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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

JOINT MOVANTS' MOTION FOR LEAVE TO FILE REPLY TO JOINT APPLICANTS' RESPONSE IN OPPOSITION TO EMERGENCY MOTION TO HOLD PROCEEDINGS IN ABEYANCE

New Energy Economy, the Center for Biological Diversity, the Coalition for Clean Affordable Energy, the New Mexico Consumer Protection Alliance, and Prosperity Works (collectively, "Joint Movants") respectfully request leave to file the attached short Reply to Joint Applicants' November 9, 2026 Response opposing Joint Movants' Emergency Motion to Hold Proceedings in Abeyance.

Good cause exists because Joint Applicants' Response materially mischaracterizes both the basis for the requested abeyance and the significance of the New Mexico Supreme Court's November 3, 2026 Order in *New Energy Economy, Inc. v. New Mexico Public Regulation Commission*, No. S-1-SC-41551. Joint Applicants characterize the requested relief as an indefinite delay based upon speculation concerning an unrelated appeal. That characterization overlooks the dispositive circumstance: **the Commission itself expressly identified *this* pending Blackstone/TXNM acquisition as a principal reason for requesting expedited**

Supreme Court determination of the governing legal standard,[1] and the Supreme Court has now granted that request.

The proposed Reply addresses that distinction, the intervening Supreme Court Order, the conflict between the Commission's competing articulations of the acquisition standard, and Joint Applicants' reliance upon authorities involving ordinary appeals of prior regulatory decisions. These matters directly affect whether good cause exists to suspend the November 30, 2026 testimony deadline and subsequent proceedings.

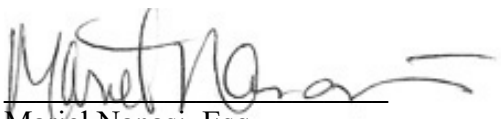
The Reply introduces no new evidence, seeks no enlargement of the relief previously requested, and will assist the Hearing Examiners in resolving an urgent procedural issue before substantial additional expert expenses are incurred. Given the approaching testimony deadline, Joint Movants request expedited consideration.

Joint Movants sought the position of parties and can state: REIA, WRA, and community groups represented by WELC (Dine CARE, To Nizhoni Ani, San Juan Citizens Alliance and Naeva) support. ABCWUA, Bernalillo County and PRC Staff do not oppose. Walmart, the City of Albuquerque and NMDOJ take no position.

WHEREFORE, Joint Movants respectfully request that the Hearing Examiners grant leave to file the attached Reply, accept it for consideration, and promptly determine the pending Emergency Motion, including the request for immediate interim suspension of the November 30, 2026 testimony deadline.

Respectfully submitted this 10th day of November, 2026.

NEW ENERGY ECONOMY



Mariel Nanasi, Esq.

[1] For convenience, Movants attach the Commission's Motion and Reply, as Exhibits A and B, respectively.

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO, TXNM ENERGY, INC.AND TROY PARENTCO LLC FOR APPROVAL OF AN ACQUISITION AND MERGER OF TROY MERGER SUB INC. WITH TXNM ENERGY, INC.; APPROVAL OF A GENERAL DIVERSIFICATION PLAN; AND ALL OTHER AUTHORIZATIONS AND APPROVALS REQUIRED TO CONSUMMATE AND IMPLEMENT THIS TRANSACTION	)	**Case No. 25-00060-UT**
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JOINT MOVANTS' REPLY TO JOINT APPLICANTS' RESPONSE IN OPPOSITION TO EMERGENCY MOTION TO HOLD PROCEEDINGS IN ABEYANCE

Joint Applicants' Response rests on a fundamental mischaracterization of Joint Movants' position. **This is not a request to suspend one proceeding merely because an appeal involving similar issues is pending elsewhere. The Commission itself asked the Supreme Court to decide the threshold legal standard governing utility acquisitions precisely because that determination is necessary to guide *this* Blackstone/TXNM proceeding.** The Commission expressly represented that the Court's determination would provide the "certainty and clarity" necessary before this proceeding substantially progresses and would affect the scope of litigation, discovery, expert testimony, and the standard ultimately applied. Exhibit A, Commission's Motion to Advance Threshold Issue, No. S-1-SC-41551, at 4, 8. On November 3, 2026, the Supreme Court granted the Commission's request. Joint Movants seek the logical procedural consequence of the Commission's own representations and the Court's intervening Order. The Commission's own filings thus establish both the exceptional public importance of the question and the particular urgency of resolving it before the Blackstone proceeding advances—an urgency the Supreme Court recognized by granting expedited consideration.

Joint Applicants accuse Joint Movants of claiming they do not know what "evidence matters" and characterize that position as a "thinly veiled attempt to prolong" this proceeding. Response at 3. **The problem is not that Joint Movants do not know the law. It is that the Commission—the ultimate decision-maker—has represented to the Supreme Court that it requires clarification of the governing legal framework before this acquisition substantially progresses.** Joint Movants maintain that New Mexico's longstanding net-public-benefit standard and Six-Factor Test are well settled. It was the Commission, not Joint Movants, that requested judicial clarification of that framework as a *threshold issue*. The Commission cannot reasonably insist that its own uncertainty warrants extraordinary Supreme Court intervention while simultaneously requiring intervenors' experts to complete sworn testimony before the requested clarification is provided.

Indeed, the Commission expressly acknowledged in its September 4, 2026 Reply to the Supreme Court that the question concerning the meaning and application of its acquisition precedent "is one of first impression for this Court." Exhibit B, Commission's Reply in Support of Motion to Advance Threshold Issue, No. S-1-SC-41551, at 5. The Commission further explained that the Supreme Court must determine "what that precedent requires, how it operates together with the governing statutes and Rule 17.6.450 NMAC, and whether the Commission's Final Order complied with that law." *Id.* Thus, the Commission itself identified the need for authoritative judicial resolution of the precise legal framework governing utility acquisitions. Joint Applicants cannot credibly dismiss the significance of that unresolved appellate question when the Commission has expressly represented that its resolution is necessary and sought extraordinary procedural relief to obtain it.

Nor does the January 15, 2026 *Procedural Order Establishing Affirmatively Relevant Topics*, ¶¶ 4–6 & nn.1–2, resolve the problem. That Order identifies the longstanding six factors and the statutory public-interest inquiry. But Chairman O'Connell, joined by Commissioner Nibert, subsequently articulated a materially different "continuation of service" acquisition standard in the Bernhard Capital Partners/New Mexico Gas Company proceeding, while the resulting Final Order characterized the Six-Factor Analysis as an aid rather than a controlling test. The Supreme Court has now agreed to address the legal framework implicated by that conflict. The question is not simply what subjects experts can discuss, but **what legal standard their evidence must satisfy and what weight the Commission must give it**. *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-032, ¶¶ 8, 12; *PNM Gas Servs. v. N.M. Pub. Util. Comm'n*, 2000-NMSC-012, ¶ 9, recognize the obligation of regulatory agencies to adhere to established standards or provide legally sufficient justification for departing from them. Those principles are directly implicated because the appealed BCP Order departed, in Joint Movants' view, from the Commission's longstanding application of the Six-Factor Analysis.

Joint Applicants further assert that, under Joint Movants' theory, any appeal involving a common legal issue would freeze every related docket. Response at 5. **That is not Joint Movants' theory; it is a straw man.** This request arises from the Commission's extraordinary motion identifying *this* specific acquisition as the reason expedited appellate guidance was necessary. The Commission cannot represent to the Supreme Court that clarification is needed before the Blackstone proceeding substantially progresses, obtain the extraordinary relief requested, and then disregard the procedural consequences of that representation in this docket. Such inconsistent positions implicate the principles underlying judicial estoppel and the integrity of administrative adjudication.

The extraordinary nature of the Commission's request further defeats Joint Applicants' suggestion that this is merely an ordinary appeal involving a legal issue common to other proceedings. The Commission invoked the public importance of obtaining expedited appellate guidance concerning the legal standards governing utility acquisitions. Rule 23-101 NMRA recognizes the exceptional significance of matters involving questions "of general public interest or policy." The Commission's own September 4, 2026 Reply expressly explained that the pending Blackstone/TXNM acquisition made the timing of the Supreme Court's determination particularly important and that resolving the threshold question earlier was "in the public interest." Exhibit B, Commission's Reply at 6–7. The importance of that determination does not depend upon how many acquisition dockets it may ultimately affect. Its immediate application to *this* proceeding, involving the proposed acquisition of New Mexico's largest electric utility, is itself a matter of substantial public consequence. The Commission sought expedited judicial guidance to discharge its statutory obligation to evaluate utility acquisitions in the public interest. Having obtained that relief, the Commission should not proceed as though the governing legal question it asked the Supreme Court to decide has no consequence for the fairness and orderly conduct of this proceeding.

Joint Applicants correctly observe that the Hearing Examiners knew of the Commission's Motion when they established the October 27, 2026 procedural schedule. But **the Supreme Court had not yet acted**. Its November 3 Order is the intervening development establishing good cause for reconsideration. Moreover, the requested abeyance is not indefinite: the Court has imposed expedited briefing, prohibited extensions, and expressly directed that the threshold issue receive consideration and disposition during its 2026–2027 term. Supreme Court Order at 2–3. Joint Applicants themselves identify July 15, 2027 as the final date for dispositions during that

term. Response at 5 n.21. Although the precise decision date remains unknown, the request is tied to an identified, expedited judicial determination—not an open-ended future contingency.

The Supreme Court's November 3 Order warrants more than passing acknowledgment. The Court granted the Commission's request to advance the threshold issue, established an accelerated briefing schedule, and expressly prohibited extensions to ensure timely consideration and disposition during its 2026–2027 term. Supreme Court Order, No. S-1-SC-41551, at 2–3 (Nov. 3, 2026). That extraordinary accommodation should be given meaningful procedural effect. To insist that intervenors complete expensive expert testimony under a disputed legal framework while the Supreme Court undertakes expedited review of that very framework would disregard the practical significance of the Court's accommodation and unfairly prejudice the parties required to develop the evidentiary record. Intervenors would be forced to incur substantial costs, commit their experts to testimony shaped by a potentially incorrect standard, and risk having to reconstruct that testimony after the Court rules. Respect for the Supreme Court's exercise of its discretion, elementary procedural fairness, and the efficient administration of justice all favor preserving the status quo until the governing legal standard is determined. **The Commission should not obtain expedited Supreme Court review in the name of the public interest and then require intervenors to bear the very costs and procedural uncertainty that expedited review was intended to avoid.**

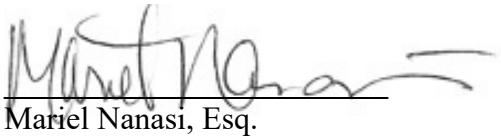
Finally, Joint Movants do not contend that the Supreme Court's decision in the BCP appeal will decide whether Blackstone's acquisition should be approved. **It will, however, determine the governing legal framework under which the experts must testify, the Hearing Examiners must evaluate the record, and the Commission must decide this acquisition.** That is exactly the distinction the Commission invoked to obtain expedited Supreme

Court review. The Commission should not require the parties to incur the expense of preparing and litigating expert testimony under a potentially incorrect framework when it expressly sought judicial intervention to avoid that consequence.

WHEREFORE, Joint Movants respectfully request that the Hearing Examiners grant the Emergency Motion, immediately suspend the November 30, 2026 direct-testimony deadline and subsequent procedural deadlines, and hold this proceeding in abeyance pending the Supreme Court's determination of the threshold legal standard in No. S-1-SC-41551.

Respectfully submitted this 10th day of November, 2026.

NEW ENERGY ECONOMY



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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NEW ENERGY ECONOMY, INC.,

Appellant, **No. S-1-SC-41551**

v.

NEW MEXICO PUBLIC REGULATION COMMISSION,

Appellee.

In the Matter of the Joint Application
For approval to acquire
New Mexico Gas Company, Inc.
By Saturn Utilities HoldCo, LLC.
NMPRC Case No. 24-00266-UT

NEW MEXICO PUBLIC REGULATION COMMISSION'S MOTION TO ADVANCE A THRESHOLD ISSUE FOR BRIEFING AND DECISION OR, IN THE ALTERNATIVE, FOR EXPEDITED BRIEFING AND CONSIDERATION OF THE APPEAL

COMES NOW the New Mexico Public Regulation Commission ("Commission"), and pursuant to Rules 12-309 and 23-101(C) NMRA, respectfully moves this Court to advance for briefing and decision a threshold legal question concerning the framework governing Commission review of proposed acquisitions of New Mexico public utilities.

Specifically, the Commission requests that the Court determine how NMSA 1978, Sections 62-6-12 (1989) and 62-6-13 (1941), Rule 17.6.450 NMAC, and the Commission's longstanding "Six-Factor Analysis" interact to govern utility-acquisition proceedings.

If the Court determines that question cannot appropriately be resolved apart from its application to the facts and record of this appeal, the Commission alternatively requests expedited briefing and consideration of the appeal in its entirety during the Court's 2026-2027 Term.

Rule 23-101(C) expressly permits cases "involving matters of general public interest or policy" to be advanced for oral argument or decision by leave of the Court upon motion of a party. This appeal presents such a matter. This Court has not yet addressed how Sections 62-6-12 and 62-6-13, Rule 17.6.450 NMAC, and the "Six-Factor Analysis" interact, although that question determines the legal and procedural framework through which the Commission evaluates acquisitions of public utilities.

This question has immediate significance beyond this appeal. Another significant and complex acquisition of a New Mexico public utility is currently pending before the Commission. Although that proceeding must be adjudicated independently on its own application and record, the

Commission must determine the legal framework governing its review. A timely determination from this Court concerning that framework would materially assist the Commission, the parties, and the public without requiring expedited resolution of other appellate issues presented here.

The Commission therefore primarily requests expedited consideration of the discrete threshold legal issue and, only if the Court concludes that issue cannot appropriately be separated from its application to this case does the Commission alternatively request expedited consideration of the appeal as a whole.

Pursuant to Rule 12-309(C) NMRA, counsel for the Commission contacted counsel for Appellant on August 18, 2026. Appellant opposes this motion.

I. Statement of Facts

This appeal arises from the Commission's Final Order concerning the proposed acquisition of New Mexico Gas Company, Inc. by Saturn Utilities HoldCo, LLC and related entities. [**Exhibit A**]

The Joint Applicants filed their application on October 28, 2024. Following a revised application, discovery, an evidentiary hearing, post-hearing briefing, a Recommended Decision, and exceptions proceedings, the

Commission entered its Final Order on July 30, 2026, and Commissioner Aguilera filed a dissent on August 4, 2026. [***Id.***]

The Final Order addressed the legal framework governing the Commission's review of the proposed acquisition, including Sections 62-6-12 and 62-6-13, Rule 17.6.450 NMAC, and the Commission's "Six-Factor Analysis." [***Id.***] Appellant filed a notice of appeal on July 31, 2026. [**Exhibit B**]

Another proposed acquisition of a New Mexico public utility is currently pending before the Commission. That matter has and is expected to continue to affect a substantial number of customers, generate significant public participation, and require substantial commitments of Commission, party, and public resources. Although it will be adjudicated independently on its own application and record, it implicates the same threshold question concerning the governing legal framework.

A determination from this Court would provide the Commission with more certainty and clarity about the framework that must guide this second proceeding before it substantially progresses. This is beneficial because this framework will affect the scope of the case, the issues to be litigated, the development of testimony and discovery, and the standards against which the proposed transaction will ultimately be evaluated.

This appeal therefore affords this Court an opportunity to resolve an important concrete question of law with immediate importance to the administration of another pending acquisition proceeding.

II. Argument

The threshold question is how Sections 62-6-12 and 62-6-13, Rule 17.6.450 NMAC, and the Commission's "Six-Factor Analysis" interact to establish the legal framework governing Commission review of proposed utility acquisitions.

More specifically: what requirements, if any, do Sections 62-6-12 and 62-6-13 impose upon the Commission's review of a proposed acquisition; how does Rule 17.6.450 NMAC implement those statutory requirements; and whether and to what extent may the "Six-Factor Analysis" operate within or supplement that statutory and regulatory framework.

A. Rule 23-101(C) authorizes the Court to advance for decision a matter of general public interest or policy.

This Court permits cases involving "matters of general public interest or policy" to be "advanced for oral argument or decision by leave of the court and upon the motion of either party." Rule 23-101(C) NMRA.

This appeal presents precisely that circumstance.

The Commission does not contend that appeals from its orders are ordinarily entitled to priority, nor does it seek expedited consideration merely because another acquisition matter is pending. Rather, this appeal presents an as yet unresolved legal question concerning the legal framework that the Commission must immediately confront again in another concurrent major proceeding affecting regulated utilities, customers, parties, and the public.

The Commission lacks a clear alternative mechanism for obtaining the authoritative guidance it seeks. Because appeals from Commission final orders lie directly with this Court, there is no apparent avenue for the Commission to obtain a district court declaratory ruling on the legal framework governing its consideration of acquisition applications. Nor does the Commission have a mechanism comparable to that of the Court of Appeals certifying a controlling question of New Mexico law to this Court. As a practical matter, therefore, this pending appeal presents the most direct and appropriate vehicle for obtaining needed guidance on the threshold legal question. Advancing that discrete question would provide the Commission with that guidance while allowing the remaining issues in the appeal to proceed in the ordinary course.

The Commission therefore asks the Court to exercise the discretion expressly contemplated by Rule 23-101(C) and advance the threshold legal-framework issue for briefing and decision.

B. The Court should advance for decision the threshold question concerning the legal framework governing Commission review of utility acquisitions.

The question for which the Commission seeks expedited guidance is this: How do Sections 62-6-12 and 62-6-13, Rule 17.6.450 NMAC, and the Commission's "Six-Factor Analysis" function together to define the scope and substantive standard governing the Commission's review of a proposed acquisition of a New Mexico public utility?

Answering that question requires the Court to confirm the respective role of each component: what the statutes require; how Rule 17.6.450 NMAC implements those requirements; and whether and to what extent the "Six-Factor Analysis" may operate within or supplement them.

That question is antecedent to application of the framework to the transaction at issue. Before determining whether a proposed acquisition satisfies the applicable legal standard, the Commission must know what that standard is. Though the Commission has relied upon their reasonable interpretation of this standard, a prompt determination from this Court would

be extremely valuable. It will provide certainty on the governing framework before the need arises to resolve another challenge to the Commission's application of that framework.

C. Resolution of the threshold question is a matter of general public interest and policy both for the outcome of this appeal and because the Commission must administer another major acquisition under the same legal framework.

The need for clarity is immediate. The Commission is considering another unusually significant acquisition of a New Mexico public utility. The interpretation of the legal framework will influence the scope of the case, the identification of relevant issues, discovery and testimony, the evidentiary hearing, and the standards ultimately applied by the Commission.

While the Commission has undertaken substantial legal analysis and thought in determining its interpretation and application of the applicable laws governing acquisitions, there is no question this interpretation will be brought before this Court in this current appeal. Uncertainty as to the outcome, therefore, carries substantial consequences. The pending proceeding will require significant expenditures of time and resources by the Commission, applicants, intervenors, Commission Utility Staff, and members of the public. Resolving the framework at the outset will reduce the risk that

those resources are expended under a legal structure later determined to be incorrect.

The Commission does not ask this Court to decide the merits of the pending acquisition or give an advisory opinion concerning that proceeding. The question presented here arises from an actual Final Order before the Court on appeal. The pending acquisition matters only because it makes resolution of that existing legal controversy unusually consequential and time sensitive.

A decision clarifying the legal framework would allow the Commission to apply this Court's interpretation prospectively while independently evaluating the pending acquisition on its own facts and record.

D. Advancing the threshold issue would preserve ordinary appellate review of the remaining issues and would not favor any party or outcome.

The Commission does not ask the Court, through this motion, to adopt the Commission's interpretation of Sections 62-6-12 or 62-6-13, approve Rule 17.6.450 NMAC, endorse the "Six-Factor Analysis," or affirm any portion of the Final Order; those are matters for briefing on the merits.

The Commission seeks only an authoritative and timely determination of how the governing legal authorities interact. Whatever the Court's answer,

it will guide the Commission's administration of future acquisition proceedings and provide certainty to regulated utilities, parties, and the public.

Advancing that discrete question does not necessarily require acceleration of the entire appeal. After the Court resolves the threshold issue, the remaining appellate issues could proceed according to the Court's ordinary procedures.

That approach balances the immediate need for guidance with the parties' interest in full and orderly appellate review of the remaining issues.

E. Alternatively, if the threshold question cannot appropriately be resolved separately, the Commission respectfully requests the Court expedite consideration of the appeal in its entirety.

The Court may conclude that the relationship among Sections 62-6-12 and 62-6-13, Rule 17.6.450 NMAC, and the "Six-Factor Analysis" cannot appropriately be determined without considering how the framework was applied to this record.

If so, the Commission alternatively requests an accelerated briefing schedule and consideration of the appeal in its entirety during the 2026-2027 Term.

The underlying administrative proceeding was extensive, but the parties are already familiar with the record and issues. An accelerated schedule can therefore preserve full merits briefing and any oral argument the Court determines would assist its review.

Because Rule 23-101(C) expressly permits advancement of matters involving general public interest or policy, the need for timely guidance concerning also justifies advancement of the entire appeal if necessary to resolve the threshold question.

III. Conclusion

The Commission therefore respectfully requests that this Court: (1) advance for briefing and decision the threshold legal question concerning the relationship among NMSA 1978, Sections 62-6-12 and 62-6-13, Rule 17.6.450 NMAC, and the Commission's "Six-Factor Analysis"; (2) establish an accelerated briefing schedule directed to that question; (3) after resolving it, permit the remaining appellate issues to proceed in the ordinary course; or, alternatively, (4) if the threshold question cannot appropriately be resolved separately, establish an accelerated schedule for briefing and consideration of the appeal in its entirety during the Court's 2026-2027 Term, with or without

oral argument as the Court deems appropriate; and (5) grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

NEW MEXICO PUBLIC REGULATION COMMISSION

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 18, 2026, I caused a copy of the foregoing *New Mexico Public Regulation Commission's Motion to Advance a Threshold Issue for Briefing and Decision or, in The Alternative, for Expedited Briefing and Consideration of the Appeal* to be electronically filed in the Supreme Court's Odyssey filing system, which in turn caused service upon all counsel of record.

/s/ Erin Lecocq
Erin Lecocq

Exhibit B

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NEW ENERGY ECONOMY, INC.,
Appellant,

No. S-1-SC-41551

v.

NEW MEXICO PUBLIC REGULATION COMMISSION,

Appellee.

In the Matter of the Joint Application
For approval to acquire
New Mexico Gas Company, Inc.
By Saturn Utilities HoldCo, LLC.
NMPRC Case No. 24-00266-UT

NEW MEXICO PUBLIC REGULATION COMMISSION'S REPLY IN SUPPORT OF MOTION TO ADVANCE THRESHOLD ISSUE FOR BRIEFING AND DECISION

The Commission respectfully submits this Reply because New Energy Economy, Inc.'s ("NEE" or "Appellant") Response rests on a mischaracterization of the relief the Commission seeks. The Commission does not ask this Court to formulate a new legal standard for utility acquisitions, to alter existing Commission precedent, or to issue legal instructions for a separate proceeding. It asks the Court to decide earlier a question of law that Appellant's own appeal requires the Court to decide in any event.

Appellant's Response asserts that "[t]here is no unsettled threshold question requiring this Court's advance guidance," that "[t]he governing law is already settled," and that this appeal presents the concrete question whether the Commission followed that law when it approved this acquisition. [**Resp. 1, 3**] The Commission agrees that this appeal presents a concrete controversy concerning the legality of the Commission's decision. The disagreement is over what follows from that premise.

Appellant's filed Statement of Issues confirms that resolution of that controversy requires the Court to determine what the governing legal framework requires. Its first issue asks whether the Commission "appl[ied] an incorrect legal standard" by allegedly abandoning its "settled 'net public benefit' framework and Six-Factor Analysis." [**SOI 3**] Appellant further characterizes the Six-Factor Analysis as "the governing legal standard repeatedly articulated by the Commission itself" and contends that the Commission instead applied "a fundamentally different legal standard." [**SOI 5**] Its second issue challenges the Commission's characterization and application of the Six-Factor Analysis, including the Final Order's explanation that the analysis is an "aid" rather than a "test," that its factors are not

individually mandatory elements of approval, and that an acquisition may be approved when a factor weighs against approval. [**SOI 8**]

Those are legal questions already presented by this appeal. The Commission asks only that the Court resolve that threshold legal dispute before the parties proceed through the remainder of merits briefing.

A. Appellant's Own Description of its Appeal Confirms That the Governing Legal Framework is Squarely at Issue.

Appellant attempts to draw a distinction between determining the governing legal framework and deciding whether the Commission followed that framework. [**Resp. 1, 3**] On the issues Appellant has presented, however, the latter necessarily requires the former.

This is not a case in which the parties agree upon the governing legal rule and dispute only the evidentiary support for the Commission's application of it. Appellant expressly contends that the Commission "appl[ied] an incorrect legal standard." [**SOI 3**] It asserts that Commission precedent requires a particular net-public-benefit framework and particular operation of the Six-Factor Analysis. [**SOI 3-5**] It further contends that the Commission unlawfully departed from that precedent by characterizing and applying the Six-Factor Analysis differently in the Final Order. [**SOI 5-8**]

The Commission, in this Motion and in general, does not concede that it departed from its precedent. To the contrary, the Final Order applied the Commission's Six-Factor Analysis within the statutory and regulatory framework governing the transaction and found a net public benefit. [**NOA, Exhibit A at 54**] Appellant disagrees with the Commission's interpretation and application of that precedent. [**SOI 8**] That disagreement creates the legal question the Commission asks this Court to resolve first.

Appellant's own formulation of its issues therefore defeats the premise that there is no threshold legal question before the Court. The Commission's Motion does not ask the Court to prejudge whether Appellant is ultimately correct about the requirements of Commission precedent, it simply asks the Court to answer the legal question first.

B. Appellant's assertion that the law is "settled" addresses the answer to the legal question, not whether the question is before the Court.

Appellant devotes substantial portions of its Response to arguing that Commission precedent has already established the legal framework governing utility acquisitions. [**Resp. 3-8**] It argues, among other things, that decades of Commission decisions require affirmative consideration of ratepayer benefits and protections and that the Commission could not depart from that

precedent without notice and justification. [**Resp. 3-10**] The Commission does not dispute this. However, Appellant's argument assumes the very legal conclusion the appeal asks this Court to review: that the Commission's precedent requires the *particular interpretation* Appellant advances and that the Final Order departed from it.

Appellant's Statement of Issues confirms the dispute. Appellant asserts both that the Six-Factor Analysis is "the governing legal standard" and that the Final Order unlawfully recharacterized how that framework operates. [**SOI 5, 8**] The question, therefore, is not whether Commission precedent has legal force; it undoubtably does. *See El Paso Electric Co. v. New Mexico Public Regulation Commission*, 2026-NMSC-___, ¶¶ 23, 26, ___ P.3d ___ (S-1-SC-40286, Apr. 24, 2026) (explaining that a Commission-approved rate remains legally operative notwithstanding an appeal and until the Commission's order is vacated by this Court). The question is what that precedent requires, how it operates together with the governing statutes and Rule 17.6.450 NMAC, and whether the Commission's Final Order complied with that law.

That question is one of first impression for this Court. The existence of Commission precedent does not eliminate the appellate legal question

concerning its meaning and application. It creates the framework the Court must interpret in deciding Appellant's appeal.

C. The Commission does not seek an advisory opinion concerning another acquisition.

Appellant also characterizes the Motion as an attempt to use this appeal to obtain prospective legal instructions for the separate Blackstone/TXNM-PNM acquisition. [**Resp. 2, 10-12**] That characterization confuses the reason the Commission seeks expedited resolution with the source of the legal question it asks the Court to resolve.

The question arises from this appeal. Appellant appealed this Final Order and expressly challenges the legal standard the Commission applied. [**SOI 3-8**] The Court therefore will be required to address that dispute, the result of which will be applied in all Commission acquisition dockets.

The Commission identified the pending acquisition because it makes the timing of this Court's resolution particularly important, but it did not create the controversy. As Appellant itself acknowledges, this appeal presents a ripe dispute concerning whether the Commission complied with the governing law in approving this transaction. [**Resp. 13-14**] And Appellant's Statement of Issues confirms that the appeal requires consideration of

Sections 62-6-12 and 62-6-13, Rule 17.6.450 NMAC, Commission acquisition precedent, and the Six-Factor Analysis. [**SOI 2-8**]

The fact that the Court's resolution of that legal dispute will provide guidance applicable to future Commission proceedings does not make the decision advisory. That is the ordinary consequence of appellate review of a disputed question of law. The separate pending acquisition explains why resolving the question earlier is in the public interest; it is not the basis for the Court's jurisdiction or the source of the controversy.

D. Advancing the legal question does not alter the merits of Appellant's appeal.

Finally, Appellant argues that the governing legal question cannot meaningfully be separated from the facts of this case and that the Court should simply decide, in the ordinary course, whether the Commission followed the law on this record. [**Resp. 15**] The Commission's Motion expressly accounts for that possibility by alternatively requesting expedited consideration of the entire appeal.

But advancing the threshold legal question does not remove the facts from appellate review or insulate the Commission's decision from scrutiny. It

simply establishes the legal framework against which those facts will be reviewed.

After the Court determines the legal question, the parties can address whether the Final Order satisfies those requirements on this record. Appellant's remaining claims—including its substantial-evidence, evidentiary, procedural, and other challenges—remain available for merits review. [**SOI 8-22**]

That sequence neither changes the governing law nor changes the question presented by Appellant's appeal. It simply permits the Court to resolve first the legal issue upon which the remainder of the appeal depends.

CONCLUSION

Appellant's Response portrays the Commission's Motion as a request to formulate new law for another proceeding. Appellant's own Statement of Issues demonstrates otherwise. Appellant asks this Court to determine whether the Commission "appl[ied] an incorrect legal standard," whether the Final Order properly interpreted and applied the Commission's longstanding acquisition framework, and whether the Commission acted consistently with Sections 62-6-12 and 62-6-13 and Rule 17.6.450 NMAC. [**SOI 2-8**]

The Commission simply asks the Court to decide that existing appellate controversy in an expedited manner, not to create a different one.

For those reasons, and those stated in its Motion, the Commission respectfully requests that the Court advance the threshold issue for briefing and decision or, alternatively, expedite briefing and consideration of this appeal.

Respectfully submitted,

NEW MEXICO PUBLIC REGULATION COMMISSION

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