

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.;) **Docket 25-00060-UT**
 APPROVAL OF A GENERAL DIVERSIFICATION)
 PLAN; AND ALL OTHER AUTHORIZATIONS)
 AND APPROVALS REQUIRED TO)
 CONSUMMATE AND IMPLEMENT THIS)
 TRANSACTION ("JOINT APPLICATION"))
 _____)

ORDER DENYING PROSPERITY WORKS'
SECOND MOTION FOR ORDER TO SHOW CAUSE

THIS MATTER comes before the Hearing Examiners on Prosperity Works' Second Motion and Brief for Order to Show Cause ("Second Show Cause Motion" or "Motion"), filed August 3, 2026. Having reviewed the Motion, the responses and reply, the Commission's July 2, 2026 Final Order on Show Cause Proceeding ("Show Cause Final Order"), and the record, and being otherwise fully advised, the Hearing Examiners conclude that the Motion should be denied. The issues raised by Prosperity Works concerning TXNM Energy, Inc.'s ("TXNM") decision not to pursue a \$350 million merger termination fee, including the prudence of TXNM's actions and any potential effects on Public Service Company of New Mexico ("PNM") and its customers, though potentially relevant to the consideration of the public interest and customer protection in this case, do not warrant initiation of a separate show cause investigation at this time.

PROCEDURAL BACKGROUND

1. On July 2, 2026, the Commission issued its Final Order on Show Cause Proceeding, concluding, among other things, that the acquisition of TXNM stock by Troy TopCo LP without prior Commission authorization violated NMSA 1978, Section 62-6-12(A)(3)(c), and that the

transaction was void and of no effect to the extent it contravened Section 62-6-12.¹ The Final Order further determined that the violation was affirmatively relevant to the Commission's consideration of the pending acquisition application and could be considered, together with all other relevant evidence, in determining whether the proposed acquisition is lawful and consistent with the public interest.²

2. On August 3, 2026, Prosperity Works filed the Second Show Cause Motion. Prosperity Works asks that TXNM and PNM be required to show cause why PNM customers should not receive a \$240 million rate credit representing what Prosperity Works contends is New Mexico's jurisdictionally allocated share of a \$350 million merger termination fee that TXNM was entitled to but chose not to claim.³ Prosperity Works further requests information concerning TXNM's efforts, or lack of efforts, to secure the termination fee and such other relief as the Commission deems appropriate.⁴

3. The Motion claims that because the Commission declared the stock purchase void and of no effect, the stock purchase could not have been "consummated" within the meaning of the parties' agreements, thereby giving TXNM the right to terminate the Stock Purchase Agreement and Merger Agreement and recover the \$350 million termination fee.⁵ Prosperity

¹ Final Order on Show Cause Proceeding, Docket No. 25-00060-UT (July 2, 2026) ("Show Cause Final Order") at 33-34.

² *Id.* at Ordering Paragraph K.

³ Prosperity Works' Second Motion and Brief for Order to Show Cause (Aug. 3, 2026) ("Second Show Cause Motion") at 1.

⁴ *Id.* at 4.

⁵ *Id.* at 3.

Works maintains that TXNM's decision not to pursue that recovery was contrary to the interests of PNM and its customers and appears to have been imprudent.⁶

4. On August 17, 2026, TXNM and PNM, Utility Division Staff ("Staff"), New Energy Economy ("NEE"), and the New Mexico Consumer Protection Alliance ("NMCPA") filed responses to the Motion. TXNM, PNM, and Staff opposed the Motion, while NEE and NMCPA supported it.⁷

5. On August 21, 2026, Prosperity Works requested leave to reply to the responses filed by TXNM, PNM, and Staff. On August 24, 2026, the Hearing Examiners granted that request, concluding that the Commission should be as fully apprised as possible regarding the factual and legal bases for the Second Show Cause Motion and the positions of the parties.⁸

6. Prosperity Works thereafter filed its Reply. Prosperity Works argues, among other things, that the Commission need not conclusively establish a violation before initiating a show cause investigation; that the Commission possesses authority under the Public Utility Act to investigate whether TXNM acted imprudently in waiving the potential termination fee; and that resolution of the prudence issue does not require the Commission to adjudicate a Delaware contract claim.⁹ Prosperity Works alternatively acknowledges that the issues could be considered during

⁶ *Id.*

⁷ Staff's Response to Prosperity Works' Second Motion and Brief for Order to Show Cause (Aug. 17, 2026); Response to Prosperity Works' Second Motion and Brief for Order to Show Cause (Aug. 17, 2026); NEE and NMCPA Response to Prosperity Works' Second Show Cause Motion (Aug. 17, 2026).

⁸ Prosperity Works' Request for Leave to Reply (Aug. 21, 2026); Order Granting Motion for Leave to Reply (Aug. 24, 2026).

⁹ Prosperity Works' Reply to TXNM/PNM and Staff Responses to Second Show Cause Motion (Aug. 31, 2026) ("Reply") at 12-16.

the merits phase of the acquisition proceeding and in a subsequent PNM rate case, but argues that they should instead be addressed now in a separate show cause proceeding.¹⁰

DISCUSSION

7. The Motion raises colorable questions concerning the potential effects of TXNM's July 17, 2026 waiver on PNM and its customers. Those questions do not, however, require or warrant initiation of a separate show cause proceeding.

8. The premise underlying the relief requested by Prosperity Works depends upon a series of contractual conclusions that do not follow automatically from the Commission's July 2, 2026 Final Order. The Commission determined that the stock acquisition was "void and of no effect" under Section 62-6-12(B).¹¹ That regulatory determination does not itself establish that there was a contractual "failure to consummate the closing" within the meaning of the Stock Purchase Agreement, that TXNM thereby possessed an immediately enforceable right to terminate that agreement, or that termination of the Stock Purchase Agreement necessarily entitled TXNM to terminate the separate Merger Agreement and recover the \$350 million termination fee.¹²

9. Those distinctions are material. "Consummation" and "closing" are contractually defined concepts under private agreements governed by Delaware law. Whether the Commission's regulatory determination of statutory voidness satisfied the conditions for contractual termination, whether other parties possessed cure rights or equitable defenses, and whether TXNM ultimately could have enforced a claim for the termination fee involve questions of private contractual rights and remedies. The Commission is not able to resolve those questions under its regulatory

¹⁰ *Id.*

¹¹ Show Cause Final Order at Ordering Paragraph B.

¹² Staff's Response to Prosperity Works' Second Motion and Brief for Order to Show Cause (Aug. 17, 2026) ("Staff Response") at 2.

responsibilities under the Public Utility Act, therefore, a separate show cause proceeding should not be used as a vehicle for resolving them.¹³

10. The Commission's July 2, 2026 Final Order also conclusively resolved the applicability of Section 62-6-12 to the stock acquisition and the statutory consequences of Joint Applicants' failure to obtain prior authorization. A second show cause proceeding should not reopen or relitigate those determinations.

11. Nor is a separate show cause proceeding necessary to preserve the regulatory issues identified by Prosperity Works. The prudence of TXNM's July 17, 2026 waiver, the circumstances surrounding that decision, and its potential effects on PNM and its customers may bear upon the Commission's evaluation of the pending acquisition. The Commission expressly determined in its July 2, 2026 Final Order that Joint Applicants' violation of Section 62-6-12(A)(3)(c) is affirmatively relevant to consideration of the acquisition application and may be considered with other relevant evidence in determining whether the proposed acquisition is lawful and consistent with the public interest.¹⁴

12. The July 17, 2026 waiver likewise may be relevant to the Commission's assessment of how TXNM management structured the transaction following the Final Order, whether those actions protect or adversely affect customers, and whether the acquisition as presently structured is consistent with the public interest. The waiver extended the merger End Date to May 31, 2027 and modified the termination-fee provisions, matters that may also bear upon the continued completeness and sufficiency of the pending Application and supporting evidence.¹⁵

¹³ *Id.* at 2-3.

¹⁴ Show Cause Final Order at Ordering Paragraph K.

¹⁵ Staff's Response at 3-4.

13. Consideration of those matters in the acquisition proceeding is particularly appropriate because Prosperity Works' requested show cause investigation rests, at least in part, on the premise that terminating the Merger Agreement and pursuing the termination fee would have been preferable to continuing the proposed acquisition and that TXNM acted imprudently by choosing the latter course. Whether that decision was prudent cannot reasonably be separated from the benefits, costs, risks, and other public-interest considerations associated with the proposed acquisition itself. Those matters have not yet been adjudicated. Section 62-6-13 provides the statutory framework under which the Commission will determine whether the proposed acquisition is lawful and consistent with the public interest on a developed evidentiary record.

14. Prosperity Works argues in its Reply that the Commission may assess management prudence without adjudicating the underlying contract claim and that uncertainty regarding the precise amount of customer harm does not deprive the Commission of its authority to protect ratepayers.¹⁶ It further argues that consideration of the waiver in a separate proceeding would provide greater focus than incorporating the issue into the acquisition proceeding.¹⁷ These arguments do not alter the conclusion that a second show cause proceeding is unnecessary. Denial of the Motion does not determine that TXNM's actions were prudent, that customers suffered no harm, or that the July 17, 2026 waiver is irrelevant to the Commission's regulatory review. Rather, it recognizes that the Commission can evaluate matters within its jurisdiction without first resolving the private contractual predicates upon which the specific relief requested in the Motion depends.

¹⁶ Reply at 16.

¹⁷ *Id.* at 15.

15. Accordingly, denial of the Second Show Cause Motion does not preclude the parties from presenting relevant evidence and argument concerning the July 17, 2026 waiver, TXNM management's decision-making, or resulting effects on PNM and its customers in the pending acquisition proceeding, subject to applicable procedural and evidentiary requirements. Nor does this Order prejudge whether any matter appropriately presented in a future ratemaking proceeding may warrant consideration or relief.

16. For these reasons, initiation of a separate show cause investigation is neither necessary nor appropriate for this matter.

IT IS THEREFORE ORDERED:

A. Prosperity Works' Second Motion and Brief for Order to Show Cause is **DENIED**.

B. Nothing in this Order precludes consideration, in the pending acquisition proceeding, of relevant evidence concerning TXNM's July 17, 2026 Letter Agreement and Waiver, the circumstances surrounding TXNM's decision to enter into that agreement, the potential effects of that decision on PNM and its customers, or any other matters whether or not named herein, to the extent such matters are relevant to the Commission's determination whether the proposed acquisition is lawful and consistent with the public interest.

C. Nothing in this Order constitutes a determination regarding the prudence or imprudence of TXNM's decision to enter into the July 17, 2026 Letter Agreement and Waiver, the existence or value of any contractual claim TXNM may have possessed, the potential appropriate ratemaking treatment of matters arising from that decision, or any other matters whether or not named herein.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico on September 25, 2026.

NEW MEXICO PUBLIC REGULATION COMMISSION



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

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