

**NMPRC CASE NO. 05-00352-UT
PUBLIC SERVICE COMPANY OF NEW MEXICO
DIRECT TESTIMONY OF PATRICK K. SCHARFF**

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INTRODUCTION

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

A. My name is Patrick K. Scharff. My address is Public Service Company of New Mexico (“PNM” or “Company”), 4201 Edith Blvd. NE, Albuquerque, New Mexico 87107. I am Manager of Distribution Planning and Distributed Resources at PNM.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS.

A. I have been employed in the electric utility industry for over 27 years. My past responsibilities have included distribution system planning, engineering, construction, transmission and distribution system operation, as well as demand-side management programs. I have a Bachelor of Science in Electrical Engineering and a Master of Science in Electric Utility Management from New Mexico State University. I am a registered professional engineer in the states of New Mexico and Arizona.

I have been employed at PNM as Manager of Distribution Planning for approximately four years and Manager of Distributed Resources for approximately six years. In my current position, I work with customers who have qualifying facility (“QF”) generation, as that term is defined in 18 CFR § 292.101, as well as other forms of distributed generation that interconnect with the utility system. My responsibilities include negotiating contracts on behalf of PNM for the acquisition of renewable energy and renewable energy certificates (“RECs”) from QFs. In such capacity, I am

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1 familiar with the provisions of the New Mexico Renewable Energy Act (“REA”),
2 Rules 17.9.570 NMAC (“Rule 570”) and 17.9.572 NMAC (“Rule 572”) promulgated
3 by the New Mexico Public Regulation Commission (“NMPRC” or the
4 “Commission”), as well as the federal Public Utility Regulatory Policies Act of 1978
5 (“PURPA”).

6

7 I have been directly involved in, or have supervised, the technical and contractual
8 aspects associated with interconnecting each of PNM’s approximately 75 net
9 metering customers as well as PNM’s seven QF and non-QF generator customers that
10 range in capacity from 0.50 kW to 8,600 kW. I have been an active participant in the
11 Institute of Electrical and Electronics Engineers (“IEEE”) task force that wrote the
12 IEEE 1547-2003 Standard for Interconnecting Distributed Resources with Electric
13 Power Systems. I have served as a member of the Governor’s Task Force on
14 Distributed Solar Energy and have been a member of the Energy, Minerals and
15 Natural Resources Department Working Group that was tasked with establishing
16 guidelines for the installation and certification of solar systems to implement New
17 Mexico’s Solar Tax Credit legislation. I am also a member of the Advisory
18 Committee for the Electric Power Research Institute’s distributed and renewable
19 energy research.

20

21 **Q. HAVE YOU PREVIOUSLY TESTIFIED OR PROVIDED COMMENT IN**
22 **REGULATORY PROCEEDINGS BEFORE THE COMMISSION OR ITS**
23 **PREDECESSOR AGENCY?**

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1 A. Yes. I testified in NMPRC Case No. 05-00356-UT in 2005 in which the Commission
2 approved PNM's program to procure RECs from customer-owned solar photovoltaic
3 ("PV") systems that are under 10 kW in size and that are net metered by PNM
4 pursuant to 17.9.571 NMAC ("Rule 571"), which PNM implemented in March 2006
5 as its Small PV Program. Additionally, in 1999, I provided public comment on
6 behalf of PNM in Case No. 2847 in relation to net metering issues.

7
8 **Q. DID YOU FILE AN AFFIDAVIT AS PART OF PNM'S AUGUST 31, 2005**
9 **PETITION FOR DECLARATORY ORDER IN THIS CASE?**

10 A. Yes. I am attaching to my testimony as PNM Exhibits PKS-1, 2 and 3, respectively, a
11 copy of the Petition and the supporting Brief and my Affidavit that accompanied the
12 Petition (collectively hereafter referred to as the "Petition").

13
14 **Q. WHY DID PNM FILE THE PETITION?**

15 A. PNM filed its Petition in an effort to obtain Commission clarification of several issues
16 related to transfer and payment obligations and recovery of costs relating to the
17 acquisition of RECs. Specifically, PNM asked the Commission to issue a declaratory
18 order that: (1) PNM has discretion to determine whether to acquire RECs from QFs
19 from which PNM purchases renewable energy under Rule 570; and (2) it is
20 reasonable and prudent for PNM to pay value for RECs, whether or not acquired with
21 the associated energy. PNM sought such clarification to enhance regulatory certainty
22 with respect to these transactions, to provide incentives for increased small power

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1 production and to obtain Commission direction on recurring issues. *See* Petition at ¶
2 7.

3

4 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.**

5 **A.** The purpose of my testimony is to describe PNM’s position on the six issues
6 identified by the Hearing Examiner in his Procedural Order issued on March 31, 2006
7 that are to be addressed by the parties in this case. These issues are the following:

8 1) Whether a public utility has discretion to acquire, or not to acquire, RECs from a QF
9 from which it purchases renewable energy under Rule 570;

10 2) Whether it is reasonable and prudent for a public utility to pay value for RECs,
11 whether or not acquired with the associated energy;

12 3) Whether renewable energy consumed on-site by a QF is energy “contracted for
13 delivery” and thus usable to meet a utility’s renewable portfolio standard (“RPS”);

14 4) Whether the Legislature has authorized the Commission to approve incentives to
15 benefit existing owners of customer-owned renewable energy systems;

16 5) Whether there are any policy constraints the Commission should consider in
17 approving any unbundling of RECs; and

18 6) Whether energy and RECs must be obtained by a utility in order for an energy
19 purchase to be considered a purchase from a renewable QF and, if so, what is the
20 avoided cost which utilities should pay for bundled energy and RECs?

21

22 These questions present issues of both law and public policy. I am not a lawyer, and
23 while I have a working knowledge and understanding of the relevant provisions of

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1 PURPA, the REA and the Commission’s regulations concerning QFs, small power
2 producers and net metering issues, I do not presume to make legal arguments or
3 arrive at legal conclusions. However, as a professional engineer with many years of
4 experience in the field of QFs and small power production facilities, as I have
5 described above, I do have considerable familiarity with both the relevant engineering
6 issues and issues of practical application that are implicated by the Hearing
7 Examiner’s questions.

8

9 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

10 **A.** PNM agrees with the statement made in Staff’s Response to Petition for Declaratory
11 Order, filed on December 1, 2005, that “the public interest will be served by a
12 comprehensive review of renewable energy issues in this case and, ultimately, by a
13 Commission ruling that will apply to all affected entities in a consistent, non-
14 discriminatory manner.” *See* Staff’s Response at ¶ 5. PNM also agrees with the
15 statement in the Commission’s Order Docketing Case, entered on December 13,
16 2005, that “[a] clear understanding of the valuation and ownership of RECs is
17 necessary to facilitate the continued development of renewable energy resources and
18 markets serving New Mexico electricity demand.” *See* Order at ¶ 8. It is important
19 for utilities, as well as for QFs, to have an understanding of the rules that will be
20 applied in New Mexico to the purchase of RECs.

21

22 PNM’s recommendations to the Commission on the issues identified by the Hearing
23 Examiner are summarized as follows:

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- 1 1) The Commission should declare that public utilities have discretion to acquire or not
2 to acquire RECs from a QF from which the utility purchases renewable energy.
- 3 2) It is reasonable and prudent for a public utility to pay value for RECs acquired from a
4 QF, whether or not acquired with the associated energy.
- 5 3) Renewable energy consumed on-site by a QF is “contracted for delivery” and thus,
6 the RECs that are created when the consumed renewable energy is generated are
7 usable to meet the utility’s RPS compliance requirement.
- 8 4) The Commission should be allowed to authorize compensation for RECs to existing
9 as well as new owners of customer-owned renewable energy systems.
- 10 5) PNM has not identified policy constraints that the Commission should consider in
11 approving any unbundling of RECs.
- 12 6) Neither statute nor rule requires the bundled purchase of both energy and RECs by a
13 public utility from a renewable energy generator. Avoided cost is a defined term for
14 payments for energy acquired from a QF; it does not include the cost of a REC and
15 does not assign any value to a REC.

16

17 In the balance of my testimony I will specifically address each of the issues identified
18 by the Hearing Examiner.

19

20 **ISSUE 1: WHETHER A PUBLIC UTILITY HAS DISCRETION TO**
21 **ACQUIRE, OR NOT TO ACQUIRE, RECS FROM A QF FROM WHICH IT**
22 **PURCHASES RENEWABLE ENERGY UNDER NMPRC RULE 17.9.570**
23 **NMAC (“RULE 570”)?**

24

25 **Q. PLEASE EXPLAIN HOW PNM PURCHASES ENERGY UNDER RULE 570.**

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1 **A.** Under Rule 570, a QF is defined as a cogeneration facility or a small power
2 production facility that meets the criteria for qualification contained in 18 CFR §
3 292.203. In accordance with Rule 570, PNM and other public utilities in New
4 Mexico are required to purchase the energy produced by any QF at no more than the
5 utility’s “avoided cost.” Avoided costs are defined in Rule 570 to mean the
6 incremental costs to the electric utility of electric energy or capacity or both which,
7 but for the purchase from the QF, the utility would generate itself or purchase from
8 another source, such costs to be calculated in accordance with Subsections (A)
9 through (D) of Rule 570.11. PNM purchases energy from QFs at the Company’s
10 avoided cost energy purchase rates that are set forth in its Commission-approved Rate
11 Schedule 12. Payment of avoided costs for QF energy is also consistent with the
12 requirements of PURPA.

13

14 **Q. DOES RULE 570 ADDRESS THE PURCHASE AND SALE OF RECS?**

15 **A.** No. At the time Rule 570 was promulgated, the concept of a renewable energy
16 certificate was not yet recognized. RECs are, however, addressed in connection with
17 the acquisition of renewable energy from QFs in the REA, §§ 62-16-1 to 62-16-10
18 NMSA 1978 and in Rule 572. The REA and Rule 572 provide for a system of RECs
19 to document all transactions between renewable energy generators, including QFs,
20 and public utilities that can be used by the utility for compliance with the RPS
21 established by the REA and Rule 572.

22

23 **Q. WHAT IS A RENEWABLE ENERGY CERTIFICATE?**

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1 **A.** Rule 572.7(E) defines a REC as a document evidencing that the enumerated
2 renewable energy kilowatt-hours have been generated from a renewable energy
3 generating facility. This definition is based on § 62-16-5(A) of the REA, which
4 provides that the Commission shall establish a system of RECs that can be used by a
5 public utility to establish compliance with the statutory RPS.

6

7 More generally, it may be stated that two major products are created from renewable
8 energy generation. One product is the actual electricity that is generated. A separate
9 product is that associated with the benefits created, for example, by a reduction in
10 harmful emissions in comparison with fossil fuel-based generation. These non-
11 electrical benefits are identified as environmental attributes of renewable energy
12 generation and are represented by RECs. Thus, rather than functioning simply as a
13 receipt for electricity purchases, RECs are proof that a certain amount of renewable
14 resource electricity has been generated.

15

16 **Q. WHAT DO THE REA AND RULE 572 PROVIDE REGARDING THE**
17 **OWNERSHIP OF RECS?**

18 **A.** The REA, in § 62-16-5(B)(1)(a), states that RECs are owned by the generator of the
19 renewable energy unless:

20 1) the RECs are transferred to the purchaser of the energy through specific agreement
21 with the generator;

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- 1 2) the generator is a QF, as defined in PURPA, in which case the RECs are owned by
2 the public utility purchaser of the renewable energy “unless retained by the generator
3 through specific agreement with the public utility purchaser of the energy”; or
4 3) a contract for the purchase of renewable energy is in effect prior to January 1, 2004,
5 in which case the RECs are owned by the purchaser of the energy for the term of such
6 contract.

7

8 Rule 572.13.B(1)(b) echoes the foregoing requirements of the REA, stating that RECs
9 are owned by the generator of the renewable energy unless the generator is a QF, in
10 which case the RECs are owned by the public utility purchaser of the renewable
11 energy unless retained by the generator through specific agreement with the public
12 utility purchaser of the energy.

13

14 The language of both the REA and the Commission’s regulation recognize that a
15 public utility and a QF may enter into a “specific agreement” that the RECs shall be
16 “retained by the generator.” This language on its face appears to provide utilities
17 with the discretion to enter into an agreement with a QF that the QF may retain the
18 RECs.

19

20 **Q. UNDER WHAT CIRCUMSTANCES WOULD A UTILITY NOT WANT TO**
21 **ACQUIRE RECS FROM A QF IN CONJUNCTION WITH A PURCHASE OF**
22 **ENERGY FROM A QF?**

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1 **A.** There are a number of reasons why a utility might not want to purchase RECs from a
2 QF. The utility might not need the RECs at a particular time to satisfy its RPS
3 requirement. Or the utility might not need additional RECs resulting from a
4 particular generating technology. Or the price demanded by the generator of the
5 RECs might be too high.

6

7 **Q.** **ARE THERE OTHER PROVISIONS IN RULE 572 THAT SUPPORT THE**
8 **INTERPRETATION THAT RECS CAN BE SEPARATED FROM THE**
9 **GENERATED RENEWABLE ENERGY?**

10 **A.** Yes. In addition to Rule 572.13.B(1)(b) that I have already mentioned, Rule 572.7.A
11 defines the term “procure,” as referring to generating or purchasing renewable
12 energy, or committing to generate or purchase renewable energy, “and/or” RECs.
13 The use of the words “and/or” seems to say that RECs can be purchased along with,
14 or separate and apart from, the purchase of energy from a renewable resource. Rule
15 572.13.B(2) also provides that the transfer and use of a REC by a public utility for
16 compliance with the RPS do not require the physical delivery of the electricity
17 represented by the REC to that public utility. Since the purchase of energy normally
18 involves physical delivery, the recognition that no physical delivery is required in
19 connection with the use of a REC supports the view that there can be a separation
20 between the purchase of RECs and the purchase of energy from a renewable resource
21 generator.

22

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1 **Q. WHY IS IT APPROPRIATE FOR THE COMMISSION TO CLARIFY THAT**
2 **A UTILITY SHOULD HAVE THE DISCRETION TO ACQUIRE, OR NOT**
3 **ACQUIRE, RECS FROM A QF?**

4 **A.** As I mentioned earlier in my testimony, PNM believes it is critical for the
5 Commission to provide clear guidance to both public utilities and QFs in New
6 Mexico as to whether there is discretion for a public utility to procure or not procure
7 the RECs associated with the renewable energy generated by the QF and to provide
8 relevant guidelines that can be used by parties considering such transactions.

9
10 PNM's desire for Commission clarification is prompted by existing as well as
11 potential PNM REC purchase programs. PNM has obtained approval from the
12 Commission in Case 05-00356-UT to implement the Small PV Program, through
13 which the Company purchases RECs associated with energy produced by small
14 customer-owned solar energy QFs. PNM will use these RECs to comply with its
15 RPS. Additionally, PNM would like to initiate a similar program for solar PV
16 customer-generators interconnected to PNM and metered under Rule 570, that is,
17 with PV facilities that are greater than 10 kW in size. Furthermore, when the
18 appropriate opportunity presents itself, PNM would like to have the flexibility to
19 purchase RECs created by customer-owned QFs using other renewable fuel resources
20 and to use those RECs for RPS compliance purposes. There are also other
21 circumstances, such as I have previously enumerated, in which PNM may desire to
22 acquire renewable energy from a QF but not the associated RECs.

23

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1 **Q. COULD RENEWABLE ENERGY, PROCURED FROM A QF THAT BY**
2 **AGREEMENT WITH PNM RETAINED THE RECS, BE USED FOR**
3 **COMPLIANCE PURPOSES WITH THE RPS?**

4 **A.** No. It is my understanding of Rule 572.13 that public utilities must use RECs to
5 establish their annual compliance with the RPS. Therefore, it is also my
6 understanding that the purchase of renewable energy alone, without the RECs, does
7 not provide a means to demonstrate compliance with the RPS.

8

9 **ISSUE 2: WHETHER IT IS REASONABLE AND PRUDENT FOR A PUBLIC**
10 **UTILITY TO PAY VALUE FOR RECS OBTAINED FROM QFS AND**
11 **OTHER RENEWABLE ENERGY GENERATORS, WHETHER OR NOT**
12 **ACQUIRED WITH THE ASSOCIATED ENERGY?**

13

14 **Q. PLEASE ADDRESS WHY PNM RAISED THIS ISSUE IN ITS PETITION.**

15 **A.** As discussed above, there is a lack of clarity under state law concerning the
16 acquisition of RECs by public utilities from QFs and the utilities' obligation to pay
17 for RECs acquired. Existing NMPRC rules governing energy purchases from QFs
18 address only the purchase of energy at avoided cost. Moreover, PNM's Schedule 12,
19 setting out the avoided cost rates that the Company will pay for energy purchased
20 from QFs, does not include a component reflecting the value of any RECs that might
21 be associated with the energy purchased from the QF.

22

23 As an example of the consequences of this lack of clarity, I will describe two specific
24 instances that I am familiar with in which an issue has arisen about PNM's obligation,
25 or lack thereof, to pay value for RECs purchased from a QF. In discussions

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1 concerning its May 20, 2005, Rule 570 Application for Interconnection, the City of
2 Albuquerque (“City”) stated that the City desired to retain ownership of all RECs
3 produced by its new QF that is fueled by landfill gas. The City wanted to sell energy
4 from its facility to PNM but took the position that the RECs had a value apart from
5 the energy. Similarly, the owner of a small PV system in Santa Fe (that is a QF as
6 defined in PURPA) with a Rule 571 Net Metering Interconnection Agreement
7 asserted that a claim by PNM for ownership of RECs produced by the customer’s PV
8 system, without additional compensation for the value of the RECs, would lead to
9 legal challenges. PNM expects that other similar issues are likely to arise in the
10 future.

11
12 Consequently, PNM concluded that it would be appropriate to petition the
13 Commission to address these matters to provide clear direction to PNM, and to QFs,
14 on whether it was appropriate for a public utility to compensate a QF for the value of
15 the RECs being transferred to PNM along with the purchase of the energy, or in the
16 alternative, for PNM to decide not to acquire the RECs, for example, due to the price
17 demanded or other appropriate circumstances that may develop in the future.

18

19 **Q. DOES PNM HAVE A RECOMMENDATION FOR THE RESOLUTION OF**
20 **ISSUE 2?**

21 **A.** Yes. As I have addressed in response to the Hearing Examiner’s first issue, the
22 statute and the Commission’s regulations appear to recognize that energy and RECs
23 are distinctly different components that can be purchased and sold separately. It

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1 follows that RECs have commercial value apart from any energy purchased by a
2 utility from a QF and that, in fairness, utilities ought to compensate QFs separately
3 for RECs.

4
5 PNM therefore believes the Commission should determine that public utilities: (1)
6 should be able to choose whether or not to purchase RECs from a QF; and (2) should
7 compensate QFs for the value of the RECs acquired with the energy purchased by the
8 utility. It is in the best interest of the QF generators, utility purchasers and energy
9 consumers for RECs to be sold, purchased and traded in an open market as a matter
10 of contractual arrangements between the parties.

11

12 **ISSUE 3: WHETHER RENEWABLE ENERGY CONSUMED ON-SITE BY A**
13 **QF IS ENERGY “CONTRACTED FOR DELIVERY” AND THUS USEABLE**
14 **TO MEET A UTILITY’S RENEWABLE PORTFOLIO STANDARD?**
15

16 **Q. WHAT IS THE SIGNIFICANCE OF THE “CONTRACTED FOR**
17 **DELIVERY” LANGUAGE REFERENCED IN THIS ISSUE?**

18 **A.** A provision of the REA, § 62-16-5(B)(1)(b), says that RECs may be traded, sold or
19 otherwise transferred by their owner to any other party; and that transfers or use of
20 the REC by a utility for purposes of compliance with the RPS “shall require the
21 electric energy represented by the certificate to be *contracted for delivery* in New
22 Mexico *unless* the [NMPRC] determines that there is a regional market” (emphasis
23 added) for exchanging RECs. To date, the Commission has made no determination
24 as to the existence of a regional market.

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1

2 **Q. GENERALLY, WHAT IS PNM'S POSITION ON THIS ISSUE?**

3 **A.** Renewable energy consumed on-site by a QF in New Mexico is energy “contracted
4 for delivery” and thus the RECs that are created when the consumed renewable
5 energy is generated are useable to meet a utility’s RPS. This view is supported both
6 by language in Rule 571 and by considerations of public policy that favor the
7 development of renewable resources.

8

9 A QF’s use of self-generated renewable energy displaces energy that would otherwise
10 have been supplied by a public utility. For purposes of demonstrating compliance
11 with the RPS, the value of a REC associated with a customer’s own generation and
12 consumption is no different than the value of a REC associated with a public utility’s
13 purchase of the customer’s excess generation. The primary business of a QF is not
14 the generation of electricity for sale to a utility. A QF’s electrical energy is intended
15 to be primarily consumed on site with a variable and *de minimis* amount of excess
16 delivered to the interconnecting utility.

17

18 **Q. PLEASE ADDRESS RELEVANT PROVISIONS OF RULE 571 THAT**
19 **SUPPORT YOUR ANSWER.**

20 **A.** The standard form Interconnection Agreement made a part of Rule 571 (Rule 571.17)
21 provides (in Section 4 of the standard form contract) that the QF shall deliver its as-
22 available energy to the utility at the utility’s meter. All energy generated by a Rule
23 571 small QF is delivered at the utility meter’s electrical connection to the customer’s

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1 load. The rule does not, however, require that the delivered energy flow through the
2 meter. In my understanding this satisfies the requirement for a “contract for
3 delivery.”

4
5 Also relevant is the Commission’s statement of “Objective” in Rule 571.6, according
6 to which the purpose of the rule is to simplify the interconnection requirements and to
7 “encourage the use of small-scale customer-owned renewable or alternative energy
8 resources in recognition of the beneficial effects the development of such resources
9 will have on the environment of New Mexico.” In PNM’s view, a policy
10 determination that RECs associated with a QF’s consumption of its self-generated
11 energy are eligible for use by a public utility for RPS compliance purposes would be
12 totally consistent with the Commission’s stated objective in Rule 571.

13
14 **Q. HAS PNM ADDRESSED THIS ISSUE PREVIOUSLY?**

15 **A.** Yes. PNM’s Response to Staff’s Exceptions in NMPRC Case No. 05-00356-UT
16 states: “Staff questions whether energy generated by small PV systems connected to
17 PNM’s grid pursuant to a Rule 571 Interconnection Agreement and either used by the
18 QF or delivered to PNM’s system if excess to the QF’s usage is ‘contracted for
19 delivery’ in New Mexico, Staff’s Exceptions, pp. 4-5. Staff, however, presents no
20 rationale for concluding that it is not. The energy is certainly delivered in New
21 Mexico -- to either the QF or PNM’s system -- pursuant to the Rule 571
22 Interconnection Agreement between the QF and PNM.”

23

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1 **Q. PLEASE COMMENT ON THIS ISSUE AS IT RELATES TO THE USE OF**
2 **SELF-GENERATED ENERGY BY A QF THAT IS INTERCONNECTED TO**
3 **A PUBLIC UTILITY UNDER RULE 570.**

4 **A.** Rule 570 provides strong encouragement for QF development and a range of flexible
5 operating options. The scope of the rule, stated in Rule 570.2(B), extends to both the
6 production and consumption functions of QFs. One of the rule’s objectives, stated in
7 Rule 570.6.A(1), is to enable the development of a market for power produced by
8 QFs. Rule 570.9(B) requires the public utility to interconnect with a QF which meets
9 the requirements stated therein. Rule 570.10.A(1) specifically authorizes a QF
10 contracting to provide power to displace its own load. Additionally, Rule 570.10
11 provides flexibility in metering options to QFs. The Interconnection Agreement is for
12 delivery to the utility whether or not the energy is sold to the utility, Rule 570.9.D(4)
13 and 570.13(E).

14
15 A policy determination by the Commission that an Interconnection Agreement under
16 Rule 570 does *not* constitute a contract for delivery and, therefore, that a QF’s
17 consumption of its self-generated energy is *not* eligible for RECs that could be used
18 by a public utility in New Mexico for purposes of compliance with the RPS, would be
19 inconsistent with the encouragement for QF development and operational flexibility
20 that is provided by Rule 570.

21
22 **ISSUE 4: WHETHER THE LEGISLATURE HAS AUTHORIZED THE**
23 **COMMISSION TO APPROVE INCENTIVES TO BENEFIT EXISTING**
24 **OWNERS OF CUSTOMER-OWNED RENEWABLE ENERGY SYSTEMS?**

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Q. DOES PNM HAVE A POSITION ON THIS ISSUE?

A. RECs have value, whether the generator is an existing or a new QF, and from a policy standpoint there is no reason to distinguish or discriminate between existing owners of customer-owned renewable energy systems and new or future owners of such systems.

Not being a lawyer, I cannot express a legal opinion about what the Legislature has or has not done. However, I can observe that the REA does not specifically address “incentives,” although it does find that the generation of electricity through the use of renewable energy presents opportunities to promote energy self-sufficiency, preserve the state’s natural resources and pursue an improved environment. § 62-16-2.A(1). I note further that Rule 572.10(A) requires public utilities, in developing their renewable energy portfolio, to take into consideration the potential for environmental and economic benefits to New Mexico. Finally, I note that in approving PNM’s Small PV Program, the Commission approved payments at the same rate for RECs from existing PV systems as from new PV Systems.

The value of a REC acquired by a utility from a QF for compliance purposes with the RPS is the same, regardless of who generated the REC, depending, of course, on the particular technology. In Rule 572, the Commission did not weight RECs separately depending upon the time at which the customer began generating renewable energy resources. Similarly, neither the REA nor Rule 572 distinguishes REC ownership

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1 based upon when the QF began generating. These observations demonstrate that, in
2 the matter of encouraging the development of renewable energy resources, the
3 Commission has generally not previously segregated or penalized existing suppliers
4 relative to potential new suppliers.

5

6 **ISSUE 5: WHETHER THERE ARE ANY POLICY CONSTRAINTS THE**
7 **COMMISSION SHOULD CONSIDER IN APPROVING ANY UNBUNDLING**
8 **OF RECS?**

9

10 **Q. WHAT IS PNM'S UNDERSTANDING OF THE REFERENCE TO**
11 **"UNBUNDLING OF RECS," AS THAT PHRASE IS USED IN THE**
12 **STATEMENT OF THIS ISSUE?**

13 **A.** By "unbundling," I understand the question to refer to the concept of treating the
14 purchase and sale of RECs separately from the purchase and sale of energy from
15 renewable energy generators.

16

17 **Q. HAS PNM IDENTIFIED ANY POLICY CONSTRAINTS THE COMMISSION**
18 **SHOULD CONSIDER IN APPROVING ANY UNBUNDLING OF RECS?**

19 **A.** No. In fact, the opposite seems to be the case when one considers the flexibility
20 regarding RECs that is provided for in the REA and Rule 572, and the encouragement
21 for QF development and operational flexibility that is provided under Rules 570 and
22 571. Constraints to unbundling RECs potentially could constrain renewable energy
23 resource development and generation diversity in New Mexico.

24

**NMPRC CASE NO. 05-00352-UT
PUBLIC SERVICE COMPANY OF NEW MEXICO
DIRECT TESTIMONY OF PATRICK K. SCHARFF**

1 **ISSUE 6: WHETHER ENERGY AND RECS MUST BE OBTAINED BY A**
2 **UTILITY IN ORDER FOR AN ENERGY PURCHASE TO BE CONSIDERED**
3 **A PURCHASE FROM A RENEWABLE QF AND, IF SO, WHAT IS THE**
4 **AVOIDED COST WHICH UTILITIES SHOULD PAY FOR BUNDLED**
5 **ENERGY AND RECS?**
6

7 **Q. DOES PNM HAVE ANY INITIAL OBSERVATIONS ABOUT THE**
8 **STATEMENT OF THIS ISSUE?**

9 **A.** PNM observes that this issue appears to be quite similar to Issue 1, in the sense that
10 this question asks about the segregation of energy transactions from REC
11 transactions. For reasons that I have already discussed, the Commission should
12 recognize that a utility may purchase energy or RECs alone from a QF, or may
13 purchase both energy and RECs from a QF, and should compensate the QF for each
14 separate component of the sale.

15
16 The avoided cost rate, as referenced in the statement of this issue, is the rate that the
17 utility pays the QF for energy purchased from the QF, in PNM's case at the avoided
18 cost rates established in PNM Rate 12. The definition of "avoided cost" does not
19 include a separate cost or a separate cost component for RECs. Instead, the cost for
20 the REC is based upon market, regulatory and other factors that are irrelevant to the
21 avoided cost that a utility is required to pay for QF energy under Rules 570 and 571
22 and PURPA.

23
24 **Q. PLEASE ADDRESS WHY THE AVOIDED COST DOES NOT INCLUDE THE**
25 **COST OF RECS ASSOCIATED WITH THE ENERGY.**

**NMPRC CASE NO. 05-00352-UT
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1 **A.** Avoided cost is a defined term under PURPA. 18 CFR § 292.101(b)(6). It does not
2 include a cost component for the payment of RECs. This matter has been addressed
3 by the Federal Energy Regulatory Commission and is described in the Brief that was
4 part of PNM’s Petition in this proceeding, which is attached as PNM Exhibit PKS-2.
5 The Commission may determine that it is appropriate to address the bundled cost that
6 utilities should pay for bundled energy and RECs, but such a bundled cost would not
7 be the avoided cost contemplated by PURPA. Since Rule 572 allows for the
8 separation of RECs and energy, PNM believes that the cost for those two separate
9 commodities should be addressed separately.

10

11 **Q. ISSUE 6 MENTIONS THE TERM “RENEWABLE QF.” WHAT DOES THIS**
12 **TERM MEAN?**

13 **A.** I am not familiar with this term. As I have already mentioned, the term “qualifying
14 facility” or “QF” has a specific meaning that is defined in PURPA and in the
15 Commission’s regulations, but there is no definition for the term “renewable QF.”
16 However, in the context of this proceeding I assume that the term “renewable QF” is
17 being used instead of the term “small power producer” that is defined in PURPA.

18

19 **CONCLUSION**

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

21 **A.** Yes, it does.

22