

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE PETITION OF THE)
UTILITY DIVISION STAFF OF THE)
PUBLIC REGULATION COMMISSION FOR)
RULEMAKING, ADOPTING NMPRC RULE 591,)
REGARDING STANDARD OFFER SERVICE)
OFFERED BY PUBLIC UTILITIES AND)
DISTRIBUTION COOPERATIVE UTILITIES)
UNDER THE RESTRUCTURING ACT,)
)
UTILITY DIVISION STAFF OF THE)
PUBLIC REGULATION COMMISSION,)
)
Petitioner.)
_____)**

Case No. 3109

FINAL ORDER ON REHEARING

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission” or “NMPRC”) upon the Comments on Rehearing filed by several parties. On June 20, 2000, the Commission issued an Order On Rehearing in which it granted “rehearing on the question of whether cost is a factor in determining whether to require the inclusion of a renewable resource in standard offer service.” As required by that Order, on June 30, 2000, Comments were filed by the Utility Division Staff (“Staff”) of the New Mexico Public Regulation Commission, the New Mexico Industrial Energy Consumers (“NMIEC”), the Attorney General of New Mexico (“AG”), Southwestern Public Service Company (“SPS”), El Paso Electric Company (“EPE”), Public Service Company of New Mexico (“PNM”), the New Mexico Rural Electric Cooperative Association (“NMRECA”), the Coalition for Clean Affordable Energy (“CCAЕ”), and the New Mexico Utility Shareholders Alliance (“Shareholders”). Later, on July 7, 2000, Vulcan Power Company filed a Request To File A Late Comment On Rehearing. Vulcan

asked that its comments of June 13, 2000 be considered as part of the record on rehearing. The Commission has done so. Vulcan opposes changing the Standard Offer Rule to make cost a factor.

On August 1, 2000, CCAE filed a Motion To Reopen The Record and Delay The Final Order On The Commission's Order On Rehearing. CCAE asks that the Commission extend the date for issuing the final order on the issue of cost as it relates to the Standard Offer Renewable Portfolio Standard until September 5, 2000. CCAE noted that this will allow interested parties time to respond to the question posed by the Commission raised during its July 22, 2000 Working Session regarding what other states had done with their Renewable Portfolio Standards and its impact on Standard Offer customers. The AG, Vulcan and City of Albuquerque support this Motion and Staff, UNM and Shareholders oppose it.

On August 17, 2000 the Commission granted CCAE's Motion to Reopen. The Commission required CCAE, and allowed other parties, to file responses to the question of what other states have done concerning Renewable Portfolio Standards by August 28, 2000. The Commission required that replies to responses be filed by September 11, 2000.

Pursuant to the Commission's Order, CCAE filed its Response describing the renewable requirements of other states on August 28, 2000. Also on that date PNM filed its Response. PNM focused on the Arizona rule, while CCAE provided a comprehensive discussion of requirements in eight states. On September 11, 2000, PNM and Texas-New Mexico Power Company filed replies.

Discussion

The Commission received pleadings on rehearing from ten parties. Generally, they conclude that Rule 591, as now written, does not include any consideration of cost as a factor in the inclusion of renewable resources in standard offer service. They conclude that the 5% requirement of Rule 591.10 D is instead mandatory. Most of them argue that the Standard Offer rule should be changed to make cost a consideration.

The AG argues that virtually all residential customers will initially be purchasing electric service under standard offer, including customers barely able to pay their utility bills. The AG concludes that the Commission has a duty to provide a least cost option to these customers, and if including renewable energy in standard offer would increase costs it should not be included.

The AG prefers that customers be given an option to receive renewable energy.

The AG proposes rewriting Rule 591.10A as follows:

“§ 17.10.591.10A:

Supply Procurement,. Each utility shall design its standard offer procurement policies and practices to assure that all supply service is procured at the lowest reasonable price consistent with reliability, availability and portfolio requirements. Standard Offer Service shall include a minimum of 5% (five percent) renewable energy resources if such resources can be acquired at a price equal to or lower than that of non-renewable energy.

The utility shall also offer a renewable energy tariff option for those customers who desire to purchase renewable energy. Renewable energy resources included in the renewable energy tariff shall not be subject to the lowest reasonable price requirement that is applicable to standard offer service.”

NMRECA argues that standard offer service customers should not be burdened with paying for renewable resources not reasonably available upon competitive price and

other terms. Also, NMRECA argues that the requirement that renewable energy be from New Mexico ignores the hydropower available to cooperatives from the Western Area Power Administration and which is expressly recognized as renewable by the Restructuring Act.

SPS supports the development of renewable resources, but not a requirement that renewable resources be part of the standard offer service supply portfolio. SPS argues that a renewable energy mandate coupled with cost screening criteria will provide the renewable industry with cost targets that facilitate prudent project selection and management. SPS believes that the Commission can provide for the assessment of renewable resources required by the Legislature in NMSA 1978 § 62-3A-2A (10), by monitoring the cost-effectiveness of renewable resources as they are proposed and constructed.

SPS recommends that the Commission use a renewable energy index based on average contract rates of renewable resources to measure the cost-effectiveness of proposed renewable resources.

PNM construes Rule 591, as now written, to require utilities to procure 5% renewable supply (if available) for standard offer service regardless of price. PNM suggests that if the Commission chooses to require utilities to consider the price difference between renewable and non-renewable sources in determining if renewables are “available”, the Rule should provide specific, objective bright-line standards for making that evaluation.

EPE’s interpretation of the Standard Offer Rule is that there is a mandatory requirement, regardless of cost, to include a minimum of 5% of the total energy supply for

standard offer service from New Mexico renewable resources, if available. EPE argues that this requirement may increase costs to New Mexico customers and asks the Commission to clarify whether it intends that the mandatory requirement be imposed regardless of cost.

EPE concludes that if the Commission wants cost to be a consideration, it should clearly set out the criteria for such consideration. EPE asks that the Commission clearly decide between keeping standard offer costs at the “lowest reasonable price” or requiring a mandatory 5% of renewables, if available, regardless of cost.

Staff believes that cost is a factor that should be considered in determining whether to require the inclusion of a renewable resource in standard offer service. Staff points out that standard offer service is under Commission jurisdiction (NMSA 1978 §62-3A-10 (C)) and is required by the Restructuring Act to be provided at just and reasonable rates. NMSA 1978 §62-3A-6 (E). Staff also observes that the Commission’s duty to ensure standard offer service is provided at just and reasonable rates may be balanced with the Legislative intent to promote renewable energy. NMSA 1978 §62-3A-2A(10).

Staff asks that if the Commission reaffirms its decision to require the inclusion of renewable energy in standard offer service, that it clarify the extent to which cost should be a factor in selecting renewable energy. Staff asks that the rule clarify whether the “lowest reasonable price” standard applies to the purchase of renewable energy and whether, in determining reasonableness, the price of renewable energy should be compared to the price of supply service from nonrenewable resources. Staff is concerned that a mandatory 5% renewables requirement (without regard to cost) would, at least until a renewable supply market develops, leave the utility without bargaining power, subjecting

it to high prices (passed on to standard offer customers) for renewable energy. Staff notes that renewable energy costs more than traditional electric power sources. As an example, Staff points to SPS's offer to sell blocks of renewable energy at an additional \$3.00 per 100 kWh (or \$0.03 per kWh) under Original Rate No. 33.

NMIEC asks that a renewable requirement not be imposed on any customers at this time. NMIEC does not oppose requiring a renewable option as part of standard offer service. If renewables are required, NMIEC urges that there be an associated cost standard such that 5% is only required to the extent that it does not raise the price of electricity above the price which it would otherwise be.

NMIEC also asserts that instead of being authorized by the Restructuring Act to require renewable energy, the Commission is instead required to examine whether to require renewable energy portfolio standards and report to the legislature and provide recommendations for further legislative changes or direction. NMSA 1978 §62-3A-19. Finally, NMIEC argues that if the Commission keeps a renewable requirement, it should remove the requirement that those resources come only from New Mexico. NMIEC concludes that this requirement will further drive up price and provide a windfall for New Mexico renewable providers.

CCAIE supports making cost a consideration in determining whether renewable energy is included in standard offer. CCAIE argues that the question is how much impact on standard offer price renewable energy should be allowed to cause. CCAIE concludes the impact will not be great because renewables are limited to 5%. They support placing a cap on the impact of renewables of a \$0.003 increase. As a result, the blended cost of Standard Offer with renewables could not increase Standard Offer price by more than

\$0.003 per kWh. The most a residential customer using 500 kWh per month would pay due to renewables would then be \$1.50 a month. In its July 7, 2000 filing Vulcan stated that it supports the position of CCAE if the Commission decides to adopt a price cap mechanism for renewables.

The Shareholders want cost to be a factor. They do not want people to be without a choice in paying for more expensive renewable energy.

We agree with Staff and the other parties who recommend including cost as a factor in determining whether to require the inclusion of a renewable resource as part of the 5% total energy supply for standard offer service. We will encourage the use of renewables, but we will cap the increase in price of standard offer service that the inclusion of renewables is allowed to cause at one tenth of a cent per kilowatt hour. In this way, assuming a price of eight cents (\$0.08) per kwh for standard offer service without a renewable requirement, the maximum allowable percentage increase would be 1.25% due to encouraging renewables. The maximum effect on a typical consumer who uses 500 kilowatt hours per month would be a \$0.50 increase per month. We will also require utilities to offer an optional green power tariff so that those willing to pay more for renewable power will be able to purchase larger amounts of renewable power. Accordingly, we will revise 17 NMAC 9.591.10D as follows:

D. Type of service. The utility shall purchase supply service for standard offer service on the basis of price, reliability, portfolio requirements and availability, balancing local environmental and economic impacts. The utility shall not discriminate on the basis of ownership of the generation source or fuel resource utilized for generation, except that, based on availability and cost, a minimum of 5% of the total energy supply for standard offer service shall be purchased by the utility from New Mexico renewable energy resources, subject to the following price increase limit. This 5% purchase of renewable energy is only

required when the effect of including renewable power in standard offer service increases the price of standard offer service by no more than one tenth of a cent (\$0.001) per kilowatt hour. The utility shall also offer a renewable energy tariff, which shall be included in the utility's transition plan, for those customers who want the option to purchase renewable energy, regardless of cost, based on availability.

THE COMMISSION FINDS AND CONCLUDES:

1. The foregoing statements and discussions are hereby adopted as Findings and Conclusions of the Commission.
2. The Commission has jurisdiction over the parties and the subject matter in this case.
3. Rehearing should be granted as provided in this Order.

IT IS THEREFORE ORDERED:

- A. Rehearing is granted as provided in this Order. NMPRC Rule 17 NMAC 9.591.10D is revised as provided in this Order.
- B. In the event of any inconsistency between the provisions of this Final Order on Rehearing and the Final Order previously issued in this case, the provisions of this Final Order on Rehearing shall control.
- C. This Order is effective immediately.
- D. NMPRC Rule 591, 17 NMAC 9.591, as revised by this Order, shall be published in the next available New Mexico Register and shall be effective October 13, 2000.
- E. A copy of this Order shall be served on all persons on the attached Certificate of Service.
- F. This Docket is closed.

**ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 19th
day of September, 2000.**

NEW MEXICO PUBLIC REGULATION COMMISSION

BILL POPE, CHAIRMAN

HERB H. HUGHES, VICE CHAIRMAN

JEROME D. BLOCK, COMMISSIONER

LYNDA M. LOVEJOY, COMMISSIONER

TONY SCHAEFER, COMMISSIONER