

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE COMPANY)
OF NEW MEXICO'S PETITION FOR)
DECLARATORY ORDER REGARDING THE)
PURCHASE OF RENEWABLE ENERGY)
CERTIFICATES FROM QUALIFYING FACILITIES)
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
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Petitioner)
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Case No. 05-00352-UT

REBUTTAL TESTIMONY OF

BENJAMIN LUCE

On Behalf of the

Coalition for Clean Affordable Energy

August 16, 2006

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

2 **A.** My name is Benjamin Luce. I am the Director and Chair of the Coalition for Clean
3 Affordable Energy (“CCAЕ”). My business address is 802 Early Street, Santa Fe, New
4 Mexico 87505.

5
6 **Q. ARE YOU THE SAME BENJAMIN LUCE WHO PREVIOUSLY TESTIFIED IN**
7 **THIS DOCKET?**

8 **A.** Yes, I am.

9
10 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

11 **A.** My rebuttal testimony provides CCAЕ’s response to issues raised by other parties in their
12 initial written testimony.

13
14 **Q. DO YOU AGREE WITH STAFF THAT “IF A PUBLIC UTILITY EXERCISES**
15 **ITS DISCRETION TO ACQUIRE RECS ALONG WITH THE QF ENERGY,**
16 **THEN THE PRICE PAID FOR THE COMBINATION SHOULD BE LESS THAN**
17 **OR EQUAL TO THE REASONABLE COST THRESHOLD (RCT) IN ITS**
18 **LATEST DOCKET”?**

19 **A.** No. Although I don’t have any fundamental objection to the economics of Staff’s
20 suggestion, for practical reasons it would be much simpler if some RCTs were
21 established explicitly for RECs, as the Commission has *already* done for PNM’s small
22 PV program. The current RCT for small , for example, is for RECs, not the
23 combination of power and RECs. The implementation of PNM’s program, as approved

1 by the Commission, proves this. I actually proposed this RCT in Commission RCT
2 proceedings, and did so specifically as a PV RECs purchase, taking into account the
3 financial benefits of net-metering and even a possible solar tax credit. The QF energy
4 transfer for net-metered systems is already handled by the net-metering arrangement
5 separately, and quite adequately.

6 Implementing Staff's suggestion would likely introduce unnecessary complexities
7 in my opinion, with nothing gained. More specifically, it would require a new RCT for
8 small PV systems to be established, and might require major and costly changes to the
9 way net-metered systems are interconnected. The current system has actually evolved as
10 a simple and economic way to implement customer-owned generation, and I see little
11 reason to change it.

12
13 **Q. DO YOU AGREE WITH STAFF'S VIEWS ON WHETHER IT IS REASONABLE**
14 **AND PRUDENT FOR UTILITIES TO PURCHASE RECS FROM QFS?**

15 **A.** I agree with Staff that it is reasonable and prudent for utilities to purchase RECs from
16 QFs, and I agree that utilities should strive to keep costs low, but I disagree that such a
17 purchase must always be "a least cost" option for a utility per se. The Renewable Energy
18 Standard explicitly avoids the use of "least cost" language, and focuses instead on
19 "reasonable cost thresholds" as determined by the Commission, and Commission
20 consideration of utility procurement plans. This is because "least cost" is no longer well
21 defined in the context of the Renewable Energy Standard, and because the Act also
22 requires utility portfolios to be diversified. For example, is the phrase "least cost" to be
23 interpreted as "the least cost small PV option", or " the least cost renewable energy

1 option in general”? The Commission is empowered by the Act to distinguish between
2 different system types and other factors, and this power is not compatible with a strictly
3 “least cost” approach. The latter approach really belongs to a former era when the
4 different emission, distribution, and other characteristics of various sources were not
5 distinguished.

6
7 **Q. DO YOU AGREE WITH STAFF’S CHAIN OF REASONING THAT THE**
8 **DEFINITION OF "RENEWABLE PORTFOLIO STANDARD" AS A**
9 **“PERCENTAGE OF RETAIL SALES BY A PUBLIC UTILITY TO ELECTRIC**
10 **CONSUMERS” IN THE ACT IMPLIES THAT NO RECS ARE GENERATED**
11 **FOR QF POWER THAT IS CONSUMED ONSITE?**

12 **A.** No. The Act states that “‘renewable portfolio standard’ means the percentage of retail
13 sales by a public utility to electric consumers in New Mexico that is required by the
14 Renewable Energy Act to be supplied by renewable energy.” This definition does indeed
15 establish the total amount of renewable energy generation that needs to be achieved by a
16 utility, and also it is true that QF power that is consumed on-site will generally decrease
17 this number. But this language does not address *how* a utility achieves the required
18 renewable energy generation percentage. This is handled by *other* parts of Act, which
19 specify that a utility may buy, sell, or trade RECs. Moreover, the generation of RECs by
20 QFs is explicitly addressed by the Act, thereby establishing that there are RECs
21 associated with QFs, and there are no qualifiers in this language, or anywhere in the Act,
22 that suggest that this language does not apply to QF power consumed on-site.

1 **Q. DO YOU AGREE WITH STAFF’S PROPOSAL FOR A SIMULTANEOUS BUY-**
2 **SELL ARRANGEMENT BETWEEN UTILITIES AND QFS?**

3 **A.** No, although I do not disagree with the underlying economics that Staff is proposing. As
4 stated above, I feel it is much simpler for some RCTs to be set explicitly for RECs, such
5 that the buy-sell arrangements for energy are handled by other mechanisms, appropriate
6 to the circumstances.

7
8 **Q. DO YOU AGREE WITH STAFF’S SUGGESTION THAT IT APPEARS THAT**
9 **RENEWABLE ENERGY RESOURCES NOT INCLUDED BEFORE JULY 1,**
10 **2004 CANNOT BE USED FOR RPS COMPLIANCE?**

11 **A.** No. The reference to July 1, 2004 appears to originate with section 4.5 of the RPS statute,
12 which says “renewable energy resources that are in a public utility's electric energy
13 supply portfolio on July 1, 2004 shall be counted in determining compliance with this
14 section.” As a party to the original crafting the RPS, I recall that the purpose of this
15 language was simply, and only, to ensure that the existing large investments by utilities in
16 renewable energy projects, such as PNM’s contract with FPL Energy, and Xcel Energy’s
17 wind project near Clovis, not be ruled as ineligible for RPS compliance by the
18 Commission. Xcel and EPE acknowledge this also in their testimony. It was definitely
19 not intended, in my opinion, to somehow imply that other existing systems, including
20 customer-owned systems, not be eligible.

21 More generally, the statement is obviously not correct on its face because the
22 whole purpose of the RPS is add much more renewable energy generation after July 1,

1 2004: The Act was clearly not created just to form a cost recovery mechanism for
2 generation contracted for prior to July 1, 2004.

3
4 **Q. DO YOU AGREE WITH STAFF’S SUGGESTION THAT UTILITIES SHOULD**
5 **ONLY PURCHASE RECS FOR PURPOSES OF RPS COMPLIANCE AND NOT**
6 **FOR TRADING?**

7 **A.** No. This suggestion does not make sense because the Act explicitly allows trading of
8 RECs as one means by which utilities may achieve RPS compliance. Specifically,
9 section 5B1(b) of the Act says “renewable energy certificates: ... (b) may be traded, sold
10 or otherwise transferred by their owner to any other party; provided that the transfers and
11 use of the certificate by a public utility for compliance with the renewable energy
12 portfolio standard shall require the electric energy represented by the certificate to be
13 contracted for delivery in New Mexico unless the commission determines that there is a
14 regional market for exchanging renewable energy certificates;” This language clearly
15 implies that trading of RECs is allowed, under the restriction that the power be
16 “contracted for delivery in New Mexico”.

17
18 **Q. DO YOU AGREE WITH XCEL ENERGY’S TESTIMONY THAT THE**
19 **LEGISLATURE HAS NOT AUTHORIZED THE COMMISSION TO APPROVE**
20 **INCENTIVES TO BENEFIT OWNERS OF CUSTOMER-OWNED RENEWABLE**
21 **ENERGY SYSTEMS THAT WERE INSTALLED PRIOR TO JULY 1, 2004? IF**
22 **NOT, WHY?**

1 A. No, that is, insofar as “incentives” is interpreted to mean utility purchase of RECs
2 associated with customer-owned generation. The reference in Xcel’s testimony to July 1,
3 2004 appears to originate with section 4.5 of the RPS statute, which says “renewable
4 energy resources that are in a public utility’s electric energy supply portfolio on July 1,
5 2004 shall be counted in determining compliance with this section.” As stated above in
6 another question, as a party to the original crafting the RPS, I recall that the purpose of
7 this language was simply to ensure that the existing investments of utilities in renewable
8 energy projects, such as PNM’s contract with FPL Energy, and Xcel Energy’s wind
9 project near Clovis, not be ruled as in-eligible for RPS compliance. Xcel and EPE
10 acknowledge this. It was definitely not intended, in my opinion, to somehow imply that
11 existing customer-owned systems not be eligible.

12
13 In fact, if one wants to stretch the interpretation of this language, it could actually
14 be interpreted to imply that existing customer-owned renewable energy systems “shall”
15 be included, because customer-owned renewable energy systems installed prior to July 1,
16 2004 are in fact renewable energy resources “in a public utility’s electric supply
17 portfolio”, in that they are “contracted for delivery” through explicit net-metering
18 contracts, are serving load on a utilities system (both the customers and also other
19 customers load), and are potential sources of RECs for RPS compliance.

20
21 Xcel also comments, in support of their position, that they feel the overall intent
22 of the RPS was to encourage new renewable energy resources. I agree with this generally,
23 but feel the inclusion of existing customer-owned systems is appropriate for a number of

1 reasons, not the least among them that it would be blatantly unfair to include only utility-
2 scale systems and arbitrarily exclude customer-owned systems. There is simply no basis
3 in the legislation for such discrimination, and such discrimination would be highly
4 provocative. Moreover, the amount of existing of customer-owned generation is trivial
5 compared with utility-scale generation existing prior to July 1, 2004.

6 More fundamentally, inclusion of existing customer-owned generation does have
7 a desirable impact on the development of renewables for RPS compliance: It strongly
8 encourages those customers to maintain and even expand their systems. These systems,
9 like the existing utility-scale generation, are in fact generating RECs now, and into the
10 future, and it important that this generation should be adequately supported and
11 encouraged. This is arguably especially true for customer-owned generation, which lacks
12 the maintenance infrastructure of a utility or large power supplier. Finally, the inclusion
13 of existing customer-owned generation results in a simpler, and more uniform program.

14 Secondly, as I have described in my original testimony, and as PNM has also
15 mentioned in their testimony as well, the RPS statute does not address “incentives” per se
16 at all – all that is covered is the purchase of renewable energy and/or RECs by utilities for
17 the purpose of compliance with RPS requirements. The question is therefore somewhat
18 misleadingly posed.

19
20 **Q. DO YOU AGREE WITH XCEL ENERGY’S STATEMENT THAT IT DOES NOT**
21 **BELIEVE THAT IT IS REASONABLE AND PRUDENT FOR A UTILITY TO**
22 **PAY A SEPARATE AND ADDITIONAL AMOUNT FOR RECS**
23 **ASSOCIATED WITH QFS?**

1 A. No. I believe that it can be, though not necessary always, reasonable and prudent for a
2 utility to pay a separate and additional amount for RECs associated with QFs. Xcel
3 Energy in this case is not taking into account the fact that statute allows a QF to retain its
4 RECs, if the utility agrees, and allows for RECs to be traded and sold for purposes of
5 RPS compliance. Moreover, Xcel also fails to address that doing so may be crucial to
6 providing the financial support for the development of QFs that the Commission deems
7 desirable. It is my understanding that the RPS was crafted explicitly to allow this.

8

9 **Q. DO YOU AGREE WITH XCEL ENERGY’S STATEMENT THAT IT IS NOT**
10 **POSSIBLE TO DETERMINE THE VALUE OF RECS IN THE ABSENCE OF A**
11 **REGIONAL OR LOCAL MARKET?**

12 A. No. Free market valuation of RECs is not the only meaningful way to value RECs or set
13 REC prices, and in fact may be the least relevant method for New Mexico at this time. It
14 is quite possible to project the likely the impact of a REC price on the development of a
15 particular source, especially the development of customer-owned sources. For example,
16 the RECs price of 13 cents per kilowatt-hour for RECs associated with PNM customer-
17 owned PV systems was calculated to combine with net-metering and solar tax credits to
18 achieve a “payback” time of 25 years or longer, with the idea that this will result in a
19 significant but reasonable increase in the rate of grid-tied PV installation.

20

21 Prices may also be varied over time to achieve the development desired by the
22 Commission: If it is found that REC price encourages too little, or too much
23 development, it may be increased or lowered, respectively, by the Commission. The

1 Commission has substantial freedom under the Act to set REC prices as it sees fit to
2 achieve the diversified RPS portfolios of utilities, and this should be the pre-dominant
3 outlook of the PRC until such time as a true free market for RECs develops. Even if and
4 when a free market does develops, the PRC shouldn't necessarily automatically look to
5 the free market for its RECs pricing: The entire system of regulated electricity generation
6 and delivery is in fact a substitute for a free market – utilities enjoy a monopoly in return
7 for regulation. Basing RECs prices solely on free market considerations would not
8 necessarily be consistent or desirable within the regulated framework.

9
10 **Q. DO YOU AGREE WITH EPE'S STATEMENT THAT A MANDATORY**
11 **PURCHASE OF QF POWER IMPLIES THAT THE REC'S MUST**
12 **AUTOMATICALLY BE TRANSFERRED TO THE UTILITY?**

13 **A.** No. PURPA did not contemplate RECs, and as PNM has testified in this proceeding, and
14 both CCAE and PNM in proceedings around PNM's 2006 Procurement Plan, the FERC
15 has discussed this point, and clearly stated that the answer is a matter of state law, and not
16 something following from PURPA.

17
18 **Q. DO YOU AGREE WITH EPE'S STATEMENT THAT RENEWABLE ENERGY**
19 **CONSUMED ON-SITE IS NOT "CONTRACTED FOR DELIVERY" AND THUS**
20 **NOT USABLE TO MEET A UTILITY'S RENEWABLE PORTFOLIO**
21 **STANDARD?**

22 **A.** No. EPE erroneously states that the power consumed on-site is not "directly measured or
23 contractually accounted for". In the case of PNM's PV REC program, for example, the

1 solar power generation is explicitly measured with a second meter measuring the full
2 output of the system, and the interconnection and power pricing arrangements are
3 governed by an explicit contract with the utility.

4

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A.** Yes, it does.