

CASE NO. 05-00356-UT
PREPARED DIRECT TESTIMONY OF
JAMES A. BRACK

1 **Q. Please state your name and business address.**

2 A. James A. Brack. My address is the New Mexico Public Regulation
3 Commission ("Commission" or "NMPRC") Marian Hall, 224 E. Palace
4 Avenue, Santa Fe, New Mexico 87501.

5

6 **Q. What is your position with the Commission?**

7 A. I am the Economics Bureau Chief in the Utility Division of the New Mexico
8 Public Regulation Commission ("NMPRC" or "Commission").

9

10 **Q. What are your responsibilities as Economics Section Bureau Chief?**

11 A. I supervise the Staff's Economics Section. In addition, I am responsible
12 for analyzing topics of a regulatory, economic, and financial nature. The
13 results of my analyses are presented as testimony before the
14 Commission.

15

16 **Q. Please describe your educational background.**

17 A. I received a Bachelor of Science in Business Administration from Northern
18 Arizona University in 1982 and a Master of Arts in Economics, majoring in
19 Regulatory Economics, from New Mexico State University in 1989.

20

21 **Q. Have you previously testified before this Commission?**

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1 A. Yes. Please see Appendix A for a listing of cases in which I have filed
2 either testimony or an affidavit.

3

4 **Q. Have you reviewed Public Service Company of New Mexico's**
5 **("PNM") Renewable Energy Procurement Plan for 2006 and its**
6 **Annual Renewable Energy Portfolio Report for 2004 ("Plan or Plans")**
7 **filed on September 1, 2005 by PNM?**

8 A. Yes, I have reviewed PNM's Plans, as well as the supporting testimony.
9 My responsibility in this case is to present Staff's recommendation with
10 regard to the Commission's approval or modification of PNM's Plan filed
11 pursuant to the Renewable Energy Act ("Act"), specifically NMSA § 62-16-
12 4, and the Commission's Renewable Energy For Electric Utilities Rule
13 (17.9.572 NMAC or "Rule 572").

14

15 **Q. Would you please provide a brief history of the Commission's**
16 **renewable energy rule and the Renewable Energy Act?**

17 A. Yes. The Commission adopted its Rule 572, in December of 2002. This
18 rule sets out a process for promoting the use and development of
19 renewable energy in New Mexico and became effective July 1, 2003.
20 Rule 572's renewable portfolio standard ("RPS") requires each public
21 utility to have an energy portfolio that includes a progressively greater

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1 percentage of energy from renewable sources, over time, on a reasonable
2 cost basis. Each public utility is required by Rule 572 to develop an
3 energy portfolio “diversified” as to type of renewable resource.

4

5 In March of 2004, the Act was enacted by the Legislature of the State of
6 New Mexico and became effective May 19, 2004. The Act requires New
7 Mexico’s public utilities to have a diversified Renewable Portfolio Standard
8 (“RPS”) of no less than five percent of each public utility’s total retail sales
9 to its retail customers by 2006, and to increase that percentage by one
10 percent annually, reaching a total of ten percent by January 1, 2011.

11

12 While the Commission’s rule fundamentally contains the same objectives
13 and substance of the Act, in December 2004 the Commission, by its order
14 in NMPRC Case No. 04-00211-UT (“Case”), amended Rule 572 to
15 conform to the Act. The Commission in Case 04-00253-UT determined
16 the reasonable cost threshold for renewable energy that is required by the
17 Act.

18

19 **Q. What are the reporting requirements that govern this proceeding?**

20 A. By September 1 of each year until 2012, and thereafter as determined
21 necessary by the Commission, each public utility must file with the

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1 Commission an annual renewable portfolio procurement plan.
2 (17.9.572.16 NMAC) In addition, each public utility must file with the
3 Commission a report regarding its renewable energy generation and, or
4 purchases of renewable energy during the prior calendar year.
5 (17.9.572.17 NMAC)

6
7 The portfolio procurement plan is to include: (1) the cost of procurement in
8 the next calendar year for any new renewable energy resource required to
9 comply with the renewable portfolio standard; (2) the amount of
10 renewable energy the public utility plans to provide in the calendar year
11 commencing sixteen (16) months later, to satisfy the percentages
12 specified in the rule, less any reductions authorized by the rule or by law;
13 (3) an explanation and exhibits demonstrating how the amount specified in
14 Paragraph (2) was determined; (4) the reductions, if any, to the renewable
15 portfolio standard for procurements for nongovernmental customers with
16 consumption exceeding ten (10) million kilowatt hours per year and/or due
17 to the reasonable cost threshold, including an explanation and exhibits
18 demonstrating how the reduction was determined; (5) testimony and
19 exhibits that demonstrate that the proposed procurement is reasonable as
20 to its terms and conditions considering price, costs of interconnection and
21 transmission, availability, dispatchability, any renewable energy certificate

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1 values and diversity of the renewable energy resource; or (6)
2 demonstration that the plan is otherwise in the public interest.

3
4 The Annual Renewable Energy Portfolio Report is an itemization of all
5 renewable energy generation and/or renewable energy purchases during
6 the prior calendar year. In addition, this report is to be used to describe
7 and quantify the implementation of the voluntary renewable tariff
8 requirements in 17.9.572.15 NMAC.

9
10 **Q. Would you first discuss PNM's Annual Renewable Energy Portfolio**
11 **Report for 2004?**

12 A. In compliance with 17.9.572.17 NMAC, PNM filed its Annual Renewable
13 Energy Portfolio Report for 2004 as a rule compliance filing separate from
14 this case docket. That report is a summary of PNM's renewable energy
15 generation, purchases and sales for the prior year. Pursuant to PNM's
16 contract with FPL Energy New Mexico Wind, LLC ("FPL") a total of
17 513,587,466 kWh and associated renewable energy certificates ("RECs")
18 were purchased in 2004. Sales by PNM of RECs in the wholesale market
19 totaled 63,100,000 kWh for the year. Retirement of RECs totaling
20 31,204,879 kWh for the year was due to the renewable energy sales to
21 customers under "PNM Sky Blue", PNM's voluntary renewable energy

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1 program. Based on Staff's review of PNM's 2004 report, Staff believes the
2 utility has met the requirements of 17.9.572.17 NMAC.

3

4 **Q. Would you now discuss PNM's 2005 Annual Renewable Energy**
5 **Portfolio Procurement Plan?**

6 A. PNM's 2006 Plan provides an outline of current and potential resources
7 for compliance with the RPS required by the Act and Rule 572, and PNM's
8 plan toward achieving renewable energy diversity. For PNM, the 5% RPS
9 for 2006 will require PNM to acquire approximately 380,029 MWh of
10 renewable energy resources. This RPS requirement is reduced by 24,200
11 MWh to adjust for non-government customers with annual consumption
12 exceeding 10 million kilowatt hours. That adjustment has been made
13 pursuant to 17.9.572.10.C NMAC and the Act. For 2007 the RPS
14 requirement increases to 6% of PNM's total retail sales. PNM's projected
15 net RPS requirement for 2007 is 503,992 MWh. The retirement of banked
16 RECs will be PNM's primary means of meeting the RPS in 2006.

17

18 PNM will continue to procure wind energy generated at the New Mexico
19 Wind Energy Center and the RECs associated with that generation.
20 Pursuant to the stipulations approved by the Commission in Cases 3137
21 and 04-00311-UT, PNM records the RECs as a regulatory asset and the

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1 costs are deferred until PNM's next general electric rate case. In that
2 future rate case PNM will need to establish the reasonableness of the
3 costs for this renewable wind resource and seek recovery.

4
5 In Case 04-00311-UT PNM was authorized costs up to \$850,000 to
6 conduct a biomass assessment during 2005. In this 2006 Plan PNM is
7 proposing to issue in the fall of 2005 a request for proposals (RFP) for
8 biomass, solar, and other non-wind renewable resources. RFP responses
9 will be compared with PNM's assessment of a self-build biomass project
10 pursuant to the Case 04-00311-UT stipulation. PNM anticipates it would
11 file a supplement to its 2006 Plan for Commission approval to proceed to
12 acquire any resources selected from this RFP. PNM's Plan also indicated
13 it will procure those resources based on RFP responses that could
14 provided energy and/or RECs to PNM in 2006 and diversify PNM's
15 renewable portfolios at a reasonable cost. Information and costs
16 regarding those projects would be included in PNM's 2007 Renewable
17 Energy Portfolio Procurement Plan.

18
19 PNM is proposing a 12-year program to procure RECs from customer-
20 owned solar photovoltaic ("PV") facilities ("PV Program"). The PV
21 Program will begin as a program for small PV systems and then expand to

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1 larger PV systems. The Small PV Program will be limited to Small PV
2 systems rated at 10 Kilowatts (“kW”) or less. The Large PV Program
3 includes PV systems rated at more than 10 kW but is dependent on the
4 outcome of Case 05-00352-UT; only then would the Commission in a
5 PNM supplement to the 2006 Plan consider it. PNM is seeking in Case
6 05-00352-UT clarification by the Commission of certain provisions of Rule
7 572 and the Act. Staff believes Small PV systems are QF’s as defined by
8 FERC. With that, Staff believes the Small PV Program proposed by PNM
9 could be impacted by the Commission’s final determination in Case 05-
10 00352-UT and is not ripe for consideration by the Commission at this time.

11

12 PNM was also authorized in Case 04-00311-UT to recover costs up to
13 \$500,000 to implement a solar PV program during 2005. By the end of
14 2005 PNM plans that a 25 kW solar PV resource will be installed. In
15 addition, a 5 kW solar PV system is now in place at a PNM office building
16 in Albuquerque. RECs associated with the generation from these facilities
17 during 2006 will be used for RPS compliance during 2006.

18

19 **Q. It appears that the only new renewable energy resource for which**
20 **PNM is specifically seeking approval in its 2006 Plan is the Small PV**
21 **Project. Would you discuss that program in a detail?**

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1 A. The Small PV Program is 12-year program to provide RECs associated
2 with an estimated 18,701,280 kWh with a total program cost of
3 \$2,782,141. The cost per REC for this program works out to be \$0.15 per
4 kWh. That is also the price cap set in Case 04-00253-UT for solar
5 projects sized at 10 kilowatts and under. Approximately 26% of the
6 program costs are upgrades to PNM's Customer Information System
7 ("CIS") and program promotion costs. PNM will pay \$0.11 per kWh for
8 RECs from program participants. REC purchase payments will be applied
9 as a credit to the participant's electric bill on a monthly basis with amounts
10 owed in excess of \$20 paid directly to the customer. Eligible participants
11 will include new and existing PV systems interconnected with PNM
12 through Rule 571, "Net Metering of Customer-Owned Qualifying Facilities
13 of 10 kW or Smaller." Small PV Program participants will be charged a
14 one-time non-refundable application fee to cover the costs of processing
15 the applications, system inspections, and the cost of the second meter
16 required to measure REC production. The Small PV Program would be
17 implemented in 2006 about the first of March. PNM estimates that this
18 program will produce 400,140 kWh in 2006 and 610,740 kWh in 2007.
19 Based on those projections, the Small PV Program would account for
20 about 0.32% of PNM's projected net RPS requirements in 2006 and
21 0.36% in 2007. At \$0.15 per kWh for this resource, the cost would be

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1 about \$60,000 in 2006 and \$92,000 in 2006. Cost for the Small PV
2 Program will be treated as a regulatory asset to be recovered through
3 rates established in future rate proceedings.

4

5 **Q. Does PNM's 2006 Plan sufficiently meet the reporting requirements**
6 **of the Act and Rule 572?**

7 A. Yes. As discussed previously, for the purposes of complying with the
8 Commission's Rule 572, the proposed portfolio filing was to set forth in
9 detail the efforts by the public utility to ensure that the filing is consistent
10 with the renewable energy plan, and the cost impact on customers by
11 customer class. To comply with NMSA § 62-16-4.D the utility is to
12 address the cost of procurement to comply with the RPS. Testimony
13 demonstrating the reasonableness and the public interest is required.

14

15 PNM's September 1, 2005 filing was made to meet its requirement under
16 the Act and the filing requirements of Rule 572. PNM's Procurement Plan
17 is an indication of PNM's attempt to meet the intent of Rule 572 and the
18 Act to move toward an energy portfolio that includes a progressively
19 greater percentage of service from diversified renewable resources.

20

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1 **Q. Does Staff have a concern regarding PNM's plans for diversifying its**
2 **renewable energy portfolio?**

3 A. No. The Commission has clearly communicated that diversity is not only
4 desirable but also a requirement for utilities' renewable energy portfolios.
5 Staff believes that PNM's Plan is an indication of the company's attempt to
6 meet the intent of Rule 572 and the Act to move toward an energy
7 portfolio that includes a progressively greater percentage of service from
8 diversified renewable resources.

9

10 **Q. What is Staff's recommendation to the Commission regarding PNM's**
11 **Renewable Energy Portfolio Procurement Plan for 2006?**

12 A. Pursuant to Rule 572 (17.9.572.18 NMAC) and the Act (NMSA §62-16-
13 4.E), the Commission can approve or modify a public utility's portfolio filing
14 or procurement plan after notice and hearing. The Commission also has
15 an obligation to determine if the costs of the renewable energy resources
16 reflected in a utility's plan (for which the utility intends to seek recovery
17 through the rate-making process) are reasonable and recoverable.

18 It appears to Staff that the Small PV Program is the only new renewable
19 energy resource for which PNM is specifically seeking approval in its 2006
20 Plan. Because Staff believes that the Small PV Program may be

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1 impacted by the outcome of Case 05-00352-UT, Staff's position is that the
2 Commission should not approve this program at this time.

3
4 If in the future PNM determines to proceed with other programs discussed
5 in its 2006 Plan, the company could seek approval through a supplement
6 to this 2006 Plan, or through some future plan.

7

8 **Q. Does Staff have a recommendation to the Commission regarding**
9 **PNM's Annual Renewable Energy Portfolio Report for 2004?**

10 A. Based on Staff's review of PNM's 2004 report, Staff believes the utility has
11 met the requirements of 17.9.572.17 NMAC and no action by the
12 Commission is required at this time.

13

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

15 A. Yes it does.

APPENDIX A

Case Experience of James A. Brack
NMPUC Utility Economist

NMPUC Case No.	Company	Type of filing
2231	Socorro Electric Cooperative, Inc	Financing
2247	Texas-New Mexico Power Company	Extension of Time
2273	El Paso Electric	Financing
2288	El Paso Electric	Financing
2305	Gas Company of New Mexico	Variance
2307	Gas Company of New Mexico	Rates
2329	Kit Carson Electric Cooperative, Inc.	Financing
2335	Sierra Electric Cooperative, Inc.	Financing
2347	New Mexico Waterworks	CCN -- Rates
2353	Gas Company of New Mexico	Rate Rider
2354	Public Service Company of New Mexico	Financing
2359	Texas-New Mexico Power Company	Financing
2368	Ranchos de Placitas Water Company	Sale of Utility
2385	Public Service Company of New Mexico	Financing
2389	Independent Utility Company	Sale of Utility
2392	El Vadito de Los Cerrillos	CCN -- Rates
2402	Texas-New Mexico Power Company	Financing
2406	Valley View Association	Rates
2419	Texas-New Mexico Power Company	Financing
2439	Rio Rancho Utilities Corporation	Rates (Sewer)
2440	Rio Rancho Utilities Corporation	Rates (Water)
2452	Socorro Electric Cooperative, Inc.	Financing
2464	Sierra Electric Cooperative, Inc.	Rates
2466	Sandia Peak Utility Company	Financing
2468	Texas-New Mexico Power Company	Financing
2470	Mesa Development Center, Inc.	Financing
2481	New Mexico Waterworks	Show Cause
2482	Public Service Company of New Mexico	Financing
2500	Public Service Company of New Mexico	Exercise Agreement
2513	Southwestern Electric Cooperative, Inc.	Financing
2515	Public Service Company of New Mexico	Financing
2518	Kit Carson Electric Cooperative, Inc.	Financing
2523	Socorro Electric Cooperative, Inc.	Financing
2531	Texas-New Mexico Power Company	Rates
2532	Sandia Peak Utility Company	Financing
2545	Public Service Company of New Mexico	Financing
2555	Sierra Electric Cooperative, Inc.	Financing
2565	Mesa Development Center, Inc.	Rates
2574	Socorro Electric Cooperative, Inc.	Financing
2577	Kit Carson Electric Cooperative, Inc.	Financing
2578	Independent Utility Company	Financing
2587	Gas Company of New Mexico	Sale of Assets
2588	City of Santa Fe -- PNM	Financing /Sale of Utility/
2596	Public Service Company of New Mexico	Financing
2603	New Mexico Waterworks	Sale of Assets
2614	Sandia Peak Utility Company	Financing
2626	Public Service Company of New Mexico	Financing
2632	Southwestern Electric Cooperative, Inc.	GDP
2655	PNM-Gas Services	Rates
2662	PNM-Gas Services	Rates
2692	Public Service Company of New Mexico	Financing
2695	Socorro Electric Cooperative, Inc.	GDP
2700	Public Service Company of New Mexico	Variance
2712	Texas-New Mexico Power Company	Financing
2721	Public Service Company of New Mexico	Financing
2728	Public Service Company of New Mexico	Securities
2737	Kit Carson Electric Cooperative, Inc.	Rates
2739	Public Service Company of New Mexico	Financing
2751	Public Service Company of New Mexico	Financing
2752	PNM-Gas Services	Variance
2761	PNM-Electric Services	Rates
2762	PNM-Gas Services	Rates
2778	Sierra Electric Cooperative, Inc.	Financing
2783	Socorro Electric Cooperative, Inc.	Financing
2800	Ranchland Utility Company	CCN -- Rates

APPENDIX A

Case Experience of James A. Brack
NMPUC Utility Economist

NMPUC Case No.	Company	Type of filing
2805	West Mesa Water Company	Financing/GDP
2814	Caprock Water Company	Financing/GDP
2823	El Dorado Utilities Inc.	Rates
2842	New Mexico Waterworks	Abandonment
2851	Roosevelt County Electric Cooperative, Inc.	Financing
2858	Texas-New Mexico Power Company	Financing
2866	Otero County Electric Cooperative, Inc.	Financing
2874	Zia Natural Gas Company	CCN – Rates
2876	Sierra Electric Cooperative, Inc.	Financing
2935	Socorro Electric Cooperative, Inc.	Financing
2989	Plains Electric G & T Coop.	Merger
3037	Independent Utility Company	CCN – Rates
3037	Independent Utility Company	CCN – Rates [Stipulation]
3062	Comm South Communications	CCN – Rates
3103	Texas-New Mexico Power Company	GDP – Merger
3137	Public Service Company of New Mexico	Transition - Part II
3137	Public Service Company of New Mexico	Transition – Holding Co.
3199	Rio Grande Electric Cooperative, Inc.	Financing
3331	Otero County Electric Cooperative, Inc.	Financing
3333	Northern Rio Arriba Electric Cooperative, Inc.	Financing
3336	Springer Electric Cooperative, Inc.	Financing
3337	Socorro Electric Cooperative, Inc.	Financing
3338	Mora-San Miguel Electric Cooperative, Inc.	Financing
3339	Southwestern Electric Cooperative, Inc.	Financing
3378	Texas-New Mexico Power Company	Transition – SOS
3395	Texas-New Mexico Power Company	Financing
3576	West Mesa Water Company	Sale-Transfer/GDP
3603	Texas-New Mexico Power Company	Affiliated Transaction
3636	Duncan Valley Electric Cooperative, Inc.	Rates
3643	Texas-New Mexico Power Company	Rates [Stipulation]
3672	Texas-New Mexico Power Company	GDP – Affiliated Transaction
3760	Texas-New Mexico Power Company	Abandonment
3762	Duncan Valley Electric Cooperative, Inc.	Rule 550 Continuation
3767	Socorro Electric Cooperative, Inc.	Financing
3777	Sierra Electric Cooperative, Inc.	Financing
3838	Public Service Company of New Mexico	Financing
03-00044-UT	Texas-New Mexico Power Company	Financing
03-00131-UT	Texas-New Mexico Power Company	Financing
03-00263-UT	Public Service Company of New Mexico	Financing – Phase I & II
03-00292-UT	Public Service Company of New Mexico	Financing/ Affiliated Transaction
03-00333-UT	Texas-New Mexico Power Company	Affiliated Transaction
04-00306-UT	El Paso Electric	RPS Procurement Plan
04-00311-UT	Public Service Company of New Mexico	RPS Procurement Plan
04-00334-UT	Southwestern Public Service	RPS Procurement Plan
04-00315-UT	PNM/TNMP	Sale
05-00354-UT	Southwestern Public Service	RPS Procurement Plan