



**Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

A. My name is Benjamin P. Luce. I am the Policy Director and Chair of the Coalition for Clean Affordable Energy. My address is 913 Acequia Madre, Santa Fe, New Mexico 87501.

**Q. PLEASE SUMMARIZE YOUR PROFESSIONAL BACKGROUND AND QUALIFICATIONS.**

A. A summary was provided in my direct testimony.

**Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

A. I am testifying on behalf of the Coalition for Clean Affordable Energy ("CCA"), a coalition of environmental and consumer groups focused on the development of renewable energy resources in New Mexico.

**Q. Please state your opinion of PRC Staff's position that the Commission should not approve PNM's plan at this time.**

A. In Staff's testimony, Staff stated that it has "no problem" with PNM's plan, but recommends that the Commission not approve PNM's plan at this time because Staff believes that the PV Program proposed by PNM is related to Case 05-00352-UT. This case is PNM's request to the Commission for a declaratory order allowing PNM to purchase Renewable Energy Credit ("RECs") from customer-generators with systems above 10 kW, which according to PNM's request would interconnect under NMPRC Rule 570.

While it is true that Case 05-00352-UT has not yet been acted on by the Commission, or even docketed yet, Staff's reason for its recommendation is not well founded in my opinion, for several reasons.

**Q. Please explain why you disagree with Staff's position.**

**A.** First, Case 05-00352-UT relates only to systems above 10 kW connecting under NMPRC Rule 570, which are simply not relevant to PNM's proposed PV program, because that program only involves systems which are 10 kW and less connecting under NMPRC Rule 571. If Staff has fundamental issues with the proposed PV program, it should raise these directly, explicitly, and separately from Case 05-00352-UT.

**Q. What does the RPS statute say about the ownership of RECs?**

**A.** In relation to the ownership of RECs, the RPS statute states that:  
"(1) renewable energy certificates: (a) are owned by the generator of the renewable energy unless: 1) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator; 2) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the public utility purchaser of the renewable energy unless retained by the generator through specific agreement with the public utility purchaser of the energy; or 3) a contract for the purchase of renewable energy is in effect prior to January 1, 2004, in which case the renewable energy certificates are owned by the purchaser of the energy for the term of such contract;"

In the first case, there is no question that a customer-generator would retain the RECs unless sold to the utility explicitly. In the second case, a utility that purchases the energy from a customer-generator could claim the RECs automatically unless the RECs are retained by the generator through a specific agreement with the utility.

**Q. How do you think this language would affect a customer-generator?**

**A.** First, this language clearly implies that a customer-generator who is also a Qualifying Facility ("QF") must be given a choice as to whether they prefer to retain the RECs. To interpret this otherwise would be precluding a case explicitly allowed for by law, and might also violate federal anti-takings law.

It might be further argued, however, that customer-generators who enter into a net-metering contract with a utility under NMPRC Rule 571 have been given that choice already and declined implicitly when they entered into the net-metering agreement.

The language in the statute in case 2), however, refers explicitly to a "utility purchaser of the energy". But FERC has previously denied a request by MidAmerican (Docket No. EL99-3-000; attached as Exhibit BL\_1) for a declaratory ruling against an Iowa Board ruling on net-metering, on the explicit basis that net-metering of customer-owned systems does not in fact constitute a power purchase by the utility. Specifically, the Commission wrote "In the case before us we find likewise that no sale occurs when an individual homeowner or farmer (or similar entity such as a business) installs generation and accounts for its dealings with the utility through the practice of netting" (page 6).

It is therefore clear that whether or not a net-metered system is deemed a QF, a power purchase, in the federal view, has not taken place unless an additional agreement to this

effect exists between the utility and customer-generator. From a state view, NMPRC Rule 571 also does not explicitly establish that a power purchase has occurred for energy supplied to the utility: The net-metering arrangement allowed for by NMPRC Rule 571 is clearly a method of metering only, not a power purchase arrangement. The only exception to this is possibly in the case of the net energy supplied over a full billing cycle, or if a net-metering customer is net-energy positive when the system in question is disconnected. The former case usually applies only to a small fraction of the renewable power fed back to the utility by a net-metering customer (many net-metered customers never come out net energy positive over a billing period), and even here the utility may simply credit the net energy delivered with no actual transaction, which avoids a power purchase in this case by effectively extending the billing cycle.

**Q. Why do you think the FERC ruling is relevant to PNM's ownership of RECs?**

**A.** The FERC ruling referred to above is also relevant to case 3) in the statute: Because no power purchase was actually taking place for net-metered systems, the RECs-associated systems installed prior to January 1 2004 also do not automatically belong to the utility. From a more fundamental standpoint, a utility cannot be deemed to be purchasing renewable power from a given source at a given time for the purposes of satisfying RPS requirements until such purchase is requested in the utilities' RPS Procurement Plan and approved by the Commission. This actually makes the whole question moot, because even if utilities were deemed to be purchasing the renewable energy and/or the RECs from net-metering customers already, no New Mexico utility has yet been approved to

purchase the RECs from such systems for the purposes of the RPS. Such purchases up to this time could in fact be disallowed by the Commission, strictly speaking.

**Q. Please summarize your testimony.**

**A.** In summary, CCAE believes that PNM's proposed PV program, with additional changes as proposed by CCAE in the first round of testimony, should be approved forthwith.

There is reason for the Commission to exercise some urgency in approving this program: Federal tax incentives for solar systems will become available in 2006, but only through 2007. There is therefore presently a near term window of opportunity for customer generators to save money in their initial investment. As it stands, PNM's program is not likely to begin until March 1, 2006, meaning that several months of opportunity have already been lost.

**Q. Does this conclude your testimony?**

**A.** Yes, it does.