

**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, ) Case No. 25-00060-UT  
INC.; APPROVAL OF A GENERAL DIVERSIFICATION )  
PLAN; AND ALL OTHER AUTHORIZATIONS AND )  
APPROVALS REQUIRED TO CONSUMMATE AND )  
IMPLEMENT THIS TRANSACTION (“JOINT )  
APPLICATION”) )**

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**ORDER DIRECTING JOINT APPLICANTS TO SHOW CAUSE**

**THIS MATTER** comes before the Hearing Examiners upon Prosperity Works’ Motion and Brief for Order Directing Joint Applicants to Show Cause (“Motion”), the Joint Applicants’ Response in opposition thereto (“Response”), the pleadings filed by other parties joining and supporting the Motion, and the replies filed by Joint Applicants and other parties. Prosperity Works’ Motion raises questions concerning the interpretation and applicability of NMSA 1978, Section 62-6-12, and whether the stock acquisition described in the pleadings was subject to the statute’s requirement for prior Commission authorization. The Hearing Examiners reviewed the various pleadings, supporting documentation, and law. Finding good cause to do so, the Hearing Examiners have contemporaneously issued a separate order in this docket granting Prosperity Works’ Motion.

Having granted the Motion, the Hearing Examiners now direct the Joint Applicants to appear and, pursuant to 1.2.2.22 NMAC, show cause why the purchase by TopCo of 8,000,000 shares of TXNM Energy, Inc. stock for \$400,000,000, completed without the prior authorization of the Commission, does not violate the provisions of NMSA 1978, Section 62-6-12, and is not therefore void and of no effect under that statute. The Hearing Examiners further direct the Joint

Applicants to address the legal and practical implications that a potential Commission determination that the stock purchase is void and of no effect would have on the Joint Application pending in this docket.

The Hearing Examiners **FIND AND CONCLUDE** as follows:

### **I. BACKGROUND AND SUMMARY OF THE PLEADINGS**

1. On February 6, 2026, Prosperity Works filed its Motion and Brief for Order Directing Joint Applicants to Show Cause. In its Motion, Prosperity Works contends that the stock acquisition at issue falls squarely within the scope of NMSA 1978, Section 62-6-12(A)(3), which provides that stock of a public utility holding company may be acquired by any person affiliated with or acting in concert with an acquiring entity for the purposes of an acquisition only with the prior express authorization of the Commission.<sup>1</sup>

2. Prosperity Works asserts that the statute's plain language is mandatory and unambiguous, and that the Legislature's use of the phrase "stock... may be acquired... only with the prior express authorization of the commission, but not otherwise" reflects a legislative intent to require Commission approval before such stock acquisitions occur.<sup>2</sup> Prosperity Works further emphasizes that Section 62-6-12(B) provides that any transaction undertaken in contravention of that requirement "shall be void and of no effect."<sup>3</sup>

3. Prosperity Works contends that the stock acquisition in question was undertaken "for the purposes of" the proposed merger and acquisition, as that phrase is used in the statute.<sup>4</sup>

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<sup>1</sup> Motion at 1-2.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.* at 3-4.

<sup>4</sup> *Id.* at 6.

Specifically, that the stock purchase was negotiated contemporaneously with the merger agreement, was executed in close temporal proximity to the merger announcement, involved an affiliate of the acquiring entity that is directly participating in the proposed acquisition, and is referred to in Joint Applicants' own testimony several times in the same context as the merger.<sup>5</sup> Prosperity Works argues that these circumstances demonstrate that the stock acquisition, whether or not it resulted in control or was characterized as "separate" by the transacting parties, was an integral component of the overall acquisition transaction, undertaken by an affiliated entity acting in concert with the acquiring party to facilitate or advance the proposed merger.<sup>6</sup>

4. On February 18, 2026, the Joint Applicants filed their Response opposing the Motion. In their Response, the Joint Applicants argue that NMSA 1978, Section 62-6-12 does not apply to the stock acquisition at issue because, in their view, the statute governs only transactions that result in the acquisition of control of a public utility or public utility holding company.<sup>7</sup> The Joint Applicants assert that the statutory scheme, when read as a whole, is intended to regulate changes in control and that the Commission's prior authorization requirement must therefore be interpreted in that context.<sup>8</sup> They contend that the stock acquisition in question involved the purchase of a non-controlling interest.<sup>9</sup>

5. The Joint Applicants further assert that the stock acquisition was undertaken as a financing transaction separate and distinct from the proposed merger and acquisition. According to the Joint Applicants, the stock issuance was intended to provide capital and financial stability and was not

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<sup>5</sup> *Id.* at 6-9.

<sup>6</sup> *Id.*

<sup>7</sup> Response at 4-5.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 19.

itself a mechanism for acquiring control of the utility or its holding company.<sup>10</sup> They argue that the transaction does not constitute an acquisition “for the purposes of” the merger within the meaning of Section 62-6-12, and that interpreting the statute to apply to such financing transactions would improperly expand the Commission’s jurisdiction beyond what the Legislature intended.<sup>11</sup>

6. Finally, the Joint Applicants argue that interpreting Section 62-6-12 to require prior Commission approval for the stock acquisition at issue would create uncertainty and disrupt ordinary financial transactions involving public utility holding companies.<sup>12</sup> They assert that such an interpretation would effectively require Commission approval for a wide range of minority stock transactions that do not implicate control or operational authority and would be inconsistent with both the statutory framework and past regulatory practice.<sup>13</sup>

7. Several other parties filed pleadings joining and supporting Prosperity Works’ Motion and requesting an order to show cause:

- a. Commission Staff states that the plain language of Section 62-6-12 is clear and does not require the “circuitous” statutory interpretation suggested by Joint Applicants.<sup>14</sup> Staff asserts that Joint Applicants’ arguments are insufficiently supported and that further explanation is necessary to resolve the statutory question.<sup>15</sup>
- b. The New Mexico Department of Justice joins Prosperity Works’ Motion and argues that prior approval requirements such as Section 62-6-12 serve a critical regulatory

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<sup>10</sup> *Id.* at 20.

<sup>11</sup> *Id.* at 16.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Staff’s Response to Motion for Show Cause Order at 5-6.

<sup>15</sup> *Id.* at 9-10.

function by preserving Commission oversight and protecting the public interest.<sup>16</sup>

NMDOJ requests that the Commission require Joint Applicants to show cause and explain both the legality of the transaction and its implications for the pending acquisition.<sup>17</sup>

- c. New Energy Economy and the New Mexico Consumer Protection Alliance argue that Section 62-6-12 unambiguously requires prior Commission authorization for stock acquisitions undertaken in connection with a utility merger and that any such transaction completed without authorization is statutorily void.<sup>18</sup> They further assert that the Commission lacks discretion to overlook this statutory requirement and must deny the merger if the violation is confirmed.<sup>19</sup>
- d. The Coalition for Clean Affordable Energy concurs with Prosperity Works' Motion and supports the requested relief requiring Joint Applicants to show cause.<sup>20</sup>

8. On March 2, 2026, the Joint Applicants and Prosperity Works filed an Unopposed Motion for Leave to File Replies claiming that issues were raised in the supporting pleadings that were not contemplated in the original Motion and Response. The Hearing Examiners granted the motion with an expedited filing deadline.

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<sup>16</sup> New Mexico Department of Justice's Notice of Joinder and Brief Supporting Motion for Order to Show Cause Directed to Joint Applicants at 4.

<sup>17</sup> *Id.* at 8.

<sup>18</sup> Response in Support of Motion to Show Cause at 1.

<sup>19</sup> *Id.* at 13.

<sup>20</sup> Coalition for Clean Affordable Energy's Response to and Concurrence With Prosperity Works' Motion to Show Cause.

9. On March 4, 2026, Joint Applicants, Prosperity Works, New Energy Economy and the New Mexico Department of Justice filed replies further arguing in support of their respective positions.

10. The Hearing Examiners, after careful review, have determined that these pleadings raise colorable and material issues regarding the scope and applicability of Section 62-6-12 and whether the stock acquisition required prior Commission authorization. The Hearing Examiners therefore find that sufficient questions exist regarding statutory compliance to warrant formal investigation pursuant to 1.2.2.22 NMAC.

## **II. COMMISSION AUTHORITY AND LEGAL FRAMEWORK**

11. Pursuant to NMSA 1978, Section 62-3-1, public utilities are affected with the public interest and are subject to Commission supervision to ensure that their activities are conducted in a manner consistent with law and the public interest.

12. Pursuant to NMSA 1978, Section 62-6-12, the Commission is specifically charged with regulating mergers, acquisitions, and related transactions involving public utilities and their holding companies.

13. Section 62-6-12(A) provides, in relevant part, that stock of a public utility holding company may be acquired by affiliated persons acting in concert for the purposes of an acquisition only “[w]ith the prior express authorization of the commission, but not otherwise.” Section 62-6-12(B) further provides that any transaction undertaken in contravention of that section “shall be void and of no effect.”

## **III. LEGAL ANALYSIS AND BASIS FOR SHOW CAUSE**

14. The Commission’s statutory responsibilities require it to ensure that transactions subject to its jurisdiction comply with applicable law and serve the public interest. Pursuant to 1.2.2.22(A)

NMAC, the Commission may initiate an investigation through an order to show cause. Pursuant to 1.2.2.22(B) NMAC, following investigation and hearing, the Commission may issue a final order resolving the matters under investigation.

15. Section 62-6-12 expressly addresses stock acquisitions undertaken by affiliated persons acting in concert for the purposes of an acquisition. The statutory question presented by the Motion, and further examined in the Response, Replies, and associated pleadings, is therefore central to the Commission's exercise of its regulatory authority.

16. Based upon the pleadings presented to the Hearing Examiners, Prosperity Works' interpretation of Section 62-6-12 presents a compelling and facially supportable reading of the statutory text sufficient to warrant further examination. Specifically, Prosperity Works' interpretation is grounded in the statute's plain language, including its express reference to acquisitions of "stock" undertaken "for the purposes of any acquisition," and raises significant questions regarding the applicability of the statute to the transaction at issue.

17. The Joint Applicants' Response and Reply do not fully address the statutory concerns raised in the Motion and emphasized in the associated supporting pleadings. Although it offers an interpretation of the relevant provisions, it does not sufficiently analyze or reconcile that interpretation with the statute's text. Nor does the Response provide legal authority that squarely supports its proposed reading of the statute's scope. While the Response and Reply characterize the transaction in a manner that Joint Applicants contend falls outside the statute, those characterizations, without further legal and evidentiary development, do not resolve the statutory questions presented.

18. The Hearing Examiners cannot recommend that the Commission depart from the ordinary meaning of the statutory language or rely upon a strained interpretation to resolve important

questions of statutory applicability on an insufficiently developed record. Given the mandatory nature of the statutory provisions at issue and the potential legal consequences, further inquiry is necessary to ensure that the Joint Applicants have properly adhered to the statutory obligations presented in Section 62-6-12.

19. Accordingly, the Hearing Examiners find that the statutory questions raised in the Motion are sufficiently consequential to warrant formal investigation pursuant to 1.2.2.22 NMAC, and that the Joint Applicants must be required to show cause why the stock acquisition described in the associated pleadings described in this Order does not violate NMSA 1978, Section 62-6-12 and is not subject to the statutory consequences set forth therein.

20. The Hearing Examiners emphasize that this Order **does not constitute a final determination that Section 62-6-12 was violated or that the stock acquisition should be rendered void**. Rather, this Order only initiates a formal investigation to determine whether the stock acquisition violated Section 62-6-12 and, if so, the legal and practical consequences of that violation.

**IT IS THEREFORE ORDERED:**

A. An investigation pursuant to 1.2.2.22 NMAC is initiated.

B. Following briefing, evidentiary hearing, and oral argument, the Commission will determine whether Joint Applicants violated NMSA 1978, Section 62-6-12. If a violation is found to have occurred, the Commission will determine the legal and practical implications of such violation. Any such determination will be issued by the Commission in a final order subject to appeal to the New Mexico Supreme Court.

C. Joint Applicants **SHALL SHOW CAUSE** why the stock acquisition described in this Order and the associated pleadings does not violate NMSA 1978, Section 62-6-12. Specifically, the Joint Applicants **SHALL** address the following matters:

- a. Whether Section 62-6-12 applies to the stock acquisition and required prior express authorization of the Commission before completion of the transaction;
- b. If the stock acquisition is found to have contravened Section 62-6-12, the legal consequences of such violation, including whether the transaction is void and of no effect pursuant to Section 62-6-12(B);
- c. Any other issues of law or fact necessary for the Commission to determine whether the stock acquisition complies with Section 62-6-12 and applicable law.

D. The Joint Applicants **SHALL** file briefing, testimony, and any supporting documentation necessary to address the matters specified above. This filing **SHALL** include all legal authority, statutory analysis, and factual evidence supporting their position.

E. Other parties to this matter **MAY** file further briefing in support of their position on this matter and/or briefing responsive to Joint Applicants' Show Cause Briefing but are not required to do so.

F. Joint Applicants **SHALL** file their Show Cause Briefing on or before April 6, 2026.

G. Other parties **MAY** file further briefing in support of their position on this matter on or before April 6, 2026.

H. Prosperity works and other parties **MAY** file briefing responsive to Joint Applicants' Show Cause briefing on or before April 20, 2026.

I. Joint Applicants **MAY** file briefing responsive to other parties' briefing in support of this matter or their position on or before April 20, 2026.

J. A public hearing **SHALL BE HELD** for the purpose of receiving evidence and, as appropriate, hearing oral argument concerning the matters specified in this Order. The Hearing Examiners may receive sworn testimony, documentary evidence, and other relevant materials, and may hear oral arguments from the Joint Applicants and Prosperity Works. The hearing may proceed as an evidentiary hearing, oral argument, or a combination thereof, as the Hearing Examiners deem necessary to develop a full and complete record for the Commission's determination.

K. The date, time, and location, and other logistics of the hearing and pre-hearing conference shall be set by separate notice.

**ISSUED** under the Seal of the Commission at Santa Fe, New Mexico, this 11<sup>th</sup> day of March 2026.



**NEW MEXICO PUBLIC REGULATION COMMISSION**

A handwritten signature in black ink, appearing to read "J Barrett", written over a horizontal line.

Jocelyn Barrett  
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A handwritten signature in black ink, appearing to read "Patrick Schaefer", written over a horizontal line.

Patrick Schaefer  
**Hearing Examiner**

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IMPLEMENT THIS TRANSACTION (“JOINT )  
APPLICATION”) )**

**CERTIFICATE OF SERVICE**

**This Certifies** that on this date I sent a true and correct copy of **Order Directing Joint Applicants to Show Cause** via email, to the parties listed here.

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**DATED** this March 11, 2026

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**/s/ Ana Kippenbrock – Electronically signed**  
**Paralegal**