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	)	**Case No. 05-00352-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
Petitioner	)	

TESTIMONY OF

BENJAMIN LUCE

On Behalf of the

Coalition for Clean Affordable Energy

July 26, 2006

Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.

A. My name is Benjamin Luce. I am the Director and Chair of the Coalition for Clean Affordable Energy. My business address is 802 Early Street, Santa Fe, New Mexico 87505.

Q. PLEASE SUMMARIZE YOUR PROFESSIONAL BACKGROUND AND QUALIFICATIONS.

A. I have a PhD in Physics from Clarkson University, with additional education in electricity and electronics, and have been employed at Los Alamos National Laboratory since 1993 where I specialized in the modeling of complex systems (I am currently on leave). I have participated in many NMPRC proceedings since 1999 on matters related to electricity. I was also very involved in the development of New Mexico's Renewable Portfolio Standard. My resume is attached as CCAE Exhibit __ (BL-1).

Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. I am testifying on behalf of the Coalition for Clean Affordable Energy ("CCAE"), a coalition of ten environmental and consumer groups focused on the development of renewable energy resources in New Mexico. The members of CCAE include: Community Action New Mexico, Natural Resources Defense Council, New Mexico Citizens for Clean Air & Water, New Mexico Public Interest Research Group, New Mexico Solar Energy Association, Physicians for Social Responsibility, Rio Grande Chapter of the Sierra Club, Southwest Energy Efficiency Project, Southwest Research and Information Center, and Western Resource Advocates.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My testimony responds to questions posed by the hearing examiner and PRC staff regarding PNM's request for a declaratory order on renewable energy credits (RECs).

Q. HOW DO YOU RESPOND TO THE QUESTION OF WHETHER A PUBLIC UTILITY HAS DISCRETION TO ACQUIRE, OR NOT TO ACQUIRE, RECS

FROM A QF FROM WHICH IT PURCHASES RENEWABLE ENERGY UNDER NMPRC RULE 17.9.570 NMAC?

A. The Renewable Energy Act clearly gives a public utility discretion about whether to acquire or not acquire RECs. Moreover, it implies that "acquire" can mean "purchase," or that it might effectively mean "automatic transfer," although, as I explain below, there are some problematic issues with "automatic transfer," to which I propose a possible response by the Commission.

More specifically, in section 5B.1 the Act states:

"(1) renewable energy certificates: (a) are owned by the generator of the renewable energy unless: 1) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator; 2) the generator is a qualifying facility, as defined by 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;"

Likewise, section 5B.2 of the Act states that:

"(1) renewable energy certificates: … (b) may be traded, sold or otherwise transferred by their owner to any other party; provided that the transfers and use of the certificate by a public utility for compliance with the renewable energy portfolio standard shall require the electric energy represented by the certificate to be contracted for delivery in New Mexico unless the commission determines that there is a regional market for exchanging renewable energy certificates;"

The language from the first excerpt clearly establishes that there are indeed RECs associated with energy generated by QFs, to begin with, and that QFs may, with agreement of the utility, retain ownership of their RECs, or that the utility may acquire them. The second excerpt establishes that RECs may be sold by their owners (whomever they are) to *any* other party. This clearly implies that a utility and a QF may initially agree that a QF will retain ownership of its RECs, and that the QF may sell those RECs to that utility in a separate agreement, or to another utility, or to any one else.

There is a good policy reason why the Commission may want a QF (or any renewable energy generator, for that matter) to be compensated for its RECs. As a party

that was directly involved with the crafting of the Act, I remark that besides the technical question of whether utilities have discretion to acquire RECs, it was my understanding that the sale of RECs by QFs to utilities, as opposed to automatic transfer, was allowed precisely so that adequate financial compensation for QFs would be possible, so that an increase in the number of QFs can be encouraged if the Commission deems that this is a desirable component of utility procurement plans.

Beyond the provisions of Act, I would like to note that there may be some problems with the structure of the Act that the Legislature may need to consider modifying in the future. Specifically, a market for RECs now exists beyond the mechanisms provided by the Act. On a regional level, the Western Renewable Energy Generation Information System (WREGIS) is under development to facilitate the tracking of RECs throughout the western electric grid. In New Mexico, for example, the Bonneville Environmental Foundation is planning to begin offering to purchase RECs from renewable energy generators. The provisions of the Act that appear to allow for utilities to automatically acquire RECs therefore potentially deprive a renewable energy generator of income it might attain in the general RECs market. This has practical disadvantages for the development of renewables in New Mexico; it potentially creates a non-uniform environment for QFs throughout the state, and may also have deeper legal implications.

Q. HOW DO YOU RESPOND TO THE QUESTION OF WHETHER IT IS REASONABLE AND PRUDENT FOR A PUBLIC UTILITY TO PAY VALUE FOR RECS, WHETHER OR NOT ACQUIRED WITH THE ASSOCIATED ENERGY?

A. The second excerpt above, from Section 5B.2, clearly implies that RECs can be purchased by a public utility for purposes of meeting the requirements of the Act without acquisition of the associated energy, because RECs can be traded and sold with the only restriction that the energy is "contracted for delivery" in New Mexico. And even this requirement may be relaxed by the Commission. This implies that RECs indeed have value independently of energy. In fact, if this was not the case, there would be no need for RECs in the first place: RECs *intrinsically* involve the unbundling of environmental

attributes from energy, and also the sale or trade of these attributes for purposes of meeting the requirements of the Act.

As to whether it is reasonable or prudent for a public utility to pay value for RECs, the Act implies that acquiring renewable energy or RECs is reasonable and prudent in a given instance simply if the Commission approves such a purchase as part of a public utility's Renewable Energy Procurement Plan.

Q. HOW DO YOU RESPOND TO THE QUESTION OF WHETHER RENEWABLE ENERGY CONSUMED ON-SITE BY A QF IS ENERGY "CONTRACTED FOR DELIVERY" AND THUS USABLE TO MEET A UTILITY'S RENEWABLE PORTFOLIO STANDARD?

A. Yes, the energy consumed on-site by a QF is energy "contracted for delivery" and thus usable to meet a utility's renewable portfolio standard, as long as there is *some* kind of contract governing the delivery of the energy (and as long as the RECs have not been sold to another entity). This is because the context of the phrase "contracted for delivery" has only to do with whether or not the energy is delivered in New Mexico, or outside of New Mexico as part of some larger RECs program, and nothing more. The language does not even say to whom the energy is delivered, that is, to the utility or directly to a customer, or how the energy is measured, or exactly where it is delivered (other than being delivered in New Mexico). The Act is concerned only with whether that delivery occurs inside or outside of New Mexico.

The interconnection and energy delivery of all grid-connected systems in New Mexico, whether interconnecting under NMPRC Rule 570 or NMPRC Rule 571, is *always* governed by a contract between the QF and the public utility. Again, the Act specifies only that a contract of some kind must exist, and does not specify or limit the metering or financial arrangements the energy is delivered under. So energy from a QF consumed on-site is clearly eligible.

Q. HOW DO YOU RESPOND TO THE QUESTION OF WHETHER THE LEGISLATURE HAS AUTHORIZED THE COMMISSION TO APPROVE

INCENTIVES TO BENEFIT EXISTING OWNERS OF CUSTOMER-OWNED RENEWABLE ENERGY SYSTEMS?

A. The Act does not deal with incentives, per se, but does establish that RECs are associated with renewable energy generated by QFs, that QFs can retain ownership of RECs if a public utility agrees, and that public utilities can purchase and trade RECs, with or without delivery of energy. The question of "incentives", per se, is simply irrelevant.

In section 4C, however, the Act states:

"In establishing and modifying the reasonable cost threshold, the commission shall take into account:

(1) the price of renewable energy at the point of sale to the public utility;

(2) the transmission and interconnection costs required for the delivery of renewable energy to retail customers;

(3) the impact of the cost for renewable energy on overall retail customer rates;

(4) the overall diversity, reliability, availability, dispatch flexibility, cost per kilowatt-hour and life cycle cost on a net present value basis of renewable energy resources available from suppliers; and

(5) other factors, including public benefits, the commission deems relevant; provided that nothing in the Renewable Energy Act shall be construed to permit regulation by the commission of the production or sale price at the point of production of the renewable energy."

The Commission is therefore given broad latitude, including consideration of "other factors, including public benefits, the commission deems relevant" when setting reasonable cost thresholds. The Commission may therefore set reasonable cost thresholds at any level it decides is appropriate for RECs, including RECs associated with QFs. In particular, it implies that if the Commission deems that increasing the number of QFs is beneficial for purposes of public benefit, it can set the reasonable cost threshold at or above the level that it believes will encourage the increase the number of QFs. This is appropriate and consistent with the overall Commission oversight of the development of renewable energy generation in New Mexico provided by the Act.

I remark here that one action the Commission might undertake to clarify these issues is to establish, as general policy, separate reasonable cost thresholds for RECs payments for various types of RECs associated with QFs, separate from the thresholds associated with various utility scale renewable energy and RECs. The Commission has already established such a QF reasonable cost threshold when it approved PNM's photovoltaic RECs buyback program, and that program can serve as a good model for further QF REC thresholds.

Q. HOW DO YOU RESPOND TO THE QUESTION OF WHETHER THERE ARE ANY POLICY CONSTRAINTS THE COMMISSION SHOULD CONSIDER IN APPROVING ANY UNBUNDLING OF RECS?

A. This question is somewhat confusing, because, as explained above, RECs intrinsically involve an unbundling of RECs from energy. The phrase "unbundling of RECs" is therefore meaningless.

Nevertheless, as far as policy constraints on the Commission on approving the use of RECs by a public utility to satisfy the requirements of the Act, as opposed to the acquisition of renewable energy directly, the only constraints are that the proposed acquisition of the RECs are:

- Consistent with the requirement that the renewable energy portfolios of public utilities shall be diversified as to the type of renewable energy resource;
- Consistent with the requirement that the energy must be "contracted for delivery in New Mexico unless the commission determines that there is a regional market for exchanging renewable energy certificates";
- That the renewable energy generation associated with the RECs in question meets the definitions of renewable energy as provided in the Act;
- That the Commission deems that the public utility has demonstrated that the proposed procurement is reasonable as to value being paid by the RECs;
- That the utilities plan is otherwise in the public interest;

The process laid out by the Act clearly implies that the Commission's decisions about specific RECs acquisitions should take place on a case-by-case basis according to these constraints.

Q. HOW DO YOU RESPOND TO THE QUESTION OF WHETHER ENERGY AND RECS MUST BE OBTAINED BY A UTILITY IN ORDER FOR AN ENERGY PURCHASE TO BE CONSIDERED A PURCHASE FROM A RENEWABLE QF AND, IF SO, WHAT IS THE AVOIDED COST WHICH UTILITIES SHOULD PAY FOR BUNDLED ENERGY AND RECS?

A. If a utility wants to acquire the RECs from a QF, along with the energy, it may do so, as explained above. The Commission may then approve, or not approve, the use of those RECs by the utility to satisfy the requirements of the Act (and as stated above, I suggest the Commission never approve such RECs in procurement plans).

I do not feel that the question of what avoided cost a utility should pay, should a utility choose to acquire the RECs without an explicit REC payment, has been adequately resolved in New Mexico. In particular, because RECs are being acquired, and because RECs have a market beyond the market created by the Act, its reasonable to take the position that the avoided cost in this case is not just related to the cost it would take the utility to generate the same amount of energy, but rather the same of amount of *renewable* energy, or even the same amount of *distributed renewable* energy in the same location of the QF (because distributed power has tangible, measurable benefits).

I suggest that the Commission set such an avoided cost by defining it to be equal to the traditional avoided cost (the cost to generate the same amount of energy) plus whatever reasonable cost threshold the Commission sets for RECs for the type of QF in question.

As explained above, however, the utility may also allow the QF to retain the RECs, and just purchase the energy, and there may be a separate agreement selling those RECs to the utility, or to another utility, for some Commission approved value. In this case, the avoided cost should simply remain at the traditional avoided cost.

In this way, a consistent set of policies is established that is consistent with the Act, which allows utilities the discretion afforded them in the Act, which is fair to QFs,

and which retains the appropriate ability of the Commission to shape the development of renewable energy in New Mexico.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does