

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) Case No. 25-00060-UT
TROY MERGER SUB INC. WITH TXNM ENERGY, INC.;)
APPROVAL OF A GENERAL DIVERSIFICATION PLAN;)
AND ALL OTHER AUTHORIZATIONS AND)
APPROVALS REQUIRED TO CONSUMMATE AND)
IMPLEMENT THIS TRANSACTION)
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
TXNM ENERGY, INC. AND TROY PARENTCO LLC,)
)
JOINT APPLICANTS.)

TESTIMONY AND EXHIBITS
OF
SUEDEEN KELLY

April 6, 2026

**NMPRC CASE NO. 25-00060-UT
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SUEDEEN KELLY**

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GLOSSARY OF ACRONYMS AND DEFINED TERMS

Defined Term or Acronym	Meaning
Acquisition	Proposed acquisition of TXNM by Troy
Blackstone or Blackstone Inc.	A publicly traded alternative investment manager listed on the New York Stock Exchange (NYSE: BX). Blackstone indirectly controls Blackstone Infrastructure.
Commission or NMPRC	New Mexico Public Regulation Commission
FERC	Federal Energy Regulatory Commission
Financing Transaction	The financing transaction contemplated by the Stock Purchase Agreement, dated May 18, 2025, whereby TXNM Energy, Inc. sold Troy TopCo LP eight million shares of TXNM common stock for \$400 million
Joint Applicants	PNM, TXNM, and Troy
PNM	Public Service Company of New Mexico
PNMR or PNM Resources	Former name of the parent of PNM; renamed TXNM Energy on August 2, 2024
TNMP	Texas New Mexico Power, a utility subsidiary of TXNM and affiliate of PNM
TopCo	Troy TopCo LP, the indirect parent company of Troy ParentCo, LLC
Troy or ParentCo	Troy ParentCo LLC, a Joint Applicant in the Acquisition, that will be the new direct parent of TXNM.
Troy Entities	Troy ParentCo LLC, Troy IntermediateCo LLC, Troy TopCo LP, Troy GP LLC, Troy Aggregator LP.
TXNM or TXNM Energy	Parent of PNM and TNMP, and a Joint Applicant in this proceeding

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I. INTRODUCTION AND PURPOSE OF TESTIMONY

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

A. My name is Suedeen Kelly. I am a partner and co-chair of the energy practice group at the law firm Jenner & Block LLP. My business address is 1099 New York Avenue, NW, Washington DC 20001.

Q. Have you previously filed testimony in this case?

A. No, I have not.

Q. On whose behalf are you appearing in this proceeding?

A. I am appearing on behalf of Troy ParentCo, LLC (“Troy”) and TXNM Energy, Inc. (“TXNM”), the parent holding company for Public Service Company of New Mexico (“PNM”, and together with Troy and TXNM, the “Joint Applicants”). My testimony supports the Joint Applicants’ response to the New Mexico Public Regulation Commission (“NMPRC” or “Commission”) Hearing Examiners’ March 11, 2026 Order Directing Joint Applicants to Show Cause (“Order”). This Order relates to a standalone financing transaction whereby TXNM sold Troy TopCo LP (“TopCo”) eight million shares of TXNM common stock for \$400 million (the “Financing Transaction”).¹

¹ TXNM is PNM’s owner. TopCo is the indirect parent company of Troy. Troy, TopCo, Troy IntermediateCo LLC, Troy GP LLC, and Troy Aggregator LP are referred to herein as the “Troy Entities.”

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1 **Q. Please briefly describe your educational and professional experience, as relevant to**
2 **this testimony.**

3 **A.** I am intimately familiar with public utility regulation, including public utility mergers and
4 acquisitions. I served as a Commissioner of the Commission for four years (1983-1986),
5 two of which were as Chairwoman (1984-1986). In that role, I was responsible for state
6 regulation of gas, electric, and water public utilities. I also served as a Federal Energy
7 Regulatory Commission (“FERC”) Commissioner for six years (2003-2009). As a FERC
8 Commissioner, I made decisions in approximately 1,300 cases each year, including on
9 proposed mergers, acquisitions, and other change-of-control transactions.

10

11 In addition to my experience as a regulator, I also have academic expertise in state and
12 federal regulation of public utilities from my decades of experience as a law professor. I
13 teach and publish on relevant topics, including public utility regulation, economic
14 regulation of business, and regulation of the energy sector. From 1986 until 2003, I was a
15 professor of law at the University of New Mexico School of Law. From 2022 through
16 2025, I was an adjunct professor at the George Washington University Law School, where
17 I taught a course on the future of the electric grid.

18

19 Moreover, I have worked for decades as an attorney in private and public practice in New
20 Mexico and Washington, D.C., specializing in utility regulation. From 1978 to 1982, I
21 managed a private law practice representing clients in state and federal litigation and
22 regulatory proceedings, with a focus on public utility law. In 1982, I worked in the
23 Consumer Division of the Office of the New Mexico Attorney General, representing

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1 residential and small business consumers in matters before the New Mexico Public Service
2 Commission. From 1992 until 2001, I managed a part-time practice in state and federal
3 energy and public utility law representing clients with respect to natural gas and oil
4 intrastate and interstate pipelines and distribution facilities and water and electric public
5 utility regulation. From 2001 to 2003 I founded and led the public utility practice at
6 Modrall, Sperling, Roehl, Harris & Sisk in Albuquerque, New Mexico. After serving as a
7 FERC Commissioner, I chaired the energy practice groups at Patton Boggs LLC and Akin
8 Gump Strauss Hauer & Feld LLP in Washington, D.C., before moving to Jenner & Block
9 LLP in 2017.

10
11 Based on the above experience, I have developed a thorough understanding of the nature
12 of public utility regulation at the state and federal levels and the key features of regulatory
13 statutes administered by state public utility commissions throughout the country. I have a
14 particularly deep background in New Mexico public utility regulation, stemming from the
15 time I served on the Commission, taught at the University of New Mexico School of Law,
16 practiced law in New Mexico, and subsequently as I have participated in cases in New
17 Mexico.

18
19 A list of my professional qualifications appears as JA Exhibit SK-1.
20

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1 **Q. Please summarize significant proceedings regarding proposed mergers, acquisitions,**
2 **and other change-in-control transactions for New Mexico utilities you evaluated while**
3 **you served on the Commission.**

4 **A.** During my service as a Commissioner, the Commission evaluated a number of significant
5 proposed transactions. In 1984, the Commission approved Texas-New Mexico Power
6 Company's general diversification plan, including a corporate restructuring and formation
7 of a holding company.² Later that year, the Commission considered and approved
8 Southern Union Gas Company's sale of Gas Company of New Mexico to PNM.³ In 1986,
9 PNM sought Commission approval of a general diversification plan to restructure PNM
10 into a public utility holding company with different subsidiaries for utility and non-utility
11 operations.⁴ The Commission rejected PNM's proposal in order to maintain the
12 Commission's regulatory oversight of PNM and protect ratepayers from increased cost of
13 capital due to losses from PNM's non-utility businesses.

14

15 **Q. What is the purpose of your testimony?**

16 **A.** The purpose of my testimony is to address (1) the history and purpose of the Commission's
17 oversight of mergers and acquisitions involving public utilities; (2) the circumstances
18 surrounding the amendment of Section 62-6-12 of the Public Utility Act ("Section 62-6-
19 12")⁵ in 1989; (3) the interplay of Section 62-6-12 and the Financing Transaction; and

² Case No. 1886, *Recommended Decision* at 6 (July 11, 1984), approved by *Final Order* (July 16, 1984).

³ Case Nos. 1891/1892, *Final Order* (Dec. 12, 1984).

⁴ Case No. 2019, Phase II, *Final Order* at 23-26 (July 8, 1986), *aff'd, Pub. Serv. Co. v. N.M. PSC*, 106 N.M. 622, 1987-NMSC-124 (N.M. Mar. 13, 1989).

⁵ N.M.S.A. 1978, § 62-6-12.

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1 (4) the regulatory implications that would follow from Prosperity Works’ proposed
2 interpretation of Section 62-6-12. Based on my experience, Prosperity Works’ proposal
3 will create more regulatory procedure with no public benefit, constrain capital available to
4 New Mexico’s utilities, and harm New Mexicans, who need the essential services provided
5 by New Mexico’s utilities, through decreased availability of the capital necessary to fund
6 those services. Although I am an attorney, my testimony in this case relates to policy and
7 Commission practice based on my experience in those areas, not legal opinion.
8

9 **II. PURPOSE OF COMMISSION OVERSIGHT OF UTILITY MERGERS AND**
10 **ACQUISITIONS**

11 **Q. Based upon your experience as a Commissioner in New Mexico and a professor who**
12 **studied regulated entities in New Mexico, please summarize your understanding of**
13 **the Commission’s role with respect to utility mergers and acquisitions.**

14 A. My experience is that New Mexico—like other states—subjects public utilities to extensive
15 regulatory oversight to protect the public interest. As the Public Utility Act explains, the
16 Commission “shall have general and exclusive power and jurisdiction to regulate and
17 supervise every public utility in respect to its rates and service regulations and in respect
18 to its securities....”⁶ Changes in control of public utilities and public utility holding
19 companies require prior Commission authorization under Section 62-6-12, which is titled
20 “[a]cquisitions, consolidations, etc.; consent of commission.”
21

⁶ N.M.S.A. 1978, § 62-6-4(A).

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1 As a Commissioner immediately prior to the passage of the current version of Section 62-
2 6-12, and as a professor teaching regulated entities at the University of New Mexico School
3 of Law at the time the current version of Section 62-6-12 was passed, it is my opinion that
4 Section 62-6-12 was drafted for the purpose of providing the Commission with oversight
5 over any attempt to change control of a public utility in New Mexico. Accordingly, any
6 such effort would trigger review under Section 62-6-12.

7
8 **Q. Why did and does the Commission focus on regulating changes in control of utilities?**

9 **A.** When I was a Commissioner, the Commission understood its oversight of utility
10 consolidations, mergers, acquisitions, and other transactions to be limited to situations
11 where there is a change in control of a utility, or a conveyance of assets that materially
12 impacted service quality or rates, an understanding that I believe continues today. With
13 respect to investments in a New Mexico public utility, including the purchase of shares of
14 stock in a New Mexico public utility or public utility holding company, the regulatory
15 focus of the Commission is not on regulating investors in its public utilities but rather on
16 ensuring that any change in control of a New Mexico public utility is in the public interest.
17 Investments made in a New Mexico public utility that do not amount to a change in control
18 of that utility do not give rise to the legal and public interest concerns at issue when control
19 of a utility changes hands. Indeed, these non-controlling investments contribute to the
20 capital essential for utilities to build the infrastructure that is needed to serve the utility's
21 customers and are therefore categorically beneficial to the utility and its customers.
22 Inquiries by the Commission into potential investors in New Mexico utilities that acquire
23 non-controlling shares of stock would be incompatible with the functioning of today's

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1 stock market; inefficient and impractical for the Commission to embark on; and, as
2 discussed below, would ultimately prove harmful to New Mexico, New Mexico utilities
3 and New Mexico utility customers, who rely on the capital provided directly or indirectly
4 by, and needed from, these investors.

5
6 **Q. How is “Control” defined in the Public Utility Act?**

7 **A.** Section 62-3-3 of the Public Utility Act defines control to include instances when:

8 (1) a person is an officer, director, partner, trustee or person of similar status
9 or function;

10 (2) a person owns directly or indirectly or has a beneficial interest in ten
11 percent or more of voting securities of a person;

12 (3) a person has a level of ownership of securities other than voting
13 securities that the commission establishes as creating a presumption of
14 control; and

15 (4) the possession of the power to direct or cause the direction of the
16 management and policies of a person exists in fact, notwithstanding the lack
17 of ownership of ten percent or more of the person's voting securities[.]⁷

18
19 **Q. Has the Commission historically exercised oversight over purchases of shares of stock
20 that do not meet control elements?**

21 **A.** No. Historically, the Commission has not exerted oversight of investors seeking to acquire
22 shares of stock that do not meet the control elements under Section 62-3-3. Practically
23 speaking, the acquisition of shares of stock in an amount less than a controlling interest is
24 unlikely to be contrary to the public interest.

⁷ *Id.*, § 62-3-3(A).

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1 **Q. Based on your experience, how did and does the Commission typically review**
2 **proposed change in control transactions?**

3 **A.** Under the Public Utility Act, the Commission thoroughly reviews proposed mergers and
4 acquisitions of utilities and must approve a proposed merger or acquisition subject to
5 Section 62-6-12 unless the Commission finds that the merger or acquisition “is unlawful
6 or is inconsistent with the public interest...”⁸ In determining whether this standard is met,
7 the Commission considers six factors: (1) whether the transaction provides benefits to
8 utility customers; (2) whether the Commission’s jurisdiction will be preserved; (3) whether
9 the quality of service will be diminished; (4) whether the transaction will result in improper
10 subsidization of non-utility activities; (5) careful verification of the qualifications and
11 financial health of the new owner; and (6) adequate protections against harm to customers.⁹
12 Where necessary, the Commission can impose conditions on mergers and acquisitions to
13 ensure that the transaction meets the applicable standard.

14
15 Proceedings to review proposed mergers and acquisitions give the applicants, the
16 Commission Staff, the New Mexico Department of Justice, consumer advocates, ratepayer
17 organizations and other intervenors the opportunity to conduct discovery, develop a robust
18 evidentiary record, cross examine witnesses at an evidentiary hearing, and brief legal and
19 policy arguments regarding the transaction. The Commission also solicits and considers
20 public comments regarding proposed transactions.

⁸ *Id.* § 62-6-13.

⁹ *See* Case No. 11-00085-UT, *Recommended Decision of the Hearing Examiner* at 15-16 (Dec. 2, 2011), approved by *Final Order* (Dec. 22, 2011).

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1 **Q. As a former Commissioner, do you believe it would be efficient for the Commission**
2 **to review successive, non-control transactions separately?**

3 **A.** No. Duplicative proceedings each time an investor purchases shares of stock would be
4 inefficient and impractical. The Commission’s oversight is needed when a new prospective
5 owner is seeking control over a utility. Prior, or subsequent, acquisitions of shares of stock
6 that do not involve a change of control or complete acquisition of the utility do not trigger
7 any of the concerns identified in Case No. 11-00095-UT, *Recommended Decision of the*
8 *Hearing Examiner* at 15-16 (Dec. 2, 2011), approved by *Final Order* (Dec. 22, 2011), and
9 noted above.

10

11

III. BACKGROUND OF SECTION 62-6-12(A)(3)

12 **Q. From a policy perspective, what is your understanding of the purpose of Section 62-**
13 **6-12(A)(3) of the Public Utility Act?**

14 **A.** In 1989, the New Mexico Legislature amended Section 62-6-12 to add subsection (A)(3).¹⁰
15 The regulatory climate at the time, particularly in the Southwest, was characterized by an
16 increased focus on regulatory oversight as a result of the excess capacity resulting from
17 significant utility investment through the 1980s and unsuccessful diversification efforts.
18 For example, both PNM and El Paso Electric had suffered large financial losses, and the
19 market price of their stock had plummeted. At the time of the amendment, legislators were
20 concerned that they were attractive takeover targets, and it was not clear that the
21 Commission would have regulatory authority over a merger between a New Mexico utility

¹⁰ SB 157, 39th Leg., 1st Sess. (N.M. 1989).

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1 and an out-of-state utility or over a transaction where an entity acquired more than 10% of
2 the shares of a utility's stock. This particular amendment, as confirmed by
3 contemporaneous news reports,¹¹ was not driven by any specific situation but rather to
4 clarify the Commission's oversight authority for transactions that gave out-of-state entities
5 a controlling interest in a New Mexico utility. The bill's intent is described as
6 "prohibit[ing] someone from acquiring more than 10 percent of the stock of a utility
7 without prior approval from regulators."¹² The focus on a controlling interest in the utility
8 is also consistent with subsection (A)(3)'s condition that the acquisition of stock be "for
9 the purposes of" an acquisition subject Section 62-6-12.¹³ The language used by the
10 legislature also appears consistent with the policy intent to address stock transactions that
11 actually serve *the purpose* of an acquisition. Notably, the legislature did not use less
12 specific wording, such as "related to," "associated with", or "in connection with" an
13 acquisition.

14
15 **Q. How has Section 62-6-12(A)(3)(c) been interpreted in the past?**

16 **A.** As far as I know, Subsection 62-6-12(A)(3)(c) has never been applied by the Commission
17 or evaluated by the New Mexico courts.

¹¹ See JA Exhibit SK-2.

¹² *Id.* at 1.

¹³ N.M.S.A. 1978, § 62-6-12(A)(3)(c).

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1 **Q. Given this history, would you read section 62-6-12(A)(3) to create a new procedure**
2 **for evaluating transactions?**

3 **A.** No. I read the language of Section 62-6-12(C) as specifically deferring to the established
4 procedure for evaluating acquisitions, as it states: “Nothing in this section shall limit or
5 expand the authority of the commission with respect to Class II transactions as provided in
6 the Public Utility Act....”¹⁴ This language is consistent with the Commission’s policy for
7 evaluating transactions, and with Section 62-6-12(B)’s requirement for pre-approval of
8 transfers of control.

9

10 **Q. What is your understanding of how Section 62-6-12(A)(3) of the Public Utility Act**
11 **aligns with the policy considerations that underpin the Commission’s interest in**
12 **regulating utility acquisitions and transfers of control?**

13 **A.** As previously discussed, the Commission’s ability to regulate a change in control of a New
14 Mexico utility is part of its regulatory authority to protect the public interest. Based on
15 legislative history and my understanding of New Mexico’s public utility law in 1989, the
16 amended Section 62-6-12(A)(3) covers a variety of scenarios where the Commission’s
17 authority to regulate change in control of a utility was not previously clear. Specifically,
18 my understanding is that the current Section 62-6-12(A)(3)(c) was designed to capture
19 transactions that change the control of the utility that would not otherwise be known to the
20 Commission. For example, the subsection may also reach parties working in concert to
21 gain and/or exercise control over utilities in a way that would otherwise escape the

¹⁴ N.M.S.A. 1978, § 62-6-12(C).

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1 Commission's review (e.g., by having several non-utility entities acquire small interests
2 that add up to a controlling interest).¹⁵ The legislature's clarification that the Commission
3 can scrutinize consolidations, mergers, and transactions resulting in control of the utility,
4 even where one of the entities is not a New Mexico jurisdictional utility, therefore, is
5 consistent with the Commission's regulatory policy. As discussed below, I do not believe
6 legislative interest in these types of transactions extends to transactions that do not transfer
7 controlling interests.

8
9 **IV. INTERPLAY OF SECTION 62-6-12 WITH THE FINANCING TRANSACTION**

10 **Q. What is your understanding from the testimonies of Joint Applicant Witnesses Tarry**
11 **and Sherman regarding the amount of shares of stock purchased by TopCo and the**
12 **rights that came with those shares?**

13 **A.** According to Joint Applicant Witnesses Tarry and Sherman, TopCo acquired
14 approximately 7.5% of the shares of TXNM and those shares came with restrictions.
15 TopCo's rights to vote the ~7.5% shares of TXNM were restricted. TopCo would not have
16 governance rights or rights to appoint anyone to TXNM's board of directors; elect or
17 remove officers; or direct TXNM's policy or management. In addition, TopCo could not
18 purchase any additional shares in the market without TXNM's approval.

19

¹⁵ See, e.g., Case No. 11-00432-UT, *Final Order* at 4-5 (June 19, 2012).

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1 **Q. Based on this testimony, in your opinion did the Financing Transaction meet the**
2 **control scenarios in Section 62-3-3?**

3 **A.** No. Relying on the facts in the testimonies of Tarry and Sherman, none of the control
4 scenarios identified in Section 62-3-3 exist as a result of the Financing Transaction, nor
5 will they exist unless or until the Commission approves the proposed acquisition of TXNM
6 by Troy (“Acquisition”).

7
8 **Q. What is your understanding from the testimonies of Joint Applicant Witnesses Tarry**
9 **and Sherman regarding whether TXNM and TopCo acted in concert?**

10 **A.** Based on the testimony of Joint Applicant Witnesses Tarry and Sherman, the Joint
11 Applicants were not acting in concert to avoid the Commission’s oversight or otherwise
12 conceal the nature of the Acquisition.

13
14 **Q. Why is that relevant to your opinion whether the Commission needed to review the**
15 **Financial Transaction?**

16 **A.** That point is relevant because, as discussed above, at the time that Section 62-6-12(A)(3)(c)
17 was enacted, the Legislature was acting to avoid the scenario where parties acted in concert
18 outside of the Commission’s view to complete a change in control of a New Mexico utility.

19 **Q. If the Commission determines that there was no change in control under the**
20 **Financing Transaction, does the Financing Transaction require Commission**
21 **approval?**

22 **A.** No. Based on my testimony regarding change in control, if the Commission were to find
23 that the Financing Transaction did not change control of the utility, the Financing

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1 Transaction falls outside the purview of the intent of Section 62-6-12. Further, the
2 regulatory purpose of Section 62-6-12(3)(c) is to reach transactions that meet the specific
3 requirement that they are for the purpose of an acquisition, so a transaction that is merely
4 for the purpose of investing in the utility (irrespective of whether an acquisition is
5 ultimately approved and completed) would not fall under the purpose of Section 62-6-12.

6
7 **Q. In your opinion, did the Financing Transaction contravene any regulatory principles**
8 **underlying Section 62-6-12 as described in subsection 62-6-12(B)?**

9 **A.** No. Because the Financing Transaction does not result in “control or exercise of control”
10 of TXNM, in my opinion it cannot be said to contravene the regulatory purposes of a statute
11 focused on change in control transactions.

12
13 **V. IMPLICATIONS OF PROSPERITY WORKS’ INTERPRETATION**

14 **Q. Based on your experience, are there potential negative consequences of the**
15 **Commission adopting Prosperity Works’ interpretation?**

16 **A.** Yes. The practical effect of Prosperity Works’ proposal is to create additional regulatory
17 procedure that may discourage investment in New Mexico utilities with no public benefit.
18 If the Commission were required to investigate any purchaser of shares of stock to
19 determine if they are “associated, affiliated or acting in concert with” a public utility or
20 public utility holding company, no matter the size of the purchase or the purchaser’s actual
21 rights with respect to the regulated utility, and, if so, whether their purchase of shares of
22 stock would be contrary to the public interest, such Commission oversight would likely
23 have a chilling effect on investment in and purchases of shares of stock of New Mexico

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1 utilities and the publicly traded holding companies that own them. First, investors in an
2 amount of shares of stock not resulting in control are unlikely to expend the resources
3 needed to obtain regulatory pre-approval to buy the shares of stock.¹⁶ Second, the time
4 that would elapse between when a prospective purchaser decides that a purchase shares of
5 stock in a New Mexico utility or its holding company would be a good investment and
6 when the Commission may approve that investment is incompatible with how the stock
7 market in the U.S. functions. My understanding is that almost all stock purchasers transact
8 in real time, and they do not announce to the public their intent to purchase shares of stock
9 in advance of their purchase. Waiting a period of time to know if one will be approved to
10 buy the stock, the market for buying that stock will inevitably and unpredictably change.
11 The requisite delay may also prevent or discourage many potential investors.

12
13 **Q. From the perspective of a former Commissioner, what other practical implications**
14 **would the Commission’s new authority have?**

15 **A.** Should potential investors in New Mexico utilities decide that the regulatory pre-approval
16 process is “worth it” and proceed to seek Commission pre-approval of their investments,
17 the resulting administration of this authority would likely prove unworkable for the
18 Commission. Requested pre-approvals of the purchase of shares of stock of New Mexico
19 utilities in the future could well flood the Commission’s docket. I understand that publicly

¹⁶ Even under Prosperity Works’ very narrow view that this statute only applies in the context of stock purchases for the purpose of an acquisition, potential investors could be concerned with investments without Commission authority given the broader read of the statute as a whole. While Prosperity Works may want the Commission to believe that its request for a show cause should be confined to a very narrow set of facts, it is unclear to me when I read the statute as a whole that investors may be concerned more broadly and may believe that approval is required for a number of stock transactions.

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1 traded holding companies that own New Mexico utilities have a number of large
2 shareholders that, if they sought Commission approval to continue to invest in such holding
3 companies, would create an unworkable situation for the Commission and Commission
4 Staff with an ensuing long queue of cases.

5
6 **Q. As a former Commissioner, do you see any unintended consequences that would arise**
7 **in applying Prosperity Works’ new rule to future transactions similar to the**
8 **Financing Transaction?**

9 **A.** Yes. First, this interpretation is inconsistent with the Commission’s mission, which is the
10 regulation of public utilities, not stock purchasers. Should the new rule be adopted by the
11 Commission, the Commission would be expanding its jurisdiction into a non-traditional
12 area of regulation unaccompanied by any definable benefit to the public. Second, applying
13 Prosperity Works’ proposed rule to the Financing Transaction and similar, non-control
14 equity investments in the future would create unnecessary burden and expense. With
15 respect to the Commission, based on my experience, the Commission would be required to
16 expend additional staff time and resources for the purpose of handling the stock purchase
17 approval applications in a speedy manner. In addition, the purchaser of non-controlling
18 shares of stock would be required to hire legal counsel to take them through the regulatory

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1 approval process. Given that little or no benefit to the public or to New Mexico utilities
2 will ensue from such regulatory reviews, these costs would seem to be difficult to justify.

VI. CONCLUSIONS AND RECOMMENDATIONS

5 **Q. What are your conclusions and recommendations?**

6 **A.** As a Commissioner, I understood that the purpose of engaging in statutory interpretation
7 is to discern the meaning of any statutory section in the context of the statute as a whole.
8 While one method is to look at the plain meaning of the words of the statute, other methods
9 include seeking to discern the broader purpose or objective the statute was intended to
10 address and seeking to understand the legislative history behind the legislation at issue.
11 When analysis of the implications of a proposed interpretation (e.g., in this case, plain
12 meaning) reveals unintended consequences that render the statute meaningless at best and
13 contrary to the public interest of New Mexicans at worst, that proposed interpretation
14 should be rejected in favor of another.

15
16 Prosperity Works' proposed interpretation of Section 62-6-12(A)(3) and, in particular, as
17 applied to the Financing Transaction in this case, shows the statute to be meaningless at
18 best and contrary to the interest of New Mexicans at worst and, thus, should be rejected.

19 Prosperity Works' proposed interpretation as applied to this case would achieve nothing
20 except the voiding of a \$400 million investment in TXNM, along with the directive to
21 TXNM to divest itself of \$400 million of its equity capital—which capital TXNM has
22 stated that it needs to develop the infrastructure necessary to serve its New Mexico utility
23 customers—and return it to TopCo. The concern of the New Mexico Legislature that

**DIRECT TESTIMONY OF
SUEDEEN KELLY
NMPRC CASE NO. 25-00060-UT**

1 changes in control of a New Mexico utility by out-of-state entities be subject to the
2 oversight of the Commission is not addressed by Prosperity Works' proposed statutory
3 interpretation. Rather, the pre-existing provisions of Section 62-6-12 apply to the proposed
4 change of control of TXNM (pursuant to the Acquisition) and are otherwise being
5 adjudicated here. Prosperity Works' statutory interpretation would do nothing except
6 mandate a directive by the Commission that action be taken contrary to the interest of New
7 Mexican utility customers, i.e., the return of capital that the New Mexico utility needs to
8 service its customers. Further, as explained above, the implications of Prosperity Works'
9 proposed statutory interpretation will prove inimical to New Mexico's utility regulatory
10 agency (more regulatory procedure with no public benefit), New Mexico's utilities
11 (constraints on capital available to them), and New Mexicans, who need the essential
12 services provided by New Mexico's utilities but will suffer from decreased availability of
13 the capital necessary to fund those services.

14
15 **Q. Does this conclude your direct testimony?**

16 **A.** Yes.

17 *GCG#535104*

Résumé of Suedeem Kelly

JA Exhibit SK-1

Is contained in the following 7 pages.

SUEDEEN G. KELLY

1099 New York Ave., NW, #900
Washington, DC 20001
Work: 202-639-6055
Cell: 202-641-6591
Email: skelly@jenner.com

EMPLOYMENT

Jenner & Block, LLP, Washington, DC
Partner and Co-Chair of Energy Practice (2017-Present)

Chambers Global Ranked #1 (2022-2025); Chosen by *Law360* - List of Ten Influential Women in Energy Law (2018); Jenner & Block Energy Practice chosen by *Law360* Five Top Energy Practices (2024 and 2019)

The George Washington University Law School, Washington, DC. Adjunct Faculty. Taught The Future of The Electric Grid, Spring Semesters 2022 through 2025

Akin Gump Strauss Hauer & Feld LLP, Washington, DC Partner, and Chair of Energy Practice (2012-2017)

Chosen by *Metropolitan Corporate Counsel* as its cover story for January 2016; Chambers Global Ranked (2012-2021), energy electricity, regulatory and litigation; Recognized by *The National Law Journal* as 2015 Top 50 Regulatory & Compliance Trailblazers in environment, energy and law; Top Author, JD Supra Readers' Choice Award (2015).

Member, Board of Directors, **UIL Holdings**, New Haven, CT (2011 -2015)

Member, Board of Directors, **Access Midstream Partners**, Oklahoma City, OK (2010 -2015)

Member, Board of Directors, **Tendril**, Boulder, CO (2010-2012)

Patton Boggs LLP, Washington, DC Partner (2010 -2012)
Co-Chair of Energy Industry Practice

Federal Energy Regulatory Commission, Washington, DC Commissioner (2003 -2009)
Responsibilities included (1) making decisions in approximately 1300 cases each year involving electric and natural gas wholesale markets and interstate transmission, hydroelectric licensees and gas pipeline certificates, oil pipeline rates, electricity reliability, and enforcement; (2) maintaining relations with the U.S. Senate Energy and Natural Resources Committee and the U.S. House Commerce and Energy Committee, including testifying before the committees as required and following legislative developments; (3) maintaining relations with industry and market participants; (4) speaking publicly on energy industry developments and maintaining relations with the press; (5) co-chairing the Smart Grid Collaborative between FERC and the

National Association of Regulatory Utility Commissioners;(6) managing the budget and staff of the Office of the Commissioner.

University of New Mexico School of Law, Albuquerque, NM
Professor of Law, 1986 - 2003

Taught Energy Law, Public Utility Regulation, Legislative Process and Administrative Law, and Administrative Practice. Served as Editor-in-Chief, Natural Resources Journal (1995-2000) (responsibilities included managing all aspects of the publication of four volumes of the Journal each year, its budget and administrative staff, and supervising the student editorial staff). Was the Lewis & Clark Law School Distinguished Visitor (1998) and was awarded the Susan and Ronald Friedman Faculty Excellence in Teaching Award (1995-96) and the Keleher & McLeod Professor of Law Award (1997-99).

Staff of **U.S. Senator Jeff Bingaman**, Washington, DC
Detail to the U.S. Senate Energy and Natural Resources Committee, 1999 (on leave from U. of NM)
Contributed to development of energy and hydroelectric licensing legislation.

California Independent System Operator, Folsom, CA Regulatory Counsel, 2000 (on leave from U. of NM)

CAISO operates much of California's transmission grid and dispatches interconnected generation, which was coordinated with the California Power Exchange until 2001. Responsible for learning and understanding the ISO's protocols and tariff provisions so as to be able to answer day-to-day legal questions. Worked on the regulatory proceeding involving the 70 unresolved issues remaining from the FERC's conditional certification of the ISO.

Modrall, Sperling, Roehl, Harris & Sisk, Albuquerque, NM
Attorney, 2001 - 2003 (on leave from U. of NM)

Responsibilities included creating and heading up the firm's public utility practice. Clients included independent power producers, water utilities, a local gas distribution company, and NM State University in its capacity as a large electricity customer.

Suede G. Kelly, Attorney-at-Law, Albuquerque, NM
Attorney, 1986 - 2001

Managed a part-time practice in federal and state energy and public utility law, representing private and publicly-owned clients in transactions, legislation, rulemakings, and litigation concerning electric, gas and water utility certification, rates and service; electricity assets siting, financing, acquisitions and mergers; electric and gas industry restructuring; and doing business with electric and gas utilities.

New Mexico Public Service Commission, Santa Fe, NM
Chairwoman, 1984 - 1986.
Commissioner, 1983 - 1984.

Responsibilities included regulation of the state's electric, gas and water utilities; management of the agency, its budget and staff; and maintaining relations with the State Legislature, the Governor's Office, the industry, and the public.

New Mexico Office of the Attorney General, Santa Fe, NM

Attorney, Public Utilities Division, 1982 - 1983

Managed cases being litigated in New Mexico state courts and cases before the NM Public Service Commission.

Luebben, Hughes & Kelly, Albuquerque, NM

Partner, 1978-1982

Managed a private law practice, representing clients in state and federal litigation and regulatory agency practice in utility, natural resources, energy, and Indian law.

University of New Mexico Graduate School of Public Administration, Albuquerque, NM

Adjunct Faculty, 1979 - 1982

Taught Administrative Law.

Natural Resources Defense Council, Inc., Washington, DC

Attorney, 1977 - 1978

Law Clerk, 1975

Managed a case load involving environmental litigation in the federal courts, federal agency proceedings and federal legislative developments.

Ruckelshaus, Beveridge, Fairbanks & Diamond, Washington, DC

Associate Attorney, 1976 - 1977

Worked on cases in federal litigation, federal and state agency proceedings, and helped to advise clients regarding legislation. Matters involved environmental, commercial, and constitutional law.

U.S. Environmental Protection Agency, Washington, DC

Law Clerk, 1974

Provided research regarding the Federal Water Pollution Control Amendments of 1972 and federal clean water policy.

EDUCATION

Cornell Law School, J.D., *cum laude*, 1976.

Cornell Law Scholarship; Delaware School Foundation Scholarship; International Law Journal Staff; Director, Cornell Legal Aid (responsible for managing the case load of the Family Division and supervising its student attorneys).

University of Rochester, B.A. in Chemistry, *With Distinction*, 1973.

Bausch & Lomb Science Award and Scholarship; President, University Women's Residence Assistants (responsible for managing women's residential assistance program and supervising the residence assistants).

PUBLICATIONS WITHIN THE LAST TEN YEARS

Partnering with American Indian Tribes to Accelerate Transmission Development On or Near Tribal Lands (Prepared for Clean Grid Initiative) (January 19, 2024) (co-authored with Keith Harper).

Episode 1: Understanding U.S. Energy Markets, American Efficient Podcast Series (Feb. 2, 2022), available at <https://www.americanefficient.com/podcasts/episode-1/>.

Escalating Threats to Infrastructure Confirm Our Need to Harden the Electric Grid (The Hill) (Oct. 30, 2017).

Episode 7: Mysterious Frontiers: The New FERC, Grid Geeks Podcast (August 9, 2017) (with host Alison Clements), available at <http://www.goodgrid.net/blog/2017/8/9/grid-geeks-podcast-episode-7>.

Federal/State Jurisdictional Split: Implications for Emerging Electricity Technologies, Lawrence Berkeley National Laboratory - Energy Analysis and Environmental Impacts Division (December 2016) (co-authored with Jeffery S. Dennis, Robert R. Nordhaus, and Douglas W. Smith), available at <https://www.energy.gov/sites/prod/files/2017/01/f34/Federal%20State%20Jurisdictional%20Split--Implications%20for%20Emerging%20Electricity%20Technologies.pdf>.

A FERC Challenge: Opening up electricity markets to advanced energy technologies, UtilityDive.com (June 30, 2016) (co-authored with Arvin Ganesan), available at <https://www.utilitydive.com/news/a-ferc-challenge-opening-up-electricity-markets-to-advanced-energy-technol/421891/>.

SWORN TESTIMONY

In the Matter of an Application by New Brunswick Power Corporation pursuant to subsections 113(2) and 113(3) of the Electricity Act, S.N.B. 2013, c. 7., Matter No. EL-004-2025 (New Brunswick Energy & Utilities Board). On behalf of New Brunswick Power Corporation (2025).

In the Matter of Southwestern Public Service Company's Application for: (1) Revision of its Retail Rates Under Advice Notice 341; and (2) Other Associated Relief, No. 25-00079-UT (New Mexico Public Regulation Commission). On behalf of Southwestern Public Service Company (2025).

In the Matter of the Joint Application for Approval to Acquire New Mexico Gas Company, Inc. by Saturn Utilities Holdco, LLC., et al., No. 24-00266-UT (New Mexico Public Regulation Commission). On behalf of Joint Applicants Bernhard Capital Partners, Emera Inc., and New Mexico Gas Company (2025).

In the Matter of Southwestern Public Service Company's Application For: (1) Revision of its Retail Rates Under Advice Notice No. 312; (2) Authority to Abandon the Plant X Unit 1, Plant X Unit 2, and Cunningham Unit 1 Generating Stations and Amend the Abandonment Date of the Tolk Generating Station; and (3) Other Associated Relief, No. 22-00286-UT (New Mexico Public Regulation Commission). On behalf of Southwestern Public Service Company (2023).

Enable Mississippi River Transmission, LLC v. Linn Energy Holdings, et al., Adversary No. 16-6017, U.S. Bankruptcy Court for the Southern District of Texas, Victoria Division. On behalf of Linn Energy Holdings, et al. (2022)

In the Matter of an Application by New Brunswick Power Corporation pursuant to subsections 113(2) and 113(3) of the Electricity Act, S.N.B. 2013, c. 7., Matter No. 513 (New Brunswick Energy & Utilities Board). On behalf of New Brunswick Power Corporation (2021-2022).

In the Matter of The Electronic Application of East Kentucky Power Cooperative, Inc. For a General Adjustment of Rates, Approval of Depreciation Study, Amortization of Certain Regulatory Assets, and Other General Relief, No. 2021-0010 (Kentucky Public Service Commission). On behalf of AppHarvest Morehead Farm, LLC (2021)

Bandera Master Fund LP, et al. v. Boardwalk Pipeline Partners LP, C.A. No. 2018-0372-JTL, Delaware Court of Chancery. On behalf of Boardwalk Pipeline Partners LP (2020-21).

In the Matter of Southwestern Public Service Company's Application For: (1) Revision of its Retail Rates Under Advice Notice No. 292; (2) Authorization and Approval to Abandon its Plant X Unit 3 Generating Station; and (3) Other Associated Relief, No. 20-00238-UT (New Mexico Public Regulation Commission). On behalf of Southwestern Public Service Company (2021).

In Re: Extraction Oil & Gas, Inc. v. Grand Mesa Pipeline LLC, Case No. 20-11548 (CSS), U.S. Bankruptcy Court for the District of Delaware, Oct. 1, 2020. On behalf of Grand Mesa Pipeline LLC.

In the Matter of Southwestern Public Service Company's Application For: (1) Revision of Its Retail Rates Under Advice Notice No. 282; (2) Authorization and Approval to Shorten the Service Life of and Abandon Its Tolk Generating Station Units; and (3) Other Related Relief, No. 19-00170-UT (New Mexico Public Regulation Commission). On behalf of Southwestern Public Service Company (2019)

In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity, No.EA-2016-0358 (Public Service Commission of the State of Missouri) On behalf of Grain Belt Express Clean Line LLC (2016)

Rockies Express Pipeline LLC v. U.S. Dep't of the Interior, Civilian Board of Contract Appeals, CBCA 3704 (1921)-REM. [REM denotes that the case was on remand from the U.S. Court of Appeals for the Federal Circuit.] On behalf of Rockies Express Pipeline LLC (2015-16)

In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc., No. 9361 (Public Service Commission of the State of Maryland). On behalf of Exelon Corporation (2015)

PROFESSIONAL ACTIVITIES

Member, Expert Advisory Board, Initiative on Climate Risk and Resilience Law, www.icrri.org (2021-Present).

Member, Board of Directors, Advanced Energy Economy Institute (2020-Present)

Member, Energy Insecurity Steering Committee of the Energy Bar Association (2022-2023)

Member, Advisory Board of Directors, American Wind Energy Association (2019-2020)

Member, Board of Advisors, Duke University Nicholas Institute for Energy, Environment & Sustainability (2018-Present)

Member, Dean's Advisory Council, Hajim School of Engineering, University of Rochester, Rochester, NY (2012 - 2020).

Rocky Mountain Mineral Law Foundation, Trustee (1988 - 1993, 2015 - 2017).

Member, Environmental Law Institute Leadership Council (2015 -2017).

Member, Advisory Board, The Perfect Power Institute, Chicago, IL (2011 –2015).

Board Member, Charitable Foundation of the Energy Bar Association (2010 - 2013).

Member, Advisory Board, Gridquant, Columbus, OH (2013).

Member, Smart Grid Advisory Committee, National Institute of Standards and Technology (2010 - 2013).

Council Member, American Bar Association, Section of Administrative Law and Regulatory Practice (2010 - 2012).

Advisory Council, Women's Council on Energy and Environment, Washington, DC (2008 – 2012; Chair 2010 - 2012).

Council Member, American Bar Association, Section of Environment, Energy and Resources (2000 - 2003).

New Mexico Women's Bar Association (1991 - 2003).

Barrister, H. Vearle Payne American Inn of Court (1995 - 2003).

Board Member, Santa Fe Diocese Foundation (1999 - 2003).

Founding Board Member, Albuquerque Open Space Alliance (1996 - 1999).

N.M. Legislative Task Force on Management of the Middle Rio Grande Bosque (1993 - 1994).

American Association of Law Schools, Chair of the Executive Committee of the Legislation Section (1994 - 1995).

Border Research Institute of New Mexico State University, Member of the Advisory Committee on its studies (1992 - 1993).

The National Regulatory Research Institute, Ohio State University, Member of the Research Advisory Committee to the Board (1988 - 1992).

Board Member, New Mexico Bar Association, Natural Resources Section (1987 - 1992)

U.S. Consumer Product Safety Commission, Chair of its Advisory Council (1980 - 1981); Member (1979-1981).

U.S. National Air Quality Commission-Four Corners Region Study, Member of Advisory Committee (1979 - 1981).

N.M. Legislative Task Force, Federal Lands Action Group, (1979 - 1981).

Washington D.C. Council of Lawyers, Executive Board Member (1977 - 1978).

Member of the Bars of New Mexico and the District of Columbia; of the U.S. Courts of Appeal for the District of Columbia, 9th and 10th Circuits; and of the U.S. District Courts for the District of Columbia and New Mexico

Articles from *Albuquerque Journal*

JA Exhibit SK-2

Is contained in the following 2 pages.

Albuquerque Journal
Albuquerque, New Mexico • Tue, Jan 31, 1989
Page 4

Article clipped from Albuquerque Journal

Bill Proposes PSC Control Utility Deals

FROM THE JOURNAL'S CAPITOL BUREAU

SANTA FE — State utility regulators would have the authority to regulate attempted mergers and acquisitions between New Mexico utilities and out-of-state concerns under a bill introduced Monday in the New Mexico Legislature.

Senate Bill 157, sponsored by Sen. Ben Altamirano, D-Catron-Grant-Socorro, would give the Public Service Commission explicit authority to control such transactions. The commission regulates utilities.

The bill was introduced at the request of Texas-New Mexico Power Co., a Fort Worth, Texas-based utility that serves Silver City and Alamogordo.

Don Salazar, a Santa Fe lawyer for T-NP, said the bill would clarify an unclear law.

Now, Salazar said, if Public Service Company of New Mexico and El Paso Electric Co. wanted to merge, the transaction would clearly come under the scrutiny of the commission because both do business in the state.

But if El Paso wanted to merge with, for example, Houston Power and Light, Salazar said the commission's authority is less clear.

The bill also would prohibit someone from acquiring more than 10 percent of the stock of a utility without prior approval from regulators.

Salazar said the bill is not designed to thwart takeovers and is not prompted by any specific situation.

James B. "Bud" Mulcock, a PNM senior vice president, said PNM is neutral on the bill.

Article clipped from Albuquerque Journal

Albuquerque Journal
Albuquerque, New Mexico • Wed, Mar 1, 1989
Page 5

Article clipped from Albuquerque Journal

Bill Requires Utility Sale Prior Approval

SANTA FE — The Senate Tuesday passed and sent to the House a bill that would require state utility regulators to give their approval before an out-of-state utility could attempt to acquire a New Mexico one.

The vote on Senate Bill 157, sponsored by Sen. Ben Altamirano, D-Catron-Grant-Socorro, was 38-1.

Altamirano said the bill "protects the public interest."

Sen. Victor Marshall, R-Bernalillo, sponsored a floor amendment that would exempt individuals, or non-utility corporations, from the prior approval requirement.

According to the bill, a utility would need regulators' approval before it could buy 10 percent or more of the stock of a New Mexico utility.

Article clipped from Albuquerque Journal

More Clippings by tags, date and location

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) Case No. 25-00060-UT
TROY MERGER SUB INC. WITH TXNM ENERGY, INC.;)
APPROVAL OF A GENERAL DIVERSIFICATION PLAN;)
AND ALL OTHER AUTHORIZATIONS AND)
APPROVALS REQUIRED TO CONSUMMATE AND)
IMPLEMENT THIS TRANSACTION)
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
TXNM ENERGY, INC. AND TROY PARENTCO LLC,)
)
JOINT APPLICANTS.)**

SELF AFFIRMATION

In accordance with 1.2.2.35(A)(3) NMAC and Rule 1-011(B) NMRA, **SUEDEEN KELLY, Partner and Co-Chair of the energy practice group at the law firm Jenner & Block LLP**, upon penalty of perjury under the laws of the State of New Mexico, affirms and states: I have read the foregoing **Testimony and Exhibits of Suedeen Kelly** which are true and correct based on my personal knowledge and belief.

DATED this 6th day of April, 2026.

/s/ Suedeen Kelly
SUEDEEN KELLY

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE JOINT APPLICATION OF)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
TXNM ENERGY, INC. AND TROY PARENTCO LLC FOR)
APPROVAL OF AN ACQUISITION AND MERGER OF)
TROY MERGER SUB INC. WITH TXNM ENERGY, INC.;)
APPROVAL OF A GENERAL DIVERSIFICATION PLAN;)
AND ALL OTHER AUTHORIZATIONS AND)
APPROVALS REQUIRED TO CONSUMMATE AND)
IMPLEMENT THIS TRANSACTION)
)
)
**PUBLIC SERVICE COMPANY OF NEW MEXICO,)
TXNM ENERGY, INC. AND TROY PARENTCO LLC,)
)
)
JOINT APPLICANTS.)****

Case No. 25-00060-UT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Testimony and Exhibits of Suedeem Kelly** was emailed to parties listed below on April 6, 2026:

Hearing Examiner Division	
Ana Kippenbrock, Paralegal	Ana.kippenbrock@prc.nm.gov;
Jocelyn Barrett	Jocelyn.barrett@prc.nm.gov;
Patrick Schaefer	Patrick.schaefer@prc.nm.gov;
PRC General Counsel	
Alejandro Rettig y Martinez	Alejandro.martinez@prc.nm.gov;
Erin Lecocq	Erin.Lecocq@prc.nm.gov;
Scott Cameron	Scott.cameron@prc.nm.gov;
ABCWUA	
Christopher Melendez	cmelendrez@abcwua.org;
Keith Herrmann	kherrmann@stelznerlaw.com;
L. Erica Flores	eflores@stelznerlaw.com;
Nann M. Winter	nwinter@stelznerlaw.com;
Mark Garrett	MGarrett@garrettgroupllc.com;
David Garrett	dgarrett@resolveuc.com;
BERNALILLO COUNTY	
Bernice Vigil	bvigil@bernco.gov;
Elissa Torres	eltorres@bernco.gov;
Marah deMeule	mdemeule@bernco.gov;
Maureen Reno	mreno@reno-energy.com;
Mateo Dunne	mateo@transformconsulting.com;

Natalia Sanchez Downey	ndowney@bernco.gov;
Valerie Joe	vjoe@bernco.gov;
W. Ken Martinez	Kenmartinez@bernco.gov;
CENTER FOR BIOLOGICAL DIVERSITY	
Gail Evans	gevans@biologicaldiversity.org;
Lavran Johnson	ljohnson@biologicaldiversity.org;
Anchun Jean Su	jsu@biologicaldiversity.org;
Howard M. Crystal	hcrystal@biologicaldiversity.org;
TROY PARENTCO, LLC	
Anna Rotman	Anna.Rotman@kirkland.com;
Andrea Halverson Harper	Andrea.Harper@kirkland.com;
Blackstone Infrastructure-Kirkland and Ellis LLP	BlackstoneInfrastructureKE@kirkland.com;
Thomas M. Domme	tmd@jkwlawyers.com;
Brooksany Barrowes	Brooksany.barrowes@kirkland.com;
Brian Haverly	bjh@jkwlawyers.com;
Julianna T. Hopper	jth@jkwlawyers.com;
Max Wade	Max.Wade@Blackstone.com;
Robert P. Goodin	Robert.Goodin@kirkland.com;
CITY OF ALBUQUERQUE	
Bryan Rowland	browland@cabq.gov;
Charles Davis	cdavis@cabq.gov;
Jennifer Lucero	jenniferlucero@cabq.gov;
Larry Blank	lb@tahoeconomics.com;
Saif Ismail	sismail@cabq.gov;
CCAE	
Cara Lynch	Lynch.Cara.NM@gmail.com;
Caitlin Evans	Evans.ccae@gmail.com;
Charles de Saillan	desaillan.ccae@gmail.com;
Don Hancock	sricdon@earthlink.com;
COALITION FOR COMMUNITY SOLAR ACCESS (CCSA)	
Kevin Cray	kevin@communitysolaraccess.org;
Alissa Greenwald	AGreenwald@keyesfox.com;
Jacob Schlesinger	jschlesinger@keyesfox.com;
Nick Bowman	nick@communitysolaraccess.org;
Diné CARE	
Kyle J. Tisdell	tisdell@westernlaw.org;
Rose Rushing	rushing@westernlaw.org;
Daniel Timmons	timmons@westernlaw.org;
Robyn Jackson	robyn.jackson@dine-care.org;
Ahtza Dawn Chavez	ahtza@naeva.org;

Lauren Bernally	lauren@naeva.org;
Rochelle Chavez	rochelle@naeva.org;
Mike Eisenfeld	mike@sanjuancitizens.org;
Nicole Horseherder	nicole@tonizhoniani.org;
EMNRD	
Bailey Toolson	Bailey.Toolson@emnrd.nm.gov;
Benjamin Shelton	Benjamin.Shelton@emnrd.nm.gov;
Christopher Hall	Christopher.Hall@emnrd.nm.gov;
Evan Rogers	Evan.Rogers@emnrd.nm.gov;
INTERWEST	
Irion Sanger	irion@sanger-law.com;
Ellie Hardwick	ellie@sanger-law.com;
Dustin Prater	dustin@sanger-law.com;
Joan E. Drake	jdrake@modrall.com;
Chris Leger	chris@interwest.org;
KROGER	
Jody Kyler Cohn	jkylercohn@BKLawfirm.com;
Justin Bieber	jbieber@energystrat.com;
Kurt J. Boehm	kboehm@bkllawfirm.com;
LIUNA / LOCAL 16	
Allison Keelin	allison@youtzvaldez.com;
May Va Lor	mlor@liuna.org;
Stephen Curtice	stephen@youtzvaldez.com
NEE	
Alissa Jean Schafer	Alissa.jean.schafer@pestakeholder.org;
Christopher A Dodd	Chris@fayerbergdodd.com;
Jim Baker	Jim.baker@pestakeholder.org;
Nichole Heil	Nichole.heil@pestakeholder.org;
Mariel Nanasi	mnanasi@newenergyeconomy.org;
Mark Ellis	Mark.Edward.Ellis@gmail.com;
NMDOJ	
Alethia Allen	aallen@nm DOJ.gov;
Billy Jimenez	bjimenez@nm DOJ.gov;
Brian Harris	BHarris@nm DOJ.gov;
Lawrence Marcus	lmarcus@nm DOJ.gov;
Maria Oropeza	MOropeza@nm DOJ.gov;
Nicole Teupell	NTeupell@nm DOJ.gov;
NM AREA	
Brian Andrews	bandrews@consultbai.com;
Chris Walters	cwalters@consultbai.com;
James Leyko	jleyko@consultbai.com;
Kelly Gould	kelly@thegouldlawfirm.com;

Peter J. Gould	peter@thegouldlawfirm.com;
Michael Gorman	mgorman@consultbai.com;
NMPCA	
Alysha Shaw	info@nmconsumerprotection.org;
Jane Yee	Jane.cambio@gmail.com;
Stephen Fischmann	Stephan.fischmann@gmail.com;
PROSPERITY WORKS	
Cara Lynch	Lynch.cara.nm@gmail.com;
Ann Lyn Hall	annlyn@prosperityworks.net;
Steve Michel	stevensmichel@comcast.net;
PRC ADVOCACY STAFF	
Bryce Zedalis	bryce.zedalis1@prc.nm.gov;
Chris Sanchez	Chris.Sanchez@prc.nm.gov;
Daren Zigich	daren.zigich@prc.nm.gov;
Ed Rilkoff	ed.rilkoff@prc.nm.gov;
Elisha Leyba-Tercero	Elisha.leyba-tercero@prc.nm.gov;
Elizabeth Ramirez	Elizabeth.Ramirez@prc.nm.gov;
Felicia Jojola	Felicia.Jojola@prc.nm.gov;
Kaythee Hlaing	Kaythee.Hlaing@prc.nm.gov;
Marc Tupler	Marc.tupler@prc.nm.gov;
Naomi Velasquez	naomi.velasquez1@prc.nm.gov;
Nicholas Rossi	nicholas.rossi@prc.nm.gov;
Peggy Martinez-Rael	Peggy.Martinez-Rael@prc.nm.gov;
TXNM AND PNM	
Adam Alvarez	Adam.Alvarez@pnm.com;
Brian Iverson	Brian.Iverson@txnmenergy.com;
Henry Monroy	Henry.Monroy@txnmenergy.com;
Debrea Terwilliger	dterwilliger@wbklaw.com;
Justin Rivord	Justin.Rivord@pnm.com;
Kyle Sanders	Kyle.sanders@txnmenergy.com;
Lisa Contreras	Lisa.Contreras@pnm.com;
PNM Regulatory	pnmregulatory@pnm.com;
Raymond L. Gifford	rgifford@wbklaw.com;
Stacey Goodwin	stacey.goodwin@txnmenergy.com;
REIA	
Dylan Connelly	Dylan.connelly@affordable-solar.com;
Jim DesJardins	Jimdesjardins1@gmail.com;
Stephanie Dzur	Stephanie@Dzur-Law.com
WALMART	
Julie A. Clark	jclark@clarkenergylaw.com;
Jaime McGovern	Jaime.McGovern@walmart.com;
WRA	

Cydney Beadles	Cydney.Beadles@westernresources.org;
Caitlin Evans	caitlin.evans@westernresources.org;
AnnaLinden Weller	annalinden.weller@westernresources.org

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#535099