

1 STATE OF NEW MEXICO  
PUBLIC REGULATION COMMISSION  
2 UTILITY DIVISION  
No. 05-00352-UT VOLUME 1  
3  
4 IN THE MATTER OF PUBLIC SERVICE  
COMPANY OF NEW MEXICO'S PETITION  
5 FOR DECLARATORY ORDER REGARDING  
THE PURCHASE OF RENEWABLE ENERGY  
6 CERTIFICATES FROM QUALIFYING  
FACILITIES  
7 PUBLIC SERVICE COMPANY OF NEW MEXICO  
8 PETITIONER,

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PROCEEDINGS

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AUGUST 21, 2006

10:00 A.M.

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MARIAN HALL

224 EAST PALACE AVE.

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SANTA FE, NEW MEXICO

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REPORTED BY: FRANCES J MEHNER, NM CCR #129  
COURT REPORTER

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## A P P E A R A N C E S

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BRUCE C. THRONE

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## P R O C E E D I N G S

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HEARING EXAMINER HUFFMAN: Good

5

morning. Could we could go on the record now? Before

6

the Commission is case number 05-00352-UT. The case

7

is in the matter of Public Service Company of New

8

Mexico's Petition for Declaratory Order Regarding the

9

Purchase of Renewable Energy Certificates from

10

Qualifying Facilities. Public Service Company of New

11

Mexico Petitioner.

12

The Commission appointed me, Lee

13

Huffman as hearing examiner for this case. We are

14

scheduled for a hearing today, August 21st. Who

15

appears for PNM?

16

MR. CLARK: Mr. Huffman, my name is

17

Robert Clark with the Miller Stratvert firm.

18

HEARING EXAMINER HUFFMAN: Okay. Who

19

appears for El Paso Electric?

20

MR. CHILDRESS: On behalf of El Paso,

21

Stacey Goodwin and Randall Childress.

22

HEARING EXAMINER HUFFMAN: Who appears

23

for CCAE?

24

MS. BELIN: Alletta Belin for CCAEE.

25

HEARING EXAMINER HUFFMAN: And who

1 appears for SPS?

2 MR. FORNACIARI: Mr. Hearing Examiner,  
3 Jeff Fornaciari, Hinkle Law Firm. And we have Jerry  
4 Shackelford with Xcel Energy Services who will also  
5 participate, who filed a motion for admission and  
6 we're awaiting a ruling on that.

7 HEARING EXAMINER HUFFMAN: That motion  
8 is granted. And I'll be signing the order whenever  
9 it's ready. We had some system problems on Friday.  
10 Is there an appearance for the attorney general? Who  
11 appears for NMIEC?

12 MR. MICHEL: Steven Michel.

13 HEARING EXAMINER HUFFMAN: Thank you.  
14 And who appears for the University of New Mexico?

15 MR. THRONE: Bruce Throne.

16 HEARING EXAMINER HUFFMAN: Thank you.  
17 Who appears for the City of Albuquerque?

18 MR. KIDD: Robert Kidd.

19 HEARING EXAMINER HUFFMAN: Is there an  
20 appearance for the New Mexico Rural Electric  
21 Cooperatives? Is there -- does anyone appear -- let  
22 the record reflect that there is no appearance for the  
23 co-ops and none for the Attorney General. Is there an  
24 appearance for the Western Water and Power Production?  
25 Let the record also reflect that there is no

1 appearance at this time for Western Water and Power  
2 Production.

3 Who appears for staff?

4 MR. HARRIS: Mr. Hearing Examiner, Dahl  
5 Harris. And it's my understanding that Mr. Taylor,  
6 who represents the AG is out of the country at this  
7 time and has asked to be excused.

8 HEARING EXAMINER HUFFMAN: Obviously,  
9 since PNM is the petitioner, PNM's testimony and  
10 witness will go first. I would propose that the next  
11 witness be El Paso Electric's witness, followed by the  
12 witness for CCAE and witness for SPS and witness for  
13 staff.

14 Are there any scheduling matters for  
15 out-of-town witnesses that this schedule either works  
16 or more importantly doesn't work for? And, also, are  
17 there any other preliminary matters before we start  
18 the witnesses?

19 MR. THRONE: Mr. Hearing Examiner, I  
20 may need to be excused at some point during this  
21 afternoon to be excused, if I have to leave.

22 HEARING EXAMINER HUFFMAN: Okay.  
23 Mr. Clark?

24 MR. CLARK: Mr. Huffman, I wanted to  
25 raise something of general applicability related to

1 the nature of this case. As you will observe, I  
2 think, in reading the prefiled testimony, not only of  
3 PNM but many of the other witnesses as well, much of  
4 the testimony tends to border on what might be deemed  
5 legal analysis. And I thought it might make sense up  
6 front to maybe establish a ground rule that the  
7 witnesses are not making legal conclusions but that  
8 they will be allowed to testify as to the subject  
9 matter of the prefiled testimony and present their  
10 point of view, subject, of course, to later review,  
11 proofing and the like so as to what issues of  
12 particular witnesses and whether a particular line or  
13 statement might be deemed a legal conclusion.

14 So I wanted like to raise that at this  
15 time.

16 HEARING EXAMINER HUFFMAN: Okay. Have  
17 you discussed this solution with any of the other  
18 parties?

19 MR. CLARK: I have mentioned it to one  
20 of the parties. I have not discussed it generally  
21 with the other parties.

22 HEARING EXAMINER HUFFMAN: Okay. Do  
23 any of the parties wish to respond to Mr. Clark's  
24 suggestion at this time?

25 MR. HARRIS: Mr. Hearing Examiner, I

1 think the suggestion is a good one. Staff agrees with  
2 it.

3 HEARING EXAMINER HUFFMAN: Okay.  
4 Anyone else?

5 MS. BELIN: CCAE thinks that's a  
6 reasonable proposal.

7 HEARING EXAMINER HUFFMAN: Mr.  
8 Childress?

9 MR. CHILDRESS: We have no problem with  
10 that. The only caveat I would mention is that it  
11 would be helpful if, for instance, if a PNM witness  
12 has, in fact, made some conclusions or observations  
13 about the law that they are not precluded from  
14 cross-examination on that, but obviously, to the  
15 extent that witnesses are not lawyers, their testimony  
16 is not to be taken as official legal conclusions, and  
17 we would agree subject to that.

18 HEARING EXAMINER HUFFMAN: Mr. Clark,  
19 any response?

20 MR. CLARK: No. I think I agree with  
21 Mr. Childress.

22 HEARING EXAMINER HUFFMAN: Okay. I  
23 think that with the qualifications the witnesses have  
24 provided in their testimony relative to legal  
25 conclusions as to what their opinion in their

1 professional or expert capacity is about certain  
2 statutes and rules, which is obviously the focus of  
3 the testimony, that there necessarily will be some  
4 level of cross-examination consistent with the scope  
5 of that direct or rebuttal testimony, of necessity,  
6 and certainly as part of a fair hearing process.

7                   But I think that with that provision it  
8 appears reasonable and acceptable to all the parties  
9 that there be a general agreement that the witnesses  
10 are not reaching legal conclusions and that the  
11 posthearing briefing stage will amplify or state the  
12 parties' legal positions.

13                   Is there anything else of a preliminary  
14 nature?

15                   MR. FORNACIARI: Yes. SPS is going to  
16 ask and is asking for administrative notice of the  
17 former Renewable Energy Resource Electricity Rule,  
18 Rule 573, which is 17-9-573, and we'd mark that  
19 document as Exhibit SPS Exhibit Number 3, and we've  
20 given it to all the parties and I believe we might as  
21 well have it available at this point and we move the  
22 admission of SPS Exhibit Number 3.

23                   (EXHIBIT SPS 3, PART 573 RENEWABLE  
24 ENERGY ACT AS A SOURCE OF ELECTRICITY,  
25 WAS MARKED FOR IDENTIFICATION.)

1 HEARING EXAMINER HUFFMAN: You are  
2 requesting administrative notice of that now appealed  
3 rule?

4 MR. FORNACIARI: Yes.

5 HEARING EXAMINER HUFFMAN: And that it  
6 be made part of the record of this case, obviously?

7 MR. FORNACIARI: That's correct. Yes.

8 HEARING EXAMINER HUFFMAN: Any  
9 objection? Hearing none, SPS Exhibit 3 will be so  
10 marked and admitted in the record in this case. And  
11 the Commission will, in writing, take administrative  
12 notice of that document at the appropriate time.

13 (EXHIBIT SPS 3 WAS ADMITTED INTO THE  
14 RECORD.)

15  
16 HEARING EXAMINER HUFFMAN: So you  
17 should consider the motion granted. I'm sure that  
18 some document of the Commission will take  
19 administrative notice of it in writing as well.

20 If there's nothing else of a  
21 preliminary matter, Mr. Clark would you present your  
22 witness?

23 MR. CLARK: I'd like to call Mr.  
24 Patrick Scharff, please.

25

1                                   PATRICK SCHARFF,  
2           after having been first duly sworn under oath,  
3           was questioned and testified as follows:  
4

5                                   MR. HARRIS: Excuse me, Mr. Hearing  
6           Examiner. I'm assuming that the order of witnesses  
7           will be same as the order of cross-examination by the  
8           attorneys?

9                                   HEARING EXAMINER HUFFMAN: Let's see.  
10          There are more attorneys than there are parties with  
11          witnesses. And hang on and I will let you know, based  
12          on who's here. The order would be PNM, EPE, CCAE,  
13          SPS, NMIEC, UNM, City of Albuquerque, and then staff.  
14          Mr. Clark.

15

16                                   DIRECT EXAMINATION

17          BY MR. CLARK:

18                   Q       Good morning, Mr. Sharff.

19                   A       Good morning.

20                   Q       You want to tell us, please, your name and  
21          your position with PNM?

22                   A       I'm Patrick Scharff. I am the manager of  
23          distribution planning and distributor resources at PNM  
24          in Albuquerque.

25                   Q       And, Mr. Sharff, have you submitted certain

1 prefiled direct and rebuttal testimony in this case?

2 A Yes, I have.

3 (EXHIBIT PNM 1, DIRECT TESTIMONY OF  
4 PATRICK K. SCHARFF, WAS MARKED FOR  
5 IDENTIFICATION.)

6 (EXHIBIT PNM 2, DIRECT TESTIMONY OF  
7 PATRICK K. SCHARFF, WAS MARKED FOR  
8 IDENTIFICATION.)

9 Q Let me show you what I have marked as PNM 1  
10 and 2 and ask you if you can identify these, please.

11 A Yes, sir.

12 Q Do you have any corrections or  
13 clarifications you want to make as to either of these  
14 testimonies?

15 A I would like to make one clarification in  
16 the rebuttal testimony.

17 Q Okay. Could you please refer to the page  
18 and the line in the rebuttal testimony?

19 A At Page 7, line 13.

20 Q All right. And what is the nature of the  
21 clarification?

22 A The clarification is that I state that three  
23 meters were required for simultaneous buy-sell. As a  
24 practical matter, that is usually going to be the  
25 case. But only two meters are theoretically required

1 to do simultaneous buy-sell.

2 Q Could you explain why three are practically  
3 necessary?

4 A It has to do with access and actually being  
5 able to install the necessary metering to measure the  
6 generator output, to measure the true load  
7 consumption. Sometimes, it's not possible to get a  
8 meter accurately at that location and therefore you  
9 sometimes need three meters.

10 Q With the clarification you just made as to  
11 Page 7 line 13, if you were asked the same questions  
12 today would you give the same answers?

13 A Yes, I would.

14 Q And are the answers, as clarified, true and  
15 correct to the best of your knowledge and belief?

16 A Yes, they are.

17 MR. CLARK: Mr. Hearing Examiner, at  
18 this time, I'd like to move the admission into  
19 evidence of PNM Exhibits 1 and 2.

20 HEARING EXAMINER HUFFMAN: Any  
21 objection?

22 MR. MICHEL: Mr. Hearing Examiner, for  
23 some reason I never received a copy of PNM's rebuttal.  
24 We moved. That may be it. I'm not going to object to  
25 the testimony, but I would like to get a copy.

1 MR. CLARK: Absolutely. Sorry if we  
2 missed someone. Mr. Wander, do you have a copy for  
3 Mr. Michel? Could the record reflect that Mr. Michel  
4 was just delivered a copy.

5 HEARING EXAMINER HUFFMAN: Yes.

6 MR. CLARK: Thank you very much.

7 HEARING EXAMINER HUFFMAN: One small  
8 thing, Mr, Scharff before cross-examination starts, do  
9 you have Page 7 of your rebuttal testimony available?  
10 You indicated it was -- a mention of, I think, three  
11 meters in line 13. Would it be accurate, sir, to say  
12 that the sentence beginning on line 13 which mentions  
13 the three meters on line 14?

14 THE WITNESS: That's correct,  
15 Mr. Hearing Examiner.

16 HEARING EXAMINER HUFFMAN: Thank you.  
17 Okay. So Mr. Clark, Exhibit 1, is his direct  
18 testimony, Exhibit 2 is his rebuttal testimony?

19 MR. CLARK: That is correct, sir.

20 HEARING EXAMINER HUFFMAN: And they are  
21 admitted into evidence.

22 (EXHIBIT PNM 1 WAS ADMITTED INTO THE  
23 RECORD.)

24  
25

1 (EXHIBIT PNM 2 WAS ADMITTED INTO THE  
2 RECORD.)

3 HEARING EXAMINER HUFFMAN: Mr.  
4 Childress, I believe you are first with this witness.

5 MR. HARRIS: Excuse me, Mr. Hearing  
6 Examiner, but I believe the record should reflect that  
7 no one has appeared to make a comment.

8 HEARING EXAMINER HUFFMAN: That is  
9 correct, Mr. Harris. Let the record so reflect.

10

11 CROSS-EXAMINATION

12 BY MR. CHILDRESS:

13 Q Good morning. My name is Randall Childress  
14 and I represent El Paso Electric Company. How are you  
15 this morning?

16 A Fine. Good morning.

17 Q I think what I would like to do is, rather  
18 than concentrate on areas of disagreement, I would  
19 like to concentrate on areas of agreement and make  
20 sure that I understand PNM's position. Do you have a  
21 copy of your direct testimony with you?

22 A Yes, I do.

23 Q Do you have a copy of the Renewable Energy  
24 Act with you?

25 A Yes, I do, but I will have to look it up in

1 my binder.

2 Q Okay. We will be talking about Section  
3 62-16-5(B)(1).

4 A Excuse me. That was 62-16-5(B)(1)?

5 Q Yes, sir.

6 MR. CHILDRESS: Mr. Huffman, I would  
7 state for the record that the court reporter has asked  
8 me for a copy of the Renewable Energy Act. I am going  
9 to provide the court reporter one. However, I assume,  
10 because this is a Commission statute and the subject  
11 of the case that there is no need to make it an  
12 exhibit or make any exceptional provisions to take  
13 administrative notice of this statute. If I'm wrong,  
14 would you so direct me?

15 HEARING EXAMINER HUFFMAN: Your  
16 assumptions are correct, Mr. Childress.

17 MR. CHILDRESS: Thank you, sir.

18 Q (By Mr. Childress) On Page 9 of your  
19 testimony, Mr. Sharff, on line 8, you cite the  
20 Commission rule 572.13.B(1)(b) which you indicate echoes  
21 the requirements of the Renewable Energy Act. And those  
22 requirements of the Renewable Energy Act that the rule  
23 echoes are the requirements that are found in the  
24 Renewable Energy Act at 62-16-5(B)(1); is that correct?

25 A That's correct.

1           Q     So let me ask you, because I believe we  
2 agree, it's your recognition of the law that both the  
3 law, the Renewable Energy Act and the Commission's  
4 rule, Rule 572, expressly provide that RECs are, in  
5 the case of a PURPA -- renewable energy QF -- the RECs  
6 are owned by the public utility purchaser unless there  
7 is some voluntary contract to the contract; correct?

8           A     That's correct.

9           Q     Okay. Now, if a utility were approached by  
10 a QF -- in effect, there is an initial presumption in  
11 the law that our state legislature has made that the  
12 RECs are owned by the public utility; correct?

13          A     For the energy that's purchased by the  
14 public utility.

15          Q     The RECs associated with that are owned by  
16 the public utility?

17          A     Yes the rules and the state statute states,  
18 unless there is an otherwise agreement the RECs are  
19 owned by the utility purchaser of the energy from the  
20 QF.

21          Q     Now, let's assume that there is not any  
22 agreement to the contrary, and there is a mandatory QF  
23 purchase from the utility and the utility owns the  
24 RECs and owns the energy, the price paid in that  
25 transaction is avoided cost; correct?

1           A     That's correct, avoided costs.

2           Q     Now, you've also indicated in your  
3 testimony, in fact I think you attached a brief  
4 associated with a FERC case; do you recall that?

5           A     I believe that was in the petition for  
6 Declaratory Order?

7           Q     Well, anywhere in your testimony or anywhere  
8 in the declaratory order or anywhere in this case has  
9 the company submitted a FERC order that FERC issued in  
10 the case in which you submitted your brief?

11          A     I don't believe so.

12          Q     Do you have a copy of that order with you,  
13 sir?

14          A     No, I don't.

15                   MR. CHILDRESS: I would like to mark as  
16 an exhibit, EPE Exhibit 3, a copy of the FERC order,  
17 Federal Energy Regulatory Commission order, granting  
18 the Commission a regulatory order.

19                   (EXHIBIT EPE 3, FERC DOCKET NO.

20                   EL03-133-000, ORDER DATED OCTOBER 1,  
21                   2003, WAS MARKED FOR IDENTIFICATION.)

22                   MR. CHILDRESS: And may I approach the  
23 witness?

24                   HEARING EXAMINER HUFFMAN: Yes, you  
25 may.

1 HEARING EXAMINER HUFFMAN: While  
2 Mr. Childress is hanging out copies of that exhibit,  
3 Mr. Clark, the court reporter needs to get copies to  
4 mark for the record of the direct.

5 MR. CLARK: Those are the originals.  
6 Let's just hand them to the court reporter right now.

7 Q (By Mr. Childress) Mr. Sharff, I'd like you to  
8 turn to Page 6 of that order, if you would, please.

9 HEARING EXAMINER HUFFMAN: Mr.  
10 Childress, do you have any extra copies of that FERC  
11 decision so I could look at it while you are  
12 questioning on it? Thank you.

13 MR. CHILDRESS: I'm sorry, Mr. Huffman.

14 THE WITNESS: Mr. Childress, as it  
15 turns out, I do have a copy of that with me.

16 HEARING EXAMINER HUFFMAN: Do all the  
17 parties have a copy of this order now? It looks like  
18 some nods are yes. Thank you.

19 Q (By Mr. Childress) Mr. Scharff, you would  
20 agree with me that is the order issued by FERC in the  
21 case you are talking about in the declaratory order  
22 where you submitted your brief?

23 A Just a moment, sir. Yes, it is.

24 Q And I will have you turn to Page 6 of that  
25 order.

1           A     Yes.

2           Q     Would you read the last sentence of  
3 paragraph number 23, please, aloud?

4           A           States, in creating RECs, have the  
5 power to determine who owns the REC in  
6 the initial instance, and how they may  
7 be sold or traded; it is not an issue  
8 controlled by PURPA.

9           Q     Thank you, sir. And would you turn to the  
10 previous page 5 of that order and look at Paragraph  
11 22?

12          A     For me, according to the numbering it's 22,  
13 you are looking for --

14          Q     Yes.

15          A     My 22 is entirely contained on Page 6.

16          Q     And in the second sentence of Paragraph 22,  
17 is it correct that FERC indicates that:

18                   Avoided costs were intended to put the  
19 utilities into the same position when  
20 purchasing QF capacity and energy as if  
21 the utility generated the energy  
22 itself.

23          A     That's correct. But it could be, as it says  
24 in the paragraph there, generated itself or purchased  
25 energy from another source.

1 Q And would you read the next sentence aloud?

2 A In this regard, the avoided cost that a  
3 utility pays a QF does not depend on  
4 the type of QF, i.e., whether it is a  
5 fossil-fuel-cogeneration facility or a  
6 renewable-energy small power production  
7 facility.

8 Q And Mr. Sharff, I understand that you are  
9 not an attorney and I understand that this case is  
10 subject to briefing, but you have indicated in your  
11 testimony that, in fact, the legislature has made a  
12 presumption, an initial presumption of the ownership  
13 of the RECs, and that initial presumption is that the  
14 RECs are owned by the public utility in a QF purchase  
15 unless there is an agreement between the utility and  
16 the QF to the contrary; correct?

17 A That's correct.

18 Q Now, an agreement, in your view, is a  
19 contract; is it not?

20 A Subject to legal review, I would say yes.

21 Q More basic, an agreement reflects a mutual  
22 agreement of two parties; correct?

23 A That's correct.

24 Q So it is correct that a utility has the  
25 discretion not to agree to enter into any agreement

1 and to rely solely on the presumption that is stated  
2 in the Renewable Energy Act?

3 A With regard to QFs, the utility is required  
4 to enter into certain agreements for the purchase of  
5 energy and for interconnection to the QF facility,  
6 however current PRC rules and statutes other than  
7 those dealing with RECs are silent on the issue of  
8 RECs.

9 Q There is nothing in the Renewable Energy Act  
10 that requires a utility to enter an involuntary  
11 contract; is there, sir?

12 A That's correct.

13 MR. CHILDRESS: All right. Thank you  
14 very much.

15 HEARING EXAMINER HUFFMAN: Ms. Belin?

16 MS. BELIN: No question.

17 HEARING EXAMINER HUFFMAN: Okay.

18 Mr. Fornaciari?

19 MR. FORNACIARI: No questions.

20 HEARING EXAMINER HUFFMAN: Thank you.

21 Mr. Michel?

22 MR. MICHEL: No questions.

23 HEARING EXAMINER HUFFMAN: Mr. Throne?

24 MR. THRONE: No questions.

25 HEARING EXAMINER HUFFMAN: Mr. Kidd?

1 MR. KIDD: No questions.

2 HEARING EXAMINER HUFFMAN: Mr. Harris?

3

4 CROSS-EXAMINATION

5 BY MR. HARRIS:

6 Q Good morning, Mr. Sharff.

7 A Good morning.

8 Q After reading the various responses to the  
9 commission's questions, would you agree with me that  
10 it is a good idea that we have a declaratory judgment  
11 action here?

12 A I believe there's a lot of questions out  
13 there in a lot of people's minds about how to  
14 interpret things. Yes, I do.

15 Q The purpose of this is for us to try to give  
16 as much guidance to the Commission so it can make a  
17 proper interpretation?

18 A That's correct.

19 Q Well, with that in mind -- excuse me.

20 MR. CHILDRESS: Excuse me. I apologize  
21 for interrupting, but I failed to complete and request  
22 the admission of EPE Exhibit 3.

23 HEARING EXAMINER HUFFMAN: Okay. Would  
24 you like to make that request at this time?

25 MR. CHILDRESS: Yes, sir.

1 HEARING EXAMINER HUFFMAN: Any  
2 objection to the admission of El Paso Electric Exhibit  
3 3? Hearing none, El Paso Electric 3 will be admitted  
4 in this case.

5 (EXHIBIT EPE 3 WAS ADMITTED INTO THE  
6 RECORD.)

7 MR. CHILDRESS: I apologize for the  
8 interruption.

9 Q (By Mr. Harris) With that in mind, I believe  
10 that it's good if we all are on the same page as to  
11 definitions and purposes and this type of thing. I am  
12 going to ask you just a series of questions related to  
13 your understanding of the Renewable Energy Act and the  
14 purposes for RECs and this type of thing so that we can  
15 understand what your testimony is.

16 The first question I'd ask is what's  
17 the purpose for a REC, or Renewable Energy  
18 Certificate.

19 A RECs were created to be used, in part, for  
20 compliance with the RPS. RECs are created when  
21 renewable energy is generated. RECs are evidence that  
22 the renewable energy being used for compliance has  
23 been created.

24 Q And on a typical certificate for RECs, what  
25 information is going to be found on that certificate?

1           A     I'm not sure what a typical certificate  
2 would be. I can tell you I can review from the  
3 statute and the rule what needs to be included in that  
4 certificate. I would say that is what a certificate  
5 has to have, what is required.

6           Q     Okay. As we speak today, can a REC exist if  
7 no renewable energy has been delivered in New Mexico?

8           A     Yes.

9           Q     And what's your reasoning for that?

10          A     A REC, or evidence that the renewable energy  
11 was generated, does not require delivery in New  
12 Mexico. If you want to use that renewable energy for  
13 compliance with the RPS, it must be delivered for  
14 consumption by the utility's retail customers in New  
15 Mexico.

16          Q     Thank you for that clarification. And in my  
17 layman's terms, when I think of a grid, I think of  
18 transmission and distribution lines in New Mexico.  
19 Would that be correct?

20          A     In a limited sense, yes. But, again, we are  
21 connected to the larger western grid, essentially.

22          Q     But as far as New Mexico is concerned --  
23 well, we don't need any further.

24          A     It would consist of the wires and the  
25 generators, transmission as well as generation and the

1 wires used for generating electricity.

2 Q The utility meters, if you are on the upside  
3 of the utility meter, that records how much is being  
4 delivered to a customer? If you are on the up side of  
5 that, which would be the drop lines, distribution  
6 lines, transmission lines, would that be the grid?

7 A The utility meter would be part of the grid,  
8 in general.

9 Q But from the meter upstream, that's the  
10 grid? Because the distinction I am trying to make, if  
11 you are on the customer side of the meter, that's not  
12 the grid?

13 A The grid, again, consists of -- I'm not sure  
14 that I could make that distinction that the customer's  
15 load is not part of the grid because the grid consists  
16 of both the generation, delivery and mechanisms of it.  
17 If there is no place to deliver it, there is no grid.  
18 In my mind, as a planner and engineer, the loads have  
19 to be integrals of the load.

20 Q In your opinion, the wires -- for instance,  
21 you have a home with a meter on it. And the wires in  
22 the home, are those wires in the home part of the  
23 grid?

24 A I would say from a utility's perspective  
25 those wires are not owned by the utility and,

1       therefore, although the load represented by that meter  
2       is part of the grid, the wires within the home  
3       obviously are not.

4           Q       And the reason for your distinction of the  
5       wires in the home not being part of the grid, is that  
6       because the utility is not responsible for those  
7       wires?

8           A       That's correct.

9           Q       In your mind, what's the definition of a  
10       qualifying facility?

11          A       In my mind, the definition of a qualifying  
12       facility -- I would have to again read it out of Rule  
13       570 or PURPA -- but, again, it is one of the  
14       facilities that meet the definition of a QF or a small  
15       power-production facility as defined in PURPA.

16          Q       Which the federal power packet, or the PURPA  
17       itself, but Rule 570 and 571 references the federal  
18       law; is that correct?

19          A       That's correct.

20          Q       So the definition of a QF is really a  
21       federal definition?

22          A       That's correct.

23          Q       Are all of the generating sources listed ed  
24       in the Renewable Energy Act, do they meet the  
25       definition of QF?

1           A     I would have to look and see what exactly is  
2     in the Renewable Energy Act.  But to the best of my  
3     recollection, without going through and rereading  
4     them, I believe they qualify under the broad term of a  
5     QF, but understand QF is a the subset of generators  
6     called small power production facilities, and I  
7     believe that they qualify as QF or small power  
8     production.

9           Q     Okay.  What controls the price of energy  
10    sold by a QF?

11          A     I'm not sure I understand your question.  
12    PNM has a tariff that we have filed for approval with  
13    the PRC in terms of what we will pay to purchase  
14    energy from the QF.

15          Q     Let me make it clear.  Federal law basically  
16    controls the price to be paid, which is avoided cost;  
17    is that correct?

18          A     Yes.  Federal law, State statutes and our  
19    rules say that utilities won't pay more than its  
20    avoided cost.  But it's avoided cost is actually  
21    controlled by market conditions beyond the utility's  
22    control.

23          Q     But it's my understanding, then, that there  
24    is -- the federal law states that the price to be paid  
25    is avoided cost and the state determines what that

1 avoided cost is?

2 A That's correct.

3 Q In the case of a 571, the small generator,  
4 the Commission has stated that the cost is the energy  
5 cost found in Rule 570; is that correct?

6 A That's correct.

7 Q And then annually the utilities are required  
8 -- or whenever they file -- they file what those  
9 energy costs are?

10 A That's correct.

11 Q And in the case of PNM, it has filed those  
12 schedules, energy schedules, and they show the price  
13 for various months for that energy?

14 A For various months and for various peak  
15 periods for various customers.

16 Q If you were speaking just of a residential  
17 class, for instance, they have one for each month, so  
18 one of the things that are listed is without a time-  
19 and-use meter, but they do have prices set for each  
20 month for that customer class?

21 A That's correct.

22 Q Okay. Now turning to the Commission's order  
23 regarding the reasonable cost threshold, the  
24 Commission has established prices, maximum costs that  
25 can be paid for various -- for energy from various

1 types of generators; is that correct?

2 A The RCT gives a price level for various  
3 kinds of technologies to be paid in terms of what  
4 would be appropriate for compliance with the RPS.

5 Q Now, those price levels that the Commission  
6 has established, are those greater than the energy  
7 costs reflected on the schedules that PNM has filed  
8 with the Commission for energy?

9 A I believe some of them are. Have not looked  
10 at the most recent filing that we made. I believe  
11 some of them may be equal to or approximately the  
12 same.

13 Q Well, subject to check, the energy costs for  
14 the latest filing by PNM is a little less than three  
15 cents and a little more than four cents; would that be  
16 approximately correct?

17 A That's approximately right.

18 Q And is there any reasonable cost threshold  
19 established by the Commission that is not more than  
20 the greatest cost that's found for residential  
21 consumer?

22 A Currently that's correct. However, in past  
23 rate schedule filings you will note that there are  
24 some times when the avoided costs have exceeded those  
25 numbers.

1 Q But presently there isn't?

2 A Currently there is not.

3 Q Now, since federal law states that the costs  
4 that can be paid for energy can't be greater than  
5 avoided costs, then I take it from that that those  
6 prices are costs that are shown in the Commission's  
7 order, it would include both energy and a value for a  
8 REC because the Commission's order addresses the  
9 reasonable cost threshold for generation of energy in  
10 the RECs?

11 A I'm not sure what the question is. I'm  
12 sorry.

13 Q Well, my presumption, since the costs that  
14 are reflected in the Commission's order are greater  
15 than the reasonable threshold or greater than the  
16 reasonable cost, then it must -- that cost must  
17 include both energy as well as the REC?

18 A I presume if you purchased renewable energy  
19 at or below the reasonable cost threshold that you  
20 were paying value for the energy and for the REC, and  
21 since avoided cost is the maximum that you have to pay  
22 for a QF, yes, some portion of that amount that you  
23 paid above what you paid for would be the REC.

24 Q So would it be possible for any particular  
25 month to subtract the energy found on PNM schedule

1 from the reasonable cost threshold established by the  
2 Commission to determine what the maximum price a  
3 company could pay for a REC and still be within the  
4 threshold?

5 A That's correct.

6 Q Now turn to your testimony, your direct  
7 testimony. Turning to Page 1 of your direct  
8 testimony, I see on lines 21 through 23 that your  
9 responsibilities include negotiating contracts for  
10 acquisition of renewable energy?

11 A Only from qualified facilities.

12 Q Okay. And does that include the recent  
13 acquisitions of energy from photovoltaics?

14 A Yes, it does.

15 Q And has there only been one price PNM has  
16 paid or has there been a variety of prices that PNM  
17 has paid for the output from those photovoltaics?

18 A For purchases, PNM pays the avoided costs at  
19 this time. None of our facilities are receiving  
20 payment, receiving kilowatt credit under the net meter  
21 rules.

22 Q So there is no variation since that's all  
23 you are paying?

24 A That's correct.

25 Q Now turning to Page 15 of your testimony, I

1 have a series of questions. Okay. On line 3 of your  
2 testimony, and going on to line 4, there is a term  
3 "contracted for delivery." Why is this term  
4 important?

5 A I believe -- and again this is my  
6 perception, I was not there when the legislation was  
7 crafted, and I was not a party to the creation of the  
8 rules for 572 -- my perception is that the majority of  
9 the thought and conversation that went into creating  
10 the statute and the rules anticipated purchases such  
11 as PNM makes for its wind energy farm and other  
12 situations like that.

13 I'm not sure how much time was devoted to  
14 considering implications that we are here discussing  
15 today which are qualifying facilities. One of the  
16 points that's made in the statute, in the rule, is for  
17 the energy to qualify for compliance with the RPS it  
18 has to be contracted for delivery for use by  
19 jurisdictional customers by the utility.

20 And the question then is, what's contract?

21 Q Well, that's a good segue, because when you  
22 have a "contracted for delivery," who is the contract  
23 between?

24 A It is between the owner of the generation or  
25 the owner of the generation output and the utility.

1           Q     And the delivery, if you are going to have a  
2     contract for delivery, is it your understanding that  
3     the delivery must be from some generating source to  
4     some point within New Mexico?

5           A     I'm not sure "point to point contract" is  
6     really a proper way of describing it, but it must be  
7     contracted for delivery to the grid to serve New  
8     Mexico retail load.

9           Q     I wasn't meaning to imply point to point  
10    contract. Your answer is appropriate. The generator,  
11    no matter where it is located, must deliver that power  
12    under this terminology somewhere into the grid in New  
13    Mexico?

14          A     That's correct.

15          Q     Now, in your understanding, was the  
16    Renewable Energy Act passed in 2004?

17          A     I believe that's correct.

18          Q     Subject to check, it would be 2004, and do  
19    you know when Rule 571 was issued by the Commission?

20          A     I believe that was around September 1999.

21          Q     Okay. And, in your mind -- and this rule  
22    referenced Rule 570, which references basically the  
23    federal law, so the purpose at that time when 571 was  
24    issued was basically compliance with the federal  
25    requirements?

1           A     That's correct.

2           Q     It would -- in your mind, was it appropriate  
3     to use 571 to interpret a statute that was passed some  
4     five years later?

5           A     I'm not . . .

6           Q     The reason I ask the question, your  
7     testimony on Page 15 indicates that you are supporting  
8     your testimony on the basis of provisions in Rule 571.  
9     And the language "contract for delivery" is found in  
10    the Renewable Energy Act, and you are pining about  
11    that and you are supporting your position based upon  
12    Rule 571. Am I misreading your testimony?

13          A     Let me have a moment to read my testimony a  
14    minute.

15          Q     Okay.

16          A     I believe that my answer there shows -- that  
17    particular issue shows that the requirements of Rule  
18    571 actually are in coordination with the requirements  
19    of REA, not that they are different or interpreting  
20    the REA, but showing that they are in agreement with  
21    the REA and the Rule 572.

22          Q     So it's more properly your position that  
23    "contract for delivery" language can be interpreted  
24    consistent with the provisions found in 571 rather  
25    than being supported by it?

1           A     I would agree with that.

2           Q     Okay. Now, the next question I have goes  
3 to, I think, the very heart of some of the confusion  
4 or different positions of the parties that we have in  
5 here, which is, if on the customer side of the meter  
6 you have a small generator photovoltaic.

7                         Going back to the question, we have a  
8 small generating source such as a photovoltaic and the  
9 energy that is being generated is consumed before it  
10 ever reaches the utility's meter, how can that be  
11 considered to be "contract for delivery" if it's  
12 consumed on wires, over wires that are in load, that  
13 basically belongs to the generator before it ever hits  
14 the meter?

15           A     A QF, to be interconnected with the utility  
16 as required by 570 and 571, must have a contract with  
17 the utility. Part of the provisions for that contract  
18 are what happens to the energy that's produced by the  
19 generator. The generator, if it exceeds its load,  
20 delivers to the utility. If it doesn't exceed its  
21 load, it displaces energy that would otherwise be  
22 provided by the utility.

23                         And, again, when you look at the definition  
24 of what a cost is, it is energy that would otherwise  
25 be produced by the serving utility. Therefore, my

1 interpretation, and the company's interpretation, has  
2 been that the contracts, whether it's Rule 571 or 570,  
3 provide the necessary contractual agreement basis  
4 evidencing what's going to happen with energy that's  
5 delivered in New Mexico used by a jurisdictional  
6 customer and that in one way or another offsets or  
7 displaces energy that would be otherwise produced by  
8 the utility.

9 Q Okay. You have the statute, the renewable  
10 energy statute before you?

11 A Hang on here. I do. Okay.

12 Q Okay. Now, on 62-16-3(E) --

13 A Uh-huh.

14 Q -- which is found on page 120 of the  
15 statutes --

16 A Uh-huh.

17 Q -- it states that the:

18 "renewable portfolio standard" means  
19 the percentage of retail sales by a  
20 public utility to electric consumers in  
21 New Mexico"

22 A That's correct.

23 Q And the word "displacement" isn't mentioned?

24 A That's correct.

25 Q And if you look at 62-16-2(3) under the

1 "Findings and Purposes", isn't that language  
2 consistent with the language found for the portfolio  
3 standard that there must be a percentage of sales?

4 A That's correct.

5 Q And then the "Purposes" section of section  
6 2, which is found in B, the first subsection there,  
7 there must be prescribed amounts of power that is  
8 being sold to its retail customers?

9 A That's correct.

10 Q And there is no language about displacement,  
11 either? So in view of that language, how, in your  
12 mind -- I mean if it explicitly said there must be  
13 retail sales, in your mind how does displacement  
14 satisfy those conditions?

15 A The language in the rule doesn't specify to  
16 which customer the energy must be sold. It talks  
17 about a merge of the jurisdictional sales in  
18 aggregate. Now, those sales can be met by  
19 conventional means and production, or they can be met  
20 by renewable energy sources that are owned either by  
21 the utility or by a consumer.

22 To the extent that the utility has avoided  
23 producing energy to meet that retail load by the  
24 customer's consumption of their on-site generation, I  
25 believe that that satisfies the requirements.

1           Q     Now returning to case 356, which I believe  
2     you were a witness in, did PNM maintain that it was  
3     purchasing any energy from the generator?

4           A     No, we didn't.

5           Q     Okay.

6           A     356 being the?

7           Q     That was the photovoltaic case.

8           A     The renewable plan that has a photovoltaic  
9     program?

10          Q     Exactly. PNM maintained that it wasn't  
11     purchasing any energy?

12          A     We were purchasing RECs.

13          Q     Right.

14          A     So that leads us back to the question of how  
15     can a utility contract for delivery of power that it  
16     consumes before it reaches the grid?

17          Q     Because I think we had agreed that there  
18     must be -- if you are going to contract for delivery  
19     you must contract for delivery of energy to be, you  
20     know, put on to the grid in New Mexico. In the case  
21     of a consumer that has -- or a QF that consumes the  
22     energy on its side of the meter, what is the contract  
23     for delivery of energy to the grid?

24          A     The load, when we are talking about wires  
25     and ownership and maintenance on the "customer side"

1 of the meter, the utility maintains no jurisdiction  
2 for it. However, at the point of interconnection, the  
3 point of common coupling, where the QF or regular  
4 customer's facilities join those of the utility, when  
5 we are doing analysis, those loads are, in general,  
6 part of the grid. So that energy has been delivered  
7 to the point of common coupling, which is part of the  
8 grid.

9 Q But the Commission -- but the utility hasn't  
10 purchased any of that energy if it's consumed?

11 A That's correct.

12 Q So if it hasn't purchased any of the energy  
13 that's been consumed for sale to customers, how has  
14 the provisions -- the definition of how a utility  
15 meets that renewable portfolio standard -- been met  
16 if it hadn't purchased any energy for sale?

17 A The Act says that the energy must be for  
18 retail customers. It doesn't say that it has to be a  
19 sale to a retail customers. It must be a percentage  
20 of our retail sales.

21 Q So you are saying, then, the energy that's  
22 consumed, that you don't pay for, is a percentage of  
23 your retail sales?

24 A That would otherwise be a percentage of our  
25 retail sales -- of the resale sales that we have

1 avoided producing conventional power for.

2 Q So you are saying the condition of a sale is  
3 being met by avoiding to have to give that power, to  
4 sell the power to them?

5 A Excuse me. I'm getting confused here. Let  
6 me back up. I'm not sure I understand your question.

7 Q The questions that I am asking all deal with  
8 the satisfaction of the renewable energy portfolio  
9 standards which requires specifically the sale of  
10 retail sales by a public utility to a consumer.

11 Where, in the situation we have been  
12 talking about, has there been a sale of energy by the  
13 utility to the retail customer?

14 A I believe that's where my confusion comes in  
15 because I don't read in the statute that a retail sale  
16 is required. It says a percentage of retail sales by  
17 the utility to electric customers. It doesn't  
18 specifically say that there has to be a specific sale  
19 to a specific customer to meet that requirement.

20 It says that in aggregate we must be using  
21 this to serve our retail jurisdictional load.

22 Q Right. But in the case of energy that's  
23 been consumed, PNM has purchased RECs?

24 A That's correct.

25 Q Okay. And the RECs show compliance with the

1 provision? The REC shows that, these whatever energy  
2 is reflected on that, can be used to satisfy this  
3 standard?

4 A That's correct.

5 Q So how do you satisfy the standard which  
6 requires percentage of sales if the company hasn't  
7 bought any energy?

8 A Again, the energy is consumed by a retail  
9 customer in New Mexico. That customer is a part of  
10 PNM's aggregate retail sales. If the energy wasn't  
11 delivered to New Mexico and consumed by a retail  
12 customer, I have a hard time understanding where it  
13 was delivered or where it was consumed. Again, I go  
14 back, you know, the language that doesn't require a  
15 specific sale, it says it must be used to meet a  
16 percentage of our jurisdictional retail sales.

17 Q And I guess that's where we are going  
18 around, because I think you are equating the  
19 consumption with meeting the standard that there has  
20 been a sale, otherwise there could be no REC; is that  
21 correct?

22 A No. A REC --

23 Q Or pardon me. The displacement equates to  
24 and satisfies the requirement that there is a sale?

25 A One. First, a REC is created when the

1 energy is generated. A REC is not --

2 Q As long as it's contracted for delivery in  
3 New Mexico?

4 A No. That is not -- if you don't mind, I  
5 will look up the definition for what a renewable  
6 energy certificate is.

7 Q That's fine.

8 A There is no definition for renewable energy  
9 certificate in the definitions of the statute.  
10 However --

11 Q Maybe --

12 A -- in the rule it will be there -- if I may?

13 Q You know, I would direct your attention to  
14 Section 5-A. On Page 1 it states what a REC is used  
15 for which is compliance with the standard?

16 A That's correct.

17 Q Okay. And the standard is a percentage of  
18 sales. So doesn't a REC show that a compliance with  
19 the standard, which is that the energy has to be sold?

20 A No, I don't agree with that.

21 Q Okay. Then why do you disagree?

22 A The standard requires that a percentage of  
23 the utility's jurisdictional sales be provided by  
24 renewable energy sources, the sales. And we can do  
25 that by a direct energy purchase evincing that by a

1 renewable energy certificate. We could meet  
2 compliance by purchasing renewable energy certificates  
3 from another utility that has jurisdictional sales  
4 within New Mexico.

5 Whether those certificates were for energy  
6 that was delivered to a specific customer or for a  
7 load that would otherwise have been served, I think is  
8 the issue here. PNM believes that if those customers  
9 who serve on-site load do in fact create RECs, those  
10 RECs should be allowed for compliance with the RPS.

11 Q In the case of the transaction between EPE  
12 and PNM, it's my understanding that EPE is purchasing  
13 RECs from PNM?

14 A I'm not directly involved in that but I  
15 believe that is the case.

16 Q And assuming that is the case, the energy  
17 that's represented by those RECs has been in fact  
18 delivered into PNM's system for retail sales?

19 A That's correct.

20 Q But in the case of a P56 transaction, PNM  
21 hasn't purchased any energy for delivery to its  
22 customers; is that correct?

23 A PNM has not purchased any energy for  
24 delivery to its customers. None of that energy has  
25 been delivered to PNM customers.

1           Q     Now we are getting to the point.  Must there  
2     be a sale of energy to a retail customer by a public  
3     utility for there to be a valid REC and to satisfy the  
4     requirements of the RPS on the renewable energy  
5     standard?

6           A     I believe that's the question.  Is a REC  
7     created for compliance, if there is not a sale?  I  
8     believe that is the question.

9           Q     In your opinion, that it can -- that the  
10    consumption can satisfy that requirement that there be  
11    a sale?

12          A     Yes, I do.

13          Q     Okay.  So you would read into the definition  
14    of percentage of sales, it would be percentage of  
15    sales and/or consumption?

16          A     I believe that's how I would interpret it.

17          Q     Thank you.  Because there is the heart of  
18    the debate?

19          A     That is the crux.

20          Q     This is the heart of the debate.  All we  
21    have done really is frame for the briefs.  Now,  
22    turning to your rebuttal testimony.  On Page 4 of your  
23    rebuttal testimony.

24          A     Yes.

25          Q     Okay.  On lines 3 and 4 you state that

1 implementing staff's proposal might mean some  
2 revisions to the RCT. And I'd like you to address  
3 what you think those revisions -- what revisions might  
4 be required.

5 A On Page 3, where that discussion starts, in  
6 discussing the reasonable cost threshold there is a  
7 limit set in kilowatt hour numbers established and it  
8 doesn't vary. In looking at RECs as having a value on  
9 their own separate from the energy that can be bought,  
10 traded, sold, used for RPS compliance, it just seemed  
11 when we were looking at avoided costs as it pertains  
12 to QF sales to utilities costs go up and down.

13 During peak demand periods or periods of  
14 time that the market is very high the avoided costs go  
15 up. If we determine the value of a REC being the  
16 avoided costs of the energy, plus the REC value up to  
17 the limit of the RCT, that has a rather unusual effect  
18 of varying the value of the REC.

19 The REC is worth less on peak than it is  
20 during the off peak periods and it just seemed that  
21 that was a rather unusual situation that perhaps  
22 hadn't been fully thought through when people were  
23 doing the reasonable cost threshold.

24 Q I would agree with your analysis. And that  
25 goes back to our discussion of when you see the costs

1 that are established for the reasonable threshold,  
2 part of it has to be the avoided costs and part of it  
3 has to be for the REC and that goes back to that  
4 discussion. So if the Commission were to consider  
5 that a problem, how would we fix that?

6 A That is not something I've had time to  
7 consider and I think it's probably going to be beyond  
8 this proceeding, but it must be something for the  
9 staff to think about.

10 Q I was curious about that because I didn't  
11 know the fix.

12 A I don't know the answer.

13 Q Okay. Turning to Page 7 of your rebuttal.  
14 And the change that you really made on line 14. I  
15 didn't really understand what you were saying, so  
16 could you explain that to me?

17 A This is a discussion that is actually coming  
18 out of our discussions on net meters and how net  
19 metering is done and what is meant by that. As a  
20 practical matter, quite often it is possible to  
21 measure separately the customer's load without a great  
22 deal of reengineering and redesign of a QF facility,  
23 and so to be able to do what we would like to do in  
24 terms of the net metering, we end up having to use  
25 three meters rather than two.

1           It's a practical matter of actually how to  
2 -- you have to get in and wire things. But staff's  
3 witness, Mr. Potturi, correctly points out that really  
4 only two meters are required to be used for doing a  
5 simultaneous buy-sell, and how you actually get those  
6 meters and where you locate them, I may not  
7 necessarily agree with his testimony, but two meters  
8 is all that is required. My testimony implied that,  
9 no, you could only do it with three.

10           Q     That's what I thought. Okay. Thanks. Now  
11 turning to Page 10 of your rebuttal testimony. Okay.  
12 The question that is being asked on 1 through 3 is  
13 meeting their RPS requirements. You're citing staff's  
14 position and whether or not staff agreed to the  
15 position.

16                     The first question I would ask is am I  
17 correct in assuming that the business of a utility,  
18 electric utility, is to provide reliable service at  
19 just and reasonable prices of electric energy?

20           A     That would be a good definition of it.

21           Q     Okay. Is PNM implying that it can engage in  
22 a business of buying and selling RECs? Or are the  
23 RECs to be used to satisfy the standard?

24           A     Subject to its requirements under statutes  
25 and regulation I believe it's appropriate for the

1 utility to be able to buy and sell RECs and trade in  
2 RECs, yes.

3 Q Separate and apart from meeting their  
4 standard?

5 A Separate and apart from meeting the  
6 standard, yeah.

7 Q Now, turning to Page 11 of your rebuttal  
8 testimony. Now on line 14, you refer to a sharing  
9 mechanism that the Commission allowed in case  
10 04-00334?

11 A Yes.

12 Q And that sharing mechanism, didn't that  
13 involve SPS's fuel clause?

14 A I believe it did.

15 Q And does PNM have a fuel clause?

16 A No, PNM does not.

17 Q Is that sharing mechanism that is referenced  
18 in 334, is that available for PNM?

19 A No, it's not.

20 MR. HARRIS: Mr. Hearing Examiner, I  
21 would like a five-minute break because I didn't  
22 anticipate that I would be right up here so soon. I  
23 need to put up an easel so I can run through a  
24 scenario.

25 HEARING EXAMINER HUFFMAN: We will take

1 a five-minute break. Off the record.

2

3 (A recess was taken from 11:23 A.M. to  
4 11:32 A.M.)

5

6 HEARING EXAMINER HUFFMAN: Okay. Could  
7 we go back on the record?

8 MR. HARRIS: Yes.

9 Q (By Mr. Harris) Since I'm away from the  
10 microphone, I'll try to speak up. Mr. Sharff, what I am  
11 going to do is draw some schematics. And this is going  
12 to be for non time of use schematic for rate, you know,  
13 for billing purposes, not, you know, a schematic showing  
14 engineering flows.

15 What I am showing is, first of all, a  
16 photovoltaic generating source which is connected to  
17 load which is then connected to the utility meter.  
18 Now what I am posing here is the photovoltaics's  
19 output is a hundred KWH. The load is 120 KWH, and  
20 under this scenario I believe -- and here would be the  
21 drop line, the distribution line.

22 I believe the utility meter would then  
23 show that 20 KWH has been used; is that correct?  
24 Under a net metering type of arrangement?

25 A Yes. The revenue meter would show 20 KWH.

1           Q     Okay. Next I will show the same  
2 photovoltaic with the same output that is being  
3 registered by a photovoltaic meter, same load, 120  
4 KWH, the utility meter and this line or the  
5 photovoltaic is connected directly before or on the  
6 upstream side of the utility meter. Now the 100 KWH  
7 output in this instance, the utility meter will record  
8 120 KWH; is that correct?

9           A     If you wire it that way I believe that's  
10 correct.

11          Q     So this is the first, what we will call  
12 Number 1, scenario, is a net metering schematic for  
13 billing purposes. And second would be a buy-sell or  
14 wiring arrangement?

15          A     That would suffice for a simple buy-sell,  
16 yes.

17          Q     Now, for billing purposes, does it make any  
18 difference if the connection is made in front of the  
19 meter or behind the meter.

20          A     Yes, it does.

21          Q     For billing purposes?

22          A     Yes, it does.

23          Q     Why is that?

24          A     If in fact -- for billing purposes in the  
25 meter that you show there as the utility meter?

1 Q Yes.

2 A If you connect that meter that is shown as  
3 the PV meter between the utility and where you are  
4 showing the customer service panel?

5 Q Right.

6 A If you can do that, you will then only  
7 register 20 kilowatt hours again.

8 Q Correct. In this instance it will record  
9 120, but if you drew a dashed line in showing that the  
10 connection was between the two meters at that point in  
11 time the meter would only register 20 KWH?

12 A That's correct.

13 Q But, theoretically, now we are going to the  
14 2-meter type of arrangement.

15 A Again, that will suffice for simultaneous  
16 buy-sell arrangements.

17 Q Now, if you were to only buy RECs, the REC  
18 purchase only, then you would use this buy-sell  
19 schematic?

20 A No, not necessarily.

21 Q Okay. Explain to me what the schematic  
22 would be like for a REC-only purchase. Would you have  
23 to have two meters.

24 A Yes, you do.

25 Q But could the -- if you are just buying

1 RECs, could this schematic work?

2 A Yes. Any meter that will measure only the  
3 production of the generator will suffice to do the  
4 measurement to measure kilowatt hours evidencing the  
5 creation of a REC.

6 Q In the various scenarios, would the economic  
7 result be the same?

8 A Definitely not.

9 Q They would vary? So, for example, in this,  
10 the first example, if the payment was 13 cents per  
11 KWH, the calculation under the net metering would be  
12 100?

13 MR. HARRIS: I'm going to try to make  
14 it plain, Hearing Examiner, I will try to move this  
15 into evidence as an exhibit to demonstrate what  
16 happens under the various types of wiring scenarios.

17 Q (By Mr. Harris) I will just use a pen here.  
18 The assumption is that 13 cents is being paid per KWH  
19 and that the appropriate rate, retail rate for the power  
20 that is being purchased is eight cents. That's the  
21 retail rate.

22 A Okay.

23 Q Now, ignoring service charges and taxes and  
24 all this, I am just doing simple accounting based on  
25 the energy, so the way it should be calculated, it

1 would be a hundred times 13, which equals 1300, and  
2 that the purchase under this net metering is 20 times  
3 8 equals 160, so the net would be 1140?

4 A Okay. I'm not sure which little diagram you  
5 are referring to.

6 Q This is Number 1. So it's a net metering  
7 diagram. I'm trying to do an accounting.

8 A You can't account for the RECs under Number  
9 1. There is no meter there to measure.

10 Q Excuse me. I screwed up. Because the  
11 reality is under this. It's 120. The meter under the  
12 net metering would have to show 120. That is where  
13 the error is.

14 A If you produce a hundred kilowatt hours then  
15 the billing goes to 120, the billing meter will only  
16 show a net of 20 kilowatt hours.

17 Q Walk me through how that would be netted.

18 A The way it is netted is during those  
19 periods, you know, when you are producing energy you  
20 are displacing load PNM would otherwise displace  
21 during the periods of time when your load is less than  
22 what the generator produces.

23 The problem with that metering is you don't  
24 know what energy was produced when. All you know at  
25 the end of the billing period is what the net result

1 is.

2 Q I will give you some further circumstances  
3 here. What we are doing is having read zero at the  
4 end of the month, the reading at the end of the month,  
5 and there is no time-of-use rates involved. So all we  
6 are going to do is our calculation based upon what has  
7 occurred. So run me through how that you could  
8 calculate what the net of this situation is.

9 A The net with that situation is 20 kilowatt  
10 hours.

11 MR. CLARK: Could you clarify the  
12 situation we are talking about, Number 1?

13 MR. HARRIS: We are talking about  
14 situation Number 1.

15 Q (By Mr. Harris) But under situation Number 1,  
16 if the utility pays -- okay. And this is in a net  
17 metering without RECs?

18 A That's correct.

19 Q I will put that here, "without RECs." Okay.  
20 So, under this net metering the amount paid is 20  
21 times 8 equals 160?

22 A That's correct.

23 Q Okay. Now, under the buy-sell, the  
24 calculation would be a hundred units sold at 13 cents;  
25 is that correct.

1 A Okay. Now we are going to include RECs?

2 Q We are going to include buy-sell with RECs.

3 A Okay. Excuse me. That top one you said net  
4 reading with RECs.

5 Q Without RECs. So this is the calculation.  
6 The bottom line is 160.

7 A Without RECs?

8 Q Is the net without RECs. Okay. Under  
9 buy-sells with RECs, the calculation would be a  
10 hundred times 13, equals 1300, and what we are selling  
11 would be the 120 times 8?

12 A That is correct.

13 Q In this case it's 960 -- or 1140. Now let's  
14 do a purchase.

15 A Okay. Now remember, one of those, the top  
16 one, that's a payment to the utility. The bottom one  
17 you are showing there would be a payment from the  
18 utility to the QF.

19 Q Okay. And so this would be to QF. Okay.  
20 Now let's do the calculation for a purchase of RECs  
21 only. And all I'm trying to do with these diagrams is  
22 illustrate what the different economic results are  
23 depending upon how the transaction is put together.

24 A Okay.

25 Q Okay? So, if you have a purchase of RECs

1 alone -- walk me through that. You would take --  
2 okay. There is RECs alone. So you would pay a  
3 hundred times 13. That equals 1300. Now, what would  
4 be paid for energy? Is that 20 times 8?

5 A What would be paid for the energy?

6 Q Right. You know, under this situation, then  
7 you would have 20 times 8 equals 160.

8 A If in your example Number 1 up there you had  
9 a meter between the PV system and the load, that would  
10 be correct.

11 Q So we are assuming that this purchase of  
12 RECs alone really is under the diagram of Number 2?

13 A I'm not sure I'd make that agreement. What  
14 we are assuming is that RECs, in order to measure  
15 them, there has to be a meter at the output of the  
16 generator and the only example you put of the  
17 generator is Number 2.

18 Q This diagram Number 2 would work?

19 A For purchasing RECs, yes. QF for purchasing  
20 RECs alone. But the accounting under Number 3 -- is  
21 this the correct accounting? For billing purposes you  
22 would multiply a hundred times 13 for 1300 and sale of  
23 energy is 20 times 160 for a net result of 1140 for  
24 RECs alone.

25 MS. BELIN: We can't read anything,

1 basically, but we particularly can't read anything  
2 that is not in the red.

3 MR. HARRIS: My response to that is  
4 that the REC -- the transcript will be clear on what  
5 the questions are and this exhibit will be available  
6 to understand what has occurred, or if you want to  
7 have a break to come up and ask questions on it you  
8 can do that as well.

9 Q (By Mr. Harris) This is simply for accounting  
10 purposes. Is this an appropriate accounting for the  
11 purchase of RECs alone?

12 A No, in the examples that you have shown.

13 Q Then tell me what the accounting for the  
14 purchase of RECs alone, how would one account for  
15 purchasing RECs alone under this scenario where a  
16 hundred KWH is produced, 120 KWH is consumed at the  
17 load.

18 A In order to purchase RECs alone -- in order  
19 to purchase RECs you have got to have a meter at the  
20 output of the photovoltaic, for example your number 3  
21 will only work if you take your first diagram, diagram  
22 Number 1, and have a meter between the photovoltaic  
23 system and the load.

24 Q Okay. Or in this -- in that case, which is  
25 Number 2, the dotted line that goes from the

1 photovoltaic? You have the photovoltaic meter and  
2 then the dotted line that's on Number 2?

3 A Is connected. Call it 2-B would work, yes.

4 Q Okay. I will put it on the diagram. The  
5 dotted line is 2-B. And then the meter reading is  
6 2-B.

7 A That's correct.

8 Q Okay. So this would be the appropriate  
9 accounting for this situation?

10 A That's correct.

11 Q Okay. Now, what that shows is that the  
12 numbers for purchase of RECs alone is the same Number  
13 1140 of the one under a buy-sell when you are buying  
14 energy and RECs, you end up with the same number?

15 A If you have a single period rate such as our  
16 rate 1-A for residential.

17 Q Correct. Okay. And so then the question,  
18 based on that rate, is it fair, in your opinion, that  
19 you would pay the same for the RECs as you would for  
20 the RECs and energy?

21 A I'm sorry. Ask the question again.

22 Q Well, what we have shown here in this  
23 calculation is if you do a buy-sell with RECs, that  
24 you end up having a net total QF of 1140. If you  
25 purchased the RECs alone, you still pay 1140, which is

1 going to the RECs. Is it fair, in your opinion, that  
2 you pay 1140 for QFs alone when you could have  
3 purchased under a buy-sell for the same price, the  
4 energy as well as the RECs?

5 A In the simple example you have shown for a  
6 single period rate where the QFs output was less than  
7 the load during all periods of time, for that your  
8 calculation is correct. But in actuality, what  
9 happens is the load will sometimes be less than the  
10 QF. The meter will run backwards and then run  
11 forwards.

12 That's an entirely different situation than  
13 the one you show here and the one that occurs more  
14 frequently in the field.

15 Q Well, what my question is based on, this  
16 particular circumstance, where you read the meter at  
17 the end of the month, this is what the meter reveals.  
18 And under this example, or hypothetical, the load  
19 consumed more than it generates; isn't that typically  
20 the case? That the load for these QFs, you know, the  
21 load is greater than the output from the QF?

22 A On an annual basis that's possible. But on  
23 a monthly billing cycle basis that's quite often not  
24 the case.

25 Q But on an annual basis, the net is often or

1 generally going to be that there is more energy sold  
2 or used at the load than is produced at the load on an  
3 annual basis?

4 A Usually. It will net out to close a zero  
5 number, the small QFs try to do that.

6 Q So based upon this annual accounting, or  
7 this monthly accounting, is it fair, in your opinion,  
8 that the utility would pay as much for the RECs alone  
9 as it would for the RECs and energy?

10 A If the utility were to make a purchase?

11 Q Yes.

12 A If the utility were making a purchase, I  
13 would say that the rate needed to be, particularly in  
14 terms of RECs, what is required to comply with the RPS  
15 and the reasonable cost threshold indicates where you  
16 are purchasing energy and the REC at the same time the  
17 combination of the two will have to comply with the  
18 RCT.

19 Q Well, assuming both comply with the RCT,  
20 what's the better deal?

21 A For whom?

22 Q Any costs that are paid by the utility are  
23 ultimately paid by the consumers of the utility?

24 A That's correct.

25 Q From the standpoint of the ratepayers for

1 the utility, what's the better deal?

2 A The lower cost the utility has to pay.

3 Q In your opinion, would the utility want to  
4 pay the lower of the two or the higher of the two?

5 A I would say that's going to be something  
6 that would be arguable. Again, under the RTS,  
7 certainly renewable energy costs more than  
8 conventional energy. We already crossed that bridge.  
9 Now it has to do with the goals of the RPS and the  
10 goals of the Commission in enacting RPS, I would say.

11 So I would like to give a single answer to  
12 that, but, again, the answer is going to be it depends  
13 on what the goals are.

14 MR. HARRIS: Okay. Good. Mr. Hearing  
15 Examiner, I'm going to mark this thing as staff's  
16 Exhibit 1.

17 (EXHIBIT STAFF 1, DRAWING, WAS MARKED  
18 FOR IDENTIFICATION.)

19 MR. HARRIS: And I'd ask that it be  
20 admitted simply to clarify the record to what we were  
21 talking about. I think by reading the record and  
22 looking at this thing it will be clear as to what we  
23 were talking about.

24 HEARING EXAMINER HUFFMAN: My  
25 suggestion. And this reminds me of the F I got in

1 penmanship in second grade on a grading period. And  
2 it was held over my head for the rest of the second  
3 grade. Two Fs meant you repeated the second grade.

4 I strongly suggest that staff prepare a  
5 highly legible copy of it on dark-colored 8 and a half  
6 by 11, if possible, document that will be highly  
7 legible to everyone concerned, that there will be an  
8 original for the court reporter and copies for  
9 everyone concerned, and that that shall be verified  
10 with the witness after lunch as accurately reflecting  
11 his understanding of that exhibit and then we will  
12 proceed.

13 MR. HARRIS: That's fine. That's a  
14 very good suggestion and we will do that.

15 HEARING EXAMINER HUFFMAN: So, since  
16 some people will want to get tables at restaurants,  
17 and I thought we might be doing that ten minutes ago,  
18 it looks like we will take a break for lunch and  
19 return at 1:30. So we are off the record.

20

21 (A recess was taken from 11:57 a.m. to  
22 1:30 p.m.)

23

24 HEARING EXAMINER HUFFMAN: Everyone  
25 ready to go back on the record? Okay. Mr. Harris?

1                   MR. HARRIS: Mr. Huffman, under your  
2 instructions, staff has drafted up something that was  
3 legible and I have given a copy of that to Mr. Sharff  
4 for him to look at and I think he is in agreement with  
5 this with a caveat. But I will let the witness speak  
6 for himself.

7                   HEARING EXAMINER MARTIN: Have you had  
8 an opportunity to review this exhibit?

9                   THE WITNESS: Yes, I reviewed it. This  
10 is what was drawn on the easel before. And I go back  
11 to my other caveat. For this particular example, for  
12 this particular sets of metering, this is accurate.

13                   However, I would point out that there  
14 are situations when the PV generator output exceeds  
15 the load. There are other metering options and under  
16 those conditions you come up with different results  
17 for the calculations.

18                   Q     (By Mr. Harris) Mr. Sharff, based on that --  
19 but the principles that are here, even if you put in  
20 different numbers with different flows, would apply for  
21 billing purposes?

22                   A     For purposes of doing calculations, yes.

23                   MR. HARRIS: Mr. Hearing Examiner, I  
24 would move into evidence Staff Exhibit Number 1.

25                   HEARING EXAMINER HUFFMAN: Any

1 objection? Hearing none, Staff Exhibit 1 will be  
2 admitted.

3 (EXHIBIT STAFF 1 WAS ADMITTED INTO THE  
4 RECORD.)

5 MR. HARRIS: Mr. Hearing Examiner, that  
6 concludes my cross-examination. Thank you,  
7 Mr. Sharff.

8

9 EXAMINATION

10 BY HEARING EXAMINER HUFFMAN:

11 Q Mr. Sharff, attached to your direct  
12 testimony there are several exhibits, one of which is  
13 your Affidavit, and then there is a petition and a  
14 brief. And, of course, the Affidavit is the only  
15 document that bears your signature and an indication  
16 of having been made under oath. But I have a few  
17 questions about some of the other exhibits.

18 On the Petition for Declaratory Order  
19 you mention at the top of the second page, paragraph  
20 one, that:

21 PNM is required to purchase energy from  
22 small power production and cogeneration  
23 facilities that meet the criteria for  
24 qualifying facilities.

25 Could you explain the differences that

1 exist between "small power production" and  
2 "cogeneration facilities"?

3 A QFs is a broad term that encompasses both  
4 cogeneration and small power production. The common  
5 understanding and explanation for small power  
6 production is it's primarily to do with renewable  
7 resources such as solar, wind, etc.

8 Cogeneration could be fired by any number of  
9 means. It could be renewable resources or, more  
10 typically, it's oil, gas, something of that nature.

11 Q And at the bottom of the page on the  
12 petition there is a statement concerning the New  
13 Mexico Act Sections -- over to the next page --  
14 Section 62-16-5(B) (1) (a) which governs the arrangement  
15 which provides that the purchaser -- let's see. That  
16 if the generator is a qualifying facility the  
17 renewable energy certificates are:

18 [o]wned by the public utility purchaser  
19 of the renewable energy unless retained  
20 by the generator through specific  
21 agreement with the public utility  
22 purchaser of the energy.

23 Is PNM or any other utility, when it  
24 purchases power from a QF, are they under a state law  
25 obligation to reach such an agreement?

1           A     No, they are not.

2           Q     Okay.  But they are under federal law  
3 obligation to make that purchase if the QF presents  
4 them with that situation?

5           A     Yes, they are.

6           Q     And then that price at which they make the  
7 purchase from, I believe you said, that the avoided  
8 cost was the maximum payment or the most that they  
9 would have to pay?

10          A     That's correct.

11          Q     Is it accurate to say that the avoided cost  
12 is always the amount that's paid?  It couldn't be  
13 less, could it?

14          A     It also -- I will answer it a couple of  
15 ways.  It is probably the most that's most typically  
16 paid, but I believe that the rules and statutes are  
17 that utilities can't be required to pay more than  
18 that.

19          Q     In your experience, does a QF ever take less  
20 than the avoided cost amount?

21          A     Not in my experience.

22          Q     Now determining avoided cost is a matter of  
23 state law.  And, for PNM, that determination exists  
24 in, I believe, in another attachment to your  
25 testimony, which is 26, avoided rate; is that correct?

1           A     That's correct.

2           Q     So that rate has been filed with the  
3 Commission and approved by the Commission?

4           A     Yes, it has.

5           Q     Do you know if it was approved through a  
6 hearing or operation of law in some way?

7           A     I don't know.

8           Q     But you do know it is an approved rate of  
9 the Commission?

10          A     Yes, sir.

11          Q     As a regulated public utility, in your role  
12 at PNM and witness in this case, is it your  
13 understanding that PNM is required to charge the rates  
14 that are on file and approved?

15          A     That's correct.

16          Q     When PNM purchases renewable power from a  
17 QF, and pays the avoided cost pursuant to rate 26,  
18 what happens if the QF wants additional compensation  
19 for the REC? I mean, what's the scenario?

20          A     Schedule 12, I believe, is our tariff for  
21 that. Rate schedules are silent on the issue of RECs,  
22 and if the owner of the REC, which is the QF  
23 generator, would want additional compensation over and  
24 above what's contained in Schedule 12, that would have  
25 to be negotiated between them, and, under the

1 circumstances, as a separate agreement.

2 Q PNM is not under any duty to agree to any  
3 additional amount?

4 A No, we are not.

5 Q Under the statute it appears that if PNM  
6 does not reach agreement with the QF the result is  
7 that PNM obtains title to the REC?

8 A That's correct.

9 Q Would you agree with that? In which case,  
10 if PNM simply doesn't negotiate, or negotiates  
11 briefly, but no agreement is reached, the result would  
12 be, if there is no agreement under the statute, PNM  
13 has title without making additional payment?

14 A That is correct.

15 Q So it appears under the statute that PNM or  
16 any utility has the ability to always obtain title to  
17 the REC without paying additional compensation?

18 A That is correct.

19 Q Does PNM have any budget or projection over  
20 the next several years of expenditure for purchasing  
21 RECs either alone or in conjunction with renewable  
22 power?

23 A I believe we do. It would be contained in  
24 our renewable energy plans and I am not familiar with  
25 what it is exactly for this year and going forward.

1           Q     Are you aware that that filing will be made  
2     fairly soon?

3           A     Yes, I believe it is. In addition to that,  
4     in our renewable energy plan for 2005, which we filed  
5     at the beginning of 2006, I do know we have provision  
6     to purchase RECs from small photovoltaic QF systems.

7           Q     Do you know the dollar amount for those  
8     purchases?

9           A     Only in general terms over the 12-year  
10    period of time. It's about \$2 million for the 12-year  
11    period of time.

12          Q     How does that break down between this  
13    purchasing RECs or purchasing RECs with power?

14          A     That's the purchase of RECs only from those  
15    small PV systems.

16          Q     In your direct testimony on Page 2 you  
17    indicate that there are -- that "PNM's seven QF and  
18    non-QF generator customers" over a certain capacity  
19    range, do you know how many are QF and how many are  
20    non-QF?

21          A     Let me find it in my testimony here.

22          Q     Page 2 of the direct. Line 9.

23          A     I believe that at this time only one of  
24    those interconnective generators is a non-QF.

25          Q     Is that a large customer?

1           A     Yes, it is.

2           Q     Okay.  And would that large customer be  
3 represented in this hearing room?

4           A     Not anymore.

5           Q     Not anymore?  So that would have been the  
6 University of New Mexico?

7           A     Yes, sir.

8           Q     Thank you.  Having no criminal law  
9 experience, I'm not sure what we can do with lineups.

10                   I have a couple of questions about  
11 things that you said to Mr. Harris.  One, I just  
12 didn't hear your answer so I will ask it again rather  
13 than looking in the transcript.  Let's see.

14                   You stated, and this is a paraphrase,  
15 it's from my notes, it's not necessarily exactly what  
16 you said, a REC can exist even though there is no  
17 delivery in New Mexico.

18                   I assume that it was contracted for  
19 delivery in New Mexico.  And then I believe you said  
20 to use a REC for compliance certain something is  
21 required.  Could you explain what that is that's  
22 required, if you recall?

23           A     First a REC is created when the renewable  
24 energy is generated.  That's one.  When the REC is  
25 created and ownership is retained by the generator

1     except, in some special instances with qualifying  
2     facilities. For compliance purposes, a REC is how you  
3     evidence or how you show you have complied with  
4     providing a certain percentage of your retail load  
5     with renewable energy.

6             That's what the purpose of the REC is for  
7     compliance purposes. For it to be able to be used for  
8     compliance it must be delivered in New Mexico. And  
9     subsequent to that the REC just simply evidences that  
10    you have renewable energy and it was delivered in New  
11    Mexico, the intent being that it's used to comply with  
12    the RPS.

13            Q     Okay. Thank you. At the bottom of Page 3  
14    of your direct testimony, in discussing PNM's  
15    petition, you say that:

16                    PNM sought such clarification to  
17                    enhance regulatory certainty with  
18                    respect to these transactions, to  
19                    provide incentives for increased small  
20                    power production and to obtain  
21                    Commission direction on recurring  
22                    issues.

23                    And you referenced the petition of  
24    Paragraph 7. So you have identified one of PNM's  
25    interests as providing incentives for increased small

1 power production. Does that invariably involve QFs?

2 A Yes.

3 Q Thank you. And does that reflect PNM's  
4 assessment of New Mexico's legal requirements or New  
5 Mexico public policy or Commission policy? In other  
6 words, what's the basis for PNM's effort to provide  
7 incentive for increased small power production?

8 A I'm not sure that PNM is interested in  
9 providing incentives specifically for small power  
10 production. What we want to do is, in compliance with  
11 the RPS, do our best to ensure that we are not placing  
12 hurdles in the way, that we are in fact complying with  
13 not only the letter but the spirit of the RPS to  
14 encourage the use of renewable energy in larger  
15 amounts throughout the state and on a diversified  
16 technology basis.

17 Q Are you aware of anything in the Renewable  
18 Energy Act that creates or encourages incentives  
19 specifically for increased small power production?

20 A Incentives aren't mentioned in the Act.

21 Q Or have the effect of encouraging small  
22 power production?

23 A To the extent that the REA, the statute, has  
24 caused the Commission's rules to be established on  
25 renewable energy and to the extent that those rules

1 provide for payments for renewable energy  
2 certification or cost thresholds for those items, that  
3 it has the equivalent effect.

4 Q Would you agree there is express  
5 encouragement for the renewable power in the Act and  
6 also in the rule?

7 A I'm not sure about the Act, but the fact  
8 that we have different prices for different  
9 technologies in the rule, I would say there is  
10 encouragement, at least recognition for different  
11 technologies.

12 Q By different prices are you referring to the  
13 weighting system that the Commission has?

14 A That's correct.

15 Q And which the legislature authorized?

16 A That's correct.

17 Q On Page 7 of your direct testimony, in  
18 discussing Rule 570 and QFs and avoided costs, you  
19 state:

20 AVOIDED COSTS ARE DEFINED IN RULE 570  
21 TO MEAN THE INCREMENTAL COSTS TO THE  
22 ELECTRIC UTILITY OF ELECTRIC ENERGY OR  
23 CAPACITY OR BOTH WHICH, BUT FOR THE  
24 PURCHASE FROM THE QF, THE UTILITY WOULD  
25 GENERATE ITSELF OR PURCHASE FROM

1 another source.

2 Is this calculation at all dependent on  
3 type of power, say solar versus wind or anything else?

4 A No, it's not.

5 Q On the top of page 10 of your direct  
6 testimony you provide an answer concerning utilities  
7 in the acquiring of RECs from a QF in conjunction with  
8 the purchase of energy from that QF, and you have  
9 identified one of the circumstances as being where the  
10 price demanded by the generator of the RECs might be  
11 too high.

12 Under state law, if no agreement is  
13 reached as to the price on those RECs, wouldn't your  
14 company still own them if it's buying that power?

15 A That's correct.

16 Q There's been a certain amount of testimony  
17 that QFs obtain -- when they obtain the avoided costs  
18 for their sale to a utility, which under federal law  
19 is obligated to make that purchase, is it your  
20 experience that the avoided cost price for that power  
21 is higher than what in most cases -- or all cases,  
22 however -- whatever your experience is -- is higher  
23 than the price would be on the market for general  
24 wholesale conditions?

25 A My experience with PNM and the way we

1 calculate our energy purchase rate or our energy rate  
2 is, no, the avoided cost is what our experience was in  
3 the market for the prior year and corresponding  
4 periods of time.

5 Q So it's not always higher?

6 A It's equivalent. It is not always above or  
7 less it is equivalent and it's based on the  
8 retrospective law.

9 Q On Page 11 of your testimony you have  
10 indicated that PNM wants to have the flexibility to  
11 purchase RECs using other renewable fuel resources in  
12 the future. By "other" do you mean something in  
13 addition to wind and solar?

14 A Yes.

15 Q Do you know the time frame when that might  
16 take place?

17 A No, I don't, but I do know the technologies.

18 Q The top of page 13 of your testimony you  
19 discuss the City of Albuquerque's QF fueled by  
20 landfill gas and a small PV system in Santa Fe where  
21 the city took the position that RECs have value apart  
22 from the energy and that small PV system in Santa Fe  
23 indicated without additional compensation there could  
24 be legal challenges. Are you aware of the nature of  
25 the legal challenges that's referenced?

1           A     No, I am not.

2           Q     Okay.  Would you agree that in passing the  
3     Renewable Energy Act that the New Mexico legislature  
4     has established policy on this subject for New Mexico?

5           A     Yes.

6           Q     And in doing so that they've mandated the  
7     generation of renewable power in New Mexico to  
8     increase the development of those types of resources?

9           A     Yes.

10          Q     On your rebuttal testimony, Page 6, you  
11     testified that currently no QFs on PNM's system are  
12     utilizing the simultaneous buy-sell option because  
13     such an arrangement is not in their best financial  
14     interest.  Could you explain why that is?

15          A     Yes.  Simultaneous buy-sell is in the  
16     interest of the generator, from the financial  
17     standpoint, when your avoided costs exceed your retail  
18     rates.  And back in the days when the rules were  
19     originally formulated, the FERC rules etc. the  
20     utilities, for a number of reasons, were experiencing  
21     significantly high avoided costs.

22          Q     The other options that you identify, such as  
23     low displacement, you say, provide the QF owner with  
24     the full retail value of all QF energy that is  
25     consumed on site.  Are these the options that they

1 elect instead?

2 A Usually they will effect either that option  
3 -- they would elect that option so they don't have to  
4 put any special metering in to serve their own load.  
5 The more prevalent one is the net metering option.

6 Q You indicate that when they, the QFs, take  
7 these options that they are provided with the full  
8 retail value of all QF energy that is consumed on  
9 site. Would that not be the case with a buy-sell  
10 option?

11 A Absolutely not. Buy-sell means that all the  
12 energy produced by the generator is purchased by the  
13 utility at the utility's avoided costs; usually one to  
14 three cents a kilowatt hours. That energy would be  
15 sold to the QF generator to serve its load at full  
16 retail rates.

17 If they use a net metering or low load  
18 displacement on the energy from the generator that  
19 service load is displacing energy it would ordinarily  
20 buy at retail rates.

21 HEARING EXAMINER HUFFMAN: Thank you,  
22 Mr. Sharff. Mr. Clark, do you have any redirect?

23 MR. MICHEL: Mr. Huffman, before Robert  
24 goes, I have had a chance to look over the rebuttal.  
25 I do have just a couple questions?

1 HEARING EXAMINER HUFFMAN: By all  
2 means, Mr. Michel.

3

4 RECROSS-EXAMINATION

5 BY MR. MICHEL:

6 Q Good afternoon, Mr. Sharff.

7 A Good afternoon.

8 Q Would you turn to Page 10 of your rebuttal?

9 And here you discuss the ability of utilities to  
10 purchase excess RECs and trade RECs or sell RECs. And  
11 my question is, if the utility purchases RECs that it  
12 doesn't need, or over and above what it needs to  
13 comply with its RTS, would you agree that the cost of  
14 those RECs should not be paid for by the utility's  
15 customers?

16 A That's outside my area of expertise, but I  
17 believe there are rules and statutes in application  
18 for when utilities do participate in such activities,  
19 whether it's RECs or other things.

20 Q You don't have an opinion as to whether or  
21 not the cost of excess RECs should be paid for by  
22 utility customers?

23 A Not knowing the circumstances under which  
24 the RECs were purchased, I can't say. If it was a  
25 benefit and there is a benefit to the utility -- I

1       couldn't think of anything.  It's outside my area of  
2       expertise.

3               Q       Can you think of a benefit?

4                       MR. CLARK:  I object to this question  
5       because the witness said it is outside his area of  
6       expertise.

7                       MR. MICHEL:  He just mentioned  
8       benefits.  I am wondering if he had any in mind.

9                       HEARING EXAMINER HUFFMAN:  Could you  
10       focus on that area of it, Mr. Michel?

11                      MR. MICHEL:  Yeah.

12              A       No, I don't.

13              Q       (By Mr. Michel) Could you turn to page 12.  I  
14       guess I'm going from Page 11 on to page 12.  You talk  
15       about a utility not being required, in your opinion, to  
16       procure renewable resources at the least cost; do you  
17       see that?

18              A       Page 12 which line?

19              Q       At the top.  Let me just ask the question.  
20       If a utility has an opportunity to purchase a solar  
21       resource from a QF at one price and from another  
22       entity at a lower price, would you agree that the  
23       utility should purchase the least -- the lower-cost  
24       resource in that instance, assuming the resource type  
25       is the same?

1           A     Assuming there were no other interests or  
2     benefits involved, the only thing in consideration was  
3     the cost, that would be correct.

4                     MR. MICHEL:  That's all I have.  
5     Thanks.

6                     HEARING EXAMINER HUFFMAN:  Mr. Clark?

7

8                     REDIRECT EXAMINATION

9     BY MR. CLARK:

10            Q     Mr. Sharff, you mentioned that you had a  
11     chance to look at Staff Exhibit 1 that was passed out  
12     after lunch; is that correct?

13            A     That's correct.

14            Q     And I believe you answered a couple  
15     questions about it.  Let me just ask you generally.  I  
16     was concerned that the questions and answers that were  
17     asked before the lunch break were not always clear  
18     because people would refer to "this" and "that"  
19     without being able to point clearly to what part of  
20     the exhibit that they were talking about.

21                     Do you have any general comments or  
22     responses that you would like to make in regard to the  
23     prelunch examination by Mr. Dahl Harris on this  
24     exhibit?

25            A     Only to point out, you know, the wiring

1 diagram -- however we want to call it -- this is item  
2 one -- is the typical metering connection that you  
3 find for a small net metering photovoltaic system.  
4 The meter listed, UM, will run forwards and backwards.  
5 At the end of the month it will register the net  
6 energy either delivered to QF or the utility.

7 For the calculation shown it shows that  
8 energy is shown delivering to the QF and it shows the  
9 amount for that and that's correct.

10 Q Will you continue? I'm sorry.

11 A Number 2 shows a couple of arrangements that  
12 are available. One of which is for simultaneous  
13 buy-sell and one is for what we call a net metering  
14 arrangement. The little dotted line that is shown as  
15 2B, that would be more typical of two-meter net  
16 metering arrangements.

17 The diagram where you have the solid line  
18 going over to the right of the UM, or utility meter,  
19 is typical of a simultaneous buy-sell arrangement.  
20 And the calculations shown for those two arrangements  
21 are correct, but to list them both as simultaneous  
22 buy-sell would be misleading.

23 Q Are there other types of meter arrangements  
24 or other scenarios of the QF that are not represented  
25 by this staff exhibit?

1           A     Yes.  There are other metering arrangements.  
2     There are other ways of accomplishing simultaneous  
3     buy-sell.  There are other arrangements by which you  
4     can accomplish net metering.  Load displacement did  
5     not have a separate metering arrangement required for  
6     it.

7           Q     Would the chart here, Staff Exhibit 1, be  
8     reflected by whether the generator uses more than the  
9     load or vice versa?

10          A     The exhibit shown by Staff's Exhibit 1, that  
11     will hold for when the load always exceeds the  
12     generator output.  However, in the simultaneous  
13     buy-sell, and in the net metering arrangements, for  
14     those situations where the generator load is greater  
15     than the -- the generator output is greater than the  
16     QF load, you get a completely different result,  
17     particularly in simultaneous buy-sell.

18          Q     So, would you characterize Staff Exhibit 1  
19     one as a fair representation of types of metering  
20     arrangements or likely types of metering arrangements?  
21     How would you characterize it?  Complete, incomplete?

22          A     I would say that as a demonstration of net  
23     metering and one instance of simultaneous buy-sell  
24     it's a very good representation.  But to try to  
25     utilize that document to interpret the results for

1 other situations of load would be to go through the  
2 calculations yourself. They are not all contained in  
3 there, not all the options.

4 MR. CLARK: I don't have any more  
5 questions.

6 HEARING EXAMINER HUFFMAN: Thank you.  
7 The witness is excused.

8 (The witness was excused.)

9 HEARING EXAMINER HUFFMAN: We haven't  
10 been in very long. We will take four minutes before  
11 we take EPE's witness, Mr. Newsom.

12

13 (A recess was taken from 2:07 to 2:17  
14 P.M.)

15

16 THOMAS L. NEWSOM,  
17 after having been first duly sworn under oath,  
18 was questioned and testified as follows:

19

20 HEARING EXAMINER HUFFMAN: Ms. Goodwin,  
21 you may proceed.

22 MS. GOODWIN: Thank you, Mr. Hearing  
23 Examiner.

24

25

DIRECT EXAMINATION

1 BY MS. GOODWIN:

2 Q Mr. Newsom, could you please state your full  
3 name and your position with El Paso Electric Company?

4 A Yes. My name is Thomas L Newsom. I am the  
5 assistant vice-president of regulatory affairs for El  
6 Paso Electric.

7 (EXHIBIT EPE 1, DIRECT TESTIMONY OF  
8 THOMAS L. NEWSOM JULY 21, 2006, WAS  
9 MARKED FOR IDENTIFICATION.)

10 Q I have placed a copy before you of what's  
11 marked EPE Exhibit 1. Could you identify that for the  
12 record?

13 A This is my direct testimony in this case.

14 Q Do you have any changes or corrections you  
15 wish to make to that testimony?

16 A None.

17 Q If I were to ask you the same questions  
18 today as are contained in this prefiled testimony  
19 would your answers be substantially the same?

20 A Yes.

21 Q And are they true and correct to the best of  
22 your knowledge?

23 A Yes, they are.

24 MS. GOODWIN: I would move admission of  
25 EPE Exhibit 1.

1 HEARING EXAMINER HUFFMAN: Any  
2 objection? Hearing none, EPE Exhibit 1 is admitted.

3 (EXHIBIT EPE 1 WAS ADMITTED INTO THE  
4 RECORD.)

5 (EXHIBIT EPE 2, REBUTTAL TESTIMONY OF  
6 THOMAS L. NEWSOM AUGUST 16, 2006, WAS  
7 MARKED FOR IDENTIFICATION.)

8 Q (By Ms. Goodwin) Also before you, Mr. Newsom,  
9 is a copy of a document marked EPE Exhibit 2. Could you  
10 identify that for the record?

11 A Yes. This is my rebuttal testimony in this  
12 proceeding.

13 Q And does that copy contain a correction in  
14 the header and the last page of the document from the  
15 prefiled testimony that you filed?

16 A Yes, it does. The term "rebuttal" now  
17 appears in the header instead of "direct." And then  
18 on line 16, in the question, the final question, the  
19 question should be: "Does this conclude your rebuttal  
20 testimony?"

21 Q Do you have any other changes or corrections  
22 to this testimony?

23 A No.

24 Q And if I were to ask you these same  
25 questions today, would your answers be substantially

1 the same?

2 A Yes.

3 Q And they are true and correct to the best of  
4 your knowledge and ability?

5 A Yes.

6 MS. GOODWIN: I would move admission of  
7 EPE Exhibit 2.

8 HEARING EXAMINER HUFFMAN: Any  
9 objection? Hearing none, El Paso Exhibit Number 2 is  
10 also admitted.

11 (EXHIBIT EPE 2 WAS ADMITTED INTO THE  
12 RECORD.)

13 MS. GOODWIN: I have no further  
14 questions and I make Mr. Newsom available for cross.

15 HEARING EXAMINER HUFFMAN: Mr. Clark?

16

17 CROSS-EXAMINATION

18 BY MR. CLARK:

19 Q Good afternoon, Mr. Newsom.

20 A Good afternoon.

21 Q In his direct testimony Mr. Sharff mentioned  
22 a couple specific instances where customers had come  
23 to PNM, two QF customers came to PNM and raised  
24 concerns about RECs. Has your company been faced with  
25 similar situations?

1           A     No, not yet.

2           Q     Does it have any Rule 570 customers that are  
3 on its system and raised any dispute regarding RECs?

4           A     We have both in Texas and in New Mexico, but  
5 in New Mexico we have customers that are qualified  
6 facilities. They are qualified but we don't have any  
7 QF purchases from those customers.

8           Q     From your client standpoint the issues we  
9 are talking about are academic?

10          A     They are academic as far as they apply to us  
11 today. They are not academic if down the road where  
12 we may actually get into those kinds of circumstances,  
13 but it's important that the record reflect everybody's  
14 position.

15          Q     Do you have a copy of the Renewable Energy  
16 Act in front of you or available to you?

17          A     Yes, I do.

18          Q     All right. Let me ask you to refer to the  
19 section that Mr. Sharff was asked some questions  
20 about, specifically Section 62-16-5(B) (1) (a).

21          A     Yes, sir.

22          Q     This is the section that says "renewable  
23 energy certificates are owned by the generator"  
24 unless, and it goes on to talk about QFs, and it says:

25                   The generator is a QF, as defined by

1                   the PURPA, in which case the renewable  
2                   energy certificates are owned by the  
3                   public utility purchaser of the  
4                   renewable energy unless retained by the  
5                   generator through specific agreement.

6                   And you have heard Mr. Sharff testify  
7                   about this and you have also testified some in your  
8                   testimony; is that correct?

9                   A     That's correct.

10                  Q     All right.  Would it, in your mind, be fair  
11                  to conclude in the language of the statute that I just  
12                  read that the legislature envisioned in which there  
13                  might be circumstances in which it might be reasonable  
14                  for the utility purchaser not to purchase the RECs at  
15                  the same time that they purchased the energy?

16                  A     I think the language shows that the  
17                  legislature did envision that there could be a  
18                  circumstance.  And I think their initial presumption  
19                  or what they have put in there is because it is a  
20                  contract qualifying facility for which the utility has  
21                  no choice but to buy power, the assumption is that the  
22                  utility that owns those as a matter of law, they  
23                  choose to contract to do something else, then that's  
24                  something they will have to deal with later on.

25                  Q     What, in your mind, would be some of the

1 circumstances in which a utility might choose to  
2 contract for the RECs separately?

3 A I cannot come up with any example where, or  
4 a situation where they might contract separately. If  
5 a power contract is being put to me that requires my  
6 company to pay a little of the highest price that  
7 might be out there, a price as was discussed earlier,  
8 in all likelihood it is not going to be negotiated  
9 lower. It will be the avoided cost, whatever it is,  
10 then, in that instance, that is a renewable QF.

11 I can't envision a circumstance at this  
12 point that I not take possession of the RECs  
13 associated with it. But I will say this, that I do  
14 believe that that's an issue that's addressed in the  
15 procurement plan and not upfront before, you know,  
16 with that type of decision being made right now.

17 I think it is a decision that is completely  
18 for procurement language in which there is a  
19 proceeding and the staff and everybody has an  
20 opportunity to investigate.

21 Q Are you familiar with Mr. Potturi's  
22 testimony in this case?

23 A I have read it.

24 Q Let me ask you to turn to Page 9 of his  
25 testimony.

1           A     I don't have that up here.  Okay.

2           Q     Looking at the bottom of Page 9, the  
3 question and answer beginning on line 15 through 18,  
4 Mr. Potturi recommends that:

5                     Public utilities should be directed by  
6                     the Commission to procure RECs only for  
7                     meeting their RPS requirements and not  
8                     for engaging in trading activity of  
9                     RECs.

10                    Do you think agree or disagree with his  
11 testimony?

12           A     I do not agree with the way it is simply  
13 laid out.  I think that there are circumstances in  
14 which a company is going to acquire RECs.  And, again,  
15 this is in the context of the procurement plan.  And  
16 more excess RECs may be acquired for whatever reason.  
17 RECs are associated with the QF contract.  There might  
18 come up a good reason why excess RECs might become  
19 available.

20                    I also think that the law itself envisions  
21 that RECs can be separated from the energy that they  
22 are associated with and can be traded.  And if you  
23 don't have the ability to trade RECs there can be no  
24 regional market.  That's part of the law that would  
25 seem to make sense, if they could only be acquired for

1 meeting the RPS requirements.

2 Q You spoke at one point in your rebuttal  
3 testimony about the goal of New Mexico and the Western  
4 states to promote a regional market. Can you talk  
5 about this regional market in relation to the question  
6 and answer I just asked you about Mr. Potturi's  
7 testimony?

8 A I'm not sure if I completely understand. My  
9 understanding is that Western governors have concluded  
10 that this is something that they want to do. And WECC  
11 is involved in developing this WREGIS system. It's an  
12 acronym. I'm not real familiar with what's happened  
13 there, but I know their objective is to develop a  
14 system by which RECs that originate in one place can  
15 be tagged and tracked so that states could get into a  
16 multi-state market for renewable energy certificates.

17 Q You mentioned a couple minutes ago that your  
18 interpretation of the Renewable Energy Act was that  
19 utilities had the ability to trade in RECs. Can you  
20 point to any particular section of the statute that  
21 you rely on for that statute?

22 A I think I am relying on the part that says  
23 unless a regional market exists. That, to me,  
24 certainly implies or suggests that trading is an  
25 option that's available under the Act.

1 MR. CLARK: I think those are my  
2 questions.

3 HEARING EXAMINER HUFFMAN: Okay.  
4 Ms. Belin?

5 MS. BELIN: I have no questions.

6 HEARING EXAMINER HUFFMAN: Okay.  
7 Mr. Foranciari.

8 MR. FORNACIARI: No questions.

9 HEARING EXAMINER HUFFMAN: Mr. Michel?  
10

11 CROSS-EXAMINATION

12 BY MR. MICHEL:

13 Q Good afternoon, Mr. Newsom.

14 A Good afternoon.

15 Q Mr. Clark just asked you about utilities  
16 trading in RECs. Do you think a utility should be  
17 speculating in RECs with its customers as the backstop  
18 if the utility does poorly in that trading activity?

19 A Let me make a clarified point. I don't  
20 think -- and I hopefully did not don't want to lead  
21 this way -- I think the law envisions that markets  
22 will exist and companies, utilities can trade in them.

23 I think that the RECs that are going -- I  
24 think it would not be appropriate, or at least is not  
25 our plan, to acquire RECs through our procurement plan

1       which then would transfer costs to our customers that  
2       are in excess or that were acquired for the purpose of  
3       trading on our own. That is, that would not be the  
4       intent. So the customers should not be paying for our  
5       trading activities.

6           Q     Okay. Appreciate that. Could you turn to  
7       Page 14 of your rebuttal? And here you talk about,  
8       towards the middle of the page, I guess lines 7  
9       through 10 -- 7 through 12, you talk about whether or  
10      not RECs should be unbundled from the energy in the QF  
11      contract.

12          A     Yes.

13          Q     Do you have the Renewable Energy Act?

14          A     Yes.

15          Q     Could you look at section 62-16-4(A)(3)?

16          A     Okay.

17          Q     And that section contains some incremental  
18      cost limitations for larger customers on your system  
19      associated with renewable procurements; are you  
20      familiar with that?

21          A     I am generally familiar with it, yes.

22          Q     Well, if you look at the language there, it  
23      indicates that these limitations are for the  
24      additional cost of procuring renewables; do you see  
25      that?

1 [s]hall be limited so that the  
2 additional cost of the renewable  
3 portfolio standard to each customer  
4 does not exceed.

5 And then it gives the dollar amounts.

6 A It clearly envisions that investing in  
7 renewables imposes an incremental cost.

8 Q Would you agree that in -- let me just ask  
9 you. In your mind, is that incremental cost the cost  
10 of energy and RECs bundled or is it just the cost of  
11 RECs?

12 A I think it's the cost of acquiring -- of  
13 meeting the RPS requirement. And RECs are what are  
14 going to evidence the compliance with that  
15 requirement. So, if the -- the ultimate conclusion as  
16 to what that cost is, whether it's bundled or  
17 unbundled, is something that's got to be addressed and  
18 resolved in the procurement plan.

19 Q So, at least for this purpose, it's  
20 important that utilities understand the value of the  
21 REC component of whatever they are procuring?

22 A I think they need to understand what they  
23 are procuring when they buy, whatever the transaction  
24 is. One of the things that we are trying to do is  
25 comply with the REA which compels us to buy either

1 energy associated -- RECs associated with energy or  
2 buy the RECs themselves. That there is value  
3 associated with or that can be associated with both  
4 the energy and with RECs.

5 Q Okay. So, for purposes here, you probably  
6 have to review the value of the energy to determine  
7 what the additional cost of complying with the RPS is;  
8 would you agree with that?

9 A I think our testimony is, since in the  
10 context of this proceeding it's a qualifying facility,  
11 we will pay the avoided cost. We own the RECs. There  
12 is no additional value associated with that REC. The  
13 energy costs us that. The energy that we pay for was  
14 the avoided cost. In that case there would be no need  
15 to separate out additional value for those RECs.

16 Q Now, if you did pay more than avoided costs  
17 for that combined bundled product, then there would be  
18 some value assignable to the REC?

19 A There would be. And, again, it would have  
20 to be addressed within the context of the procurement  
21 plan with whatever the circumstances are.

22 MR. MICHEL: Okay. That's all I have.  
23 Thanks, Mr. Newsom.

24 HEARING EXAMINER HUFFMAN: Mr. Throne  
25 is not here. Mr. Kidd, do you have any questions for

1 this witness?

2 MR. KIDD: No questions.

3 HEARING EXAMINER HUFFMAN: Mr. Harris?

4

5 CROSS-EXAMINATION

6 BY MR. HARRIS:

7 Q Good afternoon.

8 A Afternoon.

9 Q I would like some followups on the questions  
10 that were asked, you know, addressing the first  
11 sentence of Section 16-4(A) of the Renewable Energy  
12 Act.

13 A Yes, sir.

14 Q Is that requirement consistent, in your  
15 view, with the renewable energy portfolio standard  
16 definition that's set out in section 16-3(E)?

17 A If I understand your question correctly, it  
18 certainly is not inconsistent.

19 Q And the reason I asked that question is that  
20 you had stated to Mr. Michel, I believe, if this is  
21 correct, that you can satisfy your renewable energy  
22 standard quota by buying energy with RECs or RECs  
23 alone?

24 A Yes, sir.

25 Q If you bought the RECs alone, is there a

1 requirement that that energy that is represented by  
2 the REC would have been contracted for delivery in New  
3 Mexico and it would have been a part of a public  
4 utility's retail sales?

5 A Well, I can agree with half of what you just  
6 said. It has to be contracted for delivery in New  
7 Mexico, that is clearly in the law. I don't think the  
8 law goes all the way down to the point of the retail  
9 sale.

10 The renewable portfolio standard is based  
11 upon retail sales and it is saying, as I understand  
12 it, it is simply saying here is a percentage of your  
13 retail sales that have to be made with -- for which  
14 the power that represents those should come from  
15 renewable resources.

16 So I don't find the direct link that you  
17 just said. But I think that power is being delivered  
18 in New Mexico. It may be consumed by the utility  
19 itself but it may also be sold and consumed by  
20 retailers.

21 Q But you would agree that Section 3(E) states  
22 that the standard means the percentage of retail sales  
23 by public utilities to electric consumers?

24 A Yes, sir.

25 Q How do you square that -- you say the

1 standard is retail sales. If there are no retail  
2 sales to a utility's customers?

3 Q Let me give you an example. The power is  
4 contracted for delivery in New Mexico, but then it's  
5 resold to Texas. Has the standard been met?

6 A There is a hypothetical here that I'm trying  
7 to make sure of the way that my mind is processing  
8 this and be responsive to your question. There are --  
9 we are a Texas and New Mexico utility.

10 Q Right.

11 A And power that goes into our system is not  
12 specifically tracked anywhere, and so it's hard to say  
13 that if we were to buy power from a renewable  
14 generator located in New Mexico that we would in fact  
15 redirect that power somewhere, someplace else.

16 It would go into our system and if there  
17 were a jurisdictional allocation of the energy and the  
18 New Mexico portion of that renewable that is assuming  
19 it had RECs associated with that we could retire --  
20 would in fact enable us to meet or to go against our  
21 RPS requirement.

22 Q I guess what I have been struggling with for  
23 weeks is that a REC has been defined in the statute as  
24 satisfying the standard. The standard states that it  
25 is a percentage of retail sales. If there are no

1 retail sales. How has the REC satisfied the standard?

2 A But there are retail sales. The sales are  
3 taking place. But there is just -- there is no way to  
4 directly associate the power from any source, whether  
5 it's renewable or nonrenewable, with the sales to  
6 ultimate customers. We are buying our generator  
7 purchased power that is being delivered to customers.

8 Q To retail customers?

9 A And the majority of those are retail. We  
10 have one wholesale customer in Texas. By and large  
11 that power that comes into our system is being sold to  
12 retail customers either in Texas or New Mexico.

13 Q Okay. So, let's go to the situation, I  
14 believe, that now exists where EPE is buying its RECs  
15 from PNM. Okay? Now is there a requirement that the  
16 energy represented by that -- by those RECs have been  
17 not only contracted for delivery but also provided to  
18 the retail customers of UNM?

19 A I just don't find that explicitly in the  
20 law. It certainly says it is supposed to be  
21 contracted for delivery in New Mexico.

22 Q It also says to satisfy the standard that  
23 renewable energy must be, you know, given to public  
24 utilities' retail customers. So the way I have  
25 envisioned, this and, you know, if you disagree let me

1 know, and tell me why you disagree.

2           The way I envision it on the PNM-EPE  
3 transaction, EPE gives the RECs, PNM delivers it to  
4 its retail customers -- EPE rather than PNM -- files  
5 the credit for those retail sales and that only EPE  
6 and not PNM can take credit for the RECs that were  
7 created with that energy?

8           A     I can't disagree with the way that you are  
9 playing it out. By buying those RECs it is our  
10 intention to take credit for the renewable energy  
11 generated and contracted for delivery in New Mexico.  
12 And I will even -- you know, there is a presumption  
13 that it is going down all the way to the retail  
14 customer level.

15           And with PNM, if it's in their system, it's  
16 obviously -- the majority of them is their retail  
17 customers. But I think the renewable portfolio  
18 standard, to me, is a number. It's numeric and it's  
19 based upon the sales. And so, a --

20           Q     A percentage of retail sales?

21           A     A percentage of retail sales. So, I guess I  
22 am finding that -- I'm not finding quite the same link  
23 between the retail sales and the standard and contract  
24 of delivery that you are asking about.

25           Q     Right. And could you explain, you know, by

1 looking at the statute and telling me why?

2 A Well, my understanding is that the  
3 legislature wanted to encourage the development of  
4 renewable resources. There is a preference for those  
5 renewable resources, I believe, to be in the state of  
6 New Mexico. And the utilities that are going to be  
7 buying the power from those renewable resources also  
8 have retail customers in New Mexico.

9 So I think, inherently, there are sales  
10 ultimately to the retail level. And that's what the  
11 standard was based upon. They could have made a  
12 standard like what was in Texas, where it was X number  
13 of metal locks that had to be installed. And then  
14 that would -- that's another way that investment in  
15 renewable energy could have been done.

16 But New Mexico legislature chose to make the  
17 requirement based on retail sales, because I think the  
18 intent was retail customers should ultimately be the  
19 beneficiaries of the development of renewable  
20 resources in New Mexico.

21 And it also provided that they are going to  
22 pay the cost of it, so they don't want them to pay the  
23 cost for something which they are not using.

24 Q That view, is that not consistent with the  
25 language in the statute, that the Act prescribed

1 renewable energy in their portfolio standards "for  
2 sales to retail customers" that's found at 16-2(A) (3)?

3 A 16-2?

4 Q (A) (3).

5 A Yes, sir. I have to agree with that.

6 Q And (B) the purposes of the Act are to.  
7 [p]rescribe the amounts of renewable  
8 energy resources that public utilities  
9 shall include in their electric energy  
10 supply portfolios for sales to retail  
11 customers?

12 So doesn't the finding and the  
13 purpose comport with the standard that it requires  
14 sales to retail customers?

15 A Yes, sir, I believe that's true.

16 Q Now, there was a question that was asked of  
17 you by Mr. Clark concerning excess RECs. I take it  
18 from your answer that it's difficult for a -- because  
19 of the variable amount of energy that a utility sells  
20 in any one year, do business, economics and weights,  
21 and this type of thing, to precisely determine how  
22 many RECs it's going to need?

23 A That's correct.

24 Q So if a company, EPE, in purchasing RECs,  
25 can satisfy its standard by excess RECs it's your view

1 that they can be sold?

2 A They can be banked.

3 Q Banked or sold?

4 A Yes.

5 Q I take it also from your testimony that you  
6 don't anticipate buying RECs just to be in the  
7 business of buying and selling RECs?

8 A That, certainly from our company standpoint,  
9 is not a plan to be involved in it. We are supportive  
10 of the development of a regional market for RECs. And  
11 that's not necessarily so that we can participate in  
12 any kind of speculative activity, it's simply it would  
13 give us more flexibility in meeting our RPS.

14 Q And isn't it true that really the business  
15 of EPE is to provide service, i.e., electricity to its  
16 customers in just and equal rates?

17 A I think that is a pretty succinct  
18 definition, yes, sir.

19 MR. HARRIS: No further questions.

20 Thanks.

21 HEARING EXAMINER HUFFMAN: Okay.

22

23 EXAMINATION

24 BY HEARING EXAMINER HUFFMAN:

25 Q Mr. Newsom, could you turn to Page 10 of

1 your testimony? At the bottom of the page you  
2 testified:

3 Where utility ownership of RECs has  
4 been assigned as a matter of law, it  
5 may be considered imprudent or  
6 unreasonable for the utility and its  
7 customers to pay additional value for  
8 RECs that are transferred to utility's  
9 ownership by law.

10 In this testimony do you contemplate  
11 who might make that determination?

12 A Yes, sir. I think the determination is  
13 ultimately going to be made by the Commission within  
14 the context of the procurement plan.

15 Q Could you turn to your rebuttal testimony?  
16 In the middle of the page, I think lines 11 to 13, you  
17 say this ability --

18 A What page?

19 Q Page 6, middle of line 11, at the end of the  
20 paragraph.

21 This ability to sell RECs, in EPE's  
22 case, directly benefits customers  
23 because EPE has committed to credit  
24 such sales to customers through its  
25 Fuel and Purchased Power Cost

1 Adjustment Clause.

2 Did EPE make that commitment in a  
3 specific Commission case?

4 A I believe we made it within our procurement  
5 plan that it filed last year.

6 Q How will that work? How will the sharing  
7 take place?

8 A I don't know that there is a sharing in our  
9 case. We simply said if we were to acquire excess  
10 RECs and could not find another use for them such as  
11 banking them -- for whatever reason, it could be  
12 contractual reasons -- that we would, you know, if it  
13 were reasonable for us to try to sell them, then we  
14 would simply credit that back against our allocated  
15 New Mexico fuel costs.

16 So, I mean, it would not be a cost that gets  
17 allocated across the system.

18 Q Would it be a hundred percent credit for  
19 customers?

20 A Yes, sir.

21 Q On page 12 of your rebuttal, line 8, you  
22 testify:

23 It is not reasonable or prudent to pay  
24 additional value for those RECs, unless  
25 special circumstances are shown in the

1                   context of a procurement plan  
2                   proceeding.

3                   Are there any special circumstances  
4           that you have you are aware of at the present time  
5           that may justify that?

6           A     At this time, no, sir.

7           Q     On page 18 of your rebuttal testimony you  
8           refer to a provision of the Energy Policy Act of 2005,  
9           indicating there is a modification so that now "a  
10          utility is no longer required to purchase the energy  
11          if the QF has access to market opportunities." Do you  
12          know the specific provision of that act that makes  
13          this change?

14          A     No, sir, I don't. It's my understanding,  
15          what I read of summaries of how the Act worked --  
16          works -- is that in areas where the wholesale market  
17          has evolved, there is a competitive wholesale market,  
18          then the QF contract, the QF arrangement may not  
19          automatically -- may not be available because that  
20          seller could sell to anybody.

21          Q     Do you know whether the determination of  
22          whether there is access to market opportunities, if  
23          that is something that's made at FERC?

24          A     It would be my belief and understanding that  
25          FERC would make that determination then.

1 HEARING EXAMINER HUFFMAN: Thank you,  
2 Mr. Newsom. That's all I have. Ms. Goodwin, do you  
3 have any redirect?

4 MS. GOODWIN: Just briefly.

5

6 REDIRECT EXAMINATION

7 BY MS. GOODWIN:

8 Q Mr. Newsom, Mr. Harris asked you some  
9 questions with regard to the renewable portfolio  
10 standard, and I just want to see if we can't get a  
11 little more clear on this. If you would look at  
12 62-16-3(E) of the Renewable Energy Act?

13 A Yes, ma'am.

14 Q That states:

15 "Renewable portfolio standard" means  
16 the percentage of retail sales by a  
17 public utility to electric consumers in  
18 New Mexico that is required by the  
19 Renewable Energy Act to be supplied by  
20 renewable energy.

21 Is the purpose of that standard to  
22 determine the number of RECs a utility must acquire to  
23 comply with the requirements of the standard that are  
24 set forth in 62-16-4(A)?

25 A That is my understanding, yes.

1           Q     So that you would look at 62-16-4(A) and you  
2 would say "I have to have 5 percent of my retail  
3 sales, jurisdictional sales be supplied from renewable  
4 energy as proven through RECs"; correct?

5           A     That's correct.

6           Q     So that would give you a specific amount; is  
7 that correct?

8           A     That's correct.

9           Q     So if you would, please turn to  
10 62-16-5(E) (1) (B).

11          A     (B)1?

12          Q     Little B.

13          A     Okay.

14          Q     62-16-5(B) (1) (b). Begins with the phrase  
15 "May be traded, sold or otherwise"?

16          A     Yes, ma'am.

17          Q     I'd like you to look at the section that  
18 starts "provided" and could you please read that  
19 slowly for the court reporter?

20          A           [p]rovided that the transfers and use  
21 of the certificate by a public utility  
22 for compliance with the renewable  
23 energy portfolio standard shall require  
24 the electric energy represented by the  
25 certificate to be contracted for

1 delivery in New Mexico unless the  
2 commission determines that there is a  
3 regional market for exchanging  
4 renewable energy certificates.

5 Q Does that require that the energy associated  
6 with the RECs be specifically consumed by a retail New  
7 Mexico consumer?

8 A No.

9 Q If, for example, PNM purchased renewable  
10 energy by contract from a third party and contracted  
11 to have that energy delivered in New Mexico and they  
12 sold the RECs associated with that energy to El Paso  
13 Electric Company, would those RECs count if PNM used  
14 that energy either to provide it to a wholesale  
15 customer or to resell it anywhere either in the state  
16 or outside of the state?

17 A I don't think it does. I think once the REC  
18 has been separated from the energy, it's the REC that  
19 evidences the compliance with the RPS.

20 Q And it would not matter to whom PNM  
21 ultimately sold that energy to, so long as they had  
22 contracted for it to be delivered in New Mexico?

23 A That is my understanding of the law and I  
24 think that is the only way that the additional part  
25 about a regional market can possibly exist.

1 MS. GOODWIN: Thank you. I have no  
2 further questions.

3 HEARING EXAMINER HUFFMAN: Thank you,  
4 Mr. Newsom. That will be all.

5 (The witness was excused.)

6 HEARING EXAMINER HUFFMAN: Ms. Belin,  
7 is Mr. Luce ready?

8 MS. BELIN: Yes, he is.

9

10 BENJAMIN LUCE,  
11 after having been first duly sworn under oath,  
12 was questioned and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. BELIN:

15 Q Hello, Mr. Luce, could you state your name  
16 for the record, please?

17 A My name is Ben Luce.

18 Q And what's your employment?

19 A I am director of the Coalition for Clean  
20 Affordable Energy.

21 Q And you also work at Los Alamos National  
22 Labs?

23 A I also do.

24 Q Did you prepare prefiled testimony that was  
25 filed in this case?

1           A     I did.

2           Q     And you have in front of you copies, I  
3 believe, of your prefiled testimony. Did you prepare  
4 those or were they prepared at your direction?

5           A     I did. I prepared them.

6           Q     Could you identify what you have in front of  
7 you?

8                                 (EXHIBIT CCAE 1, TESTIMONY OF BENJAMIN  
9 LUCE JULY 26, 2006, WAS MARKED FOR  
10 IDENTIFICATION.)

11                                (EXHIBIT CCAE 2, REBUTTAL TESTIMONY OF  
12 BENJAMIN LUCE, AUGUST 16, 2006, WAS  
13 MARKED FOR IDENTIFICATION.)

14          A     I have my direct testimony and I have my  
15 rebuttal testimony in this case.

16          Q     Starting with the direct testimony, do you  
17 have any corrections or modifications you wish to  
18 make?

19          A     I believe -- let me just check. There are  
20 some of them here. I think -- yes. On Page 8 of my  
21 direct testimony. The word "of" appears in the third,  
22 fourth paragraph. In the paragraph it reads: "but  
23 rather the same of amount of renewable energy." That  
24 should be struck.

25          Q     The paragraph that begins "I do not feel

1 that the question," in the second sentence of that  
2 paragraph that begins with "In particular," you are  
3 referring to the fourth line of that sentence where  
4 you say "but rather the same of amount of" and you say  
5 that the first "of" should be struck?

6 A Correct. That's correct.

7 Q Is that the only correction for your direct  
8 testimony?

9 A That is. I have corrections on my rebuttal  
10 testimony as well.

11 Q Please go through those.

12 A On Page 2, in the answer at the bottom of  
13 the page, starting with line 19, the second sentence  
14 of that paragraph should read: "The current RCT for  
15 the small PV program." So insert the words "of," and  
16 "PV program" after "small."

17 HEARING EXAMINER HUFFMAN: So after the  
18 word "for" you would insert "the" in line 22?

19 THE WITNESS: Correct.

20 HEARING EXAMINER HUFFMAN: And after  
21 the word "small" you would insert capital "P" capital  
22 "V" "program"?

23 THE WITNESS: Uh-huh, correct.

24 A On Page 5, line 22, after the word -- after  
25 the phrase "RPS is" insert the word "to" -- t-o. So

1 that the phrase reads:

2 More generally, the statement is  
3 obviously not correct on its face  
4 because the whole purpose of the RPS is  
5 to add more energy.

6 One more correction. On Page 9, on line 1,  
7 "necessary" should be "necessarily." And on line 3,  
8 the second word, "is," should be "in." So the phrase  
9 should read "energy in this case." That's all the  
10 changes I have.

11 Q (By Ms. Belin) So that completes the changes  
12 you want to make to your prefiled testimony?

13 A That does.

14 Q If I asked you the same questions today  
15 would your answers be as they were in the prefiled  
16 testimony?

17 A Yes.

18 Q And is everything in these exhibits true and  
19 correct to the best of your knowledge?

20 A Yes.

21 MS. BELIN: I have identified the  
22 direct testimony of Benjamin Luce as CCAE Exhibit 1  
23 and rebuttal testimony of Benjamin Luce as CCAE 2 and  
24 I would move for their admission at this time?

25 HEARING EXAMINER HUFFMAN: Any

1 objection? Hearing none, CCAE Exhibits 1 and 2 are  
2 admitted.

3 (EXHIBIT CCAE 1 WAS ADMITTED INTO THE  
4 RECORD.)

5 (EXHIBIT CCAE 2 WAS ADMITTED INTO THE  
6 RECORD.)

7 MS. BELIN: And I will pass the witness  
8 for cross-examination.

9 HEARING EXAMINER HUFFMAN: Mr. Clark?

10

11 CROSS-EXAMINATION

12 BY MR. CLARK:

13 Q Good afternoon.

14 A Good afternoon.

15 Q As I mentioned a few minutes ago in talking  
16 to Mr. Newsom, Mr. Sharff has mentioned a couple  
17 specific instances where PNM had a controversy or  
18 dispute or discussion with certain QF customers about  
19 RECs; do you recall that testimony?

20 A I do.

21 Q Based on your familiarity generally with the  
22 renewable industry in this state are you aware of  
23 whether there have been other disputes with other QF  
24 customers or whether that has been strictly limited to  
25 a couple instances with PNM?

1           A     I believe that the specific instances  
2     Mr. Sharff referred to are fairly limited to the  
3     context of the RECs dealt with. In this case I think  
4     there is a more general context developing whereby a  
5     regional market for RECs is developing, in fact  
6     already has developed to where they are selling RECs  
7     in those systems.

8                     I think it's important that the state and  
9     Commission resolve the disposition of RECs generally  
10    for that purpose as well as just for the purposes of  
11    this current RPS hearing.

12           Q     Let me refer you briefly to Page 4 of your  
13    direct testimony. There are no lines here, but in the  
14    top third of the page you make reference to the  
15    Western Renewable Energy Generation Information System  
16    being under development. Can you tell us what that is  
17    and what the status of that project is?

18           A     The State of California has been developing,  
19    sort of leading the development of a regional  
20    renewable energy credit tracking and trading system  
21    which goes under the name of WREGIS or W-R-E-G-I-S.  
22    Western Renewable Energy Generation Information  
23    System.

24                     This program is fairly in the advanced stage  
25    and I believe a lot of negotiations are going on

1 between states as to how credits might be traded.  
2 Most of the energy itself is renewable portfolio  
3 credits. I think this will be of interest to the  
4 Commission. The Commission has statutory authority to  
5 open up New Mexico. A regional trading system such as  
6 this would be the most likely candidate for that.

7 Q The next sentence, Bonneville Environmental  
8 Foundation is planning to begin to offer RECs. Can  
9 you tell me something about what that is all about?

10 A Yes. The Bonneville Environmental  
11 Foundation is a foundation based in the Northwest  
12 which has established a RECs marketing program whereby  
13 they buy RECs from small generators, distributor  
14 generators, and sell them to the general public to  
15 offset CO2 emissions associated with the travel  
16 relative to electricity consumption or whatever source  
17 of emissions that they are interested in on site.

18 We have been working with the Bonneville  
19 Environmental Foundation to develop an appropriate  
20 program of this type in Mexico. And I think they are  
21 actually actively setting up that program and intended  
22 market for that. Also small generators that may not  
23 have an opportunity to sell their RECs to utilities  
24 for purposes of RPS compliance.

25 Q Let me ask you, do you have a copy of the

1 Renewable Energy Act in front of you?

2 A I do.

3 Q Let me ask you to turn to a provision that  
4 has been talked about several times during the course  
5 of this hearing. 62-16-5(B) (1) (b).

6 A Yes.

7 Q In the proviso there, there is a reference  
8 to "the electric energy represented by the certificate  
9 to be contracted for delivery in New Mexico." What is  
10 your understanding and construction of the phrase  
11 "contracted for delivery in New Mexico" as it is  
12 utilized in this statute?

13 A I was involved in the crafting of the  
14 language originally and my recollection of this  
15 language is that the intent, the context of this  
16 entire paragraph, is with respect to whether the  
17 Commission -- actually provides discretion to the  
18 Commission to open up the RPS to a regional market at  
19 some point in the future.

20 It was not intended to imply the detailed  
21 definition of the word "delivery" or "contracted for"  
22 other than to give the Commission some kind of handle  
23 on whether the generation was actually serving New  
24 Mexico load or serving loads in some other state.  
25 That was its primary purpose.

1           So, for example, I don't recall that the  
2 delivery meant delivery to the utility's grid on the  
3 utility's side of the grid meter or the utility  
4 customers. The thing is, it is delivered to some  
5 customer in New Mexico.

6           As far as contracted, the same definition,  
7 it was left in a very open way. The intention, I  
8 think, was to avoid something that was not  
9 appropriately somehow connected to the grid and in a  
10 formal way the utility or Commission guidance but it  
11 was not implied that this had to be a contracted for  
12 delivery to the power grid, per say.

13           There was discussion at that time of other  
14 types of options. For instance, whether the power  
15 should be metered in New Mexico. I think some drafts  
16 in fact contained such language. We eventually backed  
17 off that kind of language because it was difficult to  
18 not run into the kind of problems that staff has  
19 voiced about what a detailed description would mean.

20           And we settled for just a very generic  
21 description that would describe the process systems.  
22 And we did consider QFs in this context. I think it  
23 is evidenced by the preceding paragraphs. The QF  
24 specifically referenced there has no limitation of  
25 RECs for QF or not limited to QFs that are connected

1 directly to the utility grid in a particular way.  
2 There was no discussions for metering systems, for  
3 example.

4 MR. CLARK: All right. Thank you.

5 HEARING EXAMINER HUFFMAN: Mr.  
6 Childress or Ms. Goodwin?

7 MS. GOODWIN: Thank you.

8

9 CROSS-EXAMINATION

10 BY MS. GOODWIN:

11 Q Good afternoon, Dr. Luce.

12 A Good afternoon.

13 Q On Page 9 of your rebuttal testimony, and  
14 Page 10, at the top of Page 10, line 1, you state that  
15 the Commission has substantial freedom under the Act  
16 to set REC prices as it sees fit. Could you look at  
17 section 62-16-4(C) (5) please.

18 A December 31st? I'm sorry. What were the  
19 first words in that?

20 Q In 62-16-4(C) (5), starts with the phrase  
21 "other factors."

22 A Yes.

23 Q Now, at the end of this, after the semicolon  
24 in that section, does it not -- let me ask you this --  
25 is the Commission permitted to regulate the production

1 or sale price at the point of production of renewable  
2 energy?

3 A As far as the actual energy generation of  
4 renewable energy goes it does not. This paragraph  
5 would not allow the Commission to interfere in a  
6 negotiated price for the energy.

7 Q Thank you.

8 A However, the situation referred to in my  
9 testimony refers to REC prices, not energy.

10 Q And where does the Commission have the  
11 authority to set a price that a utility is required to  
12 pay for a REC?

13 A The Commission may modify utility  
14 procurement plans and prices for RECs or proposals  
15 worked out in the utility procurement plans. And the  
16 Commission may also set -- may take into account the  
17 factors you just referenced and the setting of the  
18 RCTs for those prices as well.

19 Q Could you please read the first sentence of  
20 Section 62-16-4(C)?

21 A Section 4? Let me --

22 Q 62-16-4(C). It begins by December 31.

23 A By December 31st, 2004, the  
24 Commission shall establish, after  
25 notice and hearing, the reasonable cost

1 threshold above which level a public  
2 utility shall not be required to add  
3 renewable energy to its electric energy  
4 supply portfolio pursuant to the  
5 renewable portfolio standard. The  
6 Commission may thereafter modify the  
7 reasonable cost threshold as changing  
8 circumstances warrant, after notice and  
9 hearing.

10 Q Thank you. Does the Commission have the  
11 ability to approve or modify a plan? Or reject a  
12 plan?

13 A In Section 4(E), the language in the Act  
14 reads:

15 The Commission shall approve or modify  
16 a public utility's procurement or  
17 transitional procurement plan within 60  
18 days and may approve the plan without a  
19 hearing, unless a protest is filed that  
20 demonstrates to the Commission's  
21 reasonable satisfaction that a hearing  
22 is necessary. The Commission may  
23 modify a plan after hearing and notice.

24 I understand that to mean that the  
25 Commission has at least a fairly substantial authority

1 to modify a procurement plan.

2 Q If the Commission were to find that the  
3 utility had paid an unreasonable amount for a REC,  
4 could the Commission reject the use of that or the  
5 cost recovery of that in its procurement plan?

6 A I would say that the utility shouldn't enter  
7 into a Purchase Agreement for a REC that it intends to  
8 recover under the Act unless it proposes that as part  
9 of its procurement plan and it is approved by the  
10 Commission.

11 I would say yes. If the utility  
12 independently decided to buy electricity at a certain  
13 price without approval of the procurement plan by the  
14 Commission and then later on proposed that the  
15 Commission allow recovery of that cost and that remedy  
16 apply to the RPS, I think the Commission would have  
17 the authority to disallow that.

18 Q Would the Commission have the authority to  
19 to tell the utility to return a negotiated specific  
20 price on any given REC?

21 A I believe the Commission would have  
22 authority to make such a suggestion.

23 Q But they could not set the price and require  
24 a utility, one way or the other, to pay a set price  
25 for renewable energy where a REC is associated; is

1 that correct?

2 A If you take that language at face value in  
3 the Act, the language is fairly strong. The word  
4 "modify" is not qualified or limited. So I believe  
5 the Commission actually has substantial authority to  
6 do so. However, I think that it would be -- I think  
7 it would be unreasonable for the Commission to approve  
8 something that would have an inordinate impact. I  
9 think the Commission has a lot of ultimate  
10 responsibilities that's reasonable and they have to, I  
11 think, try their best to remain within the spirit of  
12 the RPS and set reasonable costs for ratepayers.

13 Q Within the RPS to set reasonable costs for  
14 ratepayers?

15 A Reasonable costs for the renewable energy  
16 should be in some sense reasonable. For the  
17 commission is the ultimate authority on what is  
18 reasonable.

19 Q And where the Commission has determined it  
20 is reasonable, then a utility may recover that through  
21 their rates?

22 A If that purchase has been included in a  
23 procurement plan and that procurement plan has been  
24 approved by the Commission.

25 MS. GOODWIN: Thank you.

1 HEARING EXAMINER HUFFMAN: Mr.  
2 Fornaciari?

3 MR. FORNACIARI: No questions.

4 HEARING EXAMINER HUFFMAN: No  
5 questions. Okay. Mr. Michel?

6

7 CROSS-EXAMINATION

8 BY MR. MICHEL:

9 Q Afternoon, Mr. Luce.

10 A Good afternoon, Steve.

11 Q On Page 8 of your direct testimony you  
12 discussed a reasonable cost threshold. Would you  
13 agree that the reasonable cost threshold is a cap on  
14 the price that a utility should pay for renewable  
15 energy or for a renewable energy certificate,  
16 whichever?

17 A Yes. I believe that the total cost the  
18 utility pays for RECs should be less than the  
19 reasonable cost threshold.

20 Q And just to clarify, in the middle of the "I  
21 did not feel" paragraph you indicate that the amount  
22 that a utility should pay for the renewable attribute  
23 -- correct me if I get this wrong -- should not exceed  
24 the cost that -- the cost of the utility to generate  
25 that renewable attribute itself; is that --

1           A     Give me a moment. I think I'm not sure this  
2 answers your question, so tell me if I am missing it.  
3 I think the intent here was to express that the  
4 concept of avoided costs, I believe, has not been  
5 perhaps properly reviewed in terms of what it means  
6 for an avoided cost for redistributed renewable energy  
7 for a distributor. Renewable energy sources may have  
8 certain benefits such as avoided transmission.

9                     And truly if you ask what is the avoided  
10 cost, it's not just to generate the same amount of  
11 energy, necessarily, at a distant powerplant. What is  
12 the cost to the utility to generate that and offer it  
13 on a distributor basis.

14           Q     My question is going to be more specific in  
15 that here you are referring to just avoided cost. You  
16 are just looking at what the utility can generate or  
17 produce on its own. Would you agree that that cost  
18 also could encompass what the utility might procure  
19 it? But when you look at the actual attribute of what  
20 is distributed in the marketplace it doesn't have to  
21 be generated by the utility, is the point I am trying  
22 to get at.

23           A     I'm not sure I understand it. Ask me one  
24 more time.

25           Q     If you look at what you say:

1                   [t]he avoided cost in this case is not  
2                   just related to the cost it would take  
3                   the utility to generate the same amount  
4                   of energy, but rather the same amount  
5                   of renewable energy, or even the same  
6                   amount of distributed renewable energy.

7                   You see that language? You are  
8                   referring to avoided costs as meaning only something  
9                   that the utility itself generates and the only point  
10                  I'm trying to make with you is the fact that could  
11                  also be encompassed by what the utility could purchase  
12                  renewable energy -- or purchase renewable energy for.  
13                  It doesn't have to be generated by the utility.

14                 A       Yes, it could be. The discussion here was  
15                 in terms of, say, a regional market for RECs and you  
16                 were looking at what is the -- if that is the goal --  
17                 however, I think the spirit of this is that -- and let  
18                 me say, by the way, when I say it, I am not advocating  
19                 that we redefine what it costs the way it's described  
20                 in this paragraph.

21                 But there may come a time when we I would  
22                 like a broader definition to take into account a  
23                 number of factors: Could be locality, distributor,  
24                 also could be relationship to a free market through  
25                 RECs.

1           Q     I understand that you view a bundle of  
2 benefits besides just the renewable attribute. The  
3 only point I'm trying to make here -- trying to get  
4 you make here, is that the utility -- avoided costs  
5 doesn't have to be just what the utility can generate,  
6 it's the cheapest alternative with the same attributes  
7 the utility can procure whether it's generated or  
8 purchased?

9           A     I agree.

10          Q     Okay. Now, go to your rebuttal testimony.  
11 I'm trying to -- just like to clarify your testimony a  
12 little bit here. You are talking about on Page 7 the  
13 July 1st, 2004, date.

14          A     Right.

15          Q     And you indicate at line 10 and 11 that it  
16 was not intended, in your opinion, to imply that  
17 existing customer-owned systems that would be  
18 eligible. And you are talking about, it appears, on  
19 this page, and in this discussion here, you're talking  
20 about the physical plant and when that was  
21 constructed.

22                         What significance does the July 1st,  
23 2004, date have with regard to the energy that that  
24 plant has? Is there a cutoff date for that or start  
25 date when that energy becomes available?

1           A     The Act refers to renewable energy resources  
2     that are in public utilities electric portfolio on  
3     July 1, 2004. The physical installation of the system  
4     is -- that question alone is somewhat complex. If  
5     there is not a meter on the output of, say, the PV  
6     system, a net meter but no REC meter, then the utility  
7     actually doesn't know, have any idea how much  
8     renewable energy is being generated or what is in  
9     their supply portfolio at that point. So I would say  
10    that a system that is not metering -- does not have a  
11    REC meter -- is not in the energy supply portfolio at  
12    that point.

13                    There is also the question whether the  
14    utility has the discretion to voluntarily not take the  
15    RECs from that. There has been no decision. There  
16    was no act by July 1st, 2004, so there was no --  
17    well, there was an act but there wasn't a rule for any  
18    utility procurement plan, so the utilities haven't  
19    made a decision about whether the RECs from such  
20    system were theirs or were being retained.

21                    So, there was no way to make a determination  
22    on that date whose resources were in the supply  
23    portfolio.

24           Q     Let's assume that you had a resource that  
25    was built in January of 2004. It was in place by

1 July 1st, 2004, and it had perfect records of  
2 renewable energy produced all the way back to 2003.  
3 How far back could the utility reach? Or could that  
4 customer reach for eligible RECs? In this state could  
5 it reach back to the inception of when that plan  
6 started producing?

7 A I would say if that facility was  
8 interconnected with the utility, and it was explicitly  
9 selling renewable energy to the utility, there was a  
10 way it could be metered and the utility knew how much  
11 it was producing day by day, I would say that was a  
12 valid element and it doesn't really matter how far  
13 back it was going, because it just says, whether it  
14 matters, whether it was in the portfolio on  
15 July 1st, 2004.

16 Q So it could reach back as far as RECs -- as  
17 long as RECs were still -- had not been retired or  
18 expired? It could reach back four years?

19 A Well, when you say reach back, I'm not sure  
20 what you mean. It doesn't say RECs.

21 Q Right.

22 A It doesn't say are energy generated  
23 previously can count, it just says the resources  
24 itself. So we are talking about whether, if that  
25 resource had been in place for all those years, but

1 then on the last day of June this act had become  
2 available, the next day it wasn't available, but it  
3 wouldn't count.

4 Q Let's assume it was available July 1, 2004.  
5 What I'm trying to get a handle on, is, you are  
6 focused, in your testimony here, on the resource and  
7 whether it is eligible or not. Actually, it is not  
8 the resource that qualifies under the RPS, it's the  
9 energy from these resources that creates compliance.

10 And I'm wondering, if you have  
11 resources in place, a non-utility resource in place on  
12 July 1st, 2004, how far back, or what RECs, what  
13 renewable energy from that resource is eligible?

14 A I would say the only energy there is that  
15 energy that was produced after the -- I would actually  
16 have to read farther into the Act to answer the  
17 question, say, about FPLs facility how much of those  
18 existing RECs would count.

19 And I'm not sure from this, just this  
20 statement right here, that I can derive that  
21 information. If you want to give me a few minutes I  
22 can do that.

23 Q It's up to you.

24 A It would take a few minutes. I think that  
25 the resolution of this question, as far as which RECs

1 are available for certain times lies in how the  
2 Commission approves the transition of the procurement  
3 plan because, as the Act says --

4 Q You are referring to what section?

5 A Referring to -- let me see what section.  
6 It's Section 4(D) -- I'm sorry. G. Section 4(G).

7 A public utility may file a  
8 transitional procurement plan  
9 requesting that the Commission  
10 determine that the cost of the  
11 renewable energy resources that the  
12 public utility has committed to, or may  
13 commit to, prior to the Commission's  
14 establishing a reasonable cost  
15 threshold, are reasonable and  
16 recoverable pursuant to Section 6 of  
17 the Renewable Energy Act.

18 I believe if those transitional plans were  
19 already filed and approved, then I think that that  
20 question there was resolved as to which resources were  
21 included.

22 Q Okay.

23 A I know that those resources -- I don't  
24 believe at that time -- included any such.

25 MR. MICHEL: Okay. That's all I have.

1 HEARING EXAMINER HUFFMAN: Mr. Kidd?

2 MR. KIDD: No questions.

3 HEARING EXAMINER HUFFMAN: Mr. Harris?

4 MR. HARRIS: Staff has no questions.

5 HEARING EXAMINER HUFFMAN: No

6 questions. Okay.

7

8 EXAMINATION

9 BY HEARING EXAMINER HUFFMAN:

10 Q Mr. Luce, could you look at the bottom of  
11 Page 3 of your direct testimony, where you state that:

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

16 A Can you give me a page?

17 Q Bottom of Page 3, last two lines, "good  
18 policy reason" --

19 A Thank you.

20 Q -- "why the Commission may want a QF to be  
21 compensated for its RECs."

22 What's the basis of your conclusion -- for  
23 that conclusion in your testimony?

24 A I believe, for example, as evidenced by the  
25 Commission's approval of the small PV program PNM

1 proposed last year, that the Commission may want,  
2 under certain circumstances, for the QF to be  
3 compensated for RECs, and for the specific reason that  
4 compensation for RECs, in addition to other financial  
5 benefits the QF may receive for metering, would create  
6 a sufficient amount of compensation to actually  
7 encourage the development of those kinds of resources.

8 That otherwise those -- and that otherwise  
9 those resources, the development of those resources,  
10 wouldn't actually occur.

11 Q Do you find this policy explicitly in the  
12 Act itself?

13 A There is explicit language in the act about  
14 encouraging renewable energy and, of course, the Act  
15 itself, its overall structure, is to create a  
16 significant amount of renewable energy generation, and  
17 QFs are specifically mentioned as one class of systems  
18 that generate RECs.

19 Q On the next page, Page 4, you discuss the  
20 provisions of the Act that appear to allow for  
21 utilities to automatically acquire RECs, therefore  
22 potentially deprive a renewable energy generator of  
23 income that it might contain in the general RECs  
24 market. Now that provision, of course, is limited to  
25 QFs?

1           A     That's correct.

2           Q     Okay.  And that's whatever provisions that  
3     are in the act are those chosen and enacted by the  
4     legislature?

5           A     I'm not sure I understand your question.

6           Q     A provision is in the Act because the  
7     legislature included it?

8           A     That's correct.

9           Q     In the last sentence of that paragraph you  
10    say:

11                         This has practical disadvantages for  
12                         the development of renewables in New  
13                         Mexico, it potentially creates a  
14                         non-uniform environment for QFs  
15                         throughout the state, and may also have  
16                         deeper legal implications.

17                         Could you explain in what way there  
18    could be a potentially non-uniform environment for  
19    QFs?

20           A     Yes.  My intention when I wrote this was the  
21    idea that some utilities may voluntarily agree not to  
22    acquire the RECs automatically and to later on in  
23    procurement plans compensate some QF for RECs while  
24    other utilities may decide not to do that, thereby  
25    creating a situation where RECs -- the QFs effectively

1 have a geographically different opportunity in  
2 different parts of the state.

3 And from a general standpoint I think  
4 that's -- that's a potentially unfortunate aspect of  
5 the legislation. I personally believe that utility  
6 policy should be as uniform as possible. I am not  
7 proposing, however, a remedy to that.

8 Q On Page 8, in your first answer, you testify  
9 that:

10 If a utility wants to acquire the RECs  
11 from a QF, along with the energy, it  
12 may do so, as explained above. The  
13 Commission may then approve, or not  
14 approve, the use of those RECs by the  
15 utility to satisfy the requirements of  
16 the Act.

17 And you talking about never approving  
18 such RECs in procurement plans. Why is it your  
19 recommendation to never approve such RECs in  
20 procurement plans?

21 A I feel that in the interest of creating more  
22 uniform goals and a larger increase in the number of  
23 RECs, it's my personal feeling that the Commission  
24 should consider establishing or simply not approving  
25 RECs in procurement plans without some level of

1 payment. I do agree that that level of payment might  
2 be zero in some cases if the Commission determines  
3 that it's if not desirable to encourage that type of  
4 QF, or if the amount of QF generation is already  
5 sufficient, or if the type of intrinsic costs of  
6 generation for that particular type of QF is above the  
7 cost level.

8 Q So would it be fair to say that any  
9 additional costs imposed overall on customers are  
10 justified by the increase in the renewable production  
11 or specific portions of the renewable industry?

12 A I would say any -- I wouldn't agree with  
13 that for any increase in cost. I would say it is  
14 incumbent on the Commission to balance the impact on  
15 ratepayers with the interest that the Commission has  
16 in increasing the number of renewable energy in  
17 imposing only additional costs onto ratepayers on a  
18 level that the commission feels is reasonable.

19 For example, just to clarify, I do not want  
20 to imply that I think there should be a fixed REC  
21 price for every kilowatt hour, of QF hour, without  
22 limit. I believe that in each procurement plans the  
23 particular proposals of the utilities should be  
24 re-evaluated and a REC payment could be disapproved at  
25 that point by the Commission.

1 HEARING EXAMINER HUFFMAN: Okay. Thank  
2 you, Mr. Luce, that's all I have. Ms. Belin, do you  
3 have any redirect? It looks like we are going to take  
4 a five-minute break and then go on to SPS's witness.

5 (The witness was excused.)

6  
7 (A recess was taken from 3:45 P.M. to  
8 3:56 P.M.)

9  
10 HEARING EXAMINER HUFFMAN: Mr.  
11 Fornaciari, is your witness ready?

12  
13 JEFFREY A. BUTLER,  
14 after having been first duly sworn under oath,  
15 was questioned and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. FORNACIARI:

18 Q Mr. Butler, would you please state your full  
19 name and address, place of employment, your position,  
20 your duties and responsibilities?

21 A I will be happy to. My name is Jeffrey A.  
22 Butler. I am a junior policy analyst with Xcel  
23 Energy. I work in Denver at 1225 17th Street. My  
24 responsibilities include administering rates, offering  
25 expert opinion on rate policy, and doing -- issuing

1 analyses.

2 Q Have you been involved with SPS's activities  
3 regarding the renewable energy, renewable portfolio  
4 and their input into legislation concerning those  
5 matters?

6 A Yes, I have. I worked on the Renewable  
7 Energy Act. I also worked on Rule 572 and SPS's  
8 renewable energy reports and plans every year that  
9 they filed, yes.

10 Q In connection with your employment,  
11 Mr. Butler, have you prepared what has been marked SPS  
12 Exhibit 1, which is direct testimony of Jeffrey A.  
13 Butler, which is dated July 26, 2006?

14 (EXHIBIT SPS 1, DIRECT TESTIMONY OF  
15 JEFFREY A. BUTLER JULY 26, 2006, WAS  
16 MARKED FOR IDENTIFICATION.)

17 A Yes.

18 Q Have you also prepared rebuttal testimony of  
19 Jeffrey A. Butler which is dated August 16, 2006, and  
20 marked as SPS Exhibit Number 2?

21 (EXHIBIT SPS 2, REBUTTAL TESTIMONY OF  
22 JEFFREY A. BUTLER AUGUST 16, 2006, WAS  
23 MARKED FOR IDENTIFICATION.)

24 A Yes.

25 Q Do you have any corrections, modifications

1       amplifications you want to make in SPS Exhibit 1?

2           A     No.

3           Q     And SPS Exhibit 2?

4           A     No.

5           Q     If I were to ask you the same questions that  
6       appear in SPS Exhibits 1 and 2 today would your  
7       answers be the same as those answers that appear in  
8       those exhibits?

9           A     Yes, they would.

10          Q     Are the answers in those exhibits true and  
11       correct to the best of your knowledge and belief?

12          A     Yes, they are.

13                   MR. FORNACIARI:  Mr. Hearing Examiner,  
14       I would like to move the admission of SPS Exhibits 1  
15       and 2?

16                   HEARING EXAMINER HUFFMAN:  Any  
17       objection?  Hearing none, SPS Exhibits 1 and 2 are  
18       admitted.

19                               (EXHIBIT SPS 1 WAS ADMITTED INTO THE  
20                               RECORD.)

21                               (EXHIBIT SPS 2 WAS ADMITTED INTO THE  
22                               RECORD.)

23                   MR. FORNACIARI:  I pass the witness for  
24       cross-examination.

25                   HEARING EXAMINER HUFFMAN:  Okay.

1 Mr. Clark?

2

3

CROSS-EXAMINATION

4 BY MR. CLARK:

5 Q Good afternoon, Mr. Butler.

6 A Good afternoon, Mr. Clark.

7 Q I would like to ask you a couple of the same  
8 questions I asked the gentleman from EPE. Are there  
9 Rule 572 customers on SPS's system?

10 A No.

11 Q So your company is not in the same position  
12 as PNM where there have been a couple situations where  
13 there was a dispute on these matters?

14 A No. I would like to expound. That is no in  
15 New Mexico.

16 Q All right. Let me refer you to Page 9 of  
17 Mr. Potturi's testimony. Do you have his testimony?

18 A Yes, I do. Is that direct?

19 Q He only filed direct.

20 A All right.

21 Q On the bottom of Page 9 he testified:

22 The public utilities should be directed  
23 by the Commission to procure RECs only  
24 for meeting the RPS requirement and not  
25 for engaging in trading activity in

1                   RECs.

2                   Do you agree or disagree with his  
3 testimony and why?

4           A       SPS disagrees with the premise with this  
5 statement. We feel like the RPS activities require  
6 some amount of purchasing that would result in the  
7 ownership of RECs that will not necessarily be used to  
8 meet with RPS compliance.

9                   MR. CLARK: That's it. I don't have  
10 any more questions. Thank you.

11                   THE WITNESS: You're welcome.

12                   HEARING EXAMINER HUFFMAN: Mr.  
13 Childress or Ms. Goodwin?

14                   MS. GOODWIN: No questions. Thank you.

15                   HEARING EXAMINER HUFFMAN: Ms. Belin?

16

17                   CROSS-EXAMINATION

18 BY MS. BELIN: by Ms. Belin.

19           Q       Good afternoon, Mr. Butler.

20           A       Good afternoon.

21           Q       Referring to your rebuttal testimony, at  
22 Page 8, beginning on line 5, you state that you  
23 believe the legislature intended to automatically  
24 convey RECs from QFs to utilities to protect  
25 ratepayers from paying extra for RECs. Is that an

1 accurate characterization of what you say there?

2 A Yes, it is.

3 Q Is it your position -- I just want to  
4 understand what you are saying here -- is that the  
5 legislature intended to prohibit utilities from  
6 purchasing RECs from QFs? It is not SPS's position  
7 that the legislature chose to prohibit SPS from  
8 purchasing RECs from QFs? So under the Renewable  
9 Energy Act utilities can purchase RECs from QFs?

10 A It is allowed.

11 Q Would you agree that there are some  
12 instances where the Commission might find it in the  
13 interest of ratepayers for a utility to purchase RECs  
14 from QFs?

15 A As I stated in my direct testimony, SPS does  
16 not believe that no instance would occur. We have not  
17 found an instance ourselves. Besides that, EPA's  
18 testified that they could not see an instance where  
19 that would occur.

20 Q But you are aware that the Commission has  
21 approved of such a program in PNM's Procurement plan  
22 for purely of RECs regarding the small PV program?

23 A Yes, I am aware of.

24 MS. BELIN: I have no further  
25 questions.

1 HEARING EXAMINER HUFFMAN: Okay.  
2 Mr. Fornaciari? I am looking at my list instead of  
3 thinking. Mr. Michel? We will see if Mr. Michel  
4 comes back. Mr. Kidd?

5 MR. KIDD: No questions.

6 HEARING EXAMINER HUFFMAN: Mr. Harris?  
7

8 CROSS-EXAMINATION

9 BY MR. HARRIS:

10 Q Good afternoon.

11 A Good afternoon.

12 Q I'd like to ask you a follow-up to the  
13 question that Mr. Clark asked you about the excess  
14 RECs.

15 A Please.

16 Q Okay. And am I correct in believing that  
17 the excess RECs you are talking about would be as a  
18 result of purchases made to satisfy the standard?  
19 There was no standard in New Mexico?

20 A If I could, I would rather not use the word  
21 excess RECs, but RECs that we have purchased that at  
22 this point in time appear to not be necessary for RPS  
23 compliance. And what I was answering was that  
24 certainly whenever we enter into those contracts in  
25 purchasing renewable energy and RECs our intent is to

1 use those for RPS's compliance. We don't use -- it  
2 may occur, if you look at our draft plan or SPS's plan  
3 filed September 1st, you see a schedule that  
4 demonstrates -- that indicates we think we will have  
5 RECs that we will be required to sell in the future.

6 Q Right. Now, if you did have renewable RECs  
7 more than needed to meet the standard in one year you  
8 could sell those or bank those?

9 A That's correct.

10 Q And I think the Commission has already  
11 addressed how SPS should handle the transaction if it  
12 did sell RECs, the value received through the fuel  
13 clause?

14 A Yes. This Commission has provided a sharing  
15 mechanism for SPS to sell RECs.

16 Q So is it your testimony that SPS wouldn't  
17 acquire RECs just so it could sell them? Rather than  
18 what it anticipated it would need?

19 A Excuse me. SPS has not procured any RECs  
20 for the purpose of trading or just selling them. I do  
21 not think that the Renewable Energy Act precludes SPS  
22 from using RECs for the purposes of trading or  
23 selling.

24 Q If that were done, i.e., SPS acquire the  
25 RECs for the purpose of trading and selling rather

1 than meeting its standard, should the utility  
2 customers be put at risk in that event? Or should  
3 this be something that the shareholders would fund?

4 A SPS's contracts for the purchase of  
5 renewable energy and RECs have no proviso to what the  
6 RECs purpose was, so the purchases SPS has -- you  
7 know, I'd rather not say that we have an intent, you  
8 know, to speculate, I think is the word that you are  
9 thinking about whenever you pose a question -- if we  
10 were to enter into a transaction that was clearly of  
11 that nature I think that the Commission would have the  
12 ability, as they would in your plan for our purchases  
13 to analyze the purchase and to determine whether or  
14 not they felt it should be a part of the renewable  
15 energy plan that was submitted.

16 Q Would the company, in that event, you know,  
17 set out in the plan that it had a plan to purchase  
18 more RECs than it thought it needed so that it could  
19 trade or sell those RECs?

20 A I would think, regardless of whether or not  
21 SPS specifically mentioned it in its filings -- excuse  
22 me -- what the purpose of the acquisition of the RECs  
23 was, that all the parties would have the opportunity  
24 to explore those in the new hearing for the plan.

25 Q But unless the parties attending the

1 proceeding would be totally aware of the needs of the  
2 company in terms of what RECs it would need to meet  
3 its standard how could they question the company about  
4 the purchase of more RECs than were needed that the  
5 company anticipated were going to be traded or sold?

6 A Each one of our submitted plans pretty much  
7 start with the forecast of what our retail sales are.  
8 I think that information will always be available for  
9 someone to analyze whether or not retail sales matched  
10 our purchases.

11 Q I asked this question before, that the  
12 purpose of a -- is it, in your view, that the purpose  
13 of the utility is to provide electric service at  
14 reasonable rates? Is that your view of the  
15 description of the purpose of the utility and the CCN  
16 that was granted?

17 A I find that to be a good description.

18 Q And would you believe that would include  
19 that your CCN would allow you to then acquire RECs for  
20 the purpose of selling?

21 A I think I go back to my prior statement I  
22 made on the stand here. Just as I will not disallow  
23 that there could be an instance where we would want to  
24 pay a QF for RECs, it would not disallow that it would  
25 not be in the interest of SPS's customers to purchase

1 RECs.

2 Q But if the company's customers are on the  
3 hook for basically speculation, wouldn't that put them  
4 at risk?

5 A I think I circle back again to the prior  
6 statement I made about, this is a review of our plans.  
7 If our plan is sound, just and reasonable, and that  
8 includes purchases of RECs, I think that the  
9 Commission has exercised due caution, reviewed the  
10 plan, and if they approve the plan I think it's in the  
11 best interest of the customers.

12 MR. HARRIS: I have no further  
13 questions. Thank you.

14 HEARING EXAMINER HUFFMAN: Mr. Michel,  
15 do you have any questions?

16 MR. MICHEL: You encouraged me not to  
17 ask any questions.

18 HEARING EXAMINER HUFFMAN: There's time  
19 if you have questions, Mr. Michel.

20 MR. MICHEL: No.

21 HEARING EXAMINER HUFFMAN: You are  
22 making a knowing and intelligent waiver?

23 MR. MICHEL: Yes.

24 HEARING EXAMINER HUFFMAN: Okay.

25

1

2

## EXAMINATION

3

BY HEARING EXAMINER HUFFMAN:

4

Q On Page 14 of your direct testimony,

5

Mr. Butler, second to last answer, the one other than

6

"yes," in the last full paragraph on that page you

7

testified that:

8

SPS has more than once negotiated a

9

market price for the purchase of

10

bundled renewable energy and RECs that

11

was less than SPS's avoided costs.

12

Did that involve a wind project?

13

A Whenever I was referring to two instances,

14

in both instances, yes, the purchase was for energy

15

and RECs from a wind farm.

16

Q Okay. Was that wind farm a QF?

17

A As I understand it, both Caprock and San

18

Juan were the two facilities. They are QF. But we

19

have not made a QF purchase from either.

20

Q So it was a successful arm's length

21

transaction?

22

A Yes.

23

Q Could you pick up your rebuttal testimony,

24

SPS Exhibit 2? As a preliminary matter, the first

25

page after the cover page, it's not numbered, but I

1 believe it to be Number 1. It says at the top  
2 "rebuttal testimony" and I think on each following  
3 page, 2 through 9, if you look at the header it says  
4 "direct testimony," so would you like to change that  
5 to rebuttal testimony at this time?

6 A The header is rebuttal that I have in front  
7 of me, which it says prepared rebuttal on Page 1. I  
8 would like to change pages 2 through 9 of SPS Exhibit  
9 Number 2 to say prepared rebuttal testimony in the  
10 header.

11 Q Thank you.

12 A Thank you for pointing it out. Kind of  
13 common mistake today.

14 Q In a number of places in your direct and  
15 rebuttal you indicate under the Act says when it  
16 purchases from a QF they have title to the RECs unless  
17 there is an agreement that the QF would sell the power  
18 and retain the REC itself. And on Page 5 of your  
19 rebuttal you quote that provision of the statute,  
20 61-16-5b.1, where it says "unless retained by the  
21 generator through specific agreement of the public  
22 utility."

23 Now my understanding from your  
24 testimony and other sources is that the price is not  
25 subject to negotiations if the generator proposes, as

1 a QF, that they have the right to demand the purchase  
2 by the utility and at the utility's avoided costs and  
3 then the utilities either can or cannot enter into, as  
4 part of that transaction, a specific agreement that  
5 would allow the QF to retain title to the RECs.

6 In view of the fact that the  
7 transaction is compulsory for the utility, that it  
8 has to be a buyer, and in view of the fact that under  
9 federal law that price would then be set as a  
10 matter -- the first part is federal law -- and state  
11 law determines that price -- it appears that the QF  
12 will then be maintaining something of value, the REC,  
13 that would otherwise go to the utility.

14 It seems logical for the utility to  
15 require compensation to forego acquiring something  
16 that has value; would you agree that that is logical?

17 A My response is just to the last part of the  
18 question. Is it logical that we request value to  
19 allow the QF to retain RECs? Yes, that is logical.

20 Q Is it possible that your shareholders might  
21 view that as a prudent course of action on the whole?

22 A To request something as quid pro quo? Yes.

23 Q Is it foreseeable that if the economics were  
24 sufficiently attractive that a shareholder derivative  
25 suit could follow if there was a failure to do that?

1           A     I'd rather not speculate as to what  
2     shareholders would want to do.

3                     HEARING EXAMINER HUFFMAN:  Now,  
4     Mr. Fornaciari, if you have any redirect?

5                     MR. FORNACIARI:  A couple, under your  
6     admonition that we won't take time.

7                     HEARING EXAMINER HUFFMAN:  It's not an  
8     admonition, it's just speculation.

9

10                    REDIRECT EXAMINATION

11  BY MR. FORNACIARI:

12            Q     Mr. Butler, I just want to be clear.  You  
13     were asked a lot of questions about SPS purchasing  
14     RECs.  Has SPS purchased RECs when it is buying  
15     renewable energy or energy?

16            A     Every purchase that SPS has made since the  
17     enactment of the Act, or Rule 572, has been an energy  
18     plus REC purchase in which there was no specific price  
19     for the energy or the RECs.

20            Q     And were those purchases at or below the  
21     avoided cost?

22            A     Both purchases that we talked about earlier,  
23     Caprock and San Juan Wind Farms, were below avoided  
24     costs.

25            Q     They were not QF purchases or were they QF

1 purchases?

2 A They were not QF purchases.

3 MR. FORNACIARI: All right. Thank you.

4 THE WITNESS: You are welcome.

5 HEARING EXAMINER HUFFMAN: Thank you.

6 you are excused.

7 (The witness was excused.).

8 HEARING EXAMINER HUFFMAN: Mr. Harris,  
9 since we have finished this witness a half hour under  
10 schedule, would you like to leisurely present staff's  
11 witness?

12

13 R. PRASAD POTTURI,

14 after having been first duly sworn under oath,

15 was questioned and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. HARRIS:

18 Q Please state your name.

19 A Prasad Potturi.

20 Q Mr. Potturi, directing your attention to the  
21 stuff that's been labeled Staff Exhibit Number 1,  
22 would you please identify that?

23 (EXHIBIT STAFF 2, PREPARED DIRECT  
24 TESTIMONY OF R. PRASAD POTTURI JULY 25,  
25 2006, WAS MARKED FOR IDENTIFICATION.)

1           A     This is my prepared direct testimony in this  
2 case.

3           Q     Mr. Potturi, do you have any changes or  
4 corrections to make to this?

5           A     Yes, I have a few.

6           Q     First one is on Page 3, line 1. Strike  
7 "only," replace it with "principally." Page 4, line  
8 1, strike "the least," replace it with "a reasonable."  
9 Page 4, line 17. 17.

10                   HEARING EXAMINER HUFFMAN: Mr. Potturi,  
11 as long as we are on Page 4, line 2, would you like to  
12 change "met" to "meet"?

13                   THE WITNESS: Yes, I would. Thank you.

14           A     Next one is Page 4 line 17.

15           Q     (By Mr. Harris) Excuse me. Mr. Potturi, did  
16 you make that change on Staff Exhibit Number 2?

17           A     Thank you. Line 17. Strike "energy."

18           Q     So the sentence would read "is energy  
19 contracted for delivery" rather than "energy energy"?

20           A     That's correct. Page 5, line 16. Strike  
21 "imports." Replace it with "impact." I-m-p-a-c-t.  
22 In the diagram, a dashed line from the end of the line  
23 after QF meter, north a centimeter and then dash dash  
24 to utility grid.

25                   HEARING EXAMINER HUFFMAN: I don't see

1 where it says "utility grid."

2 THE WITNESS: It doesn't say it.

3 That's the end, is the utility grid. So there is one  
4 centimeter dashed long line coming up from QF meter --  
5 the line goes up and makes --

6 Q (By Mr. Harris) Then it goes horizontally and  
7 intersects with the solid vertical line on the far  
8 right?

9 A That's all a dashed line, just for symbolic  
10 representation.

11 Next, Page 9, line 17. Strike "only" and  
12 replace it with "principally."

13 HEARING EXAMINER HUFFMAN: Excuse me.  
14 What page and line?

15 THE WITNESS: Page 9, line 17.

16 HEARING EXAMINER HUFFMAN: Okay.

17 THE WITNESS: Strike "only," replace it  
18 with "principally." Same page, line 18, "trading"  
19 with a small T. I ran out of corrections. That's  
20 all.

21 Q (By Mr. Harris) Mr. Potturi, did you make the  
22 change on Page 6 of the dashed line?

23 A Just to explain buy-sell in a clearer  
24 fashion. That is all.

25 Q And why did you make the change on Page 4

1 where you put "the least cost" and substituted the  
2 word "a reasonable"?

3 A I am frustrated from the testimony of  
4 witnesses. They are correct and I am not. That is  
5 why I am yielding to the prior testimony and make the  
6 necessary change here.

7 Q Mr. Potturi, with those changes, are the  
8 answers to the questions that are contained on staff  
9 Exhibit Number 1 true and correct to the best of your  
10 knowledge?

11 A Yes, they are.

12 Q And if you were asked these same questions  
13 today would your answers remain the same?

14 A Yes, they would, with appropriate  
15 complications and clarification as needed.

16 MR. HARRIS: Mr. Hearing Examiner, I  
17 move into evidence Staff Exhibit Number 1. It should  
18 be Staff Number 2. Staff Exhibit numbered 1 was the  
19 diagram.

20 HEARING EXAMINER HUFFMAN: Okay. The  
21 new and improved one. Mr. Potturi, could you turn to  
22 Page 11 first of your direct testimony, and at line 9,  
23 the sentence starts on line 8. "It is staff's  
24 understanding," and then it goes "does not contain any  
25 payment for RECs."

1                   Would you like to insert a period after  
2 RECs to end the sentence? It picks up the next line.  
3 "RECs costs are pursuant to state law." Would that be  
4 an acceptable additional correction?

5                   THE WITNESS: Yes, sir. Thank you.

6                   HEARING EXAMINER HUFFMAN: Thank you.

7 Any objection to the admission of Staff Exhibit 2?

8 Hearing none, Staff Exhibit 2 is admitted.

9                   (EXHIBIT STAFF 2 WAS ADMITTED INTO THE  
10 RECORD.)Mr. Clark, Does PNM have any  
11 questions for Mr. Potturi?

12

13                   CROSS-EXAMINATION

14 BY MR. CLARK:

15           Q     Good afternoon, Mr. Potturi.

16           A     Good afternoon, Mr. Clark.

17           Q     Mr. Potturi, shortly after PNM filed its  
18 petition staff filed it's response to the petition.  
19 Do you have a copy of that? Are you familiar with it?  
20 I can provide you with a copy if you can't find it.

21           A     Would you please? Thank you.

22           Q     You will note on the second page of that  
23 document I yellow highlighted a particular phrase.  
24 The phrase that I've highlighted indicates that the  
25 public interest would be served, basically in staff's

1 view, by a comprehensive review of the renewable  
2 energy issues that had been raised in the petition.

3           Could you just elaborate and tell me  
4 why, in staff's view, it's important to air these  
5 issues and achieve a comprehensive review?

6           A     In my view there have been concerns and lack  
7 of clarity on various issues related to QFs, RECs,  
8 compliance with the law, regulatory, etc. If  
9 everything was really clear, staff would not have  
10 fired this case. Obviously, things are not clear and  
11 that is all that staff had in mind, that there is  
12 confusion and there are uncertainties that the  
13 Commission can clarify going forward. That's all my  
14 understanding of what that is.

15           Q     Let me take it back and put it back in my  
16 book.

17           A     Thank you.

18           Q     Mr. Potturi, when Mr. Harris was going over  
19 the changes in your testimony, you indicated a couple  
20 of changes but you didn't specifically provide a  
21 reason for the change, so let me just ask you on the  
22 record to discuss the reason why, in two places, you  
23 have substituted the word "principally" for "only."  
24 That would be specifically on the top of Page 3 and  
25 toward the bottom of Page 9.

1           A     Page 3 line 1. That change was made because  
2 I am convinced by the testimony of two or three  
3 witnesses that my characterization is not correct. I  
4 am convinced that they are correct and I am  
5 accommodating them by changing that.

6           Q     Okay. On Page 10 of your testimony you make  
7 the statement that: "There are no RECs pursuant to  
8 Rule 570." That's Page 20 -- line 20. Could you just  
9 amplify on that statement and explain to me what you  
10 mean by that?

11          A     Page 10, line 20? Yeah. Rule 570 was  
12 promulgated way before the REA was passed. Rule 570  
13 is pursuant to PURPA and there is no definition or  
14 provision for renewable energy certificates. Those  
15 certificates came in pursuant to the Renewable Energy  
16 Act. And that's all that I am saying here.

17          Q     All right. Let me finally ask you to turn  
18 to the Renewable Energy Act. Do you have a copy of  
19 that?

20          A     Yes, I do.

21          Q     And to section 62-16-5 that we have talked  
22 about so many times here today. And then go to  
23 subsection (B) (1) (a).

24          A     I have it.

25          Q     Okay. And this is the section that says

1 renewable energy certificates are owned by the  
2 generator unless the generator is a QF, in which case  
3 the renewable energy certificates are owned by the  
4 public utility purchaser unless retained by the  
5 generator through specific agreement, based on the  
6 language the legislature has used in this section.

7 Do you think it's fair to conclude from  
8 the language of the statute that the legislature did  
9 envision where there would be legitimate circumstances  
10 where the utility may elect to purchase the RECs?

11 A That is a reasonable conclusion based on  
12 what the law reads.

13 Q And what in your mind would be some of the  
14 reasonable -- or some of the reasons that a utility  
15 might legitimately use in the exercise of its  
16 discretion to decide to purchase these RECs?

17 A I have a hard time coming up with even one,  
18 because the language by itself reads that without  
19 doing anything you have got everything. Why then pay  
20 extra for when you've got everything, I can't fathom  
21 why anybody would do it. I do agree that the language  
22 does provide for both options.

23 Q Okay. And you say on Page 2 of your  
24 testimony that the discretion given by the statute  
25 should be exercised in a prudent manner. What does a

1 "prudent manner" mean to you in this context?

2 A I recall ratepayer interest. Anything where  
3 you see anywhere in my testimony, reasonable, prudent,  
4 anywhere in my testimony, optimal portfolio, or any of  
5 those expressions are there to interpret the words  
6 minimizing the cost impact on ratepayers. That's what  
7 one should conclude, if I say it should be exercised  
8 in a prudent manner.

9 MR. CLARK: Those are my questions.

10 Thank you.

11 THE WITNESS: Thank you.

12 HEARING EXAMINER HUFFMAN: Ms. Goodwin?

13

14 CROSS-EXAMINATION

15 BY MS. GOODWIN:

16 Q Thank you. Good afternoon, Mr. Potturi.

17 A Good afternoon, Ms. Goodwin.

18 Q I have just a few questions. I want to be  
19 clear on one of your statements on Page 8, line 8  
20 through 10. Are you stating that if a customer-owned  
21 facility is added to the system after July 1st, 2004,  
22 that those would not be eligible? Or are you  
23 referring to if a utility had not included them in  
24 their preexisting facility -- if they had not included  
25 that in their plan then they would not be using that?

1 I was confused. Can you explain this statement to me?

2 A Pleas give me a minute to read.

3 Q Sure.

4 A I thought this statement is kind of clear.

5 I can appreciate the problem.

6 In Section 62-16-4(A) (5) of the REA the  
7 legislature grandfathered existing  
8 renewable energy resources of a public  
9 utility. Any purchases from customer-  
10 owned renewable energy resources that  
11 are included in the utility's supply  
12 portfolio on July 1, 2004, can be used  
13 to meet the public utility's RPS  
14 requirement. If they were not included  
15 by that date, it appears that they  
16 cannot be used for RPS compliance.

17 Q Do you mean that a customer-owned facility  
18 that's built after that date would not be eligible for  
19 RPS compliance?

20 A I didn't say that in my testimony.

21 Q No?

22 A I did not say that.

23 Q Okay. That was my confusion. On Page 9 of  
24 your testimony, in your recommendation on line 16, you  
25 stated that:

1           Public utilities should be directed by  
2           the commission to procure RECs  
3           principally for meeting their RPS  
4           requirements.

5           Do you agree that a utility may want to  
6           procure RECs for purposes other than the RPS  
7           requirements, such as ensuring that the energy  
8           associated with their voluntary renewable energy  
9           program is from a renewable energy source?

10          A     The intent of my recommendation to the  
11          Commission -- other people may have other  
12          recommendations completely opposite of this, that they  
13          should be given carte blanche to do whatever they  
14          please, etc -- my recommendations, as I have said it  
15          here, my original preference was that nothing other  
16          than that should be done.

17                 But I recognize that one cannot be that  
18          strict. So I said principally. And that's the  
19          modification that I made. The intent here is that  
20          specific activity which could result in financial harm  
21          to either the utility or to ratepayers should be  
22          recommended. That is the intent. And that's why I am  
23          making the suggestion or recommendation to the  
24          Commission, which the Commission may accept or reject,  
25          but that's my recommendation to them.

1           And as clarified this morning by utility  
2 witnesses, even they do not advocate REC activity  
3 willy nilly, just because it is there, for game or  
4 something. It is a serious matter. Even utility --  
5 it's something that I do not want to happen. So  
6 that's all.

7           Q     When you are talking about now purchases  
8 from a customer-owned resource, is it your  
9 understanding that the customer-owned facilities were,  
10 generally speaking, qualified facilities or QF  
11 facilities?

12          A     A customer can own a qualified facility. A  
13 customer can also own a nonqualified facility. But we  
14 are here talking about customer-owned qualified  
15 facilities.

16          Q     And just to be clear. When you are  
17 referencing the reasonable cost threshold standard in  
18 your testimony, is that a two-prong standard? A two-  
19 part standard?

20          A     Please clarify what were two prongs.

21          Q     Is it your understanding that the reasonable  
22 cost threshold consists both of a price set based on  
23 technology and energy price set as well as a cap on  
24 customer billings?

25          A     The reasonable cost for sure is as posed in

1 the Commission order in that case. My recollection of  
2 that case is there were two thresholds that the  
3 Commission approved. One is 1.2 percent, 1.4, like  
4 that. The other threshold is for each technology.

5 They are certain technologies that the  
6 Commission imposed cost thresholds on. Both of them  
7 constitute a reasonable cost threshold limitation.

8 Q Are staff's recommendations in this case  
9 intended to limit the options that a utility can  
10 present to the Commission or that the Commission could  
11 consider or approve in a given procurement plan?

12 A A procurement plan can be approved as it  
13 was, fine, or rejected, or a combination there.  
14 That's my understanding of what a procurement plan's  
15 evaluation and treatment at the Commission would be.

16 Q But your recommendations are intended to  
17 limit the types of plans that a utility may present to  
18 the Commission for them to make a determination on?

19 A I did not say that anywhere in my testimony.

20 Q Do you believe that a decision in this case  
21 will change the need for the Commission to look at  
22 specific facts and circumstances of a utility's  
23 proposal in a given procurement plan? Will that need  
24 for the Commission to review those plans be changed as  
25 a result of this case?

1           A     I have not addressed treatments of  
2 procurement plans in my testimony unless you expressly  
3 show me where I have done that.

4           Q     But you had stated that you felt  
5 clarification would arise from this case when  
6 Mr. Clark asked you about staff's response to their  
7 petition; correct?

8           A     That is correct.

9           Q     And even with such clarification, does staff  
10 believe that the Commission will still need to review  
11 specific facts and circumstances as they are presented  
12 in procurement plans?

13          A     Yes, sir.

14                   MS. GOODWIN: Thank you. Those are my  
15 questions.

16                   HEARING EXAMINER HUFFMAN: Ms. Belin?

17

18                   CROSS-EXAMINATION

19 BY MS. BELIN:

20          Q     Good afternoon, Mr. Potturi?

21          A     Afternoon, Ms. Belin.

22          Q     I'd like to start by focusing on your answer  
23 to issue Number 3 which you describe at Page 5 of your  
24 testimony. Issue Number 3 is:

25                   Whether renewable energy consumed

1 on-site by a QF is income 'contracted  
2 for delivery' and thus usable to meet a  
3 utility's renewable portfolio standard.  
4 Page 5, line 16, you say:  
5 Staff recommends that RECs can be  
6 recognized if the utility and the QF  
7 enter into a simultaneous buy-sell  
8 agreement providing for the RECs to be  
9 transferred to the public utility. In  
10 this arrangement, the QF sells the  
11 entire output to the utility which  
12 simultaneously sells the same quantity  
13 of energy to the QF.

14 So am I correct in understanding that  
15 you believe that that sort of arrangement is  
16 consistent with the Renewable Energy Act?

17 A That sort of arrangement could provide for  
18 recognition of RECs which arises out of the Renewable  
19 Energy Act and the cost concept that existed before  
20 the Renewable Energy Act was passed. I was trying to  
21 combine both of them and this arrangement appears to  
22 be a desirable approach, in my opinion.

23 Q So, in your opinion, your recommendation is  
24 consistent with both Rule 570 and the Renewable Energy  
25 Act?

1           A     This recommendation, in my opinion, yes.

2           Q     Yes.  So I guess the short answer you give  
3 to issue Number 3 is "yes"?  Would that be correct?

4           A     Yes, as stated in my testimony.

5           Q     So, you've heard the questioning about some  
6 of the terms that come up in -- the term "contracted  
7 for delivery."  So you would take a view that that  
8 doesn't necessarily mean delivery to the utility's  
9 grid?  In your mind, "contracted for delivery" is a  
10 broader term?

11          A     This has more field content that I'm really  
12 not qualified to discuss with you.  Staff would be  
13 addressing this in the next brief where your  
14 questioning will be answered.  I would say I would not  
15 be able to just answer that.

16          Q     I have one question about the term "retail  
17 sale" which you may have the same answer to because  
18 that also comes up in this question.  And the question  
19 is, would you agree that because utilities are allowed  
20 to meet the requirements of the renewable portfolio  
21 standard with either RECs or actual renewable energy,  
22 that the language in the Act defining the renewable  
23 portfolio standard in referring to the retail sales is  
24 really just setting the amount of renewable energy to  
25 be delivered and not specifically that the associated

1 energy is included directly in retail sales?

2 A This has a heavy legal content again and  
3 staff's brief will do justice to your question. I  
4 could give you my impression but that's not your  
5 question.

6 Q I am interested in your impression.

7 A When I read the Renewable Energy Act I  
8 looked and finding expressly "retail sales" gets  
9 repeated often. The entire Act's purpose, it looks to  
10 me, in my nonlegal opinion, is to make sure that a  
11 certain amount of renewable energy, not a piece of  
12 paper, not a certificate of renewable energy, is  
13 included in a utility's portfolio to mean retail sales  
14 of the utility. That's the impression I got.

15 But, however, lawyers clearly explained what  
16 the requirements of the statute are, what the  
17 implication of these retail sales and RECs are, so my  
18 request to you would be to see staff's brief and then  
19 act accordingly.

20 Q Then I have a couple of questions about, I  
21 think, the same section that Ms. Goodwin asked you  
22 about on Page 8, beginning on line 5, the language  
23 that you have discussed with her there. But the  
24 question, my question is, what do you mean to say as  
25 applied to net meters, net metered QFs, that were in

1 existence as of July 1st, 2004.

2 Are you saying that now -- for net  
3 metered systems that were in existence at that time,  
4 there was presumably no way that RECs could be  
5 generated because there were no REC meters and the  
6 system wasn't set up at that time that the RECs could  
7 be procured? Are you saying for that type of system  
8 they could never be used for RPS compliance?

9 A Did I say that in my testimony anywhere? I  
10 don't think I said that anywhere in my testimony,  
11 addressing anything other than what is in my  
12 testimony.

13 Q Okay. I'm just trying to understand because  
14 what you say, if it wasn't included in the portfolio  
15 as of July 1st, 2004, it cannot be included for RPS  
16 compliance, and I'm just trying to -- my question is:  
17 Did you mean that as for net metered systems where  
18 they couldn't have been in the RPS as of that date,  
19 isn't it possible that they could later on be in a  
20 utility's -- be used to meet their RPS requirement  
21 once a REC meter is installed?

22 A If some new arrangement is made, it's a  
23 different system --

24 Q Okay.

25 A -- at that time. So, if the utility

1 includes them in their plan, the plan would be  
2 evaluated at that time, an appropriate decision would  
3 be made whether they are complying with this law or  
4 whether they are in controversy to this law itself.  
5 All this says is what the law provides on that day.  
6 Is it in their portfolio? The type of resources that  
7 you are talking about were not in their portfolio at  
8 that time. So they are not eligible. Suppose a new  
9 system comes in? Then that has to be evaluated in the  
10 plan. That's all I can say.

11 Q Would you agree that the Commission has the  
12 power to disallow inclusion of QF RECs in a utility's  
13 procurement plan?

14 A Any utility's procurement plan is subject to  
15 evaluation, modification, rejection by the Commission.

16 Q And that would be true whether the RECs were  
17 purchased from a QF or whether they automatically  
18 transferred from the QF to the utility, the Commission  
19 would have the same discretion in reviewing the RECs  
20 in the procurement plan?

21 A The procurement plan is subject to the  
22 Commission acceptance, rejection, any component is  
23 also subject to the modification, it appears to me.

24 MS. BELIN: I have no further  
25 questions. Thank you.

1 HEARING EXAMINER HUFFMAN: Mr.  
2 Fornaciari, does SPS have any questions for this  
3 witness.

4 MR. FORNACIARI: No questions.

5 HEARING EXAMINER HUFFMAN: Mr. Michel?

6

7 CROSS-EXAMINATION

8 BY MR. MICHEL:

9 Q Hello, Mr. Potturi.

10 A Good afternoon, Mr. Michel.

11 Q Mr. Clark asked you if you could conceive of  
12 a situation where the utility would give value for  
13 RECs to a QF. You had responded that you could not  
14 think of even one situation where that might be the  
15 case. Do you recall that?

16 A Yes, sir.

17 Q Is it possible that a qualifying facility or  
18 the owner of a qualifying facility might agree with  
19 the utility to sell energy to that utility at less  
20 than avoided cost in exchange for being allowed to  
21 retain the RECs?

22 A I am not aware of that at all. I do not  
23 know whether that is an option for the QF. That is  
24 one thing that I have not examined.

25 Q Assume that the owner of a QF can

1 voluntarily sell the energy at less than avoided cost.  
2 Isn't it to both the utility's and the QF's advantage  
3 for that transaction to go forward, say, if a QF was a  
4 solar QF, and assuming the interpretation is that the  
5 utility will get the RECs for free unless it agrees  
6 otherwise?

7 A In your scenario that you are describing the  
8 QF owner finds a market for the RECs to produce  
9 revenue?

10 Q The utility probably knows the market much  
11 better than the owner, the utility can have both  
12 energy and REC, they will procure the RECs and sell  
13 them in the same market, so why should they accept  
14 less than the --

15 A Utilities get the RECs with the energy.

16 Q Because the QF has told the utility, "I will  
17 either sell you the energy at less than avoided cost  
18 or I won't sell you anything and I will go to the  
19 market with my solar RECs."

20 Couldn't the utility take that deal and  
21 be better off and also the QF take that deal and be  
22 better off?

23 A I would imagine the same market that that  
24 guy wants to access is known to the utility. If the  
25 REC is that valuable they can reject it, take the REC

1 and do something with that.

2 Q But if the QF is telling the utility, we  
3 won't sell you anything if you insist on taking the  
4 RECs, but we will sell you energy at less than the  
5 avoided cost, why wouldn't the utility do that? They  
6 get cheaper energy and they don't have any option to  
7 get the RECs?

8 A I am having a little difficulty  
9 understanding a customer threatening the utility that  
10 "I am not going to sell you anything."

11 Q It's not a threat.

12 A A proposition to the utility. I am going to  
13 hurt myself. I can't agree with this. Please be my  
14 guest. Hurt yourself.

15 Q They can sell their RECs. They don't have a  
16 market for the energy, but if they have got solar  
17 RECs, they are worth a lot more than the energy. It  
18 would be in their interest not to sell anything to the  
19 utility if they were going to have to give up the RECs  
20 at avoided costs.

21 A I would have to think through your example,  
22 but your point is taken, but just because I don't know  
23 of a circumstance doesn't mean there are no  
24 circumstances that exist. There may be that I am just  
25 ignoring. And the one that you are positing I need to

1 think through whether such a thing could exist or not.  
2 I do agree with the general proposition that there  
3 could be circumstances, even though I can't think of  
4 one.

5 MR. MICHEL: Okay. Thank you.

6 HEARING EXAMINER HUFFMAN: Mr. Kidd?  
7 Mr. Kidd, does the city have any questions for this  
8 witness?

9 MR. KIDD: No questions.

10 HEARING EXAMINER HUFFMAN: Okay.

11

12 EXAMINATION

13 BY HEARING EXAMINER HUFFMAN:

14 Q Based on the scenario that Mr. Michel just  
15 described of solar RECs in part because of the three  
16 times multiplier under the Commission rule, and also  
17 because of a need for utilities to diversify their  
18 renewable energy generation, is it conceivable that a  
19 utility would be willing to pay in the aggregate more  
20 for the solar RECs, plus the power that they come  
21 with, than an equivalent amount of power that did not  
22 have the solar attribute?

23 A Those multipliers are applicable only in  
24 this state. Not the other states, to my knowledge.  
25 Everything is subject to a reasonable cost, for sure.

1 But what you are positing can happen.

2 Q Okay. Were you involved with the small-  
3 scale solar photovoltaic case involving PNM?

4 A Is that case 356? I think it 356. No, I  
5 was not involved.

6 Q Okay. On Page 3 of your direct testimony  
7 you testify that:

8 If the public utility exercises its  
9 discretion to acquire RECs along with  
10 the QF energy, then the price paid for  
11 the combination should be less than or  
12 equal to the Reasonable Cost Threshold  
13 established by the Commission in its  
14 latest RTC docket.

15 Earlier in the same paragraph you said:  
16 If the public utility exercises its  
17 discretion under the REA not to acquire  
18 RECs when it buys QF energy, as  
19 required by federal law, the price to  
20 be paid should be avoided cost.

21 In making these statements, is it your  
22 contemplation that the reasonable cost threshold would  
23 be higher than the avoided costs?

24 A Yes.

25 Q On Page 11 of your testimony you state that:

1 Most, if not all, QF payments are for  
2 energy only.

3 But then you go on to say:  
4 QFs taking advantage of "net metering"  
5 get retail rate for the QF energy  
6 produced. As retail rate contains  
7 generation (both capacity and energy),  
8 transmission and distribution,  
9 administrative and general operation  
10 and maintenance, taxes etc., "net  
11 metering" is the most beneficial to a  
12 QF.

13 Do you know how common it is for a QF  
14 to be in a net metering situation rather than  
15 proceeding under avoided costs?

16 A I think the majority of PNM are net  
17 metering. And this is the same statement or similar  
18 statement that PNM witnesses already made, that they  
19 had more value in the net metering scheme than  
20 otherwise.

21 HEARING EXAMINER HUFFMAN: Okay.  
22 Mr. Potturi, that's all I have. Mr. Harris, do you  
23 have any redirect for this witness?

24 MR. HARRIS: No, sir.

25 HEARING EXAMINER HUFFMAN: Sounds like

1 we are done with the witness. Mr. Potturi, thank you.

2 (The witness was excused.).

3 HEARING EXAMINER HUFFMAN: Let's see.

4 We could go off the record for a minute and come back

5 on to finalize discussion of posthearing briefing.

6

7 (A recess was taken from 5:00 p.m. to

8 5:05 p.m.)

9

10 HEARING EXAMINER MARTIN: We are going

11 back on the record for just a minute. Mr. Clark

12 informs me that the parties have discussed a

13 posthearing briefing schedule with initial briefs due

14 September 29, simultaneous initial briefs, and

15 simultaneous reply briefs due October 20th. Is that

16 acceptable to all parties or is there objection? I

17 see some heads nodding yes. Let the record reflect

18 there is no objection. I will issue an order

19 providing for that briefing schedule. Thank you,

20 everyone.

21

22 (The Proceedings were adjourned at 5:07 p.m..)

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C E R T I F I C A T E

I, FRANCES J MEHNER, a Certified Shorthand Reporter, do hereby certify that the proceedings of the above-entitled cause were reported by me stenographically on AUGUST 21, 2006, and that the within transcript is a true and accurate transcription of my shorthand notes.

I further certify that I am neither an attorney nor counsel for, nor related to or employed by any of the parties to the action, and that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

WITNESS MY HAND AND SEAL this 21st day of AUGUST 2006.

\_\_\_\_\_  
FRANCES J MEHNER, CCR, CM  
Notary Public  
My Commission expires: 4-20-10

