DOCKET NUMBER 25-00060-UT
FILED DATE & TIME 07/13/2026 04:25 PM MST
FILED WITH NMPRC

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 ("JOINT APPLICATION")	)	**Docket No. 25-00060-UT**

DISSENTING OPINION
TO SHOW CAUSE PROCEEDING FINAL ORDER

The majority of the New Mexico Public Regulation Commission ("Commission") entered its Final Order on Show Cause Proceeding ("the Order") at its July 2, 2026, regular meeting. The entirety of the Order is based upon the belief that the applicable statute is clear and unambiguous. The imposition of penalties, the decision to delay the proceeding for the underlying Application, and the suggestion that the Applicants should consider withdrawing the Application and resubmit were all based upon the majority's opinion that the statute is not subject to other interpretations. The applicable statute is NMSA 1978, Section 62-6-12. As set forth below, I believe the statute is not clear, it is ambiguous and subject to multiple interpretations, contains internal inconsistencies, and that reasonable minds could arrive at different conclusions that undermine the actions the majority imposed in the Order and the conclusions it reached.

A. Section 62-6-12 and Status of TopCo:

Section 62-6-12 provides, in relevant part, as follows:

> A. With the *prior express authorization of the commission*, but not otherwise:
>
> …
>
> (3) 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;
> >
> > (b) any person who is or during the course of an acquisition covered by this section *becomes subject to regulation* or is classified as a public utility or public utility holding company in any jurisdiction based on reasons *other than solely the acquisition described in this paragraph*;
> >
> > (c) any person *associated, affiliated or acting in concert with* any *person subject to regulation* or classified as a public utility or public utility holding company in any jurisdiction for purposes of *any acquisition* subject to the provisions of this section;
> >
> > ….
>
> B. Any consolidation, merger, acquisition, transaction *resulting in control or exercise of control,* or *other transaction* in contravention of this section without prior authorization of the commission shall be void and of no effect.[1]
>
> ….

The obligation to secure Commission consent is based upon the status of the party acquiring the stock at the time of the proposed acquisition.

The record reflects that Troy TopCo LLP ("TopCo") acquired eight million shares of TXNM Energy, Inc. ("TXNM") stock on May 18, 2025 (the "Stock Purchase") for cash consideration of $400,000,000.00. At the time of the Stock Purchase, the record is clear that

[1] NMSA 1978, § 62-6-12 (1941 as amended through 1989) (emphases added).

TopCo was not a public utility or public utility holding company. At the time of the Stock Purchase, TopCo was not associated or affiliated with a public utility or public utility holding company. It was only upon consummation of the Stock Purchase that TopCo became associated or affiliated with a public utility holding company, being TXNM.

B. <u>Statutory Interpretation</u>:

I agree with the majority that when interpreting statutes, the Commission must begin with the language chosen by the legislature.[2] When considering a question of statutory construction, the legislature directs all interpretation questions to begin with the maxim, "[t]he text of a statute or rule is the primary, essential source of its meaning."[3] This is commonly known as "the plain meaning rule," and under it a statute is "to be given effect as written without room for construction unless the language is doubtful, ambiguous, or an adherence to the literal use of the words would lead to injustice, absurdity or contradiction, in which case the statute is to be construed according to its obvious spirit or reason."[4] This case tests the limits of this maxim. The Commission, as well as all parties, have wrestled with the words set forth in Section 62-6-12 of the Public Utility Act ("PUA").

I further agree with the majority that when statutory language is clear and unambiguous, there is no need to resort to other indicia of legislative intent.[5] The Commission will not read language into a statute that the legislature did not include, particularly where the statute is complete

[2] *Coal. for Clean Affordable Energy v. New Mexico Pub. Regulation Comm'n*, 2024-NMSC-016, ¶ 24.

[3] NMSA 1978 § 12-2A-19 (1997).

[4] *CCAE*, 2024-NMSC-016 at ¶ 24.

[5] *New Mexico Beverage Co. v. Blything*, 1985-NMSC-039, ¶ 3 ("If a statute is unambiguous, this Court will not engage in further interpretation.").

and makes sense as written.[6] I disagree that Sections 12-6-12(A)(3)(c) and (B) meet that threshold of clarity. The statute must be read so as to give effect to all of its provisions, if possible.

In my opinion, resolution of this matter should have resulted in an analysis of the meaning and scope of Sections 62-6-12(A)(3)(c) and (B), in lieu of a finding that these sections are clear in their meaning and unambiguous. The parties provided extensive analysis of these issues through pleadings, testimony, hearing, and briefing. It is not surprising that this statute has been interpreted several ways by the various parties through their attorneys and experts. The majority's Order summarized the various parties' analysis, and I do not repeat the same. Of note is the fact that several interpretations have been advanced. During the Commission meeting, I advanced an interpretation which is set forth below.

<u>Interpretation of Section 62-6-12</u>:

(a) <u>Subsection (A)(3)</u>: Subsections (A)(3)(a), (b), (d), and (e) do not appear to be applicable to the Stock Purchase. None of the parties argued that these provisions are applicable. As noted above, TopCo is not, and was not at the time of the Stock Purchase, a public utility or public utility holding company. However, these provisions help us to understand the intent of the legislature in construing the overall meaning and application of this statute.

(b) <u>Subsection (A)(3)(c)</u>: The interpretation of this subsection of Section 62-6-12 is not as straight forward and as easy as the respective parties and the majority present. No one can state with certainty the effect of the statute on one reading or frankly on multiple readings.

[6] *State ex rel. Sandel v. New Mexico Pub. Util. Comm'n*, 1999-NMSC-019, ¶ 17.

It is clear that prior Commission approval is necessary for stock of a public utility holding company to be acquired by the following: (i) a public utility or public utility holding company and (ii) a person who becomes a public utility or public utility holding company during the course of an acquisition (other than the acquisition at hand). It is clear these two items (Subsections (A)(3)(a) and (b)) do not apply to TopCo.

More difficult is Subsection (A)(3)(c). What did the legislature intend by requiring a person acting in concert with or affiliated with a person who is a public utility or public utility holding company to secure Commission approval for the acquisition of stock in a public utility holding company "for the purposes of any acquisition subject to the provisions of this section"? The record reflects that TopCo is now associated, affiliated, or acting in concert with a public utility or public utility holding company.[7] That association is with the Joint Applicants, the acquiring party and to be acquired party, in the TXNM – Troy ParentCo LLC ("ParentCo") proposed acquisition. Therefore, this Subsection is potentially applicable as it does not contain the same limiting factor as Subsection (3)(b). The complication is placing Subsection (3)(c) in context in light of the prior Subsections of the statute and giving effect to all of the provisions of this statute. The phrase "for the purposes of any acquisition subject to the provisions of this section" is also difficult to explain and put into context. The majority concluded that "based on the plain language" Commission approval was required, since the result of the Stock Purchase created a relationship between TopCo and a public utility holding company. The majority interprets this language as directing the Commission to examine whether the Stock Purchase was undertaken for the purposes of a larger

[7] *See* Binz Dir., Ex. RJB-3 (Proxy Statement) at 44, 47; Binz Dir., Ex. RJB-4 (Schedule 13D), Item 4, at 18–19.

acquisition transaction subject to Commission oversight.[8] That interpretation begs the question of why does Subsection (3)(b) exist if the legislature intended to require prior approval by the exact same person (an acquiring party) in Subsection (3)(c)? To give effect to Subsection (3)(b) without completely eliminating its effect in Subsection (3)(c), one must consider that the legislature exempted the parties involved in an acquisition already advancing before the Commission (reasons other than solely the acquisition described in this paragraph).

It makes sense for the legislature to exempt a stock purchase acquisition by one who becomes subject to regulation as a result of the acquisition at hand. The Commission is already engaged in the process of considering an acquisition, so Subsection (3)(b) is only applicable to a person who becomes a public utility or subject to regulation based on other reasons. The Commission should have a say if a competing utility is acquiring stock in a utility that is already going through the process of potentially being acquired by another party. There is a vested public interest in not complicating an acquisition by having another utility purchase stock in the utility being acquired. But the same cannot be said for a party affiliated with the acquiring party or the party to be acquired. The Commission is already reviewing that acquisition.

The statute could reasonably be construed so as to require Commission approval of an acquisition of stock by a competing utility or a party affiliated with a competing utility but not require approval for parties already involved with the overall acquisition. In my opinion, a reasonable argument exists that Subsection (A)(3)(c) should not apply, and therefore it is not as clear as the majority concludes.

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[8] Section 62-6-12(A)(3)(c).

(c) <u>"Acquisition"</u>: The use of the term "acquisition" in the statute takes on various meanings. Subsection (3)(a) reflects an acquisition of shares of stock. Subsection (3)(b) again uses the term "acquisition" in two places. Is it the acquisition of shares of stock or is the meaning intended to be broader in scope, such as an acquisition of the utility? Subsection (3)(c) uses the term again, stating "for the purposes of any acquisition subject to the provisions of this section". Is this an acquisition of shares of stock or a broader acquisition such as all the shares or a controlling interest? Subsection (3)(e) uses the term, stating "during the course of an acquisition covered by this section . . ." It appears the use of the term "acquisition" in this instance contemplates more than a purchase of a non-controlling interest in the stock of a utility.

The term "acquisition" in the statute must be read in context. In one instance it is the acquisition of less than a controlling interest in shares of stock. In several instances it is the acquisition of the utility (all of the shares of stock). In one instance it is not as clear. The statute contemplates an acquisition of stock in Subsection (3)(a). In Subsections (3)(b) and (e) the term "acquisition" reflects the process of acquiring at least a controlling interest in the utility or utility holding company. Again Subsection (3)(c) is more difficult. "[A]ny acquisition subject to the provisions of this section" could be viewed as both an acquisition of less than a controlling interest in shares of stock and an acquisition of the utility or utility holding company (all the stock). As stated above, Subsection (3)(c) completely eviscerates Subsection (3)(b) if it includes parties involved with the acquisition of the utility or utility holding company that is being advanced before the Commission. That makes no sense, and the statute should be read in such a way that gives effect to all of its provisions, if possible. Subsection (3)(c) appears to make sense only if it does not apply to persons who during an acquisition become subject to regulation as a result being associated, affiliated or acting in concert with the party who is part of the acquisition then being considered by the Commission. Such a person would be subject to Subsection (3)(b) via Subsection (3)(d) and is excluded from the prohibition. The rationale is that the overall acquisition is already being considered by the Commission. The majority fails to consider alternative meanings of this term.

(d) **<u>Section B</u>:** The majority found that permission of the Commission was required. Therefore, Section B of the statute must be considered to determine if it is applicable and if so, what remedy or result ensues. The majority found the Stock Purchase was void pursuant to Section B. It is my opinion that Section B is unclear because of a strict reading of the words in the statute. It provides: "Any consolidation, merger, acquisition, transaction resulting in control or exercise of control, or other transaction in contravention of this section without prior authorization of the commission shall be void and of no effect." This sentence would be clearer if an Oxford comma were inserted, but legislative council service objects to the usage of such. The sentence would read: "Any consolidation, merger, acquisition, transaction resulting in control or exercise of control, or other transaction in contravention of this section, without prior authorization of the commission, shall be void and of no effect." I agree this section is clear insofar as it provides that a sale of stock that results in control is void and of no effect without prior approval of the Commission. The record reflects TopCo's Stock Purchase did not result in control.

What is meant by "or other transaction in contravention of this section"? If the legislature intended for Section B to cover all events where Commission approval was not sought, then why was the control language made a part of this Section? If the legislature intended to cover all events, then the statute would be clear if it simply stated: "Any transaction in contravention of this section, without prior authorization of the commission, shall be void and of no effect." Since the statute does not contain this clear statement, we must strive to give effect to all the words utilized. In my opinion, an analysis of what "other transaction" was intended to be covered was required. To give effect to the first part of the sentence, "other transaction" cannot include an acquisition of stock that does not result in control. "Other transaction" must then refer to another business transaction (other than consolidation, merger, acquisition, or transaction resulting in control) that results in a change of ownership or alters the control of the utility or utility holding company. It cannot simply be an acquisition of a few shares of stock. An example of "other transaction" would be a change in the general partner of a limited partnership or the formation of a new general partnership succeeding a prior partnership to name a couple. This is the only way Section B can be read to give effect to all the words of the statute without finding that the legislature simply added a catchall that rendered the first part of the sentence unnecessary.

2. The Statute is Not Clear:

The analysis provided above is to reflect that this statute is not so clear and unambiguous as argued by the parties and found by the majority. This is important as it goes to the issue of whether TopCo and the Joint Applicants reasonably believed they did not need to secure Commission approval prior to closing the stock purchase transaction, the recourse available to the Commission for the violation, and whether a maximum fine should be imposed.

C. Remedies and Penalties:

1. Proposed Remedies:

The parties proposed several potential remedies. First, Joint Applicants propose that the Commission either approve the Stock Purchase after the fact or approve a substitute transaction, namely an option agreement, intended to replicate the economic effect of the Financing

Transaction.[9] I agree with the majority that after-the-fact approval (or "*nunc pro tunc*" relief) is not an appropriate remedy. Second, several parties argue that the Commission should apply the statutory consequence set forth in Section 62-6-12(B), find the Financing Transaction void and of no effect, and require the parties to unwind or otherwise reverse the transaction.[10] Third, some parties argued that because the Financing Transaction was closely connected to the proposed acquisition, a finding that the Financing Transaction is void requires the denial or dismissal of the pending merger application.[11] Fourth, Commission Staff propose that the Commission not only apply the statutory consequence prescribed by Section 62-6-12(B), but require Joint Applicants to demonstrate how they have effectuated that consequence, ensure that customers are held harmless from all resulting costs, and consider the violation as part of the Commission's review of the proposed acquisition.[12]

In my opinion, none of these suggestions are appropriate in their entirety as I believe the Commission must recognize its underlying duty to protect and advance the public interest. This requires the Commission to embark on crafting a solution that not only addresses the argued violation, but also protects the ratepayers of not only PNM, but potentially all ratepayers of investor-owned utilities in the State. This is particularly true, as in this case, where the statute is not clear or its terms are subject to alternative meanings.

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[9] Joint Applicants' Post-Hearing Brief in Show Cause Proceedings (May 20, 2026) at 4-8.

[10] *See*, *e.g.*, Utility Division Staff's Post Hearing Brief for the Show Cause Proceeding pg. 15; New Energy Economy and NM Consumer Protection Alliance's Post Hearing Brief in Chief at 25; Center for Biological Diversity Post Hearing Brief in Show Cause Hearing at16; Coalition for Clean Affordable Energy's Post-Hearing Brief in Show Cause Proceeding at. 8; Prosperity Works' Post-Hearing Brief at 32.

[11] NEE and NM Consumer Protection Alliance's Post Hearing Brief in Chief pg. 25; Prosperity Works' Post-Hearing Brief at 32.

[12] Staff's Post-Hearing Brief at 15.

1. **Is the Statutory Remedy Applicable?**:

It is argued by Staff and most of the Opposing Parties that Section 62-6-12(B) prescribes the consequence for a transaction undertaken without the required prior Commission authorization as: "void and of no effect." As analyzed above, is the Stock Purchase subject to this Section? The Stock Purchase did not result in control. "Other transaction in contravention of this section" is the only part of Section B that would make it potentially applicable to this transaction. As discussed above, a substantial question on the interpretation of these words exists.

2. **Public Interest Considerations**:

The Commission must always look to its overarching duty to ensure that the public interest is advanced by all of its decisions. Losing sight of this duty undermines the integrity of its decisions and can complicate issues that ensue from its decisions. While the Commission must always carry out specific statutory directives, it must do so in light of its primary duty granted to it by the PUA. The issues presented in this matter highlight the importance of that duty. It would be easy to simply apply the words of the statute in this case, even with the ambiguities that exist within its terms, without considering the long-term consequences.

Staff and the Opposing Parties all argue that: the transaction is null and void; it must be unwound; and substantial penalties should be imposed. Some parties argue that the Application be denied as a result.

Had Joint Applicants and TopCo, or any of them, requested the Commission to approve the stock purchase, such permission may have been easily granted. It provided an infusion of cash resources that TXNM (PNM) needed. With the majority finding that the transaction is void and of no effect, TXNM must deliver to TopCo the sum of $400,000,000.00 and TopCo must return the eight million shares of TXNM stock. The record reflects that the cash infusion has been utilized. TXNM does not have the cash on hand to write such a check.[13]

To comply with the effect of the majority's Order, TXNM will likely have to either sell assets or go to the credit markets and borrow most, if not all of the $400,000,000.00. While the Order provides that the ratepayers of PNM will not be harmed, that cannot be assured for the long term as the majority's very decision may impact the creditworthiness of TXNM and the amount of outstanding debt. Higher interest rates may be imposed now and in the future. Ultimately the cost of borrowing for projects in the future will be borne by the ratepayers. These concerns led me to attempt to craft a solution that gave effect to the statutory mandates and minimized the impact of the decision. That solution was not adopted, apparently due to the majority's view of "clarity" of the statute.

4. Penalties:

The majority imposed the maximum penalty on each of the Joint Applicants and TopCo. These companies did not hide the transaction. As argued above, there are some questions on the interpretation of the statute. This distinguishes this matter from a recent matter where the Commission imposed penalties on an electric cooperative for continued multiple flagrant refusals to adhere to Commission orders and decisions over a course of 7 or so years.[14] In that case the Commission imposed a penalty that allowed the cooperative to avoid paying three-fourths of the penalty and therefore only have to pay a quarter of the penalty for its very defiant conduct. That is not present here and in light of the questions on the statutory interpretation, I do not believe a

[13] Direct Testimony in Response to Show Cause Order and Exhibit of Joseph D. Tarry p. 23

[14] S*ee* In the Matter of the Filing of Advice Notice No. 69 by Socorro Electric Cooperative, Inc., Docket No. 18-00383-UT, Order Proposing Modification to the Stipulation, entered June 18, 2026.

maximum penalty was warranted or necessary to promote compliance. The penalty imposed should have been substantially discounted, particularly in light of the Commission's recent penalty ruling.

5. <u>Approval of the Request to Acquire Stock</u>:

The Joint Applicants did make a request in their pleadings to approve the stock acquisition by TopCo. The request was to approve it as of the original date. I agree with the majority that the Commission cannot approve it *nunc pro tunc.* Nonetheless, the request was made and I would accept it as a general request for approval and not limited to an exact point in time. As a result, and in light of the problems and complications that will ensue by TXNM's return of the $400,000,000.00 to TopCo, I believe the Commission should have approved the request of Joint Applicants to allow TopCo to acquire eight million shares of TXNM stock on the terms originally presented for the cash consideration of $400,000,000.00 already paid to TXNM by TopCo, effective as of the date of the Order. TXNM would have to issue new shares of stock to TopCo but TXNM already received the cash consideration for stock so it would not have to return the money. This result would avoid the complications that will result from the majority's decision that requires the unwinding of the Stock Purchase. TXNM no longer has the cash consideration and will likely have to go to the credit markets to borrow to repay the money. The very action of the Order may have a negative effect on the credit rating of TXNM and they may see less favorable interest rates at a time when rates have already been rising. The public interest would have been served by avoiding these complications and the likely long-term increased costs by approving the request for TopCo to purchase TXNM stock and make it effective as of the date of the Commission's Order.

D. Effect on the Acquisition Proceeding:

The majority's Order suggests that the Joint Applicants consider refiling the Application. It is the Application that is the real issue before the Commission. Further delay in reaching a decision on the Application leaves the ratepayers, employees, management, investors in PNM and TXNM in limbo as to the future direction of the utility that serves two of the largest metropolitan areas in the State. I recognize the Stock Purchase transaction issue created legal and procedural questions that forced a delay in moving the Application forward. The majority's Order, even if the Joint Applicants decide not to refile the Application and continue to press forward on the Application as filed, creates issues that must be resolved before the Application can advance. First and foremost is the complete unwinding of the Stock Purchase and engaging in activities and preparing reports associated therewith. That will take significant time. If the Commission had approved the request to acquire the stock as discussed immediately above, then the Application proceeding would be back on track without the necessity for further delay or with an overhang of issues that will have to be sorted out due to the majority's Order.

E. Conclusion:

Reasonable arguments exist that Subsection (A)(3)(c) does not apply as TopCo's only affiliation with a public utility is by virtue of the very acquisition matter pending before the Commission. Likewise, even if Subsection (A)(3)(c) does apply, a reasonable argument exists that Subsection B does not apply to the Stock Purchase since TopCo did not acquire a controlling interest. If that is the case, while a penalty could be imposed, the transaction would not be void and there would be no basis for an unwinding of the transaction. An appeal may result in clarity of the statute that points out the interpretation of the statute's two subsections giving rise to the majority's Order landed on the wrong side of the argument. For the reasons discussed above, I dissent.

<u>/s/ Greg Nibert electronically signed</u>
GREG NIBERT, COMMISSIONER