement § Section 5.

[75] *See* Application Exhibit D, Proxy Statement at page 25 of 80.

[76] *Id.* at page 28 of 80. Dissenting shareholders receive compensation in accordance with their rights as dissenters.

Acquisition, reflecting approximately 88.2% of the over 105 million shares issued and outstanding.[77] Thus, even assuming the 8 million shares TopCo purchased under the Financing Transaction were void and could not be counted, a valid quorum of 89% still existed, and the merger would have been approved by an overwhelming margin of 99.5%[78] of voted shares voted in favor of the Acquisition. New Mexico law does not countenance disenfranchising other shareholders of the right to vote in favor of the Merger Agreement when, as here, removing the disputed shares would not have changed the result.[79] Instead, Section 53-11-32, which governs stock voting in New Mexico corporations, provides that once a quorum exists, "the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders."[80] Thus, the Financing Transaction did not affect the shareholder vote in favor of the Merger Agreement,[81] and the Acquisition may proceed.

Finally, voiding the Financing Transaction nearly a year after the fact risks unintended consequences to TXNM, TNMP and PNM. TXNM would lose $400 million in equity, incur $400 million in debt (as it would need to return the cash investment to TopCo and, until it did so, TopCo would effectively have made a loan of that amount), and be required to find another way to raise

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[77] Even if the Commission declares the Financing Transaction void, such a determination would not render the Proxy Statement untruthful. The Proxy Statement truthfully disclosed all material information available to TXNM at the time it was issued, including that the Financing Transaction had occurred. *See* 17 C.F.R. § 240.14a-9 (2025).

[78] Of the 105,378,979 shares of TXNM common stock that were issued and outstanding as of July 17, 2025 (the record date for the special meeting), 93,338,740 (or 99.6%) voted in favor of the Acquisition. The 8 million shares TopCo purchased under the Financing Transaction represented approximately .1% and the shares purchased by Zimmer represented approximately .1% of the vote in favor of the Acquisition.

[79] *See Pena v. Westland Dev. Co.*, 1988-NMCA-052, ¶ 25, 107 N.M. 560, 565, 761 P.2d 438, 443.

[80] NMSA 1978, § 53-11-32.

[81] Even if a new shareholder vote were required (which it is not), that vote could take place with more than sufficient time prior to the Acquisition.

the $400 million necessary to fund capital expenditures it has already incurred. This could impact TXNM's credit rating, potentially increase the cost of debt to customers, and create uncertainty surrounding the ability to raise future capital for investments in PNM.[82]

V. It is in the public interest and benefits customers to allow this matter to be efficiently resolved regardless of whether Section 62-6-12 is implicated.

There is a path to resolution that would avoid the administrative burden associated with interpreting the statute and allow this matter to move to a prompt resolution. As the Hearing Examiners' second question underscores, whether a violation occurred and what the appropriate remedy should be are two separate questions. Although Joint Applicants strongly believe they have correctly interpreted Section 62-6-12, the Commission could simply approve the Financing Transaction retroactively or approve a substitution of options (in place of the already outstanding shares of stock) in the current Financing Transaction. If one of those two remedies is adopted, it would resolve the alleged violation without the need to opine on whether a violation actually occurred.

Either of Joint Applicants' suggested remedies would fulfill the original intention of the Financing Transaction without these repercussions. Moreover, these remedies are especially appropriate considering that Joint Applicants reasonably believed (and still believe) the Financing Transaction to be legal and did not intend to violate the statute. Joint Applicants publicly announced the Financing Transaction,[83] and disclosed the Financing Transaction in SEC filings.

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[82] *See* Tarry Show Cause Order Testimony at 23-24.

[83] Press Release, Blackstone, TXNM Energy Enters Agreement to Be Acquired by Blackstone Infrastructure (May 19, 2025), https://www.blackstone.com/news/press/txnm-energy-enters-agreement-to-be-acquired-by-blackstone-infrastructure/; Press Release, TXNM Energy, Acquisition Investor Release (May 19, 2025), https://www.txnmenergy.com/~/media/Files/P/PNM-Resources/press-release/Acquisition%20Investor%20Release.pdf; Fraser Tennant, Blackstone Acquires TXNM Energy in $11.5bn

The Financing Transaction was extensively covered by the media, and discussed in the Acquisition Application and the testimony of six witnesses.[84] At most, Joint Applicants, in good faith, misinterpreted one sub-section of a statute that has never been applied to a similar transaction. Thus, Joint Applicants respectfully request that, if the Commission determines Section 62-6-12 was implicated, it apply one of the remedies detailed below.

Movants proposed that if Section 62-6-12 is implicated, the Commission must declare the Financing Transaction void. That is not true. In fact, even if the Commission determined that the statute applies, it would still have a variety of remedies available that do not require unwinding the transaction.

A. The Commission can approve the Financing Transaction nunc pro tunc.

Under Section 62-6-4, the Commission is granted broad power to regulate and supervise public utilities, including with respect to rates, service regulations, and securities. The Commission has exercised that discretion to retroactively authorize actions that were found to require, or potentially require, prior Commission approval.[85]

For example, in Case No. 11-00432-UT, the Commission approved a settlement despite a prior potential violation of Section 62-6-12(A)(3). There, Ranchland Utility sought Commission

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Deal, Financier Worldwide (May 22, 2025), https://www.financierworldwide.com/fw-news/2025/5/22/blackstone-acquires-txnm-energy-in-115bn-deal.

[84] *See* Application Direct Testimony of Don Tarry at 13, Application Direct Testimony of Sean Klimczak at 13, 16; Application Direct Testimony of Henry Monroy at 39; Application Direct Testimony of Heidi Boyd at 5; Application Direct Testimony of Erik Talley at 20; Application Direct Testimony of Ellen Lapson at 21, 22.

[85] *See e.g.* Case No. 20-00149-UT, *Recommended Decision* at 31 (Sep. 29, 2020), approved by *Order Adopting Recommended Decision* (Oct. 21, 2020) ("The Commission's approval of the 2013 financing transactions *nunc pro tunc* is reasonable and appropriate considering the record as a whole."); Case No. 11-00432-UT, *Final Order* at 5-7 (June 19, 2012) (finding stipulation in the public interest that would retroactively approve transfer of Ranchland stock).

approval to be acquired by a public utility holding company formed for that purpose to avoid bankruptcy. To solve cashflow issues, Ranchland sold all its outstanding stock to eleven individuals in equal shares prior to the acquisition, believing such transfers would not require approval under the Public Utility Act because no individual would obtain a controlling interest of 10% or more. The eleven shareholders were to transfer all Ranchland stock to the acquiring public utility holding company. Although Staff believed the stock transfers did require Commission approval, Staff and the utility reached a stipulation that determined the application's requested authorizations should be approved and that, among other things, asserted that Section 62-6-12(A)(3) did not apply. Based upon the stipulation and related filed testimony, the Commission waived any hearing, approved the stipulation and granted retroactive approval of the stock transfer.

The Commission could and should do the same here, allowing the Application proceedings to move forward without further delay.

B. Alternatively, the Commission can permit the parties to restructure the Financing Transaction.

In lieu of *nunc pro tunc* approval, the Commission could also permit TopCo and TXNM to restructure the Financing Transaction to involve no "stock" at all. The parties could simply substitute the currently issued and outstanding shares of stock for an option, avoiding the invocation of Section 62-6-12(A)(3) while allowing TXNM to continue to reflect the $400 million it received as equity. The parties have already prepared the documents to effectuate this change, attached to this Response as Exhibit A, and are prepared to effectuate them immediately to keep this matter moving forward.

This remedy is practicable. The parties will agree to exchange the shares of stock of TXNM currently held by TopCo for options in TXNM.[86] Under this structure, TXNM would retain the $400 million, and it would not be treated as debt.

This remedy would also place the Financing Transaction outside the scope of Section 62-6-12(A)(3), which is limited to purchases of "stock." New Mexico law distinguishes between "stock" and "options."[87] Unlike stock, options do not vest the owner with any equity ownership in the company.[88] If the Commission takes the unprecedented step of applying Section 62-6-12(A)(3) here, Joint Applicants should be permitted an opportunity to remedy the issue with the benefit of that new interpretation.

Finally, this remedy is supported by Commission precedent. For example, in *OS Farms and New Mexico-American Water Company,* Case No. 07-00330-UT, the Commission allowed parties to modify a land sales transaction that was alleged to require prior approval under Section 62-6-12, resulting in a determination that the statute was not applicable.[89] The *OS Farms* case originated in a general rate proceeding for New Mexico-American Water Company ("NMAW"), in which the Hearing Examiner recommended that the Commission declare void a sale of land by

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[86] The options would only become exercisable in one of two circumstances: (1) Commission approval of Troy purchasing the shares of common stock or Commission approval not being required for Troy to purchase the common stock; or (2) termination of the Merger Agreement such that there is no underlying acquisition.

[87] *E.g.*, NMSA 1978, § 58-13C-102 (treating "stock" as separate from an "option"); 12.11.9.7 NMAC (treating "common stock" differently than "options").

[88] Options are also sometimes called "warrants" or "stock purchase warrants." *E.g.*, *Anderson v. Somatogen*, Inc., 940 P.2d 1079, 1081 (Colo. App. 1996) ("A stock purchase warrant is purely an option to purchase stock that does not vest in the prospective purchaser an equitable title to, or any interest or right in, the stock"); *Morales v. Mapco, Inc.*, 541 F.2d 233 (10th Cir. 1976) ("the warrants were not the economic equivalent of the stock because the warrants carried no equity ownership but the stock did.").

[89] See Case No. 07-00330-UT, *Certification of Stipulation* ("NMAW Certification") (Oct. 29, 2010), approved by Final Order Approving Certification of Stipulation (Nov. 9, 2010).

NMAW to OS Farms, Inc. ("Farms") under Section 62-6-12(A)(4), because the sale transferred utility property, including utility water rights, without prior approval.[90] The Commission declined to decide the issue of prior approval or to declare the sale void as part of the rate proceeding, and instead required NMAW to file a petition for declaratory order requesting a determination on the applicability of the statute (the "NMAW Declaratory Case").

Ultimately, Farms and NMAW reached a settlement in the NMAW Declaratory Case through revised agreements that clarified and modified the original transaction and addressed ownership of water rights.[91] In holding the settlement was in the public interest, the Commission concluded that customers received the benefits of the revised agreements and that no prior approval was needed.[92]

Similarly, in a series of cases arising from the *Raton Natural Gas Stock Acquisition*, the Commission permitted parties to a controlling-interest stock acquisition to resolve disputes over a potential Section 62-6-12 violation without making a final determination on the underlying transaction.

In Case No. 3832, Glenn Hatfield, one of three owners of Raton Natural Gas ("RNG"), sold 36.6% of RNG's outstanding common stock to David Hamilton (the "Hamilton Sale"). Hamilton then filed for approval of the purchase and transfer and for a General Diversification Plan. The other two RNG owners intervened, arguing that the Hamilton Sale was void for lack of prior approval under Section 62-6-12(A)(3)(a). RNG subsequently filed an application in Case No.

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90 *See OS Farms, Inc. v. New Mexico American Water Company Inc. and New Mexico Public Regulation Commission* ("OS Farms"), 2009-NMCA-113, ¶¶ 3-4, 6, 147 N.M. 221.

91 NMAW Certification at 11-16.

92 *Id.* at 17-23.

03-00174-UT for approval of Hatfield's divestiture of his stock to the other RNG owners if the Hamilton Sale was found ineffective or unenforceable. After mediation, Hamilton proposed a resolution of the stock disputes in Case Nos. 3832 and 03-00174-UT, resulting in the filing of Case No. 03-00323-UT. There, RNG sought approval of the divestiture and transfer of Hatfield's stock to the other RNG owners and, to the extent Hamilton held any interest in RNG as a result of the Hamilton Sale, divestiture of Hamilton's interests pursuant to an agreement compensating Hamilton for his stock purchase.

In approving the stipulated acquisitions in Case No. 03-00323-UT, the Commission found that the transactions were "in the public interest in part because many of the issues now pending before the Commission will be resolved" and would lead to the resolution of related federal litigation. Notably, the Commission concluded that the stipulated acquisitions were not unlawful but expressly declined to determine whether the Hamilton Sale was void under Section 62-6-12(B). The Commission could similarly allow the parties to restructure the Financing Transaction to avoid issues under Section 62-6-12(A)(3).

In sum, even if the Commission determines the Financing Transaction implicated Section 62-6-12(A)(3), it has multiple available remedies that would allow TXNM to retain the $400 million it already received. Each of these remedies is preferable to applying Section 62-6-12(A)(3) to a non-controlling stock purchase for the first time ever and voiding a transaction that closed ten months ago.

VI. Conclusion

For the foregoing reasons, Joint Applicants urge the Commission to find that Section 62-6-12 does not apply to the Financing Transaction as a matter of both law and fact. If the Commission determines that the Financing Transaction required prior authorization under Section 62-6-12, it is in the public interest to grant that authorization *nunc pro tunc* because the Financing

Transaction benefits customers by providing necessary equity to fund both PNM and TNMP, and under other facts and circumstances this type of securities transaction by TXNM is not regulated under the Public Utility Act. In the alternative, the Commission may permit the Financing Transaction parties to remedy a potential violation through an alternative agreement that does not qualify as a stock acquisition.

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GCG#535106

Exhibit A

Is contained in the following 13 pages.

EXCHANGE AGREEMENT

This Exchange Agreement (this "Agreement"), dated as of [●], 2026, is by and between Troy TopCo LP, a Delaware limited partnership ("Holder"), and TXNM Energy, Inc., a New Mexico corporation (the "Company"). Capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to such terms in that certain Stock Purchase Agreement, dated as of May 18, 2025, by and between Holder and the Company (the "Stock Purchase Agreement"), which terms shall apply as defined therein regardless of the validity of such agreement.

WHEREAS, pursuant to the Stock Purchase Agreement, Holder purchased 8,000,000 shares of Company Common Stock (the "Exchanged Stock");

WHEREAS, Holder desires to exchange the Exchanged Stock with the Company for an option to purchase 8,000,000 shares of Company Common Stock (the "Option") pursuant to the terms of the Option Agreement attached hereto as Exhibit A (such agreement, the "Option Agreement"); and

WHEREAS, the Company desires to exchange the Option contemplated by the Option Agreement for the Exchanged Stock on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

AGREEMENT

1. Exchange. Notwithstanding anything to the contrary in the Stock Purchase Agreement, Holder hereby assigns, transfers and delivers to the Company the Exchanged Stock, and the Company hereby accepts such Exchanged Stock, in each case, as full consideration for and in exchange for, the Option contemplated by the Option Agreement. For the avoidance of doubt, the parties hereto hereby expressly acknowledge and agree that the Option contemplated by the Option Agreement is not intended to constitute "stock" under any New Mexico Laws.

2. SPA Validity. Notwithstanding anything to the contrary in this Agreement or the Stock Purchase Agreement, in the event that the Stock Purchase Agreement and the purchase of the Exchanged Stock contemplated thereby are void *ab initio* because it was in violation of applicable Law, (a) the effective date of this Agreement shall be deemed to be the date of the consummation of the purchase of the Exchanged Stock contemplated by the Stock Purchase Agreement (that was determined to be void), (b) references herein to the exchange of the Exchanged Stock for the Option contemplated by the Option Agreement shall instead be deemed to refer to payment of the $400,000,000.00 of cash consideration previously contemplated by the Stock Purchase Agreement to have been paid as the aggregate Per Share Price for the purchase of the Exchanged Stock as payment for the purchase of the Option contemplated by the Option Agreement such that instead of paying the aggregate Per Share Price for the purchase of the Exchanged Stock under the Stock Purchase Agreement, Holder shall instead be deemed to have paid the $400,000,000.00 of cash consideration for the purchase of the Option contemplated by the Option Agreement under this Agreement, subject to substantially the same representations and

warranties as contemplated by the Purchase Agreement, (c) Holder shall be entitled to retain all cash dividend payments received in respect of the Exchanged Stock prior to the date that such determination is made as payments from the Company to Holder under the Option Agreement and (d) this Agreement and the Option Agreement shall be deemed to be reformed, in all respects, to reflect the intent of the foregoing, *mutatis mutandis*.

3. Holder's Representations and Warranties. Holder represents and warrants to the Company as of the date of this Agreement and as of the date of any exercise of the Option that:

(a) Holder is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware;

(b) Holder has the requisite corporate power and authority to (i) execute, issue and deliver this Agreement and the Option Agreement and (ii) perform any other obligations under this Agreement and the Option Agreement;

(c) each of this Agreement and the Option Agreement has been duly authorized, validly issued and is a valid and binding obligation of the Holder, enforceable against the Holder in accordance with the terms hereof;

(d) the execution, delivery and performance of this Agreement and the Option Agreement will not, conflict with (i) the Holder's organizational documents, (ii) any other agreement, contract or similar instrument to which the Holder is a party or (iii) any Laws having jurisdiction over the Holder or its properties; provided, that the representation in this clause (iii) as to any conflicts with New Mexico Law of the issuance of the Option Stock shall be solely in the circumstance in which the Option is exercisable pursuant to Section 1 of the Option Agreement except in the case of clauses (i) and (iii), any such conflict which, if it did exist, has not had and would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the consummation of the transactions contemplated by this Agreement or the Option Agreement;

4. Company's Representations and Warranties. The Company represents and warrants to Holder as of the date of this Agreement and as of the date of any exercise of the Option that:

(a) the Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of New Mexico;

(b) the Company has the requisite corporate power and authority to (i) execute, issue and deliver this Agreement and the Option Agreement, (ii) issue and deliver the Option Stock issuable upon exercise of the Option and (iii) perform any other obligations under this Agreement and the Option Agreement;

(c) each of this Agreement and the Option Agreement has been duly authorized, validly issued and is a valid and binding obligation of the Company, enforceable against the Company in accordance with the terms hereof;

(d) the Option Stock issuable upon exercise of the Option have been duly authorized and, when and if issued upon such exercise in accordance with this Option

Agreement, will be validly issued, fully paid, non-assessable, and will be free of any and all encumbrances and restrictions on transfer other than restrictions under applicable State and federal securities Laws;

(e) the execution, delivery and performance of this Agreement and the Option Agreement and the issuance of the Option does not, and the issuance of the Option Stock upon exercise of the Option will not, conflict with (i) the Company's certificate of incorporation, (ii) the Company's bylaws, (iii) any other agreement, contract or similar instrument to which the Company is a party or (iv) any applicable Laws; provided, that the representation in this clause (iv) as to any conflicts with New Mexico Law of the issuance of the Option Stock shall be solely in the circumstance in which the Option is exercisable pursuant to Section 1 of the Option Agreement; except in the case of clauses (iii) and (iv), any such conflict which, if it did exist, has not had and would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect (as defined in the Stock Purchase Agreement);

5. Governing Law. This Agreement, and all claims or causes of action (whether at Law, in contract or in tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance hereof, shall be governed by, and construed in accordance with, the Laws of the State of Delaware (without giving effect to choice of law principles thereof or of any other jurisdiction that would mandate or permit the application of the Laws of any jurisdiction other than the State of Delaware).

6. Venue. Each of the parties to this Agreement irrevocably (a) agrees that it shall bring any and all actions or proceedings in respect of any claim arising out of, related to, or in connection with, this Agreement or the transactions contemplated by this Agreement, whether in tort or contract or at law or in equity, exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware or, if such court shall not have or declines to accept jurisdiction over a particular matter, then any federal court within the State of Delaware, (b) submits with regard to any such action or proceeding, generally and unconditionally, to the personal jurisdiction of such courts and agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (c) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the courts described above, and (d) consents to service being made through the notice procedures set forth in Section 10.2 of the Stock Purchase Agreement. The Company hereby agrees that service of any process, summons, notice or document by U.S. registered mail to the respective addresses set forth in Section 10.2 of the Stock Purchase Agreement shall be effective service of process for any suit or proceeding in connection with this Agreement or the transactions contemplated hereby. Each party hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to serve process in accordance with this Section 6, that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and to the fullest extent permitted by applicable Law, that the suit, action or proceeding in any such court is brought in an inconvenient forum, that the venue of such suit,

action or proceeding is improper, or that this Agreement, or the subject matter hereof or thereof, may not be enforced in or by such courts and further irrevocably waives, to the fullest extent permitted by applicable Law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which such party is entitled pursuant to the final judgment of any court having jurisdiction. Each party expressly acknowledges that the foregoing waiver is intended to be irrevocable under the Laws of the State of Delaware and of the United States of America; provided, that each such party's consent to jurisdiction and service contained in this Section 6 is solely for the purpose referred to in this Section 6 and shall not be deemed to be a general submission to said courts or in the State of Delaware other than for such purpose.

7. Waiver of Jury Trial and Certain Damages. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF THE PURCHASER OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF OR THEREOF.

8. Incorporation. Sections 10.2 through 10.7 and Section 10.11 of the Stock Purchase Agreement shall be deemed to apply to this Agreement, *mutatis mutandis*.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, each of the undersigned parties has caused this Agreement to be executed as of the date first above written.

TROY TOPCO LP

By: _____
Name: Sebastien Sherman
Title: Vice President

TXNM ENERGY, INC.

By: _____
Name: Don Tarry
Title: Chief Executive Officer

Exhibit A

Form of Option Agreement

(*See attached.*)

THIS OPTION AGREEMENT AND THE SECURITIES ISSUABLE UPON THE EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE TRANSFERRED IN VIOLATION OF SUCH ACT AND LAWS OR THE PROVISIONS OF THIS OPTION AGREEMENT.

THIS OPTION AGREEMENT SHALL CONSTITUTE AN OPTION CONTRACT AND NOT "STOCK" UNDER ANY APPLICABLE LAW.

OPTION AGREEMENT

[●], 2026

TXNM Energy, Inc., a New Mexico corporation (the "Company"), hereby grants to Troy TopCo LP, a Delaware limited partnership ("Holder"), the right to purchase 8,000,000 shares of the Company's common stock, no par value (the "Company Common Stock" and, such 8,000,000 shares thereof, the "Option Stock"), at a purchase price of $0.0001 per share of Company Common Stock (the "Exercise Price") on the terms and conditions set forth in this Option Agreement (the "Option," and, this Option Agreement, the "Option Agreement"). All capitalized terms not otherwise defined in this Option Agreement shall have the meanings ascribed to such terms in that certain Stock Purchase Agreement, dated as of May 18, 2025 (the "Stock Purchase Agreement"), by and between Holder and the Company, which terms shall apply as defined therein regardless of the validity of such agreement.

1. The Option may be exercised at any time following the earlier to occur of: (a) the time at which no further approval of the New Mexico Public Regulation Commission (the "Commission") is required for Holder to consummate the exercise of the Option and purchase of the Option Stock contemplated by this Option Agreement (whether because the Commission has approved the purchase of the Option Stock pursuant to NM Stat § 62-6-12(A)(3), the Commission has determined that its approval is not required or otherwise); and (b) valid termination of that certain Merger Agreement, dated as of May 18, 2025, by and among Troy ParentCo LLC, a Delaware limited liability company, Troy Merger Sub Inc., a New Mexico corporation, and the Company prior to consummation of the Closing.

2. Subject to Section 1, Holder may exercise the Option on any Business Day for all (but not less than all) of the Option Stock by delivering to the Company: (a) a written notice of Holder's election to exercise the Option (an "Election Notice") and (b) payment of the aggregate Exercise Price. Upon receipt of an Election Notice, the Company shall promptly, and in any event within three Business Days deliver to Holder evidence reasonably satisfactory to Holder of (i) the issuance of the Company Common Stock and (ii) listing of the Company Common Stock on the New York Stock Exchange (it being understood that upon, exercise, the Company shall cooperate with Holder and use reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under the rules and policies of the New York Stock Exchange to enable the listing of the Company Common Stock with the New York Stock Exchange as promptly as practicable following exercise of the Option). Payment of the Exercise Price shall be made by wire transfer of immediately available funds to the account(s) designated by the Company in writing (such account to be designated by the

Company within one Business Day of the Holder's request for such account information).

3. The Company shall, at all times, reserve and keep available out of its authorized but unissued Company Common Stock, solely for the purpose of issuance upon the exercise of the Option, the maximum number of Option Stock that are issuable upon the exercise of the Option. The Company shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable Option Stock upon the exercise of the Option. The Company shall not, directly or indirectly, by any intentional action, avoid or seek to avoid the observance or performance of any of the terms of the Option but will, at all times, in good faith assist in carrying out all such actions as may be reasonably necessary or appropriate to protect the rights of Holder against impairment. The Company will not at any time, except upon dissolution, liquidation or winding up of the Company, close its transfer books so as to result in preventing or delaying the exercise or transfer of the Option.

4. In the event that the Company pays any cash dividend with respect to the Company Common Stock at a time that the Option remains outstanding and has not been exercised, the Company shall deposit and hold in an interest bearing escrow account insured by the Federal Deposit Insurance Corporation established solely for the purposes of this Option Agreement (the "Dividend Holdback Account"), an amount of immediately available funds equal to the amount of the dividend that would have been paid to the holder of the Option Stock if the Option Stock were issued and outstanding on the record date and payment date of such dividend. Other than pursuant to the following sentence, in no event shall the Company withdraw, distribute or make any payment of any funds held in the Dividend Holdback Account without the prior written consent of the Holder. In the event that the Option is exercised, contemporaneously with the issuance of the Option Stock, the Company shall pay to the Holder, by wire transfer of immediately available funds to the account(s) designated by the Holder in writing, all amounts held in the Dividend Holdback Account.

5. In the event that the number of Company Common Stock issued and outstanding after the date hereof and prior to the Holder's exercise of the Option or the number of securities convertible or exchangeable into or exercisable for Company Common Stock shall have been changed into a different number of Company Common Stock or securities convertible or exchangeable into or exercisable for Company Common Stock, as applicable, or securities of a different class as a result, in either case, of a reclassification, stock split (including a reverse stock split), stock dividend, recapitalization, merger, issuer tender or exchange offer or other similar transaction, then, in each case, the number of Option Stock purchasable hereunder as result of Holder's exercise of the Option shall be equitably adjusted to provide to Holder the same economic effect as contemplated by this Option Agreement prior to such event.

6. Holder represents and warrants to the Company as of the date of this Option Agreement and as of the date of any exercise of the Option that:

(a) it is acquiring the Option and, upon exercise hereof, the Option Stock, for its own account without a view to the distribution thereof;

(b) it is an "accredited investor" within the meaning of Regulation D under the Securities Act;

(c) it has been advised and understands that the Option and the Option Stock have not been registered under the Securities Act or any state securities Laws and, unless so registered, cannot be offered, sold, transferred or otherwise disposed of except pursuant to an exemption from or in a transaction not subject to the registration requirements of the Securities Act and all applicable state securities Laws;

(d) it can bear the economic and financial risk of its investment for an indefinite period of time, and has such knowledge and experience in financial or business matters that it is capable of evaluating the risks and merits of the investment in the Option and the Option Stock that may be issued upon the exercise of such Option; and

(e) the Company has made available to Holder, at a reasonable time prior to Holder's acquisition of the Option, the opportunity to ask questions and receive answers concerning the terms and conditions of such acquisition and to obtain any additional information which the Company possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of the information furnished by the Company in connection with such acquisition, and Holder has reviewed or had the opportunity to review all such documents or information referred to above.

7. The Company represents and warrants to Holder as of this Option Agreement and as of the date of any exercise of the Option that:

(a) assuming the truth and accuracy of Holder's representations and warranties contained in Section 6, the issuance of the Option and the issuance of Option Stock pursuant to this Option Agreement are exempt from the registration and prospectus delivery requirements of the Securities Act; and

(b) the Company agrees that neither it nor any Person acting on its behalf has offered or will offer the Option or the Option Stock or any part thereof or any similar securities for issue or sale to, or has solicited or will solicit any offer to acquire any of the same from, any Person so as to bring the issuance and sale of the Option or the Option Stock hereunder within the provisions of the registration and prospectus delivery requirements of the Securities Act.

8. This Option Agreement, and all claims or causes of action (whether at Law, in contract or in tort) that may be based upon, arise out of or relate to this Option Agreement or the negotiation, execution or performance hereof, shall be governed by, and construed in accordance with, the Laws of the State of Delaware (without giving effect to choice of law principles thereof or of any other jurisdiction that would mandate or permit the application of the Laws of any jurisdiction other than the State of Delaware).

9. Each of the parties to this Option Agreement irrevocably (a) agrees that it shall bring any and all actions or proceedings in respect of any claim arising out of, related to, or in connection with, this Option Agreement or the transactions contemplated by this Option Agreement, whether in tort or contract or at law or in equity, exclusively in the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware or, if such court shall not have or declines to accept jurisdiction over a particular matter, then any federal court

within the State of Delaware, (b) submits with regard to any such action or proceeding, generally and unconditionally, to the personal jurisdiction of such courts and agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (c) agrees that it will not bring any action relating to this Option Agreement or any of the transactions contemplated by this Option Agreement in any court other than the courts described above, and (d) consents to service being made through the notice procedures set forth in Section 10.2 of the Stock Purchase Agreement. The Company hereby agrees that service of any process, summons, notice or document by U.S. registered mail to the respective addresses set forth in Section 10.2 of the Stock Purchase Agreement shall be effective service of process for any suit or proceeding in connection with this Option Agreement or the transactions contemplated hereby. Each party hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Option Agreement, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to serve process in accordance with this Section 9, that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and to the fullest extent permitted by applicable Law, that the suit, action or proceeding in any such court is brought in an inconvenient forum, that the venue of such suit, action or proceeding is improper, or that this Option Agreement, or the subject matter hereof or thereof, may not be enforced in or by such courts and further irrevocably waives, to the fullest extent permitted by applicable Law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which the party is entitled pursuant to the final judgment of any court having jurisdiction. Each party expressly acknowledges that the foregoing waiver is intended to be irrevocable under the Laws of the State of Delaware and of the United States of America; provided, that each such party's consent to jurisdiction and service contained in this Section 9 is solely for the purpose referred to in this Section 9 and shall not be deemed to be a general submission to said courts or in the State of Delaware other than for such purpose.

10. EACH PARTY TO THIS OPTION AGREEMENT HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF THE PURCHASER OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF OR THEREOF.

11. Article VI, Article VII, Article VIII, and Sections 5.1, 5.5, 5.6, 10.2 through 10.7 and Section 10.10 of the Stock Purchase Agreement shall be deemed to apply to this Agreement, *mutatis mutandis*. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto (whether by operation of law or otherwise) without the prior written consent of the other party; provided, that, each party hereto may assign to any Affiliate thereof following valid termination of the Merger Agreement in accordance therewith.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the Company and Holder have caused this Option Agreement to be duly executed as of the date first above written.

TROY TOPCO LP

By: Troy GP LLC
Its: General Partner

By: BIP Holdings Manager L.L.C.
Its: Manager

By: _____
Name: Sebastien Sherman
Title: Senior Managing Director

TXNM ENERGY, INC.

By: _____
Name: Don Tarry
Title: Chief Executive Officer

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. 25-00060-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO, TXNM ENERGY, INC. AND TROY PARENTCO LLC,	)	
JOINT APPLICANTS.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Joint Applicants' Response to the Hearing Examiners' Order Directing Joint Applicants to Show Cause and for Other Relief** was emailed to parties listed below on April 6, 2026:

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Dated this 6th day of April, 2026.

By: /s/ *Justin Rivord*
Justin Rivord, Senior Project Manager
PNM Regulatory Policy & Case Management
Public Service Company of New Mexico

GCG#535095