

maximum public input into our policy decisions, responses were sought from the State Attorney General, the Public Service Company of New Mexico, the New Mexico Sustainable Energy Collaborative, the staff of the Utility Division of the Commission and others. Once the initial responses were received, they were then circulated to the various parties to provide an opportunity for additional comments.

Several comments submitted deserve particular attention. The issue most discussed centered around the nature and timing of electrical utility deregulation and the need for continued study and analysis during the period leading up to deregulation established by the state legislature in SB 266, which is January 1, 2007. The Attorney General stated, “While the development of an energy policy is badly needed at both the state and federal levels, the adoption of the electric energy policy principles is made difficult and confusing by the question of whether New Mexico will move to a competitive electric market, and if so, to what degree will electric utilities be deregulated.”

The Attorney General’s response went on to cite Principle 21 as the most important. That principle holds, “A thorough risk benefit analysis of competition should be performed before additional legislation to open New Mexico’s markets is considered.” “This principle should form the linchpin of any other principles that may be embraced by the Commission,” the Attorney General stated.

Other major points included in the Attorney General’s Response:

- The Proposed Electric Energy Principles relating to generation and supply do not address whether deregulation of the generation function should be pursued.
- Additional reliability and power quality incentives should not be required by monopoly utilities.

- Reduced use should not be required to avoid higher rates.
- The Attorney General does not support proposals to establish alternative forms of regulation.

In conclusion the Attorney General recommends, “the proposed principles be revised to highlight the importance of conducting further studies to determine if deregulation of the generation function should proceed at any time in the foreseeable future. The proposed principles should also be revised to reflect the fact that many of them implicitly assume that generation should be deregulated, a conclusion that is not supported by the Attorney General.”

The New Mexico Sustainable Energy Collaborative noted in their response the need to focus on energy security in light of the terrorist attacks of September 11, 2001. “Energy security must be considered among the important goals. NMSEC is convinced that New Mexico’s very large and diverse renewable energy resource base holds significant promise to enhance the energy security of both our state and our nation.”

The NMSEC stressed the importance in establishing a commercially viable renewable energy industry in New Mexico and advocated the following goals:

- Increased production and use of renewable energy in New Mexico.
- Increased energy efficiency and conservation.
- Increased Energy supply diversity.
- Long-term price stability for consumers.
- Stimulated economic development within New Mexico’s borders.
- Reduced pollution.

- Decreased dependency on fossil fuels.
- Environmental protection and improved public health.

The Public Service Company of New Mexico strongly supported the Commission's efforts in establishing certain electric energy policy principles. PNM in their response stated, "The following three overarching principles should be lodestars for the formulation of New Mexico electric energy policy:

- State electric energy policy should provide price stability and reliability of supply, especially for residential and small commercial customers, whether the legislative framework provides for traditional regulation or for open access.
- State electric energy policy should establish a preference for using market-based principles that will facilitate transition to a competitive electric market as provided by the Restructuring Act
- State electric policy should provide a regulatory framework that supports the timely siting and construction of generation, transmission and distribution facilities."

PNM noted that their overarching principles are consistent with the Commission's draft policy with the exception of principle 27, which states, "New Mexico should require its utilities to support engineering studies by New Mexico universities and national laboratories on solutions for technical problems, and on ways to reduce coal fired emission and other environmental impacts from electricity production." PNM also pointed out the fact that many governmental entities need to be involved in formulating and implementing electric energy policy for New Mexico. According to PNM, any adopted policy should, "recognize and be consistent with the current legislative framework." "The Restructuring Act provides for a competitive electric market in 2007, and the Commission's draft policy principles must take this change of regulation

into account,” PNM stated.

PNM cited the need to establish a preference for market-based principles that will facilitate transition to a competitive electric market as provided by the Restructuring Act. “First, state electric energy policy should provide a general framework that allows public utilities to develop programs that are consistent with the policy while reflecting conditions unique to each utility. Utilities need to be able to respond to their customers and the market,” they stated. PNM went on to point out the need to provide for streamlined regulatory processes saying that, “inflexible and time-consuming regulatory requirements impair the ability of utilities to respond to markets and add costs.”

In regard to PNM’s statement that electric energy policy should provide a regulatory framework that supports the timely siting and construction of generation transmission and distribution facilities, they proposed that three subsidiary principles be considered:

1. State electric policy should provide for streamlined regulatory processes. Timely construction of infrastructure requires that regulatory processes concerning siting and other approvals be as streamlined as possible in order to avoid unnecessary and undesirable delays.
2. State energy policy should support the development of long-term energy supply and the facilities necessary to deliver that supply to the customers.
3. Energy policy should recognize the need for tax treatment for new electric energy resources that does not disadvantage New Mexico as the site for those new resources.

In conclusion, PNM argued that state energy policy should include the three overarching principles they set out. “These three policy principles embody the preference for using market-based principles that will facilitate transition to a competitive electric market under the Restructuring Act, while continuing to ensure that safe, adequate, reliable electric service will be

available to customers at fair, just and reasonable rates,” PNM stated.

The staff of the Utility Division of the Commission provided a detailed response to each of the 27 New Mexico Energy Policy Principles. It is important to note their general concern of the impact of following the provisions currently contained in the Restructuring Act. The staff wrote, “This current, legislatively-mandated energy policy is designed to replace regulation with competition and consumer choice beginning in 2007. This energy policy will give the market, through individual consumers and competitive power suppliers, control over the major elements of the electric industry in New Mexico. After deregulation under the provisions of the Restructuring Act, the Commission’s role will be significantly reduced or eliminated in these areas. Neither the Commission or the Legislature will have meaningful input regarding issues associated with the Commission’s draft energy policy principles such as generation mix, adequacy of supplies, power prices and price stability.”

The Utility staff concluded that, “The draft policy and principles issued by the Commission, if adopted and implemented, would require a radical change from the current energy policy’s path towards the restructuring of the electric utility industry in New Mexico. Staff comments recognize that without legislative intervention to repeal the Restructuring Act, the Commission’s energy policy principles could be implemented only on a temporary basis.”

The concern regarding full implementation of deregulation legislation was echoed in the second response issued to the Commission by the Attorney General. The Attorney General recommended that, “the issue of deregulation of the generation market be reevaluated. The NMPRC should take an active role in this process. In addition the NMPRC should reject any proposed policy principles that diminish the authority and jurisdiction of the state regulatory agency.”

In the second response submitted by PNM, they cited the disagreement about how - and whether electric utility industry restructuring should be addressed. However, PNM pointed out that, “it will be beneficial regardless of future state or federal regulatory changes to foster and encourage the development of infrastructure - generation, transmission and distribution facilities that will be necessary to assure the provision of reliable electric service.”

Respondents applauded the efforts of the Commission to articulate and adopt an electric energy policy for New Mexico. Many expressed concerns regarding the requirement set forth in the Restructuring Act to enter into a deregulation timetable that is artificially imposed and which is not based on true conditions. The benefits of following the timetable are speculative at best and adherence could result in more harm than good to New Mexico, it’s economy, and consumers.

The Attorney General in particular advocated more analysis and study possibly leading to additional legislation as we approach the 2007 deadline. The overriding question is should the Commission advocate amendments to the Act or simply a repeal, which if adopted, would allow us to craft an overall policy that will be reliable and just for all New Mexicans?

We would like to thank all those who took the time and made the effort to respond to our requests for comment. A successful energy policy for our state will be crafted by the thoughtful input of all of our state agencies, legislators and private energy concerns. This process is a reflection of that reality. While we sincerely believe that the following electric energy policy perspective is appropriate, vitally needed, and based on sound principles, we recognize that any policy will need to be dynamic and flexible. And so, the Commission looks forward to increased dialogue with other state agencies, legislators, consumers, and industry representatives about this most important topic.

NEW MEXICO ELECTRIC ENERGY POLICY

1. Steps should be taken to ensure New Mexico utilities have appropriate power mix portfolios, including adequate generation or sufficient contracted long term power supplies to avoid subjecting consumers to short term market price spikes.
2. New Mexico utilities should be required to support more diverse generation sources, including renewable energy, as a means to hedge against market and fuel price spikes.
3. Distributed generation holds promise for many customers and may enhance redundancy in supply and reliability of the electric grid and should be promoted with appropriate interconnection rules and provisions for just compensation for excess electricity.
4. Rules to promote reliability should be developed and adopted.
5. New Mexico utilities should be required to maintain, develop, and construct adequate distribution facilities to assure the safe delivery of reliable and high quality power.
6. New Mexico's utilities should be encouraged to plan for and make investments in their infrastructure. Those risks and costs in building and resources should be recognized and properly allocated to create incentive and reward as well as an adequate penalty or customer compensation.
7. Rules establishing power quality thresholds and benchmarks should be developed and adopted with adequate penalty or customer compensation provisions to assure New Mexico of an adequate standard of high quality power.
8. A thorough analysis of New Mexico's transmission system should be performed to determine under capacity and constraints on a regional basis as well as within the state of New Mexico.

9. Efforts to educate consumers about electric issues including effective conservation, fuel source implications, and rate and service provisions are important and should be incorporated into the customer education programs of all utilities and commenced prior to deregulation.

10. All load serving entities should be required to provide information to their customers regarding their power portfolio, including the generation types and fuel sources and the associated environmental impacts to allow consumers to make informed decisions about their electric use.

11. Retail rates should be redesigned to encourage residential customers to engage in conservation activities and large power customers to shift uses to off peak demand times.

12. The Public Regulation Commission should commence an investigation into areas and services in the electric industry which through opening to competition could provide greater benefit or savings to consumers.

13. New Mexico should reward efforts by consumers, utilities, and others to convert inappropriate and inefficient electric uses to highly efficient electric or other non-electric power sources.

14. Efficient use of electricity in our homes, businesses, and public and private transportation systems, should be encouraged to prevent depletion of the resources necessary for our State's electric energy production.

15. Vigilant oversight of utilities' obligations to provide safe, adequate, and reliable service at just, reasonable, and non-discriminatory prices should be continued.

16. In addition to reviewing all rules applicable to electric utilities in compliance with statutory mandates, the New Mexico Public Regulation Commission should consider proposals

to establish alternative forms of regulation or performance based ratemaking arrangements for such electric utilities.

17. In a forum open to all stakeholders, the New Mexico Public Regulation Commission should review this electric energy policy every two years, prior to each 60-day legislative session to reassess its principles in relation to progress, market change, and legislative requirements and provide that review to the Legislature, Governor, and the public.

18. A thorough study regarding subsidization of fuel source or externalization of cost connected to New Mexico generating plants and fuels should be conducted. Information gained through this study should be used to firmly establish and even the playing field for electric generation alternatives, including both dispatchable and non-dispatchable renewable energy sources, combined heat and power applications, and distributed generation.

19. New Mexico should develop constructive partnerships with its neighboring states and work in concert with them in developing solutions for regional problems especially in the area of interstate transmission.

20. New Mexico should develop a more active and prominent presence on electric energy policy issues at both regional and national levels to assure representation and inclusion in the development of strategy and outcomes. New Mexico should encourage regional and federal agencies dealing with electric energy policy to provide local venues to accommodate such representation and inclusion.

21. A thorough risk benefit analysis of competition, as well as a review of the lessons learned from other states should be performed prior to opening New Mexico markets.

22. Research into and the use of such alternative sources such as wind, solar, geothermal, bio-mass (including forest thinings), land fill gas, anaerobic digestion, and combined heat and power applications should be encouraged by strong State and Federal incentives.

23. Cooperative policies should be formulated with the appropriate governmental entities to ensure appropriate and necessary access to Federal, Tribal, and State lands for electric energy development and transmission.

24. Appropriate tax levels and incentives should be enacted to foster sufficient and responsible electric energy production in our State.