

A brief summary of CCAIE's position on each of those issues is:

1. Whether a public utility has discretion to acquire, or not to acquire, RECs from a QF from which it purchases renewable energy under NMPRC Rule 17.9.570 NMAC;

CCAIE's position is that a utility does have discretion to acquire, or not to acquire, RECs from a QF from which it explicitly purchases renewable energy under Rule 570.

2. Whether it is reasonable and prudent for a public utility to pay value for RECs, whether or not acquired with the associated energy;

CCAIE's position is that it may be reasonable and prudent for a public utility to pay value for RECs, whether or not acquired with the associated energy.

3. Whether renewable energy consumed on-site by a QF is energy "contracted for delivery" and thus usable to meet a utility's renewable portfolio standard;

CCAIE's position is that RECs associated with renewable energy consumed on-site by a QF are usable to meet a utility's renewable portfolio standard.

4. Whether the Legislature has authorized the Commission to approve incentives to benefit existing owners of customer-owned renewable energy systems;

CCAIE's position is that the Legislature has not explicitly authorized the Commission to approve incentives to benefit existing owners of customer-owned renewable energy systems per se, but has authorized the Commission to approve utility purchase of RECs from QFs, including RECs from owners of existing customer-owned renewable energy systems.

5. *Whether there are any policy constraints the Commission should consider in approving any unbundling of RECs;*

CCAIE's position is that there are no policy constraints for the Commission to consider in approving any unbundling of RECs; this issue has been addressed with language in the Renewable Energy Act ("REA") and in Commission-adopted Rule 572. This issue, as it relates to Commission-accepted procurement plans, is further discussed below.

6. *Whether energy and RECs must be obtained by a utility in order for an energy purchase to be considered a purchase from a renewable QF and, if so, what is the avoided cost which utilities should pay for bundled energy and RECs?*

CCAIE's position is that utility REC purchases from a QF are eligible for inclusion in a utility procurement plan for compliance with Rule 572, and that the Commission should establish clear reasonable cost thresholds for purchases of both RECs only (without energy) and RECs bundled with energy.

DISCUSSION OF CCAIE'S POSITION

I. WHETHER A PUBLIC UTILITY HAS DISCRETION TO ACQUIRE, OR NOT TO ACQUIRE, RECS FROM A QF FROM WHICH IT PURCHASES RENEWABLE ENERGY UNDER NMPRC RULE 17.9.570 NMAC

Rule 570, which governs utility agreements with QFs, is silent on the issue of RECs. To determine the treatment of RECs, one must turn to Rule 572 (the REA rule) for a definition and

discussion of REC ownership. Rule 572 clearly affords a public utility the option to acquire RECs from a QF. The parties were generally in agreement with this point. *See* Scharff (PNM) direct testimony, p. 7; Potturi direct testimony, p. 2; Newsom (EPE) direct testimony, p. 9; Luce (CCAIE) direct testimony, p. 3.

2. WHETHER IT IS REASONABLE AND PRUDENT FOR A PUBLIC UTILITY TO PAY VALUE FOR RECS, WHETHER OR NOT ACQUIRED WITH THE ASSOCIATED ENERGY

Utilities may acquire either renewable energy (with associated RECs) or RECs (without the associated renewable energy) to comply with Rule 572. Under Rule 572, the Commission has authority to determine whether a public utility's procurement plan for RPS compliance is reasonable and prudent. The Commission also reviews reasonableness and prudence in rate cases. The Commission previously has approved El Paso Electric Company's ("EPE") 2004 procurement plan, which relies on the acquisition of RECs from PNM for compliance with Rule 572.

PNM maintains that by acquiring RECs associated with energy consumed on-site by a QF, it is able to use those RECs to meet its RPS requirements. Scharff, Tr. p. 27, lines 10-15; and p. 43, line 7 through p. 47, line 19. EPE, SPS ("Southwestern Public Service Company") and CCAIE generally concur. *See, e.g.*, Newsom, Tr. p. 111, line 17 through p. 112, line 8; Butler Direct, p. 10; Luce, Tr. p. 120, line 7 through p. 122, line 3.

Staff, on the other hand, implies that renewable energy consumed on-site can only be counted towards the RPS if the utility and generator engage in a "simultaneous buy-sell" transaction. In its testimony, Staff has implied that the requirement that renewable energy be

“contracted for delivery” means that renewable energy must be delivered to the utility’s grid, and not directly to a customer’s load (as in the case of net-metered systems), to be eligible for use by utilities for RPS compliance. *See* Potturi Direct, p. 5. CCAIE disagrees with this implication for the following reasons: First, the REA does not require that energy represented by the REC be “delivered to the grid,” and does not even mention the grid. Instead, it requires only that the energy be “delivered in New Mexico.” NMSA 1978, § 62-16-5(B)(1)(b).

Second, Staff’s suggested interpretation is inconsistent with the context of the language in the REA. Section 5(B)(1)(b) of the Act provides:

(1) renewable energy certificates. . . may be traded, sold or otherwise transferred by their owner to any other party; provided that the transfers and use of the certificate by a public utility for compliance with the renewable energy portfolio standard shall require the electric energy represented by the certificate to be contracted for delivery in New Mexico unless the commission determines that there is a regional market for exchanging renewable energy certificates. . . .

This language clearly shows that the context of the phrase “contracted for delivery” is within the broad authority of the Commission to open up the RPS to a regional REC market **outside of New Mexico**. The purpose of the “contracted for delivery in New Mexico” language, therefore, is to ensure that the power associated with RECs is delivered inside New Mexico – not outside of New Mexico. Nothing in this provision provides any basis for interpreting it as imposing a restriction about exactly **how** or exactly to whom the renewable energy is delivered, as long as it is delivered in New Mexico.

Finally, it should also be noted that it is mathematically and physically possible to interpret the flow of electrical power, in the case of a net-metered QF that consumes a portion of its generation, as consisting of two electrical flows, one from the QF’s generation to the utility,

simultaneous with another flow from the utility to the QF's load. In a mathematical and physical sense, therefore, renewable energy consumed on-site is delivered to the New Mexico grid.

Because renewable energy consumed on-site by a QF has been delivered to loads within New Mexico, and is governed by interconnection contracts, it should be considered "contracted for delivery" and therefore usable to meet a utility's renewable portfolio standard.

Staff also implied that the reference in the definition of "renewable portfolio standard" in the REA to "retail sales" means that the utility must supply renewable energy directly from the utility's grid to its customers as part of its retail energy sales in order for the renewable energy to be eligible for compliance with the RPS. Staff's implication seems to be that RECs associated with renewable energy that is not directly included in retail sales cannot be eligible.

CCAIE disagrees with this interpretation. The language in Section 3(E) of the REA states:

"renewable portfolio standard" means the percentage of retail sales by a public utility to electric consumers in New Mexico that is required by the Renewable Energy Act to be supplied by renewable energy.

Section 62-16-3(E). Viewed by itself, this language might be susceptible to an interpretation such as that suggested by Staff. Other language in the REA, however, clearly indicates that RECs associated with renewable energy that is not explicitly included in a utility's retail sales are indeed eligible, as long as the underlying renewable energy is "contracted for delivery in New Mexico."

Indeed, Section 5 of the REA states that:

[t]he commission shall establish . . . a system of renewable energy certificates that can be used by a public utility to establish compliance with the renewable portfolio standard and that may include certificates that are monitored, accounted for or **transferred by or through a regional system or trading program for any region in which a public utility is located.**

(Emphasis added.) By stating that the RECs may include RECs which are “transferred by or through a regional system,” the REA presumes that the RECs may be unbundled from energy, and in particular, that they do not need to be associated with energy that is directly included in a utility’s retail energy sales.

Therefore, Section 3(E) does not require a utility to supply renewable energy from the utility’s grid to retail customers as part of its retail sales in order for the renewable energy to be eligible for the utility’s compliance with the RPS. For the REA to be internally consistent and logical, the phrase “supplied by renewable energy” in Section 3(E) must be interpreted to include either renewable energy that is directly supplied or eligible RECs, where the underlying renewable energy is not necessarily included in retail customer sales.

4. WHETHER THE LEGISLATURE HAS AUTHORIZED THE COMMISSION TO APPROVE INCENTIVES TO BENEFIT EXISTING OWNERS OF CUSTOMER-OWNED RENEWABLE ENERGY SYSTEMS

The REA nowhere explicitly mentions “incentives,” but it does explicitly deal with the ownership, sale, and use of RECs associated with QFs for RPS compliance. Existing customer-owned renewable energy systems interconnected under either Rule 570 or Rule 571 are QFs, and the REA nowhere prohibits the RECs associated with such systems from being used for RPS compliance. Moreover, the REA explicitly grandfathers certain existing renewable energy resources, showing that in some cases the Legislature wanted to absolutely ensure that certain existing renewable energy sources, that are already in a utility’s supply, be eligible for compliance with the RPS (leaving the Commission no discretion in these cases). For net-metered systems that interconnect under Rule 571, the RECs are not initially in a utility’s supply

(until a REC meter is explicitly added). The Commission therefore has the discretion to approve or disapprove the use of existing, net-metered customer generated RECs for RPS compliance. Moreover, a utility does not have the discretion to acquire all of the RECs associated with net-metered systems automatically (without payment), because the REA only allows such discretion for QFs from which the utility is purchasing the energy (as in systems that connect under Rule 570 and sell their power to the utility at avoided cost).

5. WHETHER THERE ARE ANY POLICY CONSTRAINTS THE COMMISSION SHOULD CONSIDER IN APPROVING ANY UNBUNDLING OF RECS

Throughout the course of this case, the utility procurement plans and the development of the REA and subsequent rulemaking, CCAIE has advocated for the unbundling of RECs and energy to ease compliance with the RPS and allow for New Mexico participation in national REC markets. The issue of whether the Commission should consider approving any unbundling of RECs has already been decided. Rule 572 allows utilities to acquire **either** RECs **or** bundled renewable energy to comply with the act's requirements. NMAC § 17.9.572.7(A).

While the PRC has authorized RECs as a compliance mechanism for the state RPS requirement, multiple markets exist for RECs. REC markets have evolved to the point where utilities and renewable energy generators regularly buy, sell, trade, or otherwise acquire RECs. PNM and EPE both are actively involved in the REC market. PNM is actively involved in the voluntary REC and renewable energy market through its wholesale contracts for RECs and wind energy with multiple entities. And the oral testimony of CCAIE witness Ben Luce referenced the

development of the WREGIS attribute tracking system and the activities of the voluntary green power market.¹ *See* Luce Tr. p. 118, line 18 through p. 119, line 24.

6. WHETHER ENERGY AND RECS MUST BE OBTAINED BY A UTILITY IN ORDER FOR AN ENERGY PURCHASE TO BE CONSIDERED A PURCHASE FROM A RENEWABLE QF AND, IF SO, WHAT IS THE AVOIDED COST WHICH UTILITIES SHOULD PAY FOR BUNDLED ENERGY AND RECS?

CCAЕ agrees with other parties that the REA allows utilities to take ownership of QF RECs without payment beyond avoided cost in certain circumstances. The language of the Section 4(B)(1)(a) of the REA states:

renewable energy certificates . . . 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. . .

Significantly, this language explicitly states that a utility must be the “purchaser” of the renewable energy from a QF in order to automatically own the RECs. Thus, where a utility does not purchase renewable energy from a QF, it does not automatically acquire the RECs.

The fraction of a QF’s renewable energy that a utility purchases varies depending on the metering arrangements under which a QF interconnects, and in some cases also on the detailed operation of the QF (e.g., when the QF produces relative to when it consumes power). In

¹ The WREGIS website may be found at <http://www.westgov.org/wieb/wregis/>. Information on the status of markets for RECs may be found at http://www.resource-solutions.org/policy/TariffHandbook/Handbook_on_Renewable_Energy_Programs_&_Tariffs.pdf and <http://www.eere.energy.gov/greenpower/resources/pdfs/38994.pdf>.

particular, utilities do not purchase all of the output of a QF under some metering/interconnection arrangements, and cannot automatically take ownership of RECs associated with that fraction of the energy that they do not explicitly purchase. For example, all of the RECs associated with the renewable energy generated by QFs that interconnect under NMPRC Rule 570, under a metering option such that the QF's renewable energy generation is explicitly metered by the utility and purchased at avoided cost, belong to the utility unless the utility voluntarily allows the QF to retain ownership of the RECs.

For net-metered systems that interconnect under NMPRC Rule 571, however, the only renewable energy that is explicitly purchased by the utility is the net excess kilowatt-hours that are explicitly purchased at avoided cost by the utility. How these kilowatt-hours are purchased depends on the different billing options for this purchase under NMPRC Rule 571. Either the utility purchases the net excess kilowatt-hours at the end of a billing period, or it purchases them when the system is disconnected, depending on which billing option under Rule 571 the utility chooses. The RECs associated with this purchased renewable energy clearly belong to the utility unless the utility voluntarily allows the QF to retain ownership of the RECs. The RECs associated with the remaining renewable energy generated by the net-metered QF (and used by it), however, are retained by the generator. This includes, for example, the renewable energy which is measured by the additional "RECs meter" which is utilized under PNM's Small PV program.

The above interpretations are consistent both with FERC rulings and with the explicit language of the REA. FERC has ruled that net-metering doesn't constitute a power purchase, but rather a swap of electricity (except for any net-excess kilowatt-hours that are explicitly purchased at avoided cost, as with New Mexico's net-metering rule). FERC has additionally

ruled that the ownership of RECs associated with QF generation is determined only by state law. Specifically, FERC found: “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.” (MidAmerican Energy Holdings Company, 94 FERC ¶61,340 2001). FERC found further: “There may be, over the course of the billing period, either a net sale from the individual to the utility, or a net purchase by the individual from the utility. When there is a net sale to a utility, and the individual's generation is not a QF, the individual would need to comply with the requirements of the Federal Power Act.” Id. pg. 7

FERC’s ruling that net-metering does not constitute a power purchase makes physical as well as legal sense. Unless an additional RECs meter is installed, neither the utility nor the customer-generator can even know how many RECs are generated under net-metering, because the reading on a net-meter does not show how much energy was produced, but rather only the difference between how much was produced and how much was consumed by the customer-generator.

Finally, the question of what is the avoided cost that utilities should pay for bundled RECs and energy is slightly confusing. Utilities should pay avoided cost according to their filing avoided cost rates for energy that they explicitly purchase from QFs interconnecting under Rule 570. If the utility chooses to automatically acquire the RECs associated with such systems, then the utility pays a zero amount for these RECs. If the utility declines to automatically acquire such RECs, and instead proposes to purchase such RECs and is approved to do so by the Commission, then the price paid for those RECs can be any price that the Commission approves and/or sets by modification of a utility’s procurement plan. This price should be equal or less to

the reasonable cost threshold for such RECs, unless the Commission has granted a variance for a greater price in a given instance. The Commission may take into account a wide range of factors, including societal benefits, when setting such reasonable cost thresholds.

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Respectfully Submitted,

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