

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**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 AND THE COALITION FOR  
CLEAN AFFORDABLE ENERGY'S EXCEPTION REQUESTING  
CLARIFICATION OF RECOMMENDED DECISION**

Public Service Company of New Mexico ("PNM") and the Coalition for Clean Affordable Energy ("CCAЕ") submit this Exception Requesting Clarification of Recommended Decision of the Hearing Examiner ("RD") to state their exception to and request the Commission to clarify two matters addressed in the RD: (1) the extent to which PNM may be required in subsequent rate proceedings to show the prudence and reasonableness of costs which have been expended consistent with Commission approval of PNM's 2006 Procurement Plan and (2) the methodology by which PNM will pay customers for RECs under the Small PV Program.

**Cost Recovery**

The RD, p. 8, discusses the cost recovery provision of the Renewable Energy Act, § 62-16-6(A), which ensures that "a public utility that procures or generates renewable energy *shall* recover, through the rate-making process, the reasonable costs of complying with the renewable portfolio standard. Costs that are consistent with commission approval of procurement plans or transitional procurement plans *shall* be deemed to be reasonable." (Emphasis added). In its Response Brief, p. 7, Staff asserted that, despite the mandatory language in § 62-16-6(A), where "the Commission has deemed the costs [for procuring renewable resources consistent with a Commission approved procurement plan] reasonable

within the context of the procurement plan case, that finding can still be rebutted in a rate case.” The RD, p. 23-24, recites Staff’s position that costs approved by the Commission in a proceeding on a utility’s proposed renewable procurement plan are “nevertheless subject to being rebutted in the subsequent rate proceeding”, and states that “[w]hile Staff’s position is in general well taken, there is no actual controversy in this case regarding either the burdens of proof borne by utilities under the REA or the Commission’s ratemaking authority.” The RD then cites to testimony at the hearing by PNM Witness P. Scharff as being consistent with Staff’s position. On page 25, the RD states that “[a]dditionally, as found above, PNM bears the burden of establishing in its next general rate case the prudence of all Program expenditures ....” Further, Finding of Fact and Conclusion of Law No. 12, RD p. 44, provides that the total costs of the Small PV Program proposed by PNM “are reasonable and recoverable” and should be approved, subject to the proviso that “PNM bears the burden of proving the prudence of those costs” in subsequent rate proceedings.

PNM is concerned that the portions of the RD recited above create an ambiguity about the extent to which costs expended by PNM under a Commission approved Small PV Program might be subject to disallowance in rate proceedings for recovery of those approved costs. The REA, § 62-16-6(A) is clear that if the Commission approves a procurement plan and if the utility incurs costs consistent with that approved plan, the costs “shall be deemed reasonable” and the utility shall recover those costs through the rate-making process. The utility cannot be required, after proceeding in accordance with the Commission’s approval of its procurement plan to incur costs to procure the renewable resources to meet its RPS consistent with the Commission’s approval, to establish once again that it was reasonable to procure the resource and to incur those

costs. That would effectively defeat the entire purpose of the assurance of cost recovery provided in § 62-16-6(A).

Applied in the context of this proceeding, § 62-16-6(A) means that if the Commission approves PNM's proposed procurement of RECs from solar PV systems rated at 10 kW or less for \$0.13 per kWh, in accordance with the Small PV Program, and PNM thereafter implements the Small PV Program and procures the RECs at the approved cost, PNM cannot be denied recovery of the costs for acquiring the RECs at that price.

As a part of the Small PV Program, PNM's 2006 Plan proposed expenditure of costs of up to \$350,000 for program information and consumer education materials. At the hearing, the Hearing Examiner questioned PNM Witness P. Scharff regarding the lack of specificity provided by PNM as to a "cost breakdown of the various components" for these proposed costs. Hearing Examiner, Tr. 152. On redirect examination of Mr. Scharff, PNM counsel followed up on the Hearing Examiner's concern:

Q. Mr. Scharff, is it your understanding that if the Public Regulation Commission were to approve PNM's procurement plan including the expenditure of sums for the CIS modification and the advertising program, that PNM would nonetheless have to come back to the Commission in a rate proceeding to determine to establish the prudence of those expenditures and that they were actually incurred?

A. To the best of my knowledge, I believe that is the case that PNM would have to come back in a proceeding.

This redirect testimony was limited on its face to costs expended under the Small PV Program for advertising (and CIS modification, which PNM agreed to withdraw from its 2006 Plan on agreement with CCAE). Since PNM's 2006 Plan did not include an itemized cost breakdown for the proposed expenditure of \$350,000 for the advertising component of the Small PV Program, PNM agrees that it will have to show in subsequent rate proceedings that the approved amount was prudently expended; *i.e.*, that it was expended non-wastefully for the

purposes for which it was approved. By contrast, costs for RECs procured in accordance with the Small PV Program, if approved by the Commission, should not be subject to relitigation as to their prudence since PNM will not have retained any discretion over the nature or amount of these expenditures. PNM would have to show, of course, that the costs were actually incurred in the implementation of the authorized procurement plan and were not otherwise recovered in retail rates, but under § 62-16-6(A) neither the purpose for which the costs were incurred, to purchase RECs under the approved Small PV Program, nor the amount, \$0.13 per REC as authorized, can be reexamined in a later proceeding.

The Commission should clarify that the costs to procure RECs for the Small PV Program at \$0.13 per kWh are approved as proposed under PNM's 2006 Plan and are recoverable in rates by making the following changes to the RD:

- Page 24: ~~“While Staff’s position is in general well taken, there is no actual controversy in this case regarding either the burdens of proof borne by utilities under the REA or the Commission’s ratemaking authority. In fact, PNM recognizes the bifurcated process Staff postulates. As it expressly acknowledged at the hearing, PNM bears the burden of establishing in a subsequent rate proceeding the prudence of all Program expenditures for information and consumer education materials and must show all program costs have actually been incurred. Scharff Tr. 171-72. Moreover, in the Stipulation approved by the Commission in Case No. 04-00311-UT, PNM agreed to defer determination of the reasonableness of the valuation of the renewable energy resources from the NMWEC until PNM’s next general rate case. The Stipulation provides on page 2, “If, in its next general rate case, PNM seeks to recover the costs of the renewable resources from the NMWEC to meet the RPS, PNM will be required to establish the reasonableness of such costs, which the Signatories are entitled to contest.”~~ There is no actual controversy in this case regarding either the burdens of proof borne by utilities under the REA or the Commission’s ratemaking authority. In fact, PNM recognizes the bifurcated process Staff postulates. As it expressly acknowledged at the hearing, PNM bears the burden of establishing in a subsequent rate proceeding the prudence of all Program expenditures for information and consumer education materials and must show all program costs have actually been incurred. Scharff Tr. 171-72. Moreover, in the Stipulation approved by the Commission in Case No. 04-00311-UT, PNM agreed to defer determination of the reasonableness of the valuation of the renewable energy resources from the NMWEC until PNM’s next general rate case. The Stipulation provides on page 2, “If, in its next general rate case, PNM seeks to recover the costs of the renewable resources from the NMWEC to meet the RPS, PNM will be required to establish the reasonableness of such costs, which the Signatories are entitled to contest.”
- Page 25: ~~“Additionally, as found above, while it is decided in this case that overall expenditure of \$350,000 for customer information and education costs is prudent and reasonable. PNM bears the burden of establishing in its next general rate case the prudence of all the specific Program expenditures for information and consumer education materials and that all Plan costs have actually been incurred.”~~ Additionally, as found above, while it is decided in this case that overall expenditure of \$350,000 for customer information and education costs is prudent and reasonable. PNM bears the burden of establishing in its next general rate case the prudence of all the specific Program expenditures for information and consumer education materials and that all Plan costs have actually been incurred.”
- Page 44, ¶ 12: ~~“The costs of \$2,781,166 for the 12-year Small PV Program are reasonable and recoverable through rates established in future rate proceedings consistent with Paragraph 12 of the Case 3137 Stipulation and, accordingly, should be approved; provided, however that in any such proceeding PNM bears the burden of proving the prudence of those costs the specific expenditures for information and consumer education materials, and that the all Program costs have actually been incurred and that they have not been otherwise recovered in retail rates.”~~ The costs of \$2,781,166 for the 12-year Small PV Program are reasonable and recoverable through rates established in future rate proceedings consistent with Paragraph 12 of the Case 3137 Stipulation and, accordingly, should be approved; provided, however that in any such proceeding PNM bears the burden of proving the prudence of those costs the specific expenditures for information and consumer education materials, and that the all Program costs have actually been incurred and that they have not been otherwise recovered in retail rates.”

**Purchase of RECs under the Small PV Program**

On page 16, the RD correctly discusses the specifics of the REC payment aspects of the Small PV Program as proposed by PNM: PNM will purchase all RECs associated with energy generated from each participating PV system; payment will be made by crediting the participant's electric bill on a monthly basis; if the credit exceeds the participant's monthly bill by less than \$20, the balance will be carried forward as a credit to the next month's bill; if the credit exceeds the participant's monthly bill by more than \$20, the entire balance will be paid to the customer. A further discussion of the REC payment provisions of the Small PV Program on pages 22-23 of the RD, however, does not accurately reflect the Program provisions proposed by PNM and agreed to by CCAE. The following language is incorrect and appears to confuse the Small PV Program with aspects of Rule 572:

PNM will provide participating customers a kWh credit of \$0.13 per REC for the net excess energy they generate. The credit will be carried forward from month to month. In accord with Rule 571.11(D), a customer will only be paid for excess energy supplied to PNM when the customer leaves the system, if there is a net excess at that time.

In order to correctly reflect the REC payment provisions of the Small PV Program proposed by PNM and agreed to by CCAE, the Commission should amend the above quoted language on pages 22-23 of the RD to read as follows:

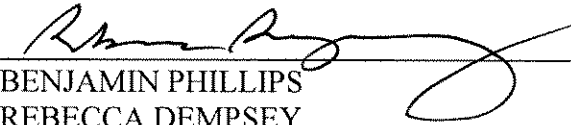
As described on page 16, *supra*, PNM will pay participating customers a kWh credit of \$0.13 per REC for the energy they generate, as measured by the RECs meter that measures the full output of the customer generator's PV system while the customer is participating in the program.

Respectfully submitted,

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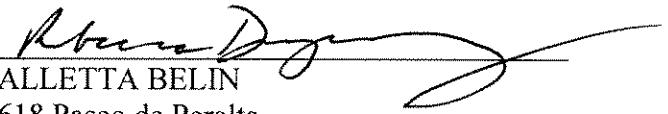
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **Public Service Company Of New Mexico and the Coalition for Clean Affordable Energy's Exception Requesting Clarification of Recommended Decision** was e-mailed and mailed, first-class, postage paid, or hand-delivered this 14<sup>th</sup> day of December 2005, to each of the following persons as indicated:

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Dated this 5<sup>th</sup> day of December 2005.

By

  
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