

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

) Utility Case No. 05-00352-UT

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

Petitioner,)

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DIRECT TESTIMONY OF JEFFREY A. BUTLER

ON BEHALF OF

SOUTHWESTERN PUBLIC SERVICE COMPANY

(July 26, 2006)

UTILITY CASE NO. 05-00352-UT
PREPARED DIRECT TESTIMONY OF
JEFFREY A. BUTLER

I. INTRODUCTION AND QUALIFICATIONS

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

2 A. My name is Jeffrey A. Butler. My business address is 1225 17th Street, Denver,
3 Colorado.

4 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

5 A. I am testifying on behalf of Southwestern Public Service Company (SPS), a
6 wholly owned subsidiary of Xcel Energy Inc. (Xcel Energy).

7 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?**

8 A. I am employed by Xcel Energy Services Inc. (XES), the service company
9 subsidiary of Xcel Energy, as a Senior Policy Analyst.

10 **Q. PLEASE BRIEFLY DESCRIBE YOUR DUTIES AS SENIOR POLICY**
11 **ANALYST.**

12 A. My duties focus on the development of regulatory policy positions for Xcel
13 Energy's operating companies and include issue analysis; testimony research and
14 drafting; witness training and preparation; regulatory case direction and
15 administration; compliance reporting; and maintaining regulatory relationships.

16 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

17 A. I graduated from the University of Phoenix in May 1989, receiving a Bachelor of
18 Science degree in Business Administration. In May 1995, I graduated from the
19 University of Phoenix, receiving a Master of Business Administration degree.

20 **Q. WHAT IS YOUR PROFESSIONAL EXPERIENCE?**

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1 A. I have been employed by Xcel Energy or its predecessor companies since 1985.
2 From 1985 until 1987, I was employed as an Instrumentation and Control
3 Technician at Ft St. Vrain Nuclear Generating Station in Colorado. From 1987
4 until 1989, in the capacity of Technical Instructor, I instructed Instrumentation
5 and Control Technicians at Ft. St. Vrain. From 1989 until 2006, I was employed
6 in various capacities in Xcel Energy's Governmental and Regulatory Affairs
7 group. My first position was a Rate Accountant. In 1997, I assumed the duties of
8 a Case Administrator. In 2001, I assumed the duties of a Policy Analyst. I was
9 promoted to a Senior Policy Analyst in 2003. I have been involved with cost-of-
10 service work, rate design studies, resource planning, facilities approval, and
11 regulatory matters for 17 years.

12 **Q. HAVE YOU TESTIFIED BEFORE ANY REGULATORY AUTHORITIES?**

13 A. Yes. I have testified before the Colorado Public Utilities Commission.
14

15 **II. ASSIGNMENT**

16 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

17 A. The purpose of my testimony is to state SPS's position on the six issues identified
18 in the Hearing Examiner's Procedural Order and Notice (March 31, 2006).

19 In its Order Docketing Case dated December 13, 2005, the Commission
20 made SPS and El Paso Electric Company (EPE) parties to this case along with the
21 petitioner Public Service Company of New Mexico (PNM). SPS agrees with the

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1 position previously advocated by EPE in its Motion to Dismiss¹ to the effect that
2 the issues central to this case were either adequately addressed by NMAC
3 17.9.572 (Rule 572) or were best examined within the context of PNM's annual
4 renewable energy procurement plan proceeding.

5 **Q. WHAT ARE THOSE SIX ISSUES?**

6 A. The Hearing Examiner determined that he would consider the following six
7 issues:

- 8 1. Whether a public utility has discretion to acquire, or not acquire,
9 RECs from a QF from which it purchases renewable energy under
10 NMPRC Rule 17.9.570 NMAC;
- 11 2. Whether it is reasonable and prudent for a public utility to pay
12 value for RECs, whether or not acquired with the associated
13 energy;
- 14 3. Whether renewable energy consumed on-site by a QF is energy
15 "contracted for delivery" and thus usable to meet a utility's
16 renewable portfolio standard;
- 17 4. Whether the Legislature has authorized the Commission to approve
18 incentives to benefit existing owners of customer-owned
19 renewable energy systems;

¹ El Paso Electric Company's Motion to Dismiss, New Mexico Public Regulation Commission
Utility Case No. 05-00352-UT, December 5, 2005.

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1 5. Whether there are any policy constraints the Commission should
2 consider in approving any unbundling of RECs; and

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

7 **Q. PLEASE SUMMARIZE SPS'S POSITION ON THE SIX ISSUES?**

8 **A.**SPS's position on the issues is as follows:

9 1. The Renewable Energy Act (REA) and Rule 572 establish that
10 public utilities own the RECs associated with energy purchased
11 from a Qualifying Facility (QF). The REA and Rule 572 also
12 provide public utilities the option of not acquiring the RECs and
13 the option, but not the obligation, of acquiring the RECs at
14 additional expense.

15 2. It could be reasonable and prudent for a public utility to acquire
16 RECs independent of energy and that the appropriate forum for
17 determining reasonableness and prudence of a REC purchase is in
18 a public utility's annual renewable energy procurement plan
19 proceeding.

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- 1 3. The energy consumed on-site by a QF is energy that is “contracted
2 for delivery” and is applicable for compliance with a public
3 utility’s renewable portfolio standard (RPS).
- 4 4. The Legislature has not authorized the Commission to approve
5 incentives to benefit owners of customer-owned renewable energy
6 systems that were installed prior to July 1, 2004.
- 7 5. The REA, Rule 572, NMAC 17.9.570 and NMAC 17.9.571 (Rules
8 570 and Rule 571) provide specific constraints to the unbundling
9 of RECs from the renewable energy sold to public utilities under
10 the mandatory QF purchase obligation applicable to public utilities
11 under the Public Utility Regulatory Policy Act of 1978 (PURPA).
12 While a renewable energy generator and a public utility purchaser
13 are free to negotiate other mutually acceptable pricing
14 arrangements, if a New Mexico QF seeks to sell renewable energy
15 to a public utility under the guaranteed market and price provided
16 by the PURPA mandatory purchase obligation, under the REA the
17 QF must offer the public utility a bundled product, including both
18 energy and RECs, at a price no higher than the avoided cost
19 pricing determined in accordance with Rules 570 and 571.
- 20 6. The Legislature was clear that the public utility purchaser owns
21 RECs produced by QFs unless the public utility purchaser

1 contractually agrees otherwise. The avoided cost for the bundled
2 purchase is determined in accordance with Rules 570 and 571.

3

4 **III. PUBLIC UTILITY DISCRETION TO ACQUIRE OR NOT ACQUIRE**
5 **RECS FROM A QF FROM WHICH IT PURCHASES RENEWABLE ENERGY**

6

UNDER NMAC 17.9.570

7 **Q. PLEASE DESCRIBE SPS'S INTERPRETATION OF THE REC**
8 **OWNERSHIP PROVISIONS IN THE REA AND RULE 572 AS IT**
9 **CONCERNS QFS.**

10 **A.** SPS believes that the Legislature and the Commission have provided express and
11 clear language in the REA and Rule 572 respectively concerning ownership of
12 RECs associated with the energy acquired from a QF. The REA at Section 62-16-
13 5 states the following:

14 Renewable energy certificates... are owned by the generator of the
15 renewable energy unless... the generator is a qualifying facility, as defined
16 by the federal Public Utility Regulatory Policies Act of 1978, in which
17 case the renewable energy certificates are owned by the public utility
18 purchaser of the renewable energy unless retained by the generator
19 through specific agreement with the public utility purchaser of the
20 energy...

21 Rule 572 likewise provides that the public utility purchaser of renewable
22 energy from a QF owns the RECs. NMAC 17.9.572.13.B.1.b contains the exact
23 language quoted above from the REA.

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1 SPS notes that REC ownership was an emerging issue when the legislation
2 that became the REA was drafted. The Legislature acknowledged and resolved
3 REC ownership issues within the statute.

4 **Q. DOES SPS INTERPRET THE REC OWNERSHIP PROVISIONS OF THE**
5 **REA AND RULE 572 TO ALLOW A PUBLIC UTILITY DISCRETION AS**
6 **TO THE PURCHASE OF RECS FROM A QF FROM WHICH IT**
7 **PURCHASES RENEWABLE ENERGY UNDER NMAC 17.9.570?**

8 A. Yes. The Legislature and the Commission have provided public utilities the
9 discretion to not take ownership of renewable energy certificates when purchasing
10 renewable energy from a QF. The REA and Rule 572 sections quoted above
11 unambiguously provide that discretion.

12
13 **IV. REASONABLENESS AND PRUDENCE OF A PUBLIC UTILITY PAYING**
14 **VALUE FOR RECS WHETHER OR NOT ACQUIRED WITH**
15 **ASSOCIATED ENERGY**

16 **Q. DOES SPS BELIEVE THAT IT CAN BE REASONABLE AND PRUDENT**
17 **TO ACQUIRE RECS SEPARATE FROM RENEWABLE ENERGY?**

18 A. Yes. As the Commission is aware, SPS and its customers currently benefit from
19 purchase power agreements, including agreements with QF suppliers such as
20 Caprock Wind LP, for the bundled purchase of renewable energy and RECs at an
21 advantageous cost. SPS proposed and the Commission approved wind energy

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1 purchases as part of SPS's RPS compliance strategy. SPS receives the RECs with
2 the wind energy purchase. SPS has demonstrated that a successful, reasonable
3 and prudent RPS compliance strategy can be structured with purchases of
4 renewable energy and RECs in a bundled package.

5 Nonetheless, renewable energy portfolio and compliance strategies need to
6 be flexible enough to contemplate and accommodate a variety of pricing and
7 supply scenarios. SPS supports the notion that a reasonable and prudent
8 renewable energy portfolio and compliance with the RPS can be built or achieved
9 with the purchase of RECs separate from renewable energy.

10 **Q. DOES SPS BELIEVE THAT IT CAN BE REASONABLE AND PRUDENT**
11 **TO PAY A SEPARATE AND ADDITIONAL AMOUNT FOR RECS**
12 **ACQUIRED WITH THE ASSOCIATED RENEWABLE ENERGY?**

13 A. As it concerns PURPA mandated purchases from a QF, SPS does not believe it is
14 reasonable or prudent to pay a separate and additional amount for RECs acquired
15 with the associated renewable energy. If a New Mexico QF seeks to sell
16 renewable energy to a public utility under the guaranteed market and price
17 provided by the PURPA mandatory purchase obligation, under the REA the QF
18 must offer the public utility a bundled product, including both energy and RECs,
19 at a price no higher than the avoided cost price determined in accordance with
20 Rules 570 and 571.

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1 As it concerns other voluntary, mutually agreed to, renewable energy
2 purchases, SPS believes it could be reasonable or prudent to pay a separate and
3 additional amount for RECs acquired with the associated renewable energy. As
4 discussed above, renewable energy portfolio and compliance strategies need to be
5 flexible enough to contemplate and accommodate a variety of pricing and supply
6 scenarios. However, the public utility must be free to accept or reject any such
7 purchase arrangement where separate and additional payments are made for the
8 RECs acquired with the associated renewable energy.

9 **Q. WHAT IS THE PROPER FORUM FOR MAKING A DETERMINATION**
10 **CONCERNING THE REASONABLENESS AND PRUDENCE OF**
11 **RENEWABLE ENERGY OR REC PURCHASES FOR RPS**
12 **COMPLIANCE?**

13 A. SPS believes that determining reasonableness and prudence of renewable energy
14 purchases and/or REC purchases should be done in a public utility's annual
15 renewable energy procurement plan proceeding.

16
17 **V. QUALIFICATION FOR RPS COMPLIANCE OF QF ON-SITE**
18 **CONSUMED RENEWABLE ENERGY PRODUCTION**

19 **Q. DOES SPS BELIEVE THAT ENERGY CONSUMED ON-SITE BY A QF IS**
20 **ENERGY THAT CAN BE COUNTED FOR COMPLIANCE WITH A**
21 **PUBLIC UTILITY'S RPS?**

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1 A. Yes. SPS believes that the Commission should broadly interpret Rule 572 as it
2 concerns QF on-site renewable energy generation and consumption to best
3 promote renewable energy development. Rule 572.13(B)(2) states, concerning
4 RECs, that the renewable energy must be “contracted for delivery in New
5 Mexico.” SPS believes that it is reasonable to classify renewable energy that a
6 QF generates and consumes on-site as contracted energy for delivery in New
7 Mexico. Therefore, the RECs associated with such renewable energy would
8 qualify for compliance with a public utility’s RPS.

9
10 **VI. COMMISSION AUTHORITY TO APPROVE INCENTIVES TO BENEFIT**
11 **EXISTING OWNERS OF CUSTOMER-OWNED RENEWABLE ENERGY**
12 **SYSTEMS**

13 **Q. PLEASE DESCRIBE SPS’S INTERPRETATION OF THE REA AS IT**
14 **CONCERNS RENEWABLE ENERGY GENERATORS IN EXISTENCE**
15 **AT THE TIME THE REA BECAME LAW.**

16 A. The REA at Section 62-16-4.A.5 (concerning the RPS) states the following:
17 (R)enewable energy resources that are in a public utility’s electric energy
18 supply portfolio on July 1, 2004 shall be counted in determining
19 compliance with this section.

20 The REA is clear that a public utility’s contracted or owned renewable
21 energy resources are eligible for RPS compliance if they are part of the portfolio
22 on July 1, 2004. The REA does not address the renewable resources in New

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1 Mexico that were producing renewable energy that was not contracted for
2 delivery to a public utility as of July 1, 2004.

3 **Q. DOES SPS BELIEVE THAT THE LEGISLATURE AUTHORIZED THE**
4 **COMMISSION TO APPROVE INCENTIVES TO BENEFIT EXISTING**
5 **OWNERS OF CUSTOMER-OWNED RENEWABLE ENERGY**
6 **SYSTEMS?**

7 A. No. It is SPS's belief that the legislature chose to acknowledge the existing
8 public utility contracted or owned renewable resources in the above outlined
9 manner to preclude "punishing" a public utility for efforts undertaken to broaden
10 its portfolio of electric energy resources before 2004 and in advance of the REA.
11 Aside from that specific allowance for existing renewable energy endeavors, the
12 Legislative intent appears to be oriented towards promoting the development of
13 new renewable resources as opposed to recognizing existing resources. It can be
14 reasoned that this approach internalizes the concept that existing resources were
15 built because sufficient incentive existed absent the market created by the RPS
16 and that no further incentive was warranted.

17

1 **VII. POLICY CONSTRAINTS TO CONSIDER IN APPROVING**
2 **UNBUNDLING OF RECS FROM THE ASSOCIATED RENEWABLE**
3 **ELECTRIC ENERGY**

4 **Q. HAS SPS IDENTIFIED ANY POLICY CONSTRAINTS FOR**
5 **COMMISSION CONSIDERATION IN APPROVING ANY UNBUNDLING**
6 **OF RECS FROM THE ASSOCIATED RENEWABLE ELECTRIC**
7 **ENERGY?**

8 A. Yes. The REA and Rule 572, along with Rules 570 and 571, provide specific
9 constraints to the unbundling of RECs from the renewable energy sold to public
10 utilities under the mandatory QF purchase obligation applicable to public utilities
11 under PURPA. While a renewable energy generator and a public utility purchaser
12 are free to negotiate other mutually acceptable pricing arrangements, if a New
13 Mexico QF seeks to sell renewable energy to a public utility under the guaranteed
14 market and price provided by the PURPA mandatory purchase obligation, under
15 the REA the QF must offer the public utility a bundled product, including both
16 energy and RECs, at a price no higher than the avoided cost pricing determined in
17 accordance with Rules 570 and 571.

18 SPS notes that it supports the development of regional REC trading
19 markets and the recognition of these markets by the Commission. In the absence
20 of a regional or local market it is not possible to determine the value of RECs.
21 SPS's multi-jurisdictional service territory makes SPS a candidate for either the

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1 acquisition and use for compliance of regional RECs or for using the Rule 572
2 provision (17.9.572.13.B.2) that allows for RECs generated in SPS's broader
3 service territory to be used for compliance after petitioning the Commission.
4

5 **VIII. QF PURCHASES – BUNDLING OF ENERGY AND RECS AND THE**
6 **AVOIDED COST FOR BUNDLED PURCHASES**

7 **Q. DOES A QF PURCHASE REQUIRE A TRANSFER OF BOTH ENERGY**
8 **AND THE ASSOCIATED RECS TO CONSTITUTE A QF PURCHASE?**

9 A. As I stated earlier in my testimony, the Legislature has determined that, unless
10 otherwise stated in the purchase agreement, the public utility purchaser of QF
11 energy is the owner of the RECs associated with the purchase of renewable
12 energy from a New Mexico QF. The REA and Rule 572 provide for the purchase
13 of energy without the associated RECs. SPS cannot currently envision a situation
14 wherein it would be in its customers' interests for SPS to relinquish ownership of
15 the RECs associated with a renewable energy purchase from a QF pursuant to the
16 mandatory purchase obligation under PURPA.

17 **Q. WHAT SHOULD THE PUBLIC UTILITY PURCHASER OF QF**
18 **RENEWABLE ENERGY PAY AS THE COST OF THE PURCHASE?**

19 A. NMAC 17.9.570 and NMAC 17.9.571 specify a method for calculating the
20 avoided cost of energy for the public utility purchaser of QF energy and specify
21 that this calculated cost be the purchase price for the energy purchase - SPS

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1 believes that it cannot pay more than this cost for energy purchased from a QF
2 pursuant to the mandatory purchase obligation under PURPA. As noted above, a
3 renewable energy seller and a public utility purchaser are free to negotiate other
4 mutually acceptable pricing arrangements to meet the public utility's load and
5 RPS requirements.

6 SPS believes that a public utility's customers are best served by paying no
7 more than the amount prescribed in NMAC 17.9.570 and NMAC 17.9.571 for the
8 bundled renewable energy and RECs from a QF who is exercising its right to sell
9 under a mandatory purchase obligation pursuant to Section 210 of PURPA. SPS
10 has more than once negotiated a market price for the purchase of bundled
11 renewable energy and RECs that was less than SPS's avoided cost. SPS
12 anticipates that it may be necessary to purchase bundled renewable energy and
13 RECs at a market price that is greater than SPS's avoided cost to diversify its
14 renewable energy portfolio. SPS would not make such a purchase pursuant to the
15 mandatory purchase obligation under PURPA.

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 **A.** Yes.

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PUBLIC SERVICE COMPANY OF)
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Petitioner,)
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Direct**

Testimony of Jeffrey A. Butler, filed July 26, 2006, was mailed first class, postage pre-paid to the following:

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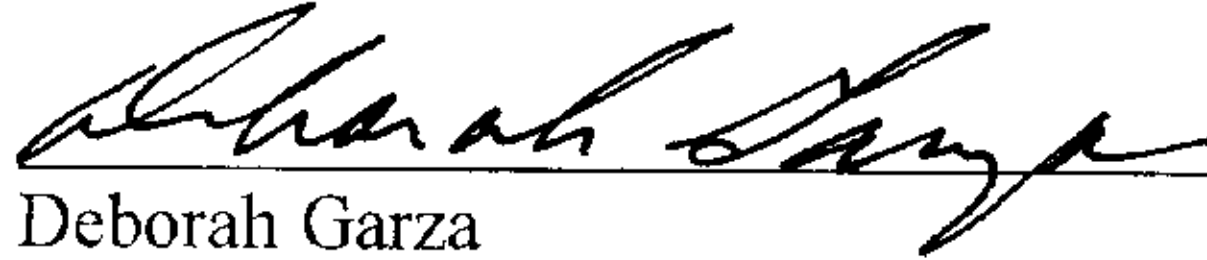
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Dated this 25th day of July, 2006.

SOUTHWESTERN PUBLIC SERVICE COMPANY



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