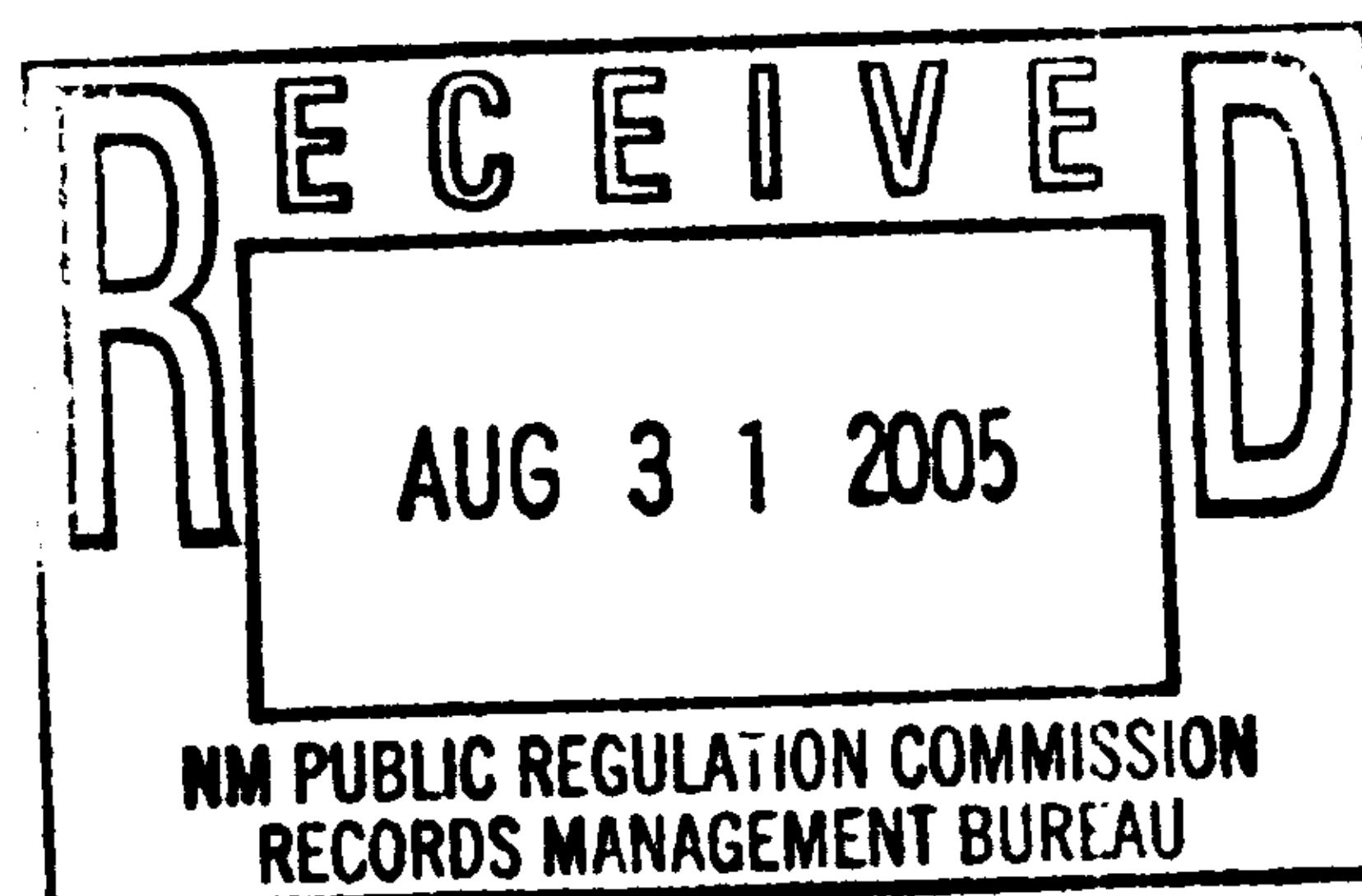


PNM
Alvarado Square
Albuquerque, NM 87158-0920
505 241-2700
Fax 505 241-2386
www.pnm.com

August 31, 2005



*A personal commitment
to New Mexico*

Mr. Ronald X. Montoya
Interim Operations Manager
New Mexico Public Regulation Commission
224 East Palace Avenue
Santa Fe, NM 87501

RE: *PNM's Filing of a Petition for Declaratory Order*

Dear Mr. Montoya:

05-00352-UT

Attached is PNM's Petition for Declaratory Order regarding 17.9.572 NMAC ("Rule 572"), Section 13(B). In conformance with 17.1.2.24(B) NMAC, attached with the Petition is a Brief setting forth PNM's position and relevant facts in support of the Petition and an Affidavit by Mr. Patrick K. Scharff attesting to the facts set forth in the Petition and Brief.

In this Petition for Declaratory Order, PNM requests that the Commission issue a declaratory order that: (1) PNM has discretion to determine whether to acquire RECs from Qualifying Facilities ("QFs"), as referenced in Rule 572.13(B), from which PNM purchases renewable energy under Rule 570; and (2) it is reasonable and prudent for PNM to pay value for RECs, whether or not acquired with the associated energy purchased from QFs.

The original and fourteen copies are for filing. Please conform the fifteenth copy for our files and return with our courier. Enclosed is a check for \$25.00 to cover filing fees. Copies of this filing are also being mailed or delivered to the parties identified on the service list.

If you have any questions regarding this filing, please contact me at 505-241-2479.

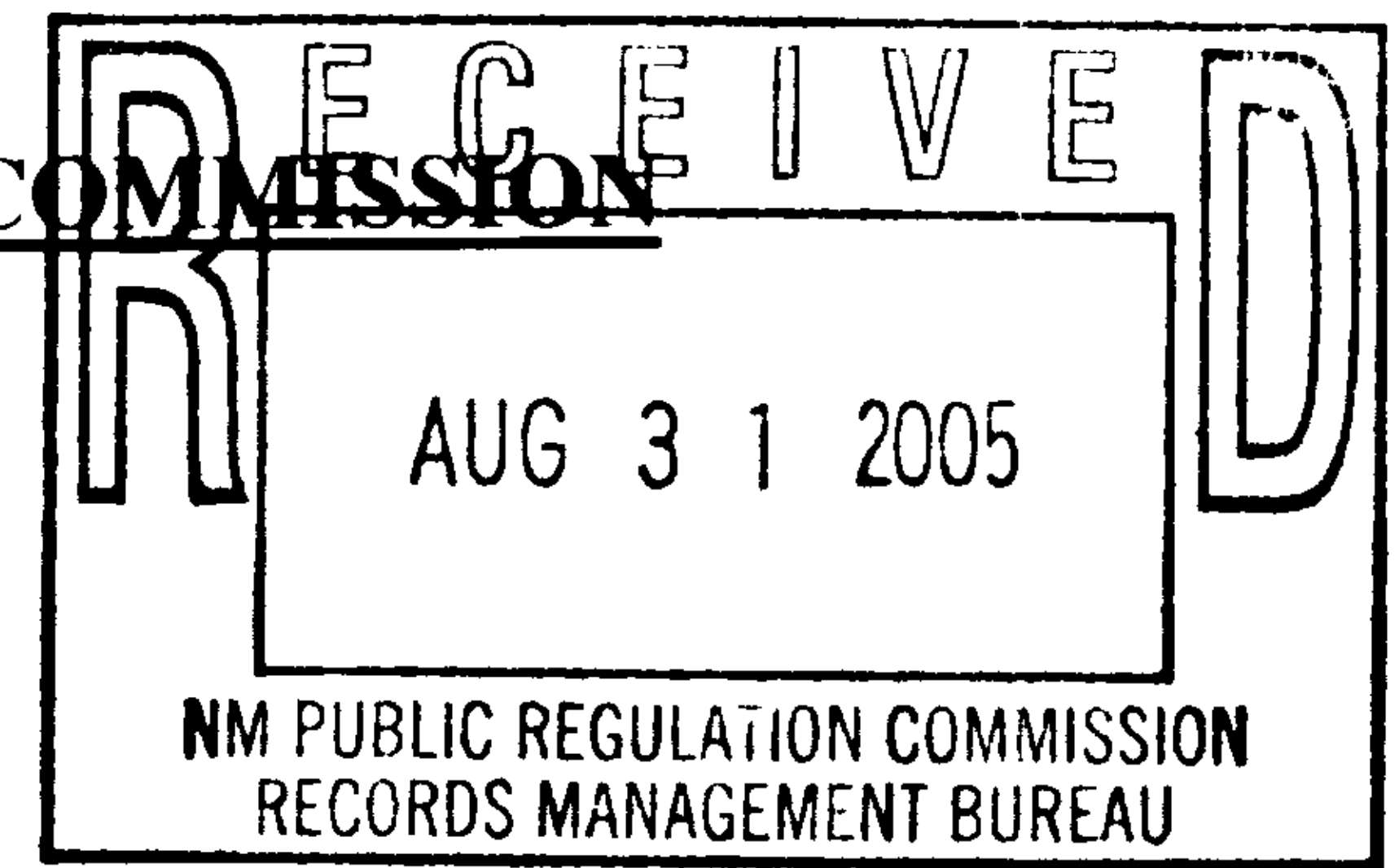
Respectfully,

A handwritten signature in cursive script that reads "Thomas J. Wander".

Thomas J. Wander
Director, Regulatory Projects

cc: PNM's Petition for Declaratory Order Filing Certificate of Service
Joanne Reuter – MS 0920
DCC – MS 0900

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,)
)
Petitioner,)
)
_____)**

Utility Case No. 05-00352-UT

**PUBLIC SERVICE COMPANY OF NEW MEXICO'S
PETITION FOR DECLARATORY ORDER**

Public Service Company of New Mexico ("PNM"), pursuant to 17.1.2.24. NMAC, petitions the New Mexico Public Regulation Commission ("NMPRC" or the "Commission") for a declaratory order clarifying transfer and payment obligations and recovery of costs relating to the acquisition of renewable energy certificates ("RECs") under § 62-16-5 NMSA of the Renewable Energy Act, §§ 62-16-1 to 62-16-10 NMSA 1978 (Repl. Pamp. 2004) ("REA"), Commission Rule 17.9.570 NMAC ("Rule 570"), and Commission Rule 17.9.572 NMAC ("Rule 572"). Specifically, PNM requests that the Commission issue a declaratory order that: (1) PNM has discretion to determine whether to acquire RECs from QFs, as defined below, from which PNM purchases renewable energy under Rule 570; and (2) it is reasonable and prudent for PNM to pay value for RECs, whether or not acquired with the associated energy.

The Affidavit of Patrick K. Scharff, Manager of Distribution Planning and Distributed Resources ("Affidavit") is attached as Attachment A. PNM's Brief in Support of PNM's Petition for Declaratory Order is attached as Attachment B. As grounds for this Petition, PNM states as follows:

1. PNM is required to purchase energy from small power production and cogeneration facilities that meet the criteria for qualifying facilities (“QFs”) set forth in rules adopted by the Federal Energy Regulatory Commission (“FERC”). 17.9.570.9(G) NMAC.

2. PNM’s approved Rate No. 12 establishes energy rates consisting of avoided costs for the purchase of excess energy from QFs that operate in parallel with PNM’s system. *See* Attachment C. This is consistent with FERC regulations and Commission rules that provide that public utilities cannot be required to pay more than avoided costs for the excess energy produced by QFs. 18 C.F.R. § 292.304(a)(2); *See* 17.9.570.11(A) NMAC.

3. Rule 572 requires public utilities to use RECS to satisfy the renewable portfolio standard (“RPS”). 17.9.572.13 NMAC. State law provides that transfers of RECs do not require physical delivery of the electric energy represented by the certificate to a public utility. 17.9.572.13(B)(2) NMAC. However, neither the REA nor Commission rules specifically address the monetary value of RECs, other than providing that they may be traded, sold or otherwise transferred by their owner to any other party. § 62-16-5(B)(1)(b) NMSA 1978; 17.9.572.13(B)(2) NMAC.

4. REC value and ownership are matters to be determined by the Commission. FERC has held that: (a) FERC’s avoided cost regulations governing payments to QFs do not contemplate the existence of RECs; (b) avoided cost rates for capacity and energy sold under Public Utility Regulatory Policies Act of 1978 contracts do not convey the RECs in the absence of express contractual provisions; and (c) requirements concerning transfers of ownership of state-created RECs must be found in state law. 105 FERC ¶ 61,004 (Oct. 1, 2003; *reh’g denied*, 107 FERC ¶ 61,016 April 15, 2004).

5. State law provides that the public utility purchaser of renewable energy from a QF owns the associated RECs produced by the QF unless the QF retains the RECs through specific

agreement with the public utility purchaser. § 62-16-5(B)(1)(a) NMSA 1978; 17.9.572.13(B)(1) NMAC. It is not clear, however, how the exercise of this discretion will impact a public utility's ability to recover any costs incurred by the public utility purchaser for the value of the associated RECs.

6. Based on the language in the REA allowing a public utility and QF to agree that the QF will retain ownership of its RECs, the statutory and regulatory authority to trade RECs apart from the energy, the fact that avoided costs pay only for the purchase of excess energy, and the uncertainty in state law concerning cost recovery for REC purchases from QFs, PNM believes it is in the public interest to clarify that a public utility has the discretion to determine whether to acquire RECs from a QF from which it purchases excess energy. Given that discretion, it is reasonable and prudent for the public utility to decide not to acquire some RECs when it purchases energy from a QF and to pay value for the RECs that it does acquire. In addition, allowing public utilities to automatically acquire RECs without payment could be deemed an unconstitutional taking of private property for public use without just compensation.

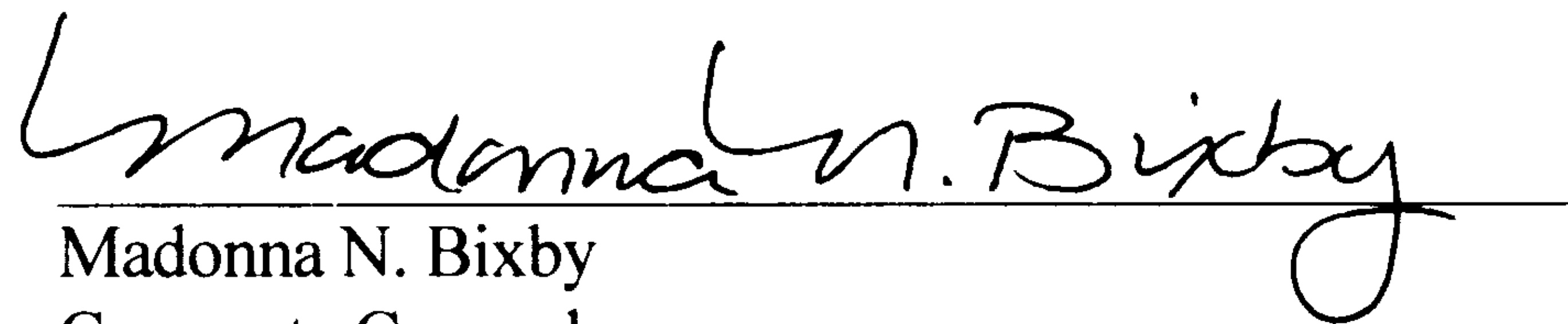
7. Clarification of these issues will enhance regulatory certainty with respect to these transactions and provide incentive for increased small power production. Moreover, these will be recurring issues absent clear direction by the Commission. Because of ongoing obligations to comply with the RPS, there will be other situations in which PNM must determine whether to contract with a QF to purchase renewable energy but leave REC ownership with the QF, to purchase RECs to satisfy the RPS without also purchasing the associated renewable energy, or to purchase both.

8. In the event the Commission believes any approval or authorization is necessary, PNM requests that the Commission consider the attached Brief and Affidavit as support for PNM's request for such approval.

WHEREFORE, PNM respectfully requests an Order of the Commission:

1. Declaring that PNM has discretion to determine whether to acquire RECs from QFs from which PNM purchases renewable energy under Rule 570;
2. Declaring that it is reasonable and prudent for PNM to pay value for RECs, whether or not acquired with the associated renewable energy; and
3. Granting further relief as the Commission finds just and reasonable.

Respectfully submitted this 31st day of August, 2005.



Madonna N. Bixby
Corporate Counsel
PNM Resources, Inc.
Alvarado Square, MS 0806
Albuquerque, NM 87158
Phone: 505-241-4929
Fax: 505-241-6267

COUNSEL FOR PUBLIC SERVICE COMPANY
OF NEW MEXICO

4. I am familiar with provisions in the Renewable Energy Act (“REA”), Rules 17.9.570 NMAC (“Rule 570”) and 17.9.572 NMAC (“Rule 572”) promulgated by the New Mexico Public Regulation Commission (“Commission” or “NMPRC”), and the federal Public Utility Regulatory Policies Act of 1978 relating to the acquisition of energy from QFs by public utilities.

5. Under Rule 570, a QF is defined as a cogeneration facility or a small power production facility that meets the criteria for qualification contained in 18 CFR Section 292.203. In accordance with Rule 570, PNM and other public utilities in New Mexico are required to purchase the energy produced by any QF at no more than the utility’s avoided cost.

6. PNM purchases energy from QFs at the company’s avoided cost Energy Purchase rates that are listed in its Commission-approved Rate Schedule 12 tariff.

7. In connection with the acquisition of renewable energy from QFs, the REA and NMAC provide for a system of RECs to document all transactions between renewable energy generators, including QFs, and public utilities that can be used for compliance with the renewable portfolio standard (“RPS”) established by the REA and Rule 572.

8. Rule 572 states in part that RECs “are owned by the generator of the renewable energy unless (a) the renewable energy certificates are transferred to the purchaser of the energy through a specific agreement with the generator; (b) the generator is a qualifying facility, as defined in 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...”.

9. PNM intends to seek approval from the Commission to implement programs to purchase RECs associated with energy produced by customer-owned solar energy QFs. PNM intends to include the RECs purchased from the participants in the program for customer-owned solar QFs to comply with its RPS. Additionally, when the appropriate opportunity presents itself, PNM desires the flexibility to purchase RECs created by non-solar customer-owned QFs for complying with its renewable energy portfolio requirements, for example, using biomass resources. There also may be situations in which PNM desires to acquire renewable energy from a QF but not the associated RECs.

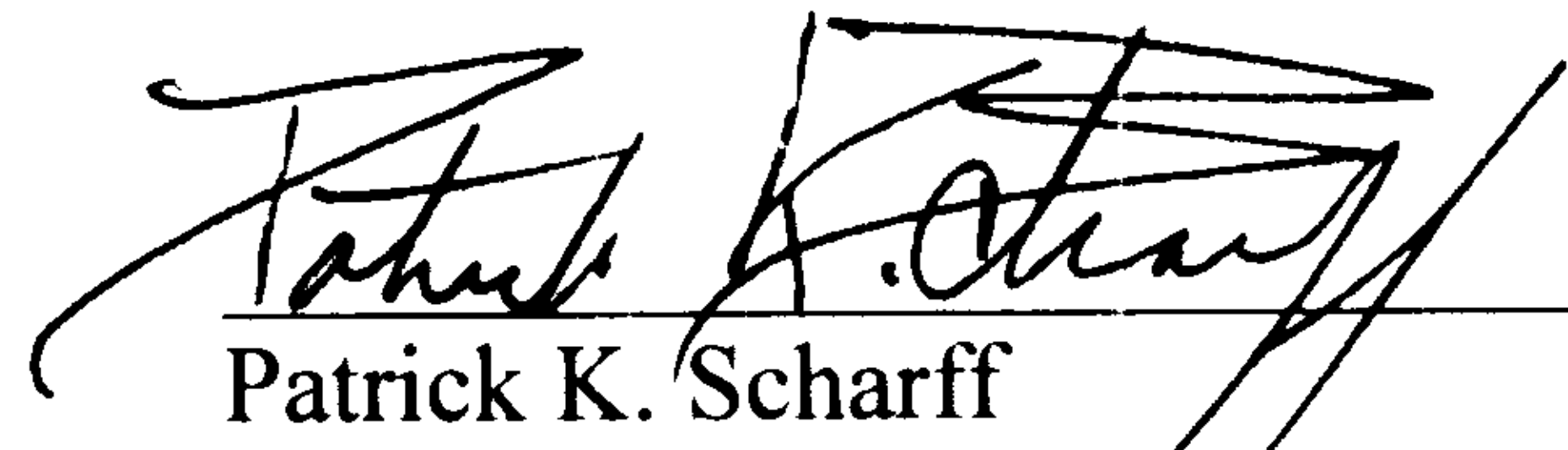
10. PNM believes there is a lack of clarity under state law concerning the acquisition of RECs by public utilities from QFs and their obligation to pay for RECs acquired.

11. As an example of this lack of clarity, in discussions concerning its May 20, 2005, Rule 570 Application for Interconnection, the City of Albuquerque ("City") stated that the City desired to retain ownership of all RECs produced by its new QF that is fueled by landfill gas. Similarly, the owner of a small photovoltaic system in Santa Fe with a Rule 571 Net Metering Interconnection Agreement asserted that a claim by PNM for ownership of RECs produced by the customer's photovoltaic system without additional compensation for the value of the RECs would lead to legal challenges.

12. PNM believes that it is in the best interest of the REC generators, utility purchasers and energy consumers if RECs are sold, purchased and traded in an open market as a matter of contractual arrangements between the parties.

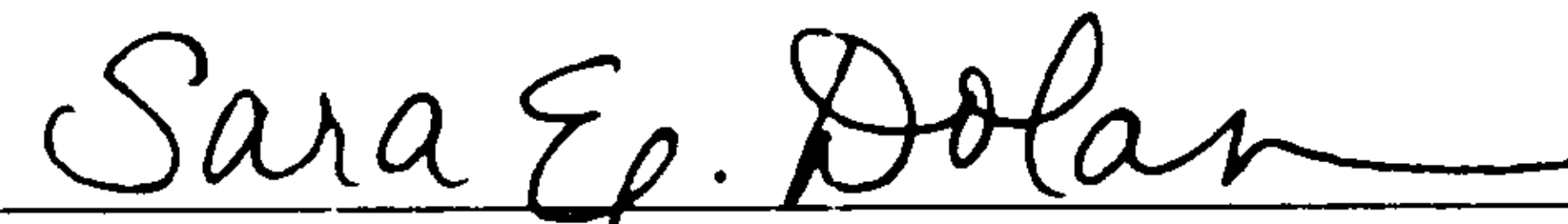
13. For the reasons stated, and in support of PNM's Petition for Declaratory Order, PNM requests that the Commission declare that PNM has discretion to determine whether to acquire RECs from QFs from which PNM purchases renewable energy and that, if PNM takes

ownership of the RECs associated with the energy it procures from a QF, it is appropriate for PNM to compensate the QF for the value of the RECs received by PNM.


Patrick K. Scharff
Manager of Distribution Planning and Distributed Resources

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

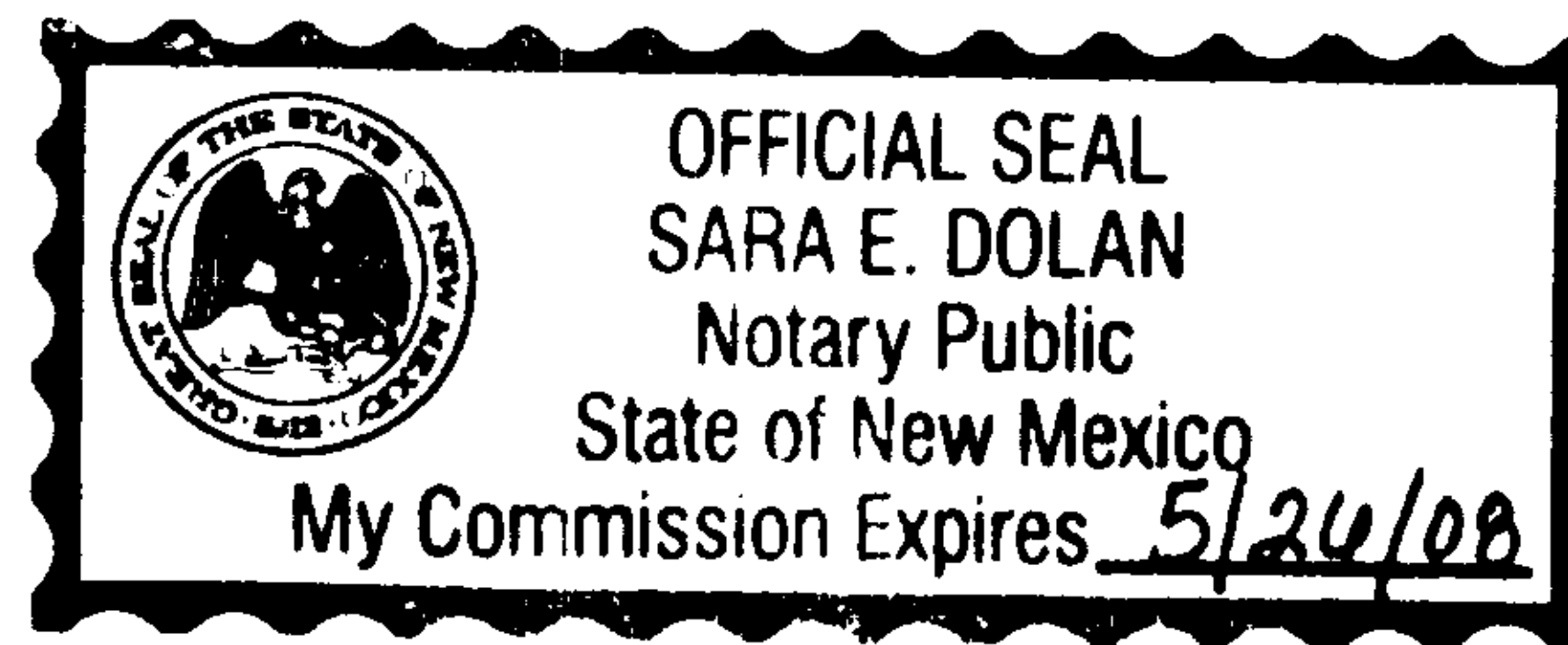
SUBSCRIBED AND SWORN TO before me this 31st day of August, 2005, by Patrick K. Scharff.


Notary Public

My Commission Expires:

May 24, 2008

47430



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,)**

Petitioner,)

Utility Case No. _____

**PUBLIC SERVICE COMPANY OF NEW MEXICO'S
BRIEF IN SUPPORT OF PETITION FOR DECLARATORY ORDER**

Public Service Company of New Mexico ("PNM"), pursuant to 17.1.2.24. NMAC, files this Brief in Support of Petition for Declaratory Order. In its petition, PNM requested a declaratory order from the New Mexico Public Regulation Commission ("NMPRC" or "Commission") clarifying transfer and payment obligations and recovery of costs relating to the acquisition of renewable energy certificates ("RECs") under § 62-16-5 NMSA of the Renewable Energy Act, §§ 62-16-1 to 62-16-10 NMSA 1978 (Repl. Pamp. 2004) ("REA"), and Commission Rules 17.9.570 NMAC, *Governing Cogeneration and Small Power Production* ("Rule 570"), and 17.9.572 NMAC, *Renewable Energy for Electric Utilities* ("Rule 572"). Specifically, PNM requested a declaratory order that: (1) PNM has discretion to determine whether to acquire RECs from qualifying facilities from which PNM purchases renewable energy under Rule 570; and (2) it is reasonable and prudent for PNM to pay value for RECs, whether or not acquired with the associated energy.