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July 21, 2006

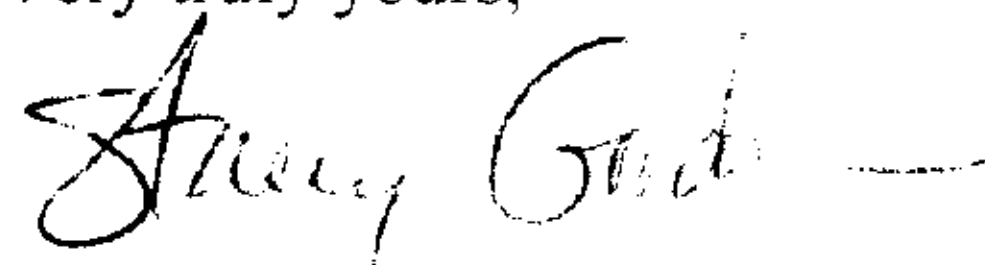
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Mr. Ron X. Montoya
New Mexico Public Regulation Commission
224 East Palace Avenue
Santa Fe, New Mexico 87501

Re: Case No. 05-00352-UT

Enclosed for filing please find the original and fourteen (14) copies of **El Paso Electric Company's Direct Testimony of Thomas L. Newsom**, including a fax of his Affidavit and an original Certificate of Service for filing. The original Affidavit was delayed in shipping and will be filed for substitution for the fax immediately upon receipt. Please file-stamp and return the additional two copies with our messenger. Thank you for your assistance in this matter.

Very truly yours,



Stacey J. Goodwin

SJG*pat
Enclosures

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

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COMMUNICATIONS SECTION

**DIRECT TESTIMONY
OF
THOMAS L. NEWSOM**

JULY 21, 2006

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**EL PASO ELECTRIC COMPANY
DIRECT TESTIMONY OF
THOMAS L. NEWSOM**

I. INTRODUCTION AND PURPOSE

1

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Thomas L. Newsom. My business address is 400 West 15th Street, Suite
4 806, Austin, Texas 78701.

5

6 **Q. HOW ARE YOU EMPLOYED?**

7 A. I am employed by El Paso Electric Company ("EPE" or the "Company") in the position
8 of Assistant Vice President, Regulatory Affairs.

9

10 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND BUSINESS**
11 **BACKGROUND.**

12 A. I hold a Bachelor of Business Administration in Accounting from the University of Texas
13 at Arlington and a Master of Accountancy from the University of Texas at El Paso. I
14 have over thirty-three years of professional experience, including over six years in public
15 accounting and over twenty-seven years in accounting, financial, and administrative
16 positions as an officer and employee for two rate-regulated utilities.

17 In public accounting, I performed and supervised audit engagements for a variety
18 of clients, including banks, real estate development companies, stock brokerage firms,
19 manufacturing companies, retail and wholesale firms, a municipality, a school district,
20 and a hospital district. In addition to audit responsibilities, I also performed and
21 supervised tax engagements consisting of tax return preparation and strategic tax
22 planning for a variety of individuals, partnerships, and corporations.

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1 My corporate experience includes accounting and financial activities within a
2 Federal Energy Regulatory Commission (“FERC”) rate-regulated utility prior to my
3 employment with EPE. During that time, I supervised the documentation and ongoing
4 analysis of accounting systems and internal controls, including the development of new
5 systems and controls, for the entire company. I also managed and supervised personnel
6 responsible for plant accounting, sales and customer receivables, subsidiary records and
7 consolidations, and financial reporting. In my last position with that company, I was
8 responsible for the development and maintenance of accounting, budgeting, and strategic
9 planning systems for a major operating division.

10 Upon joining EPE in August 1989, I became responsible for the Company’s
11 interface with its various regulatory authorities, including assuring the Company’s
12 compliance with applicable laws, regulations, and commission orders regulating its
13 operations and rates. I have been actively involved in developing corporate responses to
14 proposed accounting standards and regulatory rulemakings and in the development of
15 corporate strategy as it is impacted by the rules or actions of EPE’s regulators. Upon
16 adoption of new or revised standards or rules, I have been an active participant in their
17 implementation within the Company. I have attended various regulatory seminars and
18 have participated in the educational functions of industry trade groups.

19
20 **Q. PLEASE DESCRIBE YOUR CURRENT RESPONSIBILITIES WITH EPE.**

21 **A.** I am currently responsible for the Company’s interface with its regulators with respect to
22 the various routine and non-routine interactions with the regulatory commissions. This

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1 responsibility encompasses the Company's compliance with the requirements of the laws,
2 regulations and specific orders of regulatory authorities. Included in this capacity is
3 testifying on behalf of the Company with respect to its compliance with the requirements
4 of renewable energy programs in Texas and New Mexico.

5
6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A. The purpose of my testimony is to respond to the questions raised by the Hearing
8 Examiner in his Notice of these proceedings. As stated by the Hearing Examiner in the
9 public notice for this proceeding, the decisions made in this case may impact renewable
10 energy policy in New Mexico and set parameters for transactions for the purchase of
11 Renewable Energy Certificates ("RECs") from Qualifying Facilities ("QFs") by public
12 utilities.

13
14 **II. BACKGROUND OF PROCEEDING**

15 **Q. PLEASE SUMMARIZE HOW THIS PROCEEDING BEGAN.**

16 A. This proceeding was initiated by Public Service Company of New Mexico ("PNM").
17 PNM filed its Petition for Declaratory Order that requested an Order from the
18 Commission declaring that PNM has discretion to decide whether to acquire RECs from
19 which PNM purchases renewable energy under NMPRC Rule 570 avoided cost tariffs.
20 PNM also requested an Order declaring that it is reasonable and prudent for PNM to pay
21 value for the RECs associated with energy generated by those QFs.

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1 Commission Staff, the Attorney General’s Office and EPE responded to PNM’s
2 Petition on grounds that PNM raised questions concerning the Renewable Energy Act of
3 2004 (“Act” or “REA”) that had state-wide implications. The Commission issued a
4 Docketing Statement assigning the case to the Hearing Examiner. As a result of an initial
5 pre-hearing conference, the Hearing Examiner posed several questions for parties to
6 address in direct testimony, to which I respond below.

7
8 **Q. PLEASE EXPLAIN THE PRIMARY REQUIREMENT OF THE RENEWABLE**
9 **ENERGY ACT FOR UTILITIES TO MEET A PORTFOLIO STANDARD.**

10 A. The Act requires utilities to fulfill a renewable energy portfolio standard (“RPS”) based
11 on percentages of retail energy sales to New Mexico jurisdictional customers,
12 commencing with 5 percent on January 1, 2006, and reaching 10 percent on January 1,
13 2011 and thereafter, subject to limitations of a reasonable cost threshold and a large non-
14 governmental customer cost cap. The Act grants the Commission authority to
15 promulgate rules consistent with the Act’s language for the specified RPS requirement,
16 and requires rate recovery of related costs. Utilities must file annual procurement plans
17 to meet the RPS requirement, which must be approved by the Commission prior to
18 implementation. Utilities must also file annual reports on their procurement activities
19 undertaken to comply with the Act.

20
21 **Q. HAS THE COMMISSION PROMULGATED A RULE FOR COMPLIANCE**
22 **WITH RPS REQUIREMENTS?**

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1 A. Yes. The Commission adopted its Renewable Energy Rule in Case No. 04-00211-UT by
2 Final Order on Rehearing on March 22, 2005, to implement the provisions of the Act, and
3 to have a Rule consistent with the Act as required. To calculate compliance with the RPS
4 requirements, the Renewable Energy Rule applies the following weighted kilowatt-hour
5 (“kWh”) values to each kWh generated by the listed renewable energy resources: Wind
6 or Hydropower generators - 1 kWh; Biomass, Geothermal, Landfill Gas, or Fuel Cell
7 generators - 2 kWh; and Solar generators - 3 kWh.

8

9 **Q. HOW ARE RECS USED IN THE ACT AND RENEWABLE ENERGY RULE?**

10 A. The purpose of RECs is to demonstrate compliance with the Act and the Commission’s
11 Renewable Energy Rule, NMPRC Rule 572. Transactions between a public utility and a
12 supplier of renewable energy for purposes of the RPS requirement must be documented
13 through RECs. As further detailed below, a REC represents an actual amount of
14 renewable generator output, and may be purchased without physical delivery of the
15 associated energy to the REC purchaser as long as the associated energy is contracted for
16 delivery into New Mexico. Under Rule 572 (NMAC 17.9.572.17), utilities must file
17 annual reports on renewable energy generation or purchases of renewable energy during
18 the prior calendar year that itemize all renewable energy generation and/or renewable
19 energy certificate purchases and sales; and list (with copies of) all renewable energy
20 certificates, including acquired, issued or retired certificates;

21

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1 **Q. PLEASE ADDRESS THE REQUIREMENTS FOR RENEWABLE ENERGY**
2 **CERTIFICATES AND SALE OR TRADING OF CERTIFICATES.**

3 A. The Act authorizes the Commission to establish a specific REC system, and allows RECs
4 that are monitored, accounted for or transferred by or through a regional system or
5 trading program for any region in which a public utility is located. As previously stated,
6 a public utility may establish compliance by the purchase of a REC without taking
7 physical delivery of the associated energy, but the Act requires the energy represented by
8 the certificate to be “contracted for delivery in New Mexico,” unless the Commission
9 determines that a regional system exists. If the Commission has not yet made a
10 determination that a regional renewable energy market or trading system is available for
11 all public utilities in New Mexico, any public utility may seek approval from the
12 Commission for individual RECs that represent energy generated by a renewable energy
13 resource within a regional renewable energy market or trading system in any region
14 where the public utility is located.

15

16 **III. RESPONSE TO COMMISSION QUESTIONS**

17 **Q. DO THE COMMISSION’S QUESTIONS REQUIRE A LEGAL RESPONSE AS**
18 **WELL AS RESPONSIVE TESTIMONY?**

19 A. Yes. The Commission’s questions require a legal interpretation of the Act and related
20 laws and regulations for QFs. I am not a lawyer and do not attempt to answer questions
21 from a legal perspective. This will be addressed in EPE’s subsequent legal briefs in this
22 case.

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Q. DOES A PUBLIC UTILITY HAVE 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. Yes. The Act specifically states that RECs are owned by the public utility purchaser of the renewable energy, unless the QF generator and the utility purchaser otherwise reach a specific agreement that they will be retained by the generator. The Commission’s Renewable Rule 572, required by the Act to be consistent with the provision of the Act, contains similar language. It is clear that the RECs are owned by the public utility purchaser under the terms of the Act, unless the utility agrees to a contract to allow the QF provider to retain the RECs. Because QF purchases are mandatory pursuant to NMPRC Rule 570, the utility cannot refuse to purchase from a QF. Thus, if a QF forces a mandatory purchase of renewable energy, the RECs must be transferred to the public utility under the terms of the Act, unless the utility voluntarily agrees to a contract to the contrary.

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

A. It depends on the facts and circumstance of each purchase. For instance, the Act allows compliance with the RPS requirements through purchase of RECs without physical delivery of the associated energy, so long as the energy is contracted for delivery in New

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1 Mexico. EPE has an approved Procurement Plan, with approved rate recovery, for
2 acquisition of RECs from a non-QF provider without taking physical delivery of the
3 associated energy.

4 Whether a given transaction with a QF should result in specific separation of the
5 REC from the associated energy for purposes of compliance with the RPS depends upon
6 the facts and circumstances in a utility's renewable Procurement Plan. With regard to a
7 mandatory purchase of energy from a QF (where by law the RECs are owned by the
8 utility), if a public utility voluntarily agrees to a contract to allow a QF provider to retain
9 the RECS and then proposes in a Procurement Plan to purchase those RECs from the QF
10 at an additional cost, the reasonableness and prudence of the Procurement Plan should be
11 decided by the Commission based upon the specific facts and circumstances for that
12 utility. The purposes of the Act include the requirement that utilities be allowed to
13 "recover costs through the rate-making process incurred for procuring or generating
14 renewable energy used to comply with the prescribed amount" of renewable energy and
15 "to protect public utilities and their ratepayers from renewable energy costs that are
16 above a reasonable cost threshold." Where utility ownership of RECs has been assigned
17 as a matter law, it may be considered imprudent or unreasonable for the utility and its
18 customers to pay additional value for RECs that are transferred to the utility's ownership
19 by law.

20

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1 **Q. IS RENEWABLE ENERGY CONSUMED ON-SITE BY A QF ENERGY**
2 **“CONTRACTED FOR DELIVERY” AND THUS USABLE TO MEET A**
3 **UTILITY’S RENEWABLE PORTFOLIO STANDARD?**

4 A. No. If energy is consumed on-site it is not directly measured or contractually accounted
5 for; therefore no energy is delivered by contract into New Mexico. Under the Act, a REC
6 requires that associated energy be purchased by the utility or otherwise contracted for
7 delivery into New Mexico. Under NMPRC Rule 570 and Rule 571, QFs and net metered
8 customers only receive payments or credits for kWh generated by the customer in excess
9 of the amount consumed by the customer (including the amount provided by the utility).
10 Excess energy may either be sold to the utility under a simultaneous buy/sell contract or
11 measured at the meter and delivered to the grid for credit during a billing period.
12 Because energy consumed by a customer is not metered and contracted for delivery,
13 those kWh are not usable to meet the utility’s RPS.

14
15 **Q. HAS THE LEGISLATURE AUTHORIZED THE COMMISSION TO APPROVE**
16 **INCENTIVES TO BENEFIT EXISTING OWNERS OF CUSTOMER-OWNED**
17 **RENEWABLE ENERGY SYSTEMS?**

18 A. There is no language in the Act that authorizes the Commission to approve incentives to
19 benefit existing owners of customer-owned renewable energy systems.

20
21 **Q. ARE THERE ANY POLICY CONSTRAINTS THE COMMISSION SHOULD**
22 **CONSIDER IN APPROVING ANY UNBUNDLING OF RECS?**

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1 A. Yes. The Commission must follow the Act, recognizing that the Legislature has resolved
2 the question of ownership of RECs from a QF purchase. The Commission should also
3 recognize that a utility must purchase energy from a QF under PURPA and NMPRC Rule
4 570, regardless of whether that energy would otherwise be a resource that the utility
5 would choose to purchase to economically and reliably meet customer needs. The Act
6 designates ownership with the utility, unless the utility in its discretion contracts
7 otherwise with the QF. The Act requires the Commission to implement rules consistent
8 with the Act. Mandatory unbundling by the Commission of RECs from QF-provided
9 energy would contradict the Act and would force the utility to pay more for the RPS
10 program because it will either pay extra for an attribute of the energy that it already owns,
11 or will have to acquire additional RECs from other resources if RECs are unbundled from
12 a QF purchase and not delivered to the utility in accordance with the Act.

13
14 **Q. MUST ENERGY AND RECS BE OBTAINED BY A UTILITY IN ORDER FOR**
15 **AN ENERGY PURCHASE TO BE CONSIDERED A PURCHASE FROM A**
16 **RENEWABLE QF AND, IF SO, WHAT IS THE AVOIDED COST WHICH**
17 **UTILITIES SHOULD PAY FOR BUNDLED ENERGY AND RECS?**

18 A. Yes, for purposes of meeting the RPS requirements of the Act, a REC must be obtained.
19 Because a QF purchase is required as set forth in the Commission's Rule 570, and
20 because the Legislature has determined that RECs are, absent a contract to the contrary,
21 to be transferred to the public utility purchaser, there must be a REC with the renewable
22 QF purchase. The avoided cost is set forth in NMPRC Rule 570 and related tariffs.

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1

2 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

3 **A. Yes, it does.**

4

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COMPANY OF NEW MEXICO'S PETITION)
FOR DECLARATORY ORDER REGARDING)
THE PURCHASE OF RENEWABLE ENERGY)
CERTIFICATES FROM QUALIFYING)
FACILITIES)

Utility Case No. 05-00352-UT

PUBLIC SERVICE COMPANY OF)
NEW MEXICO,)

Petitioner,)
_____)

AFFIDAVIT

State of Texas)

) ss.

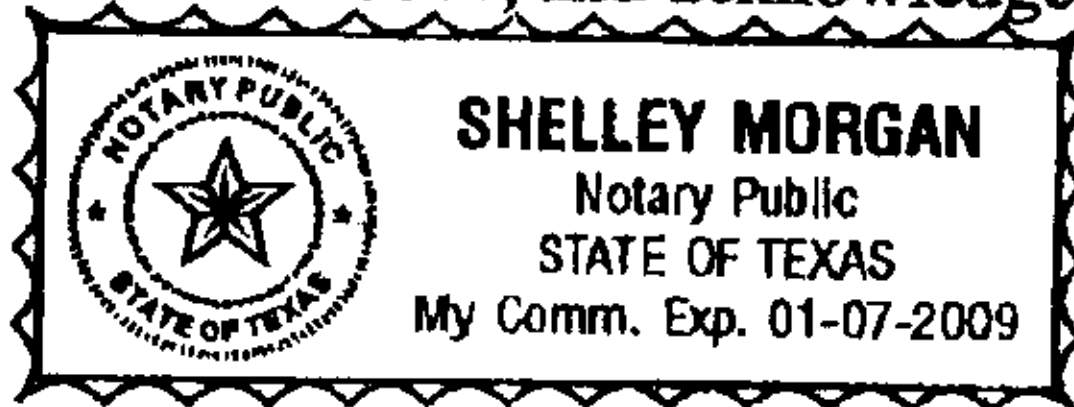
County of Travis)

Before me, the undersigned notary public, personally appeared **Thomas L. Newsom**, who being duly sworn on oath, deposes and says that the foregoing prepared Direct Testimony, Exhibits, and statement of facts contained therein are true and correct to the best of his knowledge, information and belief.

Thomas L. Newsom

THOMAS L. NEWSOM

On this 19th of July, 2006, before me, a Notary Public for the State of Texas, appeared Thomas L. Newsom, known by me, or proved to me, to be the person whose name is subscribed above, and acknowledged to me that he executed the same.



Shelley Morgan
Notary Public

My Commission Expires:

1-7-09

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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FOR DECLARATORY ORDER REGARDING)
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FACILITIES)**

CASE NO. 05-00352-UT

**PUBLIC SERVICE COMPANY OF)
NEW MEXICO)**

Petitioner,)

2005 JUL 21 11 4: 23

COMMUNICATIONS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **El Paso Electric Company's Direct Testimony of Thomas L. Newsom** was mailed first class, postage prepaid or hand-delivered, to each of the following:

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DATED this 21st day of July, 2006.

Respectfully submitted,



Stacey J. Goodwin, Esq.

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COMM-FS