

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1 **Q. PLEASE STATE YOUR NAME AND IDENTIFY THE PURPOSE OF YOUR**
2 **REBUTTAL TESTIMONY.**

3 **A.** My name is Patrick K. Scharff. I have previously filed direct testimony on behalf of
4 Public Service Company of New Mexico (“PNM”) in this proceeding. The purpose
5 of my rebuttal testimony is to address certain portions of the filed direct testimony of
6 the Utility Division Staff (“Staff”) of the New Mexico Public Regulation Commission
7 (“Commission” or “NMPRC”), El Paso Electric Company (“EPE”), Southwestern
8 Public Service Company (“SPS”) and the Coalition for Clean Affordable Energy
9 (“CCAIE”). None of the other intervening parties has filed testimony in this case.
10 The issues identified by the Commission, as addressed below, were described in
11 detail in my direct testimony.

COMMISSION ISSUE #1

14 **Q. PLEASE ADDRESS STAFF’S POSITIONS CONCERNING THE**
15 **COMMISSION’S ISSUE #1.**

16 **A.** In addressing the Commission’s Issue #1, Staff essentially makes three points: (1) the
17 Renewable Energy Act (“REA”) only allows a public utility to acquire RECs from a
18 QF to meet the utility’s Renewable Portfolio Standard (“RPS”); (2) if the utility does
19 not acquire RECs when it buys energy, the price to be paid is the utility’s avoided
20 cost; and (3) if the utility buys both energy and RECs, then the total price should be
21 less than or equal to the Reasonable Cost Threshold (“RCT”) established by the
22 Commission. I will address each of Staff’s positions below.

23

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1 PNM does not agree with Staff’s first point. The REA does not limit a utility to
2 purchasing RECs, from a QF or from any other source, for the sole purpose of
3 complying with the purchasing utility’s RPS. While satisfying an RPS is plainly one
4 legitimate purpose for which a utility may purchase a REC, it is not the only purpose.

5

6 In this regard, I would refer the Commission to two sections of the REA, namely
7 Sections 62-16-5.A and 62-16-5.B (1) (b). Section 61-16-5.A says, among other
8 things, that the Commission shall establish a system of RECs “that *can be* used by a
9 public utility to establish compliance” (emphasis added) with the RPS. The use of the
10 words “can be” indicates that this section does not restrict the system of RECs
11 established by the Commission to being used exclusively for RPS compliance.
12 Additionally, Section 62-16-5.B (1) (b) states that RECs “may be traded, sold or
13 otherwise transferred by their owner to any other party” Rather than limiting
14 the trading, selling and transferring of RECs just to transactions aimed at satisfying a
15 utility’s RPS, this language allows willing buyers and sellers to transact freely in
16 RECs. As I will address later in my testimony in regard to Commission Issue #5, the
17 broader construction of the statute I am advocating (*i.e.*, that utilities are not limited
18 to acquiring RECs solely to satisfy an RPS) is also more conducive to promoting a
19 vigorous market in RECs, and to promoting the statewide development of renewable
20 energy resources, than the more restrictive interpretation advanced by Staff.

21

22 PNM agrees with Staff’s second position. It is consistent with the Public Utility
23 Regulatory Policies Act of 1978 (“PURPA”) that utilities should not be required to

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1 purchase energy from QFs at a price greater than the utility’s avoided cost. Staff’s
2 position is also consistent with previous Federal Energy Regulatory Commission
3 (“FERC”) decisions that avoided cost, as it pertains to QFs, does not address or
4 include any consideration for RECs or for the potential value of RECs. (See PNM
5 Exhibit ____ (PKS-2), attached to my direct testimony, for a discussion regarding
6 relevant FERC case law.) Further, PNM agrees with the implication of Staff’s second
7 position, namely that a utility paying a QF a price for RECs, over and above the
8 avoided cost of energy, is or can be a prudent action by the utility.

9
10 With regard to Staff’s third position, PNM makes the following observation. Staff’s
11 proposal, if adopted by the Commission, will have a consequence that may not have
12 been contemplated in the Commission’s Final Order that established the RCT in
13 NMPRC Case No. 04-00253-UT. The RCT price is a fixed value. However,
14 throughout the year, PNM’s avoided costs vary with respect to on-peak and off-peak
15 prices and by month. Each year PNM files its updated Rate 12 “Cogeneration and
16 Small Power Production” (the current version of which is included with PNM Exhibit
17 ____ (PKS-1) in my direct testimony), which contains PNM’s avoided cost schedule.
18 The result of Staff’s proposal that the total cost of avoided cost energy, plus REC
19 price, should not exceed the RCT implies that the value of RECs during peak load
20 periods is less than their value during off-peak load periods.

21
22 Intuitively, it seems that the value of RECs created by energy production during peak
23 load periods would have at least the value as the RECs associated with energy

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1 produced during off-peak periods, if not more. Staff does not address this issue in its
2 proposal and at this time PNM has no solution to this apparent conundrum.
3 Implementing Staff's proposal might mean that some revisions to the RCT, as
4 provided by 17.9.572.11B NMAC ("Rule 572"), would be appropriate. In this regard,
5 I note that under the Commission's Final Order in Case 04-00253-UT, a
6 reexamination of the RCT is to be conducted during the fall of 2007.

7

8 **Q. FOLLOWING UP ON THE FIRST PART OF YOUR DISCUSSION OF**
9 **STAFF'S POSITION ON ISSUE #1, DO YOU HAVE ANY COMMENTS ON**
10 **EPE'S TESTIMONY REGARDING THE PURPOSE OF RECS?**

11 **A.** EPE states (page 7, lines 10-11) that the purpose of RECs is to demonstrate
12 compliance with the REA and Rule 572. As I have addressed above, and as I further
13 address in response to Issue #5, I agree that one purpose of RECs is RPS compliance,
14 but this is not the only purpose. RECs may also be bought and sold for other
15 purposes consistent with the REA.

16

17

COMMISSION ISSUE #2

18 **Q. IN ITS RESPONSE TO ISSUE #2, STAFF HAS PROPOSED THAT IF A**
19 **UTILITY PURCHASES RECS TO SATISFY ITS RPS REQUIREMENTS,**
20 **EVEN IF THE UTILITY DOES NOT PURCHASE THE ASSOCIATED**
21 **ENERGY, THE PURCHASE IS PRUDENT ONLY IF IT IS THE LEAST**
22 **COST OPTION FOR THE UTILITY. DOES PNM AGREE WITH STAFF'S**
23 **POSITION?**

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1 **A.** No. Staff proposes a restriction on the purchase of RECs to satisfy the utility’s RPS
2 requirements that is not contained in either the REA or in Rule 572. Rule 572.16 sets
3 forth the criteria that a public utility must comply with in developing its annual
4 renewable energy plan, including a demonstration that the proposed procurement is
5 reasonable as to its terms and conditions considering price, costs of interconnection
6 and transmission, availability, dispatchability, any REC values and diversity of the
7 renewable energy resource. Rule 572.12 provides that costs incurred in complying
8 with a Commission-approved procurement plan are deemed reasonable and requires
9 the recovery of such costs through the ratemaking process. In other words, a “least
10 cost” limitation should not be superimposed on the other requirements of Rule 572.

11

12 **Q.** **IN ITS RESPONSE TO ISSUE #2, STAFF HAS ALSO ARGUED THAT IF A**
13 **UTILITY PURCHASES RECS TO SATISFY ITS RPS REQUIREMENTS,**
14 **EVEN IF THE UTILITY DOES NOT PURCHASE THE ASSOCIATED**
15 **ENERGY, THE PURCHASE IS PRUDENT ONLY IF THE RECS ARE**
16 **ASSOCIATED WITH ENERGY DELIVERED IN NEW MEXICO AND SOLD**
17 **TO RETAIL CUSTOMERS OF PUBLIC UTILITIES IN NEW MEXICO.**
18 **DOES PNM AGREE WITH THIS POSITION?**

19 **A.** I disagree with this statement to the extent it uses the words “and sold to retail
20 customers.” There is nothing in the statute or in Rule 572 that contains such a
21 requirement. It is enough that the energy be delivered in New Mexico and used by
22 retail customers.

23

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

COMMISSION ISSUE #3

Q. IN ITS RESPONSE TO ISSUE #3, STAFF IMPLIES THAT RECS ARE CREATED ONLY WHEN THERE IS A SALE OF RENEWABLE ENERGY. DOES PNM AGREE THAT RECS ARE ONLY CREATED WHEN THERE IS A SALE OF RENEWABLE ENERGY?

A. No. Rule 572 defines a REC to mean “a document evidencing that the enumerated renewable energy kilowatt-hours have been generated from a renewable energy generating facility.” Neither Rule 572 nor the REA makes any reference to a sale being required for a REC to be created.

Q. STAFF HAS PROPOSED THAT RECS ASSOCIATED WITH THE ENERGY PRODUCED BY A QF AND CONSUMED ON-SITE CAN BE CONSIDERED TO BE FOR DELIVERY IN NEW MEXICO ONLY IF THE UTILITY AND PRODUCER HAVE A SIMULTANEOUS BUY-SELL CONTRACT. DOES PNM AGREE WITH STAFF’S PROPOSAL?

A. No. Simultaneous Buy-Sell is a metering arrangement provided for in 17.9.570.10.C NMAC (“Rule 570”). In a simultaneous buy-sell arrangement, the utility purchases the entire output of the QF at avoided cost and supplies the entire consumption of the QF load at its normally applicable retail tariff rate. Currently, no QFs on PNM’s system are utilizing the simultaneous buy-sell option because such an arrangement is not in their financial best interest. Other metering options such as Load Displacement and two meter Net Metering, both of which are also authorized in Rule 570, provide the QF owner with the full retail value of all QF energy that is consumed on-site.

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1 Staff's proposal is also inconsistent with the goals of the Commission's single-meter
2 Net Metering Rule, 19.9.571 NMAC ("Rule 571") that provides the owner of a small
3 renewable energy QF the full retail value for all energy consumed on-site.

4

5 PNM agrees with CCAE's position that the energy produced and consumed on-site by
6 a New Mexico QF has been delivered to a New Mexico retail customer of an electric
7 utility.

8

9 Staff's proposal to allow REC purchases for QF energy consumed on-site only if
10 there is a simultaneous buy sell contract would, if embraced by the Commission,
11 place a significant financial restraint on the development of renewable energy QFs in
12 New Mexico. One of the financial constraints will be the cost of the additional
13 metering required for a simultaneous buy-sell arrangement. Simultaneous buy-sell
14 requires the use of three interval data recording meter registers, not two as shown in
15 Staff's example (Staff direct, page 6). Using Staff's example, when the QF output X
16 is greater than the on-site load Y, energy flow out onto the utility grid requires a
17 meter that registers or records and time stamps only the outflow of energy away from
18 the load. When the QF output X is less than the on-site load Y energy flows from the
19 utility toward the load, a single meter register cannot determine both the energy
20 toward and away from the load.

21

22 In approving PNM's Small PV Program in Case No. 05-00356-UT, in December
23 2005, the Commission accepted the proposition that RECs associated with QF energy

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1 consumed on-site are eligible for purchase to satisfy RPS requirements. I recognize
2 that in its final order in Case 05-00356-UT the Commission did not prejudice the
3 resolution of the present declaratory order proceeding; nevertheless, to accept Staff's
4 proposal for a simultaneous buy-sell metering arrangement would require that the
5 Commission reverse its previous decision and would likely bring to a halt, or at least
6 slow, the dramatic increases in deployment of small PV systems that PNM's Small
7 PV Program have fostered.

8

9 **Q. IN ITS RESPONSE TO ISSUE #3, EPE HAS PROPOSED THAT THE RECS**
10 **ASSOCIATED WITH THE ENERGY PRODUCED BY A QF AND**
11 **CONSUMED ON-SITE ARE NOT DELIVERED BY CONTRACT INTO NEW**
12 **MEXICO. DOES PNM AGREE WITH EPE'S POSITION?**

13 **A.** No. EPE states that if energy is consumed on-site it is not directly measured or
14 contractually accounted for and therefore no energy is delivered by contract into New
15 Mexico. EPE's testimony does not explain where the energy produced by a QF and
16 consumed on-site is delivered, if not into New Mexico.

17

18 PNM does agree with EPE that if a QF is interconnected with a utility in New Mexico
19 there must be an interconnection agreement as required by Rule 570 and Rule 571.
20 As I described in my direct testimony, at page 17, Rule 570 specifically authorizes a
21 QF with an interconnection agreement pursuant to the rule to provide power to
22 displace its own load and the interconnection agreement is for delivery to the utility

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1 whether or not the energy is sold to the utility. PNM believes that the QF's
2 interconnection agreement satisfies the requirement for delivery into New Mexico.

3

4

COMMISSION ISSUE #4

5 **Q. IN THEIR RESPONSES TO ISSUE #4, BOTH CCAE AND EPE STATE THAT**
6 **THE REA HAS NO LANGUAGE THAT EITHER ADDRESSES OR**
7 **AUTHORIZES INCENTIVES. DOES PNM AGREE THAT THE REA IS**
8 **SILENT ON THE MATTER OF INCENTIVES?**

9 **A.** Yes. Both the REA and the Commission's renewable energy rule, Rule 572, are
10 silent on the issue of incentives. However, to characterize payments made for the
11 purchase of renewable energy with RECs, or for RECs alone, as an "incentive"
12 payment is not accurate. The REA provides for the use of RECs; as I have already
13 addressed, they can be purchased, transferred or used to fulfill a utility's RPS
14 requirements or for other purposes. The Commission, through the RCT and as
15 provided for in Rule 572, has established that RECs have value. Neither the REA nor
16 the RCT differentiates between owners of existing renewable energy systems and the
17 owners of new systems. It is, therefore, incorrect to characterize payments for
18 renewable energy with RECs, or payments for RECs alone, as "incentives" regardless
19 of whether the renewable generator is an existing system or newly constructed.

20

21

COMMISSION ISSUE #5

22 **Q. IN ITS TESTIMONY ON ISSUE #5, STAFF HAS RECOMMENDED THAT**
23 **THE COMMISSION DIRECT UTILITIES TO PROCURE RECS ONLY FOR**

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1 **MEETING THEIR RPS REQUIREMENTS AND NOT FOR ENGAGING IN**
2 **TRADING ACTIVITY IN RECS. DOES PNM AGREE WITH STAFF'S**
3 **RECOMMENDATION?**

4 **A.** No, for reasons that I have already addressed in my rebuttal testimony in response to
5 Staff's position on Commission Issue #1. Significantly, Staff does not cite any
6 provision of the REA or of Rule 572 that requires or suggests such a restriction. In
7 fact, the language of both the REA and Rule 572 contemplate an active regional
8 market in the trading of RECs. Both statute and rule allow public utilities to
9 purchase, transfer and retain for up to four years RECs in addition to or in lieu of
10 using them for RPS compliance purposes. At a fundamental level, it is PNM's
11 position that RECs represent important property interests that ought, to the extent not
12 restricted by specific state laws or regulations, to be freely transferable between
13 willing buyers and sellers, like any other property interests.

14
15 Thus, Staff's recommendation to restrict the market for RECs appears to contradict
16 the goals of the REA and Rule 572 to increase the use of renewable energy to meet
17 energy supply needs and to take into account the environmental and economic
18 interests of New Mexico. Additionally, such a requirement would encourage public
19 utilities to take a very conservative approach toward encouraging renewable energy
20 development lest there be any risk of acquiring RECs in amounts that could
21 potentially exceed a future RPS requirement.

22

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1 I would further mention that Staff’s testimony concerning Commission Issue #5 is
2 inconsistent with several Commission orders. On December 21, 2005, in NMPRC
3 Case 05-00355-UT, the Commission approved EPE’s 2005 Annual Procurement Plan
4 for 2006 (the “EPE Plan”). The EPE Plan involved, among other things, the purchase
5 of RECs from PNM under a six-year contract. Staff’s testimony as to Commission
6 Issue #5 is thus plainly inconsistent with the Commission’s approval of the EPE Plan.
7 If Staff’s logic were to be accepted, PNM would not have been allowed to sell RECs
8 to EPE because PNM would only have been allowed to procure RECs for meeting its
9 own RPS requirements, and would not have been able to procure RECs that it
10 thereafter sold to EPE.

11

12 Also, on December 21, 2004, in NMPRC Case 04-00334-UT, the Commission
13 approved SPS’s renewable energy procurement plan. This decision, among other
14 things, provided for a sharing mechanism to account for proceeds from the sale of
15 RECs by SPS, with profits thereof to be shared between retail customers and
16 shareholders. Again, the Commission’s decision is contrary to Staff’s position that
17 utilities are limited to doing nothing more with RECs than accumulating them to
18 satisfy their RPS.

19

20 **Q. IN ITS TESTIMONY ON ISSUE #5, STAFF HAS RECOMMENDED THAT**
21 **THE COMMISSION DIRECT UTILITIES TO ADOPT STRATEGIES TO**
22 **MIMIMIZE THE COST IMPACT ON RATEPAYERS. DOES PNM AGREE**
23 **WITH THIS RECOMMENDATION?**

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1 **A.** Again, Staff has made a recommendation that is not consistent with the REA and
2 Rule 572.16, which require that public utilities develop a renewable energy portfolio
3 procurement plan. Through the cost cap mechanisms for large industrial energy
4 consumers and the RCT, the Commission has already taken effective steps to limit the
5 cost impact of compliance with the RPS on ratepayers. PNM does not believe that
6 this declaratory order proceeding is the appropriate venue to address additional
7 strategies to further minimize the impact of RPS compliance on ratepayers.

8

9 **Q.** **IN ITS RESPONSE TO ISSUE #5, SPS STATES THAT, IN THE ABSENCE**
10 **OF A REGIONAL OR LOCAL MARKET, IT IS NOT POSSIBLE TO**
11 **DETERMINE A VALUE OF RECS. DOES PNM AGREE?**

12 **A.** No. Any time there is a willing buyer and seller a REC value can be established.

13

14

COMMISSION ISSUE #6

15 **Q.** **IN ITS RESPONSE TO ISSUE #6, STAFF HAS PROPOSED THAT RECS BE**
16 **PURCHASED AT THE LOWEST PRICE THAT THE UTILITY HAS TO PAY**
17 **FOR RECS. DOES PNM AGREE WITH STAFF'S PROPOSAL?**

18 **A.** No. Staff's proposal would limit the ability of utilities to diversify their portfolios of
19 renewable energy resources by restricting purchases to the lowest cost technology
20 specified by the RCT. Staff does not take into account the requirements set forth in
21 both the REA and Rule 572, as discussed above, that a public utility must use in
22 developing its renewable energy portfolio procurement plan and for the
23 Commission's approval of such plan.

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1

2 **Q. IN RESPONDING TO ISSUE #6, STAFF REITERATES ITS EARLIER VIEW**
3 **THAT WHEN RECS AND ENERGY ARE PURCHASED FROM A QF THE**
4 **PRICE SHOULD BE NO HIGHER THAN THE VALUE ESTABLISHED BY**
5 **THE RCT. DOES PNM AGREE WITH STAFF'S PROPOSAL?**

6 **A.** I have addressed this point earlier in my rebuttal testimony in regard to Commission
7 Issue #1. As I explained above, PNM does not necessarily disagree with Staff's
8 position that, for compliance with the RPS, the total price of the energy purchased
9 from a QF at avoided cost plus the cost of the REC should not exceed the limit
10 established by the RCT. The consequence of an avoided cost-related price for RECs
11 purchased from QFs may not have been adequately considered in the Commission's
12 RCT proceeding.

13

14 **Q. IN ITS RESPONSE TO ISSUE #6, STAFF FURTHER STATES THAT "QFS**
15 **TAKING ADVANTAGE OF 'NET METERING' GET RETAIL RATE FOR**
16 **THE QF ENERGY PRODUCED." DOES PNM AGREE THAT QFS GET**
17 **THE RETAIL RATE FOR THE QF ENERGY PRODUCED?**

18 **A.** No. PURPA and Rules 570 and 571 restrict the rates paid by utilities to QFs for
19 energy purchases to no more than avoided cost. The provisions of both Rule 570 and
20 Rule 571 require that QF energy be purchased at a price not to exceed the utility's
21 avoided cost. This avoided cost price restriction on utility purchases of QF energy is
22 not limited to any single billing meter configuration. QFs do not, and by rule cannot,
23 get full retail rates for the QF energy produced. Rather than a "payment," QFs

**PUBLIC SERVICE COMPANY OF NEW MEXICO
REBUTTAL TESTIMONY OF PATRICK K. SCHARFF
NMPRC CASE NO. 05-00352-UT**

1 receive full retail value for all QF energy that is consumed on-site. The QF energy
2 that is consumed on-site displaces energy that would otherwise be purchased from the
3 serving utility at full retail rates.

4
5 Except for the very restrictive provisions of Rule 571, utilities purchase all QF energy
6 delivered to the utility at the utility's avoided cost. As an incentive to increase the
7 use of small renewable energy QF generation, one of the billing options provided by
8 Rule 571 is single-meter net metering. With single-meter net metering the billing
9 meter is allowed to run backwards when QF generation exceeds the on-site
10 consumption. By allowing the billing meter to run backward, the QF receives full
11 retail value for all of the energy produced by the QF, not just the energy consumed
12 on-site. However, Rule 571 is very clear in its provision that the price paid for any
13 purchases of energy from an eligible QF will be at the utility's avoided cost.

14

15 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

16 **A.** Yes, it does.

17

18

19