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I. INTRODUCTION

Public Service Company of New Mexico (hereinafter PNM or Company) filed its “Renewable Energy Portfolio Procurement Plan for 2012” (Plan) on July 1, 2011 in compliance with the Renewable Energy Act (REA) NMSA 1978 §62-16-1 et seq. and Commission Rule 17.9.572 NMAC. In addition to existing procurements of energy and Renewable Energy Certificates (RECs) PNM proposed to continue REC procurements under the Solar Incentive Programs (SIP) and to continue to procure RECs from new solar distributed generation facilities over 100kW through a competitive bid process. In addition, PNM’s Plan included a new proposal to procure RECs from a small hydro resource. PNM also provided projections of its plans for 2013. (Plan, p. 1) No party made an objection to PNM’s Plan pursuant to NMSA §62-16-4(E).

PNM witness Bothwell testified that, because of large customer limitations and the RCT cap, 5.5% of PNM’s energy in 2012 will be renewable, under the Company’s Plan. (Bothwell Rebuttal, p. 5) Ms. Bothwell explained that the REA provides for a reduction in the Renewable Portfolio Standard (RPS) when certain cost limits are exceeded. *Id.* In addition, the large customer exclusion of the REA, set forth at §62-16-4A(2), places a limit on the Company’s RPS requirement (Bothwell Direct, p. 10). Given the costs associated with existing procurements, no room is left to add resources in 2012 as the total cost of all renewable resources would exceed the RCT. (*Id.* p. 17) According to Ms. Bothwell:

Rule 572.11 sets the RCT for 2012 at 2.25 percent of all customers’ aggregated overall annual electric charges; in 2013 it is 2.50 percent. PNM based the RCT calculation on the prior year’s (2010) revenues of \$797,277,195, which includes fuel adjustment clause revenue. The projected cost for RCT purposes of renewable resources in 2012 is 2.55% of PNM’s projected 2010 retail revenues and the projected cost of such

resources in 2013 is 2.51% for existing, approved and proposed resources in this plan. These calculations are detailed in Tables 4 and 5, Exhibit CDB-4. The costs in Tables 4 and 5 include the price of the renewable energy at the point of sale, the transmission and interconnection costs required to deliver the renewable energy, the operational costs required to deliver the renewable energy, the avoided fuel cost of the units that will be displaced by the renewable energy, and the avoided costs for losses, if applicable. (*Id.* p. 16)

Ms. Bothwell testified that “PNM computed the RPS compliance cost based on the annual revenue requirements of each renewable procurement less any annual benefits projected in that year that are considered avoided fuel costs. PNM then determined the RCT by dividing this number by PNM’s total revenue in the most recent calendar year.” (Bothwell Direct, p. 11) Dr. Larry Blank also provided testimony on behalf of PNM regarding calculation of the RCT. (See PNM Ex. 6 and 7).

Several Intervenors filed testimony in the case, although not one of these Intervenors objected to the Plan. These witnesses included R. Thomas Beach on behalf of the New Mexico Independent Power Producers, Randall Sadewic on behalf of the Renewable Energy Industries Association of New Mexico, Craig D. O’Hare on behalf of the County of Santa Fe, and John Curl on behalf of the Coalition for Clean Affordable Energy, the Sierra Club and Western Resource Advocates. In addition, R. Dwight Lamberson provided testimony on behalf of Utility Division Staff. Each of these witnesses proposed various alternative RCT calculations to those used by PNM.

NMIPP witness Beach expressed concern that PNM “...is not required to purchase additional renewable energy in 2012 because the costs for its existing purchases of renewable generation will exceed...” its RCT. (NMIIP Ex. 1, p. 2) He then proposed an RCT calculation that results in “net costs for renewables” by subtracting avoided fuel

costs, avoided line losses and avoided capacity costs. (*Id.* p. 3) He also recommended using levelized costs in the future to calculate the RCT. *Id.*

Mr. Curl testified that PNM's Plan should be rejected, but did not provide any alternative list of renewable procurements. (Curl Direct, p. 2) His objection to the Plan is based on PNM's refusal to utilize a levelized, life-cycle cost methodology "...they used in prior cases." (*Id.* p. 3) [See Case No. 10-00037-UT] He further objected that PNM had failed, in his mind, to include all avoided costs. *Id.* p. 4. He also disagreed with the Company's decision to use actual 2010 revenues for determining the RPS rather than forecasted numbers. (*Id.* p. 5)

REIA witness Sadewic took issue with several details related to PNM's SIP, and criticized the Company's RCT calculation, specifically its failure to levelize procurement cost calculations (Sadewic Direct, p. 32) and its "revenue requirement method of calculating its procurement costs" (*Id.* p. 29)

Mr. O'Hare, on behalf of the County of Santa Fe, objected to the limits on renewable energy development under PNM's Plan and problems with the company's SIP proposal. (O'Hare Direct, p. 4) He also asserted that "...the RCT methodology and assumptions used by PNM may be called into question..." (*Id.*)

Finally, Staff witness Mr. Lamberson criticized PNM's RCT calculation as "too restrictive" and recommended that the Commission utilize a methodology that "...included a credit for avoided capacity and fuel cost of a combustion turbine as the resource being avoided." (Staff, Ex. 1, p. 15) He also proposed an incremental RCT rather than the cumulative method being used by the Commission.

The Attorney General and NMIEC believe that PNM's methodology for calculating the RCT is reasonable and consistent with Commission policy and should be accepted. In prior cases, most notably Case Nos. 08-00198-UT and 10-00037-UT, PNM proposed the use of a levelized methodology for calculating the RCT, which was similar to the one that is being proposed by many of the Intervenors in this case. However, PNM has now abandoned that position, because these levelized methodologies do not reflect the actual rate impact of the renewable resource purchases on the consumer. The RCT calculation methodology proposed by PNM in this case is generally in conformance with the methodology outlined by Attorney General Witness James Cotton in NMPRC Case 10-00037-UT in which the addition of new solar resources was litigated. In that case, Mr. Cotton testified regarding his professional interpretation and understanding of the RCT from his point of view of a consumer advocate. He testified that "the RCT, established under the Renewable Energy Act (REA), §62-16-3(D) and 4(B) and further defined under Rule 572 in 17.9.572.11 NMAC, provides a cap, expressed as a percentage of electric revenues, on how much a utility should be required to spend to meet the renewable energy requirements of an electric energy supply portfolio." (p. 6, Direct Testimony of James Cotton) He further explained that

"the REA and Rule 572 contemplated a reasonable cost threshold in order to protect consumers from unreasonable rate increases. The RCT is intended to cap the ratepayers exposure to increased costs resulting from the expansion of renewable energy, such that the cost of this renewable energy to ratepayers will not exceed 2% of revenues in 2011..." (p. 7, Cotton Direct)

In addition to his conclusion that the RCT is a consumer rate impact test, Mr. Cotton reached several other conclusions regarding the RCT. Among these were:

- Use of levelized cost in calculating the RCT is inherently unfair to ratepayers and defeats the intent of the RCT, which is to limit renewable costs that will be passed on in revenue requirements to New Mexico ratepayers.
- The RCT should be based on the actual rate impact to customers, as reflected in revenue requirement, and not in some hypothetical mathematical construction involving levelized costs and possible future savings.
- Expense reductions for numerous avoided costs, such as avoided capacity costs, avoided transmission and distribution costs, avoided carbon emission costs, avoided line losses and other items, are extremely difficult, if not impossible, to determine and should not be used unless such savings are real savings today. Operational costs and fuel savings that will actually be experienced when large amounts of solar capacity are added to the system are often not known and measurable costs at this time.
- The focus of renewable cases should be the well-being of ratepayers, not the well-being of vendors of solar systems or the small group of customers who can afford to install such systems... To the extent that solar power is required under the diversity requirements of Rule 572, it should be provided at lowest reasonable cost.
- Because the cost of energy produced by utility-owned photovoltaic (PV) facilities is substantially less expensive than, the cost of energy produced by individual PV systems, utility-owned systems should be preferred for meeting the RPS because they are cheaper, their construction can be controlled by the utility, they are overseen by the PRC, and they do not require the traditional

core customers who do not generate their own electricity, to subsidize the most affluent customers.

The Attorney General and NMIEC continue to support the approach to the calculation of the RCT which was advocated by Mr. Cotton in Case 10-00037-UT. PNM's decision to also support a methodology that recognizes the ratepayer impact of the RCT is a significant positive development which should be lauded rather than criticized.

The Attorney General and NMIEC also note that the Supreme Court's recent decision in *NMIEC v. NMPRC*, 2007-NMSC-053 ¶¶ 20-22, 30-34, 142 N.M. 533, 168 P.3d 105 (2007) requires the provisions of the REA to be read together with, and reconciled to, the ratemaking provisions New Mexico Public Utility Act (NMPUA) NMSA 1978 62-3-1 *et seq.* Therefore, the REA must be interpreted to include the general regulatory principle that a utility should acquire all of its resources at the lowest reasonable cost, whether those resources are renewable or traditional. In other words, the REA does not require ratepayers to excessively subsidize or pay inflated costs for renewable resources in order to provide benefits to private industry over and above those required by the RCT. The requirement in New Mexico law that utility rates be cost-based precludes such largess.

II. ARGUMENT

Pursuant to the REA, NMSA § 62-16-4(B), a utility is not required to acquire renewable generation in excess of the RCT. In accordance with the requirement set forth in NMSA § 62-16-4(E), the Commission has established an RCT for 2012 as 2.25% of

customers' overall annual electric charges. That percentage will increase to 2.50% in 2013. (17.9.572.11(B) NMAC) Because PNM's plan is initially for 2012, PNM utilized revenues for 2010, the latest year for which exact revenue figures are available when its Plan was being prepared. (Bothwell Direct, p. 16) These revenues were approximately \$797 million. *Id.* Two and a quarter percent of these revenues is \$17.9 million. Thus, the RCT cap for the PNM Plan proposed in this docket is \$17.9 million for 2012. According to witness Bothwell, however, the projected costs of existing renewable resources in 2012 will be 2.55% of revenues, which is above the RCT. (Bothwell Direct, p. 16) She states that these calculations

include the price of renewable energy at the point of sale, the transmission and interconnection costs required to deliver the renewable energy, the operational costs required to deliver the renewable energy, the avoided fuel cost of the units that will be displaced by the renewable energy, and the avoided costs for losses, if applicable. *Id.*

The REA defines the RCT as "the cost established by the Commission above which a public utility shall not be required to add renewable energy to its electric energy supply portfolio..." (NMSA § 62-16-3) Rule 17.9.572.11(B) further defines the RCT for 2012 as 2.25 % of "all customers aggregated overall annual electric charges." Because it is clear that PNM's RCT will be above 2.25% with existing resources, the inquiry should logically end, especially insofar as there is no statutory requirement for a higher percentage of renewables until 2015. See § 62-16-4A(1).

Several Intervenors, however, while not objecting to PNM's Plan, have filed testimony presenting alternative methodologies that they assert should be used in calculating the RCT. Taken together, these Intervenors recommend that the Commission should use RCT methodologies that include levelized costs, projected revenues rather

than known revenues, and increased cost calculations for avoided capacity, fuel and other claimed avoided costs. By substituting these cost methodologies for the rate impact test set out in the REA and Rule 572, these intervenors seek to have PNM spend additional amounts on renewable energy without appearing to violate the RCT. These additional expenditures would significantly raise consumers' rates. Yet none of these Intervenor so much as mention the ratepayer impact of their RCT proposals. These Intervenor seem to have no recognition of, nor any appreciation for, the fact that ratepayers are already providing significant subsidies for renewable resources. This lack of appreciation is particularly apparent from those Intervenor who are the direct beneficiaries of these subsidies, and who seem to believe that ever increasing subsidies should be theirs as if by fiat.

It is the Attorney General and NMIEC's opinion that the Commission has already rejected similar levelization and avoided cost methodologies when it closed Case 08-00198-UT without adopting a purported "consensus rule." In that case, which was a Notice of Proposed Rulemaking (NOPR) issued by the Commission on December 1, 2009, many of these same parties supported a proposed rule which included levelization and avoided cost methodologies for calculating the RCT. Similar to the Intervenor proposals in this case, this rule did not take into account the impact on ratepayers of the proposed RCT calculation. After much opposition from consumer groups, the Commission closed the case when the eighteen-month limit on rulemakings had elapsed. So clearly the Commission did not sanction any of the various levelization and avoided cost methodologies advocated in this case when given the chance.

As noted above, the most significant problem with these Intervenor methodologies is that costs that result from the use of their proposed RCT calculations cannot come within the requirements of the REA and Rule 572. This is because the levelization of costs does not carry through to the rate impact. Generally speaking, consumer rates cannot be levelized without violating Generally Accepted Accounting Principles. The adoption of any methodology which creates the kind of extreme dissonance between utility costs and utility rates as is created by a levelized RCT calculation would cause a utility to either charge the ratepayers the actual cost of the renewable resources (not the levelized cost) or write-off the difference between the two.. Either result is unacceptable and contrary to the plain meaning of both the NMPUA and the REA.

As also noted above, the REA and Rule 17.9.572.11(B) clearly set forth a rate impact test for the RCT. The RCT is a statutory rate cap which, although effectuated through Rule 572, cannot be superseded by a levelization mechanism that doesn't simultaneously limit the impact on customer rates. Because the Commission is required by the REA to establish the RCT, (NMSA § 62-16-4(C)) and utilities are excused from acquiring renewables if they exceed the RCT (NMSA §62-16-4(B)) there is a statutory rate cap mechanism that cannot avoided by such methods as an administrative waiver, variance or cost levelization that does not flow through to rates. In his testimony in Case No. 10-00037-UT, Attorney General witness Cotton expressed the position, which both the Attorney General and NMIEC support, when he stated:

The REA and Rule 572 contemplated a reasonable cost threshold in order to protect consumers from unreasonable rate increases. The RCT is intended to cap the ratepayers exposure to increased costs resulting from the expansion of renewable energy, such that the cost of this renewable

energy to ratepayers will not exceed 2% of revenues in 2011 (growing at .25% per year until it reaches 3% in 2015).

Cotton Direct, p. 6-7, Case 10-00037-UT.

Although, according to 62-16-4(C) the Commission may modify the RCT after notice and hearing, there is no indication that the Commission intends, in the foreseeable future, to modify the RCT from the current methodology. (2.25% for 2012 increasing by .25% per year until reaching 3% in 2015).

In this context, it is also necessary to note that Staff witness Lamberson has taken the unique position among the parties that the RCT is an annual limit that applies anew to each year's procurements, and would thus be cumulative. (See Staff Ex. 1, p. 17) For example, under Staff's proposal an RCT of 3% would become a 30% requirement after ten years. While Staff took this position in Case 10-00037-UT, no other party or witness has supported this interpretation. (See Gunter Direct, p. 14-16) Moreover, Staff's position is clearly not supported by either the provisions of the REA, Rule 572, the past precedent of the Commission, or by any of the regulated utilities. In addition, adoption of Staff's methodology would lead to results that clearly are not contemplated by the REA and would be untenable for consumers.

A closer analysis of this issue would show that Section 62-16-4(A)(2) sets out the cost limits of meeting the RPS for large customers. The percentage limits are the same as those in Rule 17.9.572.11(B), applicable to all other customers, at least until 2011. The REA provision calls for the cost to be no more than 1% in 2006, or \$49,000 whichever is lower, increasing by .2% a year, or \$10,000, until 2011, when it will be the lower of 2% or \$99,000. If Mr. Lamberson's interpretation of the RCT is applied to the large

customer calculation, the increase from 2006 to 2007 would be \$49,000 plus \$59,000 or \$108,000. The dollar cap for 2008 would be an additional \$69,000 to \$177,000, for 2009 it would be \$256,000, for 2010, \$345,000. By 2011, the cost cap for large customer would total \$444,000 under Mr. Lamberson's analysis.

If adopted, Mr. Lamberson's interpretation would result in exponential growth in customers' bills solely as a result of renewable costs. Under this methodology, by 2015 PNM's bills could be increased by almost 15% due to the annual increase in the RCT of between 1.8% (2010 to 2011) and 3% (2014 to 2015). By 2020 PNM's rates could increase almost 35% based on Mr. Lamberson's unique renewable RCT interpretation. It is important to remember that this 35% rate increase would be for the procurement of renewable resources only. The ratepayers would still be required to support any increases needed to procure conventional resources, including those conventional resources needed to firm up the intermittent power available from nearly all currently installed solar and wind generation. Simply stated, is there no support in Rule 572 for Staff's proposed RCT calculation methodology. In addition, this methodology is a relatively recent creation of Staff. The Attorney General and NMIEC are not aware of any case where Staff has proposed this RCT methodology prior to Case No. 10-00037-UT. Nor has the Commission adopted this interpretation in any case, in which it has dealt with renewable resources. Consequently, Staff's proposed methodology in this case is inconsistent with past Commission practice and should be rejected.

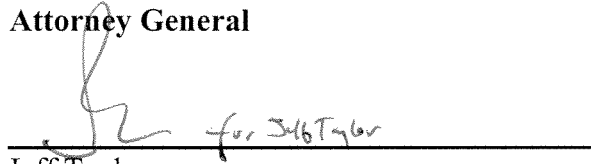
III. CONCLUSION

While several Intervenor witnesses advocate alternative methodologies to calculate the RCT, none of the witnesses presented any evidence that demonstrated that PNM's overall Plan is unreasonable. Moreover, because nothing in PNM's Plan was shown to be inconsistent with Commission policy, and because the Commission has not adopted a rule that addresses the RCT calculation in detail, there is no identifiable reason to reject PNM's Plan.

Respectfully Submitted,

OFFICE OF THE NEW MEXICO ATTORNEY GENERAL

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A handwritten signature in black ink, appearing to read "for Jeff Taylor", is written over a horizontal line.

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DATED this 18th day of November, 2011.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE PUBLIC SERVICE COMPANY)
OF NEW MEXICO'S REVISED RENEWABLE ENERGY)
PORTFOLIO PROCUREMENT PLAN FOR 2012,)
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Petitioner.)
_____)

Case No. 11-00265-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy **Joint Post-Hearing Brief**, filed November 18, 2011 was mailed first-class, postage pre-paid, and sent via electronic transmission to the following:

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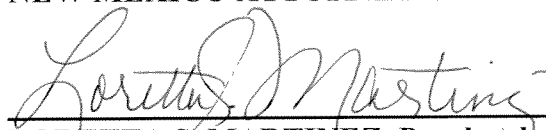
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