

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE)	
COMPANY OF NEW MEXICO'S NOTICE)	
OF FILING OF "RENEWABLE ENERGY)	
PROCUREMENT PLAN FOR 2006,")	
)	Case No. 05-00356-UT
PUBLIC SERVICE COMPANY OF NEW MEXICO,)	
)	
Petitioner.)	
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REPLY BRIEF OF THE
COALITION FOR CLEAN AFFORDABLE ENERGY

Pursuant to the December 1, 2005 Order extending time for response briefs, the Coalition for Clean Affordable Energy ("CCAIE"), hereby submits its Reply Brief.

Introduction and Background on Renewable Energy Certificates ("RECs")

In CCAIE's opinion, Staff's Opening Brief fails to establish a compelling argument that there is a connection between Cases 05-00356-UT and 05-00352-UT sufficient to warrant a delay in approval of PNM's proposed PV program. A detailed response to Staff's Brief is given below. Before considering the details, however, CCAIE would like to respond generally to some overall issues regarding RECs and PNM's RPS Procurement Plan that are raised at many points by Staff in their brief.

As CCAIE's previous testimony in Commission cases shows, CCAIE has been centrally involved in the crafting of the PRC's original Renewable Portfolio Standard ("RPS"), and was a primary stakeholder in the crafting of subsequent RPS legislation and the final rule (Rule 572 adopted in PRC Case 04-00211-UT) implementing that legislation. In particular, CCAIE was the

party that first suggested the use of RECs in the RPS, and also the multipliers for different renewable resource types (see for example, CCAIE Comments filed September 3, 2004 in Case 04-00211-UT or April 14, 2002 in Case 3619). CCAIE member groups, such as Western Resource Advocates and the Natural Resources Defense Council, also have extensive experience with RECs outside of the New Mexico context, and have been central players in the development of RECs based programs throughout the West. Based on this experience, we would like to comment on the general intent of RECs and the relation of RECs to the procurement plan process and other powers as provided for the Commission in the RPS legislation.

First, the REC mechanism serves, in our view, to simply make it easier, and more economical for rate payers, for New Mexico utilities to comply with the RPS, especially those utilities such as El Paso Electric that serve relatively small loads in New Mexico. *By their very nature, RECs involve an unbundling of environmental attributes from energy*, which is allowed precisely so that RECs can be valued at different prices from actual energy, and so that RECs can be transferred without actual energy delivery. It is therefore somewhat misleading to use the phrase “unbundling of RECs from energy”, as Staff does in some places, because RECs are, by their very nature, intrinsically unbundled from energy.

From the standpoint of the RPS, utilities are required to either purchase renewable power directly, or to purchase RECs. This is intended to simplify compliance, although it is appropriate for the Commission to decide whether purchases of RECs should be approved or not in particular instances in particular utility procurement plans.

CCAIE acknowledges, as Staff implies in their brief, that there are many issues associated with particular RECs decisions, ranging from cost to various societal issues questions. *But CCAIE disagrees with Staff's general implication that these issues have been overlooked up to this point,*

or that opening up these issues represents opening a veritable “Pandora’s Box” of issues. CCAIE also disagrees that a major delay in RPS cases needs to occur for the Commission to examine all the issues associated with RECs all at once.

The process set forth in the RPS statute was in fact designed explicitly to take these issues into account and to give the Commission unprecedented power, flexibility, and time, to carefully and systematically resolve these issues through three basic mechanisms: Rule-makings, such as Case 04-00211-UT, to implement the statute, which of course the Commission can re-open at it sees fit; Case 04-00253-UT to set reasonable cost thresholds; and finally, on-going, and annual re-consideration of utility RPS procurement plans, which the Commission has statutory authority to approve, modify or deny based on such considerations of source diversity (including Cases 04-00306-UT, 04-00334-UT, 04-00311-UT, 05-00354-UT, 05-00355-UT, 05-00356-UT).

CCAIE also disagrees with Staff’s implications that consideration of RECs issues on a case-by-case basis via these mechanisms would necessarily lead to “inconsistent”, “erroneous”, or “discriminatory” results. In fact, CCAIE thinks it likely that attempting to deal comprehensively with RECs issues all-at-once and ahead of time would not allow the Commission to adequately anticipate the many special circumstances that arise in particular cases, and that a rulemaking on treatment of RECs might actually make it more difficult for the Commission later on to appropriately tailor procurement plans to the particular circumstances it encounters. Essentially, the Commission would be subjecting its statutory authority to modify procurement plans to an unnecessary and prior rule not based on adequate experience. Several years from now, sufficient experience and issues may develop to the point where such a rule-making becomes manifestly desirable, but we believe that day is still some years off, at least.

In summary, in the opinion of the CCAIE, the Commission already has the powers, the process, and the data, with which to make well-informed and timely decisions on RPS procurement plans, including those that involve RECs, and should do so on a case-by-case basis.

Background on the Proposed PV Program

Before commenting on detail on Staff's opening brief, we would also like to comment briefly on some of the relevant circumstances leading up to PNM's proposed PV program, to give the Commission some idea of the above-described process in action in relation to this case, and to provide some perspective for our response to Staff's opening brief.

In 2004, CCAIE gave testimony in Case 04-00211-UT (the rulemaking on Rule 572 which implements the RPS statute) to the effect that Staff and the Commission should explicitly consider certain RECs issues in that rule-making, specifically any REC issues that might arise in relation to customer-generated renewable energy, and to possibly include language in Rule 572 to cover these issues if necessary. It was expressed to CCAIE directly at the conclusion of that rulemaking, by the presiding hearing examiner Bill Hermann, that there appeared to be no fundamental problems in the final Rule with utilities buying customer generated RECs, and that no special language was required. The official record at least partially reflects this viewpoint.

Following this, in Case 04-00253-UT (the reasonable cost threshold proceeding), which occurred roughly simultaneously with the rule making for Rule 572, a specific reasonable cost threshold was established by the Commission for customer PV RECs (15 cents per kWh). Again, there was no indication from Staff, other parties, or the Commission, that there were any outstanding and unresolved issues with utility purchase of customer generated PV RECs, and the

establishment of a reasonable cost threshold for customer owned PV seemed to confirm this in a very concrete way.

Then, in Case 04-00311-UT on PNM's 2005 Procurement Plan, Staff, CCAIE, the Attorney General, and PNM entered into a stipulated agreement with the following language: "Provided that PNM files with the Commission following the conclusion of the 2005 Legislative Session, but no later than August 1, 2005, a list of specific expenditures to develop a customer owned PV program that has been agreed upon by the Signatories, PNM will expend up to \$200,000 in 2005 on the listed expenditures."

This stipulation was approved by the Commission, and its language clearly indicates that the idea of customer based PV program, if not all of the specific expenditures, has been sanctioned by the Commission and the Signatories, and that PNM had even been approved to spend a significant amount of money on the program *in 2005*, pending the approval of the Signatories on the detailed list of expenditures. No mention was made that the Signatories needed to first to resolve issues with RECs, or issues with any other case or rule.

CCAIE agreed, incidentally, to allow PNM to miss the August 1, 2005 expressly to allow Staff and the Commission, and also PNM, more time to adequately handle the many other cases pending before the Commission at that time, including the gas efficiency programs proposed by PNM in Case 05-00261-UT. CCAIE did communicate with PNM repeatedly prior to the deadline about filing the PV program. The other Signatories, including Staff, made no such attempts to our knowledge, but also did not raise any concerns regarding the implementation of a customer PV program.

CCAIE notes that other expenditures approved in the stipulation have now been incurred, including PNM's development of its own PV demonstration project and the development of a

biomass project. CCAIE therefore now feels that the delay *already* incurred in the onset of the customer PV program is somewhat unfair to rate payers and to the solar industry, because widespread press coverage in the media of the customer PV program following the Commission's approval of the stipulation created a widespread expectation in the minds of rate payers that such a program was imminent. This program represents a balance of interests among the parties, and the many rate payers represented by them, with respect to PNM being authorized by the Commission to develop its own biomass and PV projects with rate payer money. This balance has not yet been honored by the Commission, and further delay will be even more unfair to rate payers in CCAIE's opinion. This kind of regulatory uncertainty is also a deterrent to New Mexico's solar industry who are poised to supply equipment and make substantial investments in support of this program.

Following the approval of the stipulation, PNM and CCAIE communicated about the details of PNM's plan for the customer PV program, and attempted to craft a proposal that would satisfy all the requirements of the statute and the RPS rule. In particular, we attempted to carefully avoid creating any potential problematic issues with RECs. For example, purchase of PV RECs from outside PNM's service territory was not proposed, nor were purchases of RECs from off-grid systems, nor from systems greater than 10 kilowatts in capacity (that is, above the net-metering threshold and outside the scope of Rule 571). This was despite the fact that there is widespread interest in the CCAIE and indeed among many rate payers in considering such ideas.

CCAIE therefore feels that the program that was ultimately filed by PNM, notwithstanding some final tweaks that PNM and CCAIE have now agreed to in our recent Joint Proposed Recommended Decision in this case, is a well thought out and modest proposal that is entirely consistent with statute, rule 572, and other relevant PRC proceedings. We furthermore

assert, and explain in detail below, that the issues now been raised by Staff, which have been raised as if they are somehow new and profound, have actually already been carefully taken into account in the design of this program.

Moreover, CCAIE feels that it was actually *sensible*, and helpful to the Commission, for PNM to file their Declaratory Order Request separately from the proposed PV program. This Declaratory Order represents a distinct set of issues, and should be dealt with separately by the Commission.

CCAIE's Response to Staff's Specific Arguments

First, Staff makes a number of arguments to the effect that Cases 05-00356-UT and 05-00352-UT are so closely intertwined via the relationships between Rules 570 and 571, that they should not be considered separately. Staff also argues that the RPS statute contains language automatically requiring the RECs from QFs to flow to the interconnecting utility. The inter-related arguments by Staff on these topics can be roughly paraphrased as follows:

- Staff points out that Rule 571 (which is relevant to Case 05-00356) contains a phrase saying that Rule 571 is “intended to supplement” Rule 570 (which is relevant to Case 05-00352). Although the word “supplement” actually has no specifically defined meaning, this phrase conveys an *impression* that the two rules are tightly intertwined.
- Staff argues that Cases 05-00356-UT and 05-00352-UT are closely intertwined on the basis that Rule 571 implements avoided cost payments in one particular instance - to pay for unused net-metering credits at the time of system disconnection. Staff further points out that this is related to satisfying federal rules for QFs, implying that Rule 571 is therefore related to Rule

570, because the latter also deals with implementing federal rules for QF power purchases at avoided cost.

- Staff suggests that the RPS statute already provides that renewable energy certificates are transferred “*by operation of law*” in transactions between Qualifying Facilities and public utilities, implying that the proposed PV program is not consistent with statute. Staff attempts to strengthen this interpretation by referencing the fact that the Commission did not support a suggestion by CCAIE in a previous rulemaking that *all* REC transfers occur under contract.
- Staff argues that the Cases 05-00356-UT and Case 05-00352-UT are closely intertwined on the basis that the “menus of options provided in these rules are not mutually exclusive”, and also on the basis that Rule 571 was crafted in an attempt to simplify Rule 570, and hence is closely intertwined.
- Staff suggests “customer-owned generators operating under Rule 570 could argue reliance on Commission approval of REC payments at the rate of thirteen cents per kWh, and legitimately claim the same regulatory treatment for themselves.”

CCAIE’s responds to these points as follows:

First, CCAIE acknowledges that Rule 571 specifies that avoided cost will be paid for any unused *net-metering credits* (as distinct from RECs) for a QF that are left over when a net-metered QF disconnects, which is essentially the only point of real similarity between Rules 571 and 570 for the purposes of this case (the full relationship between the two rules is discussed further below). But it is also true that, as CCAIE has already pointed out in previous testimony in this case, the RPS statute only requires the *automatic* flow of RECs from a QF to a utility *if* the QF is not retaining the RECs through a specific agreement with the utility, and also *if* a power

purchase is explicitly involved. The first fact is therefore not in conflict with the proposed PV program, as we explain in detail below, *because both PNM and the customer generator will be entering into a specific agreement via the REC purchase contract that precisely addresses when and how that RECs associated with the unused net-metering credits are transferred to the utility.*

More specifically, the agreement between a customer generator and PNM under the proposed PV program will accomplish two crucial things: First, it will allow the QF to retain the RECs associated with the unused net-metering credits so far as the interconnection of the QF under Rule 571 is concerned. In the absence of the agreement, these RECs would have been measured by the bi-directional meter that measures the customer's net usage/production of electricity and would flow automatically to the utility. But this automatic flow is effectively suspended by the agreement in accordance with the RPS statute.

Secondly, the agreement will then transfer the RECs generated by the customer-generator *while the customer-generator is participating in the PV program*, and as measured by a separate "REC meter". It will do so for the REC price established by PNM and the Commission for the PV program, and the customer generator can decide to either accept that price, or not to participate and retain their RECs (assuming they still sign an alternate agreement to retain their RECs, which CCAIE feels should be an option included in the proposed PV program).

Note that the RECs associated with the unused net-metering credits, that are initially retained by the QF by agreement with respect to Rule 571, *may or may not* be sold to PNM in the long run, depending on when the customer generator eventually decides to disconnect: If the customer-generator disconnects at a time when it is still participating in the proposed PV program, then the RECs measured by the REC meter, and sold to PNM, *will* in fact include any RECs associated with any unused net-metering credits. On the other hand, if the system

disconnects after participation in the program ceases (say, if the proposed PV program terminates before the system is disconnected), then these RECs *will not* be sold to PNM under the proposed PV program.

Furthermore, note that in either case, and as long as Rule 571 remains in effect, PNM will always ultimately pay the avoided cost for the unused *net-metering credits* when the system disconnects, *whether or not PNM purchases the RECs associated with these unused credits*. If this occurs while the customer generator is still participating in the PV program, avoided cost payment will be strictly for net-metering credits, which is really net-energy and not RECs in this case, because the agreement precludes the transfer of RECs to PNM as measured by the net-meter in this case. If the customer generator disconnects after the customer generator has already left the PV program, or the PV program has terminated, then the agreement is no longer in force, and the RECs associated with any unused net-metering credits will flow to the utility automatically, at least under the RPS statute and Rule 571 as they presently stand.

At first glance, this might seem confusing, and it might seem that the customer generator is still somehow getting paid twice for the same RECs: We emphasize that this is never the case. It is true that the customer generator is enjoying two incentives in some sense, under *two* different programs for generating the *same* renewable energy. That is, the customer generator enjoys both the net-metering incentive, as provided for by Rule 571, and the incentive provided by the RECs buyback, as provided for under Rule 572. The payments under Rule 571 implicitly include both payments for the unused net-metering credits, if any, and indirect assistance with their cost of generating renewable energy generation in the sense of not having to pay for utility power that the customer generator offsets via net-metering with their own generation. The payments under Rule 572 are the REC payments, and are entirely separate. The two programs

therefore piggy-back properly, without any actual conflict or double counting within or between programs.

This arrangement is also reasonable from a reasonable cost standpoint, because the proposed PV program has been specifically designed, and the RECs payment specifically proposed, such that all of this works together to provide a total reimbursement to customer-generators. This reimbursement is minimally sufficient, at best, *to encourage the development PV for the purposes of diversifying the RPS portfolios*. CCAIE's testimony, for example, contains a comprehensive analysis of the cost of the PV with both programs working together, and also under the assumption of an additional upfront tax incentive. The testimony shows clearly that the "payback time" for PV will still be fairly long - approximately 27 years – even with the REC buyback of \$0.13/kWh and a tax incentive, indicating that this level of REC payment is certainly not too large. Although \$0.13 per kWh may sound large in comparison to typical utility avoided cost levels, it should be kept in mind that the proposed PV program will only run through 2018, unless extended later by the Commission, whereas the PV systems the systems creates will likely produce clean power for rate payers for many years beyond 2018, at least on average. Thus the \$0.13/kWh REC payment level is effectively more like \$0.06/kWh, from the standpoint of the long-term, stable-priced green power supply that is provided to rate payers. The three credit multiplier also effectively reduces the cost of the PV RECs to rate payers about \$0.02/kWh (or about \$0.04/kWh if one assumes the PV program is extended indefinitely beyond 2018). These numbers show clearly that the proposed PV program is clearly the cheapest source of local solar RECs available for PNM customers, as PNM as also stated in their original filing.

Staff seems to be clinging to an interpretation that the RECs from QFs, such as those that would be involved in the proposed PV program, should still automatically flow to the utility.

Nowhere did Staff take into account in their opening brief that such an automatic transfer does not take place if the QF retains the RECs through specific agreement with the utility, and nowhere did Staff explicitly counter CCAE's and PNM's previous arguments to this effect.

Nor did Staff respond to CCAE's and PNM's testimony to the effect that FERC doesn't regard net-metering as a power purchase to begin with (except for the unused net-metering credits, which have been dealt with above), which makes it questionable that the automatic transfer of RECs as provided for in the RPS statute could occur at all even in the absence of a specific contract for systems interconnecting under Rule 571 (recall that the statute mentions a power purchase explicitly in the context of such transfers) .

Staff also attempts to bolster its interpretation by pointing out that the Commission did not adopt a previous suggestion by CCAE in the rulemaking for Rule 572 to the effect that *all* REC transfers should be associated with a contract. CCAE's purpose in making this argument in Case 04-00211-UT was to ensure that owners of renewable energy facilities had reasonable rights to retain the RECs associated with their energy production, that power purchase agreements contained provisions regarding the treatment of RECs, and that RECs not automatically flow to the power purchaser. The statute allows the retention of RECs by the QF under specific agreement, so that Staff's interpretation of automatic flow of RECs under all circumstances is not correct.

CCAIE disagrees with Staff that the "menus of options provided in these rules are not mutually exclusive". They in fact exclusive for all relevant purposes to this case: First, Rule 570 allows only "avoided cost" or "energy cost" reimbursement for QF power generation under its various options. Specifically, systems that interconnect under Rule 570 are either doing so under a power purchase agreement at avoided cost, or are interconnecting under a "Net-Metering" or

“Separate Load Metering” options at the utility’s “energy rate”, which Rule 570 clearly distinguishes from the utility’s “normally applicable rate”.

Rule 571, on the other hand, deals only with net-metering credits at the full retail rate (the utility’s “normal applicable rate”). Rule 570 also requires what *it* calls “Net-Metering” to be carried out using a different metering arrangement (a two-meter arrangement) which is distinct from what is used under Rule 571.

Secondly, the technical interconnection requirements for each rule are self-contained in each rule, and these requirements are quite unique to each rule. This in fact is one of the reasons that there are two distinct rules to begin with, as Staff correctly points out.

Third, Rule 571 contains explicit language indicating that in the event that any conflict arises between Rule 570 and Rule 571, then the provisions of Rule 571 shall prevail.

Fourth, Rule 570, as Staff points out correctly, was implemented expressly to implement PURPA, whereas Rule 571 *cannot* be deemed to have been crafted to implement PURPA, the implementation of which was already completely covered by Rule 570. Rather, the Commission crafted Rule 571 expressly “...to encourage the use of small-scale customer-owned renewable or alternative energy resources in recognition of the beneficial effects the development of such resources will have on the environment of New Mexico.” *NMAC § 17.9.571.6*. As CCAIE and PNM have explained in previous testimony, net-metering, such as provided for under Rule 571, doesn’t constitute a power purchase to begin with in the view of the FERC, except where unused net-metering credits are concerned. For this reason Rule 571 is not in violation of PURPA, just as FERC ruled in the case between MidAmerican and the Iowa Utility board (see the direct testimony of Benjamin Luce on behalf of CCAIE).

Thus, Rule 571 stands on its own and is quite distinct from Rule 570: It addresses a different set of interconnection requirements, a different type of power purchase agreement or no power purchase at all. Moreover, Rule 571 was created a full ten years after Rule 570 was adopted, to provide a New Mexico with a new, state specific incentive for small-scale renewable energy generation. This incentive is distinct from, and is in fact a stronger incentive, than the incentive provided by PURPA and its implementation via Rule 570.

As stated above, Staff also argues that systems interconnecting under Rule 570 might somehow legitimately claim that they should also receive the same REC payments that PNM offers to systems interconnecting under Rule 571. This is clearly not the case because systems Rule 571 are *already* operating as fundamentally distinct programs, as just explained. But also, such claims would simply not be legitimate technically, simply because the proposed PV program would be *explicitly* be limited to systems interconnecting under Rule 571. It is conceivable that a system that is eligible to interconnect under Rule 571 might choose to interconnect under Rule 570, but it would then be ineligible for the proposed PV program unless its changed its interconnection status, or if the Commission granted it a special variance.

With regard to the notion of incentives in general, Staff suggests, on the basis of a 1984 Supreme Court ruling, that the Commission lacks “the power to effect social policy through preferential rate making”. Staff then argues that the proposed PV program is an “incentive” program for owners of photovoltaics systems, implying that it is a social policy and hence that it is not allowable and not supported by the Legislature.

Staff’s argument is flawed in two ways: First, it fails to take into account the fact that the Commission has already arguably created an incentive for PV systems when it created Rule 571 expressly “...to *encourage* the use of small-scale customer-owned renewable or alternative

energy resources in recognition of the beneficial effects the development of such resources will have on the environment of New Mexico.” *NMAC § 17.9.571.6*. (Emphasis added) This suggests that the Commission already has the authority to create at least some types of incentives. This is not in conflict with the Supreme Court ruling cited by Staff because Rule 571 does not provide the incentive through rate-making per se – it simply provides a metering arrangement by which customer generators and utilities can exchange power within the existing framework of rates. Nonetheless, it provides an incentive.

Secondly, with respect to RECs pricing, Staff’s citation of a 1984 Supreme Court ruling is flawed because the RPS statute, which was passed ten years after the ruling cited, amends New Mexico’s Public Utility Act and explicitly grants the Commission authority to take into account a wide range of societal benefits and other factors when setting the reasonable cost thresholds for RECs or renewable energy. This language is precisely the basis for the proposed PV program, as is the reasonable cost threshold that limits the amount of REC payments.

With regard to reasonable cost threshold and the valuation of RECs in PNM’s proposed PV program, Staff suggests that “the evidentiary record in this case does not support the finding that the proposed costs of procuring these RECs are reasonable”, and Staff suggests that the cost of the RECs has simply been set at the reasonable cost threshold.

This is simply not accurate. Previous testimony by CCAIE included detailed cost analysis of PV costs showing that the proposed PV program, even when considered together with the net-metering incentive and a hypothetical 30% tax credit and no financing costs, would only decrease the “payback time” for PV systems to around 27 years for systems that join the program in the first year. It was further noted that a payback time of 10 years or less is generally considered to constitute a strong incentive. This suggests clearly that REC costs proposed by

PNM is a very reasonable cost for the purchase of RECs associated with customer owned PV systems. PNM included similar information in their testimony as well.

Specific information about the potential value of distributed PV to rate payers, and on the job creation potential of encouraging distributed PV was also cited, and obvious benefits such as natural gas price hedging, job creation, grid benefits, etc, were also mentioned. Staff therefore seems to be essentially ignoring testimony already on the record when its makes the claim that the evidentiary record is deficient. CCAIE notes that Staff has not asked a single question about CCAIE's testimony, either in discovery or cross examination, or challenged this supporting information in any way. Therefore Staff has failed to counter the evidentiary record in this case. The record *does* support the finding that the proposed costs of procuring these RECs are reasonable.

We now address a different set of arguments put forth by Staff related to unbundling of RECs, and benefits associated with RECs. Specifically:

1. Staff argues that there are many unresolved questions, including social justice issues, that have to do with the unbundling of RECs from energy, and hence the Commission should not approve the proposed PV program until these issues are resolved "*generally*". Staff poses a list of example questions (answered in some detail below).
2. Staff suggests that approval of the proposed PV program would "necessarily limit the scope of the Commission's decision-making in the Declaratory Judgment case", based on the idea that approval would sanction certain decisions about unbundled RECs and energy, and that these might be inconsistent with what is decided in the Declaratory Judgment case.

3. Staff suggests that “the operations of net metering are not transparent; they do not show up on the typical rate-payer’s bill. Generally, only the utility and its beneficiaries understand the operations of the program and its substantial subsidies.” This appears to be intended to further support their argument that the proposed PV program is somehow discriminatory.

CCAIE’s response to these points are as follows:

First, CCAIE disagrees with Staff that the proposed PV program creates any problematic issues with respect to the “unbundling of RECs from energy”. The issues concerning QFs and compatibility with Rule 571 were already covered above. We now address the wider societal issues related to unbundling of RECs in this case.

The Commission should have little or no concern about the unbundling of RECs in this case because under PNM’s proposed PV program, 100% of the renewable energy associated with the RECs that PNM proposes to purchase will flow directly to PNM customers any way (including the customer generator). This is because PNM has limited the proposed program to PNM customers with grid-tied (net-metered) systems, and has not, as mentioned previously, proposed to buy PV RECs from systems outside its territory, to include off-grid systems, or the like. Thus, the proposed PV program does not entail the types of issues that Staff references in the El Paso case, where the utility has proposed to obtain the majority of its RPS compliance via RECs.

CCAIE notes that with respect to the social justice related citation that Staff references in its brief (*Considering Environmental Justice in the Decision to Unbundle Renewable Energy Certificates*, Comment, Ida Martinac, Environmental Law Journal Symposium Edition, 35

Golden Gate U.L. Rev. 491, 526 (Spring 2005), the detailed discussion of social justice issues associated with RECs in that citation is essentially limited to out-of-state and inter-utility REC purchases. Thus this citation does not provide any further compelling reasons why the RECs issues with the proposed PV program are problematic.

From a positive standpoint, it is easily argued that PNM’s proposed PV program is an extremely sound from a social justice point of view, given the many specific benefits of distributed PV generation, and given that these will occur directly in PNM’s service territory. We also note that distributed PV generation also does not suffer many of the potential drawbacks of other forms of distributed generation associated with factors such as noise, emissions, increased pressure on natural gas supply lines, etc.

It is also important to note that all of the renewable energy associated with the RECs that PNM proposes to buy will be measured absolutely under PNM’s proposal, which is important to ensuring the fundamental integrity of the proposed program. Thus, although the RECs are utilized, the renewable energy itself is still fully characterized and delivered to PNM customers, and the way that energy is contracted for is covered completely by Rule 571.

The bifurcation of RECs from energy in this case should therefore really just be regarded as a convenient mechanism for integrating net-metering in a consistent way with an RPS related RECs purchase. It is arguably does not involve unbundling in a fundamental sense; such as if the energy were actually being delivered to a different utility, or coming from out-of-state. From this standpoint the proposed PV program is analogous to the way RECs are treated in green power programs: In the green power case, customers are effectively paying for unbundled RECs in the sense that the green power they are “purchasing” is not necessarily flowing through their particular meters, but none-the-less it is being delivered somewhere on the same power grid and

to the same customer base to which they belong. The Commission to date has never ruled that this unbundling aspect is problematic.

As for Staff's argument that approval of the proposed PV program would "sanction certain decisions about unbundled RECs" and therefore "necessarily limit the scope of the Commission's decision-making in the Declaratory Judgment case". CCAIE does not see how this could be the case, because, as previously discussed, the Declaratory Judgment deals only with systems interconnecting under Rule 570, for which the "menu options" and systems involved truly are exclusive to Rule 571 for all relevant purposes (as previously argued). But moreover, if the Commission decided later on that it does want to take a position in the Declaratory Order that conflicts in some way with the proposed PV program, it would still be free to take that position and alter the PV program in PNM's next procurement plan proceeding, especially because the agreements in that proposed program are proposed to renew annually. Statute also specifically provides that "The commission may thereafter modify the reasonable cost threshold as changing circumstances warrant, after notice and hearing". The Commission would even be free to immediately suspend the PV program, if necessary. Staff's claim is therefore specious.

We now address the specific questions that Staff lists as being components of the "Pandora's Box", to see how the foregoing arguments bear on them:

- 1) Staff asks "How should RECs be valued, in general?"

This question is exactly what the Reasonable Cost Threshold Case in 2004, and the utility RPS Procurement Plan cases, such as this one, are designed to address. We assert that consideration should be on a case-by-case basis, as the PRC has already been doing now for over a year.

- 2) Staff asks "What are the indicia that the proposed valuation is prudent and a reasonable procurement cost?"

The indicia are largely up to the Commission, within the wide limits set by the RPS statute. The testimony submitted by PNM and CCAIE, however, provides a wide range of data which suggest relevant indicia quite clearly, include the many types of benefits of distributed PV, the detailed cost analysis provided, and all of the considerations and outcome that went into the 2004 case on the reasonable cost threshold for customer owned PV, etc.

- 3) Staff asks “Has the Legislature authorized the Commission to approve costs and rates based on *incentives* targeted to benefit existing and potential developers and owners of photovoltaic systems?”

Yes. [62-16-4](#) of the RPS statute specifically empowers the Commission to consider “other factors, including public benefits, the commission deems relevant” in their consideration of RPS Procurement plans. This extremely broad authority was advocated by CCAIE and other stakeholders expressly for the purpose of enabling programs such as PNM’s proposed PV program, because creating a market for distributed photovoltaics has substantial public benefits including job creation, emissions reduction, etc.

PNM’s proposed PV program also does not propose an upfront incentive, per se, in the way that most state PV incentives operate, but is instead production based. In fact, its *more* than just an incentive – *it’s a definite contract for verifiable RECs in accordance with the RPS statute*. Of course, it *is* an incentive in terms of its effect, and a good one at that, in that it directly promotes high quality installations.

- 4) Staff asks “Whether energy generated and consumed on-site is energy “contracted for delivery”?”

Yes, it is. As the above comment explained, renewable energy generated by customer generators would be delivered directly to PNM’s customers, and the contractual arrangements for the

delivery of that energy are already completely covered by Rule 571 (and all participants in the proposed PV program would be net-metering customers that have contracts with their utilities under Rule 571).

- 5) Staff asks “Whether public utility cash payments for the purported RECs are in violation of the Renewable Energy Act and its legislative intent?”

There is no violation – severance of RECs from energy, and purchase of RECs by utilities from renewable generators are explicitly enabled by statute.

- 6) Staff asks “What policy constraints should the Commission consider in approving any unbundling of RECs?”

The factors that the Commission can take into account in this case are clearly defined in statute and rule, and RECs are clearly defined by statute and Rule 572, as is the process by which the procurement plans are decided. The actual constraints on the Commission on deciding RECs transfers are relatively few: the Commission has broad powers to modify the content of these plans, and should do so on a case-by-case basis.

Finally, we discuss Staff’s citation to the effect that “the operations of net metering are not transparent; they do not show up on the typical rate-payer’s bill. Generally, only the utility and its beneficiaries understand the operations of the program and its substantial subsidies.”

While there is some truth to this claim, this same claim is applicable much utility regulation, and nothing in the statute requires that such conditions be met. For example, if the Commission finds a clever way to avoid a particular expensive transmission upgrade by encouraging another, much cheaper alternative, are customers likely to know about those benefits and see them listed on their bills? Probably not. What this shows is that even direct grid-related benefits may be real and even tangible, yet not transparent and easily visible. The

situation is even more complicated for environmental benefits: What's the tangible benefit of cleaner air? Most people don't even notice if the air is clean, but only notice if the air is dirty and/or suddenly clears up. Yet the benefit is definitely real, though, and in fact paramount to human life.

With regard to customer owned PV specifically, the benefits *are* in fact likely to be quite well known to ratepayers when they begin to materialize at a significant scale. Ratepayer awareness of benefits would be directly promoted by the direct visual experience of local distributed PV generation, the presence of PV manufacturing and installation companies, etc. CCAIE's polling of New Mexico residents indicates very extremely high interest (around 89%) in the advancement of solar generation in New Mexico, and we suspect the public would become acutely aware of, and supportive of, both the presence and benefits of widespread PV deployment.

Lastly, we feel it is important to clarify the true meaning of the word "beneficiaries" as referenced in the above quote, and in relation to the proposed PV program. This topic has a clear bearing on the social justice issues raised by Staff as well.

The quote above was clearly only referring to the owners of distributed PV systems, or those directly involved with such systems, as being the "beneficiaries" of the net-metering program. Customer generators, however, are not the primary beneficiaries alone of the net-metering and proposed PV programs: All rate payers are the primary beneficiaries, because the benefits are actually a better environment, more jobs, lower electrical infrastructure costs, etc. In the case of grid-tied PV system owners, the owners are actually the largest *subsidizers*, as opposed to beneficiaries, and they actually suffer a financial *penalty* overall, and little direct

personal financial *benefit*, for their investment in improving the electricity infrastructure and the environment for everyone.

There is a deep social justice aspect to this: to the extent that wealth is associated with willingness to purchase a grid-tied PV system, then the proposed PV program becomes a vehicle to leverage that wealth to benefit all rate payers (and in fact everyone). Wealth, moreover, is only a partial factor – a surprising number of relatively poor but environmentally oriented people also purchase, or wish to purchase, PV systems. This is another reason why the proposed program is desirable: It not only leverages wealth, but effectively widens the pool of wealth being leveraged.

In CCAIE's view, the owners of grid-tied systems are actually heroes, who donate large sums of their money to help all of society with little compensation in return. The purchase of RECs from grid-tied system owners at a reasonable cost from the standpoint of the payback time of systems is therefore well justified in our opinion.

In conclusion, CCAIE respectfully requests that the Commission approve PNM's Renewable Energy Procurement Plan for 2006.

Respectfully submitted, this 5th day of December, 2005.

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY)
OF NEW MEXICO’S NOTICE OF FILING OF)
“RENEWABLE ENERGY PROCUREMENT)
PLAN FOR 2006”) Case No. 05-00356-UT

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Reply Brief of the Coalition for Clean Affordable Energy were delivered to the New Mexico Public Regulation Commission on this 5th day of December 2005, and to each of the following, first-class and postage prepaid:

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