BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPAN Y OF NEW MEXICO'S RENEWABLE ENERGY PORTFOLIO PROCUREMENT PLAN FOR 2013, Case No. 12-00131-UT
PUBLIC SERVICE COMPANY OF NEW MEXICO, Petitioner.

RECOMMENDED DECISION

7 November 2012
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Anthony F. Medeiros, Hearing Examiner for this case, submits this Recommended Decision to the New Mexico Public Regulation Commission ("Commission" or "PRC") pursuant to NMSA 1978, § 8-8-14 and PRC Rules of Procedure 1.2.2.29(E)(4) and 1.2.2.37(B) of the New Mexico Administrative Code ("NMAC"). The Hearing Examiner recommends the Commission adopt the following statement of the case, discussion, findings of fact, conclusions of law and decretal paragraphs in an Order.

I. STATEMENT OF THE CASE


On May 2, 2012 PNM filed an Errata to Exhibit GTO-5 to the Direct Testimony of Gerard Ortiz.

On May 3, 2012, the New Mexico Industrial Energy Consumers ("NMIEC") filed a Motion for Leave to Intervene and Request for Discovery.
On May 11, 2012, the Attorney General for the State of New Mexico ("AG") filed a Motion for Leave to Intervene and Request for Discovery.

On May 17, 2012, the Commission issued an Initial Order (i) commencing a proceeding to consider PNM’s 2013 Plan, (ii) designating a hearing examiner to preside over the matter, and (iii) requiring the Commission’s Utility Division Staff ("Staff") to participate as a party.

On May 23, 2012, the Commission, by single-signature order, issued an Order Designating Hearing Examiner, which designated the undersigned as Hearing Examiner in this matter.

On May 25, 2012, SunEdison LLC ("SunEdison") filed a Motion for Leave to Intervene.

On May 29, 2012, the Coalition for Clean Affordable Energy ("CCAE") filed a Motion for Leave to Intervene and Request for Discovery.

Also on May 29, 2012, the Hearing Examiner issued an Order Scheduling Pre-hearing Conference for June 6, 2012.

On May 31, 2012 Western Resource Advocates ("WRA") filed its Motion for Leave to Intervene and Request for Discovery.

Also on May 31, 2012, CCAE filed an Errata to Motion of CCAE for Leave to Intervene and Request for Discovery.

On June 4, 2012, PNM filed a Motion for Entry of Protective Order.

On June 12, 2012, Sierra Club filed a Motion for Leave to Intervene and to be Added to Service List.
On June 13, 2012, PNM filed a Notice of Extension of Time for PNM to Respond to the AG’s First and Second Set of Interrogatories.

On June 21, 2012, the Hearing Examiner issued a Protective Order.

On June 22, 2012, the Hearing Examiner issued a Procedural Order with attached Notice of Proceeding. The Procedural Order established, among other things, the following: (i) set a public hearing for September 4, 2012; (ii) required PNM to publish a Notice of Proceeding and file an affidavit of publication in the docket; (iii) set a July 3, 2012 deadline for filing supplemental testimony regarding an amendment to PNM’s 2013 Plan; (iv) required potential intervenors to file a motion for leave to intervene by July 20, 2012; (v) set a deadline of August 15, 2012 for filing Staff and any intervenor testimony; (vi) set a deadline of August 29, 2012 for filing rebuttal testimony; and (vii) required any person filing testimony to appear at the September 4, 2012 public hearing and submit to examination under oath.


On July 20, 2012, Interwest Energy Alliance (“Interwest”) filed a Motion for Leave to Intervene and Request for Discovery. Interwest also filed a Motion for Admission of Lisa Tormoen Hickey to Appear Pro Hac Vice.

Also on July 20, 2012, First Solar, Inc. (“First Solar”) filed a Motion for Leave to Intervene and to be Added to Service List.
On July 24, 2012, PNM filed an Affidavit of Publication of Notice of Proceeding.

On August 1, 2012, the Hearing Examiner issued a Notice of Official Service List.


Also on August 15, 2012, CCAE and WRA jointly filed the Direct Testimony of John E. Curl.


On August 29, 2012, Staff filed a Response to PNM’s August 28, 2012 Motion.

Also on August 29, 2012, PNM filed the Rebuttal Testimony of Gerard T. Ortiz.

On August 30, 2012, the Hearing Examiner issued an Order Approving Alternate Procedure.

Also on August 30, 2012, PNM submitted a Notice of Filing of First Solar Contract and Notice of Filing of Confidential Material Pursuant to the Protective Order.

On August 31, 2012, First Solar filed a Notice of Limiting Disclosure of Confidential Information and a Motion for Treatment of Certain Information as “Confidential Material” and Brief in Support.
Also on August 31, 2012, the Hearing Examiner issued an Order Granting Admission *Pro Hac Vice* to counsel for Interwest, Lisa Tormoen of Hickey, Esq. of Alpern Myers, Stuart, LLC in Colorado Springs, Colorado.

On September 4, 2012, SunEdison filed a Motion to be Excused from Attendance at the September 4, 2012 Hearing in this Matter.

The public hearing was held on September 4, 2012. The following counsel entered appearances:

**For PNM**
Benjamin Phillips, Esq.
Rebecca Dempsey, Esq.

**For the Attorney General**
Jeff Taylor, Esq. (attendance excused)

**For CCAE and Sierra Club**
Charles F. Noble, Esq.

**For First Solar**
Patrick Griebel, Esq.

**For Interwest**
Lisa Tormoen Hickey, Esq.
Laura Sanchez, Esq. (attendance excused)

**For NMIEC**
Peter Gould, Esq.

**For WRA**
Steven S. Michel, Esq. (attendance excused)

**For Staff**
Ryan Jerman, Esq.
Nancy Burns, Esq.

The Hearing Examiner admitted the following exhibits of the respective Parties into evidence:
PNM
- Direct Testimony of Gerard T. Ortiz (PNM Exh. 1);
- Supplemental Direct Testimony of Gerard T. Ortiz (PNM Exh. 2);
- Rebuttal Testimony of Gerard T. Ortiz (PNM Exh. 3);
- PNM Renewable Energy Portfolio Procurement Plan for 2013 (PNM Exh. 4);
- PNM Amendment to Renewable Energy Portfolio Procurement Plan for 2013 (PNM Exh. 5);
- Direct Testimony of Shane Gutierrez (PNM Exh. 6);
- Supplemental Direct Testimony of Shane Gutierrez (PNM Exh. 7)
- Direct Testimony and Exhibits of Kumiko Styes (PNM Exh. 8)

WRA/CCAE
- Direct Testimony of John E. Curl (WRA/CCAE Exh. 1)

NMIEC
- Response to NMIEC Data Request 1-4 (NMIEC Exh. 1)
- NGI Gas Price Index (NMIEC Exh. 2); and
- Load-following and Renewable Integration Cost Report (NMIEC Exh. 3)
- Direct Testimony of R. Dwight Lamberson (Staff Exh. 1)
- Direct Testimony of Bruno Carrara (Staff Exh. 2).

As the public hearing commenced, the Hearing Examiner excused counsel for SunEdison, Robert Sutphin, Esq., from attendance. During the hearing, the Hearing Examiner issued a Bench Request directing PNM to provide, by September 12, 2012, a report on installed capacity and pending applications under its solar incentive program. The Hearing Examiner also required PNM to file a proposed recommended decision by October 2, 2012, any other party to file a response to that proposed recommended decision by October 9, 2012 and replies by October 16, 2012.

On September 12, 2012, PNM filed a Response to Hearing Examiner’s Bench Request.
On September 25, 2012, the Transcript of Proceedings ("Tr.") of the September 4th 2012 hearing was entered in the docket.¹

On October 2, 2012, PNM filed a Joint Proposed Recommended Decision on behalf itself, CCAE, the Sierra Club and First Solar.

On October 9, 2012, NMIEC and Staff each filed a Response to the Joint Proposed Recommended Decision.

On October 12, 2012, Interwest filed, untimely, a Response to the Joint Proposed Recommended Decision. The cover letter to the filing states Interwest’s Response was “efiled on October 9, 2012.” Neither the Commission’s procedural rules nor the Procedural Order governing this case² provides for “efiling” without express prior authorization of the Hearing Examiner or the Commission and Interwest made no request, by conforming motion or otherwise, to file electronically. Nevertheless, Interwest e-mailed its Response to the Parties and the Hearing Examiner on October 9, 2012. Interwest’s failure to observe Commission procedure is excused in this limited instance and its Response is accepted.

¹ If applicable, transcript citations in this decision include the witness’ surname in parentheses. Citations to exhibits in the record are to the sponsoring party (e.g., “PNM”), followed by the enumerated exhibit (“Exh. ___”); the citations to admitted pre-filed testimony include the witness’s surname and “Dir.” for direct testimony, “Supp.” for supplemental direct and “Reb.” for rebuttal testimony, e.g., “PNM Exh. 1 (Ortiz Dir.) at __,” “PNM Exh. 7 (Gutierrez Supp.) at __,” and “PNM Exh. 3 (Ortiz Reb.) at __.”

² See Procedural Order (June 22, 2012), at 8, para. O (“Anyone filing pleadings, testimony and other documents in this case may file them either in person at the Commission’s docketing office in the P.E.R.A. Building in Santa Fe, New Mexico, or by mail to the Commission’s address at P.O. Box 1269, Santa Fe, New Mexico 87504-1269, and must serve copies thereof on all parties of record and Staff in the manner indicated on the official Certificate of Service for this case. All filings shall be e-mailed on the date they are filed with the Commission. Additionally, all filings shall be e-mailed to the Hearing Examiner at Anthony.Medeiros@state.nm.us”).
On October 16, 2012, PNM filed its Reply to the Responses of Interwest, NMIEC and Staff to the Joint Proposed Recommended Decision.

II. DISCUSSION

A. Legal and Evidentiary Standards of Review

The Renewable Energy Act and Rule 572

The REA requires a public utility under the jurisdiction of the Commission to include renewable energy in its electric energy supply portfolio and to meet the RPS in a given year. The RPS is defined both in the REA and the Commission’s rule implementing the Act, Rule 572, as “the percentage of retail sales by a public utility to electric consumers in New Mexico that is required to be supplied by renewable energy.” Under Rule 572, for public utilities (i.e., investor-owned utilities or “IOUs”) other than rural electric cooperatives and municipalities, the RPS is no less than 6% in 2010, 10% for 2011 through 2014, 15% for 2015 through 2019, and 20% in 2020 and subsequent years.3

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3 Renewable energy is defined in Rule 572 as “electrical energy generated by means of low or zero emissions generation technology with substantial long-term potential and generated by use of renewable energy resources that may include solar, wind, hydropower resources brought into service after July 1, 2007, geothermal, fuel cells that are not fossil fueled and biomass resources; biomass resources are fuels, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass; renewable energy does not include fossil fuel or nuclear energy.” 17.9.572.7(D) NMAC.

4 NMSA 1978, § 62-16-3(G); 17.9.572.7(F) NMAC.

5 17.9.572.10(B) NMAC. Prior to amendment in 2007, the REA increased the RPS by 1% per year, from a baseline of 5% in 2006, to 10% in 2011. The 2007 amendment eliminated the 1% annual increase and provided instead an RPS of 5% by 2006 and 10% by 2011. The Commission determined that the 6% RPS in effect under the old REA would continue through 2010. See In the Matter of Amendments to the Renewable Portfolio Standard Rules of the New Mexico Public Regulation Commission. PRC Case No. 07-00157-UT, Final Order (Aug. 7, 2007), at 53.
The REA provides for specified reductions to the RPS in certain cases. First, a public utility is not required to add renewable energy to its portfolio above the Reasonable Cost Threshold ("RCT") established by the Commission. The RCT is defined in the REA 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 pursuant to the [RPS]." The REA delegates the duty of developing an RCT to the Commission. In establishing and modifying the RCT, the Commission is required to take the following factors into consideration:

1. the price of renewable energy at the point of sale to the public utility;
2. the transmission and interconnection costs required for the delivery of renewable energy to retail customers;
3. the impact of the cost for renewable energy on overall retail customer rates;
4. the overall diversity, reliability, availability, dispatch flexibility, cost per kilowatt-hour and life-cycle cost on a net present value basis of renewable energy resources available from suppliers; and
5. other factors, including public benefits, that the commission deems relevant.

The RCT established by the Commission was set at 2% of all retail customers' aggregated overall annual electric charges in 2011 and to increase by 0.25% per year until January 1, 2015, when it is capped at 3%. Thus, the RCT is 2.50% for 2013 and

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6 NMSA 1978, § 62-16-4(C); 17.9.572.11(A) NMAC.
7 NMSA 1978, § 62-16-3(D); 17.9.572.7(C) NMAC.
9 17.9.572.11(B) NMAC.
2.75% for 2014. The Commission is presently engaged in rulemaking to consider, among certain other proposed amendments to Rule 572, developing a standardized RCT calculation. In its Notice of Proposed Rulemaking in Case 11-00218-UT, the Commission found that “Rule 572 should be amended inter alia establish “a detailed, standard method consistent with the REA . . . for calculating the costs of purchasing or creating renewable energy for the purposes of applying the RCT, for determining how those costs should be used for ratemaking purposes, and for defining the requirements of a fully diversified renewable energy portfolio.”

Second, the RPS shall be reduced, as necessary, to limit the kWh of renewable energy procured by a utility for “large non-governmental customers” – meaning retail customers at a single location or facility with consumption exceeding ten million kWh per year – to a specified percentage or dollar amount. This provision is often referred to as the “Large Customer Cap.”

Rule 572 further provides that if the cost to procure renewable energy is greater than the RCT in any given year, “a public utility will not be required to incur that cost or to procure that resource, provided that the condition excusing performance under the [RPS] in any given year will not operate to delay the annual increases in the [RPS] in subsequent years.” If a public utility believes its procurement will exceed the RCT, it must file a request for a waiver of the RPS for

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11 Id. at 3-4, para. 13.
12 NMSA 1978, § 62-16-4(A)(2); 17.9.572.10(C) NMAC. The cap for large non-governmental customers is fixed at $99,000 and adjusted for inflation by the cumulative increase change in the consumer price index, urban. Id.
the applicable calendar year. Any such request “shall explain in detail why the public utility cannot procure resources at a cost less than the [RCT] and shall include an explanation and evidence of all efforts the public utility undertook to procure resources at a cost within the RCT.\textsuperscript{13}

In 2011, the REA was amended to exempt certain political subdivisions from all charges by utilities for renewable procurements if the political subdivision certifies that it will expend 2½% of that year’s annual electricity charges to develop renewable generation within 24 months.\textsuperscript{14} There is no evidence in this docket that any political subdivision in PNM’s service area has made such a certification.

A public utility demonstrates compliance with the RPS through the retirement of renewable energy credits (“RECs”). A REC is a document evidencing that the kWhs of enumerated renewable energy have been generated from a renewable energy generating facility.\textsuperscript{15} For purposes of satisfying the RPS, each REC has a minimum value of one kWh of renewable energy.\textsuperscript{16} RECs are owned by the generator of the renewable energy unless they are transferred to the purchaser of the energy by contract,\textsuperscript{17} the generator is a qualifying facility (“QF”) as defined in the federal Public Utility Regulatory Policies Act of 1978 (“PURPA”),\textsuperscript{18} in which case the RECs are

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\textsuperscript{13} 17.9.572.11(C) NMAC.


\textsuperscript{15} 17.9.572.7(E) NMAC.

\textsuperscript{16} NMSA 1978, § 62-16-5(B).

\textsuperscript{17} 17.9.572(C)(1)(a) NMAC.

owned by the public utility purchaser of the renewable energy, or the contract for purchase of renewable energy was in effect prior to January 1, 2004, in which case the energy purchaser owns the RECs for the term of the contract.

A public utility's renewables portfolio must be "diversified as to the type of renewable energy resource, taking into consideration the overall reliability, availability, dispatch flexibility and cost of the various renewable energy resources made available by suppliers and generators." Prior to being repealed and replaced by the new rule adopted in the Commission's Final Order in Case No. 07-00157-UT, Rule 572 provided that the value of RECs were weighted on the basis of the renewable energy technology employed to generate electricity. The former Rule 572 provided that a kWh of wind and hydropower were weighted one-to-one (1:1); a kWh of biomass and related technologies or geothermal generation was multiplied by 2 (i.e., 2:1 weighting per kWh); and a kWh produced by solar energy electricity was weighted 3:1. In promulgating the new Rule 572, effective September 1, 2007, the Commission prospectively eliminated weighted valuation of RECs, replacing the so-called "multipliers" with new diversity percentage targets for specific renewable energy resources. Under the present rule, to have a fully diversified renewable

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19 17.9.572(C)(l)(b) NMAC.
20 Id. § 572(C)(1)(c).
22 PRC Case No. 0700157-UT, Final Order at 66, decretal ¶ A.
23 Id. at 10.
portfolio, a public utility was required by January 1, 2011 to satisfy its RPS using no less than 20% wind energy, 20% solar energy, 10% other renewable energy technologies and at least 1.5% distributed generation ("DG") for calendar years 2011 through 2014 and 3% DG beginning in calendar year 2015. Public utilities are required to demonstrate and receive approval of their plans to bring their existing portfolios into compliance with those diversity targets.

The REA requires a public utility to file with the Commission a report on its renewable energy generation or purchases for the prior calendar year and a renewable energy portfolio procurement plan by July 1 of each year and thereafter until 2022 as determined by the Commission. Under Rule 572.17, the utility’s report for the prior calendar year must:

A. itemize all renewable energy generation and/or REC purchases and sales;
B. list, and include copies of, all RECs, including acquired, issued or retired certificates;
C. state, for each purchase or sale of a REC, including those to be applied in future years:
   (1) the seller’s name, address, telephone number, and e-mail address;
   (2) the purchaser’s name, address, telephone number and e-mail address;

24 Distributed generation “means electric generation sited at a customer’s premises, providing electric energy to the customer load at that site and/or providing electric utility to a public utility or rural electric distribution cooperative for use by multiple customers in one or more contiguous distribution substation service areas.” 17.9.572.7(1) NMAC.
25 Id. §§ 572.7(G)(1)-(2).
26 Final Order, Case No. 07-00157-UT, at 39.
(3) the dates and terms of each transaction involving RECs;

(4) the quantity of RECs purchased or sold;

(5) the purchase price;

(6) the type of renewable energy resource used to generate the renewable energy and its valuation pursuant to Rule 572.14;

(7) other data useful to the Commission in evaluating the utility’s acquisition efforts in accordance with its portfolio procurement plan; if the acquired renewable energy was not acquired in accordance with the utility’s procurement plan, the utility must demonstrate the renewable energy was acquired at the lowest reasonable cost consistent with reliability, availability and portfolio requirements, including resource diversity; and

D. describe and quantify the implementation of the voluntary renewable tariff requirements in Rule 572.15.  

The REA further requires a public utility to file with the Commission a renewable energy portfolio procurement plan ("REPP" or "Plan") by July 1 of each year and thereafter until 2022 as determined by the Commission. Rule 572 requires that annual REPPs include:

(1) the cost of procurement in the next calendar year for any new renewable energy resource required for the utility to comply with its renewable energy portfolio standard;

(2) the amount of renewable energy the public utility plans to provide in the calendar year commencing 16 months later to satisfy the percentages specified in Rule 572, less any reductions authorized by Rule 572 or by law;

(3) an explanation and exhibits showing how the amount specified in paragraph (2) above was determined;

(4) the reductions, if any, to the renewable portfolio standard for procurements for nongovernmental customers with consumption exceeding ten million kilowatt hours per year and/or due to the reasonable cost threshold, including an

28 17.9.572.17(A)-(D) NMAC.

explanation and exhibits that show how the reduction was
determined;

(5) a demonstration through testimony and exhibits that
the proposed procurement is reasonable as to its terms and
conditions considering price, costs of interconnection and
transmission, availability, dispatchability, any renewable energy
certificate values and portfolio diversification requirements; or

(6) a demonstration that the procurement plan is otherwise
in the public interest.30

The REA requires the Commission to approve or modify a procurement plan
that contains the information required by the REA and Rule 572 within 90 days of the
plan’s filing and may approve the plan without a hearing, unless a protest
demonstrating the need for a hearing is timely filed.31 The Commission may modify a
plan after notice and hearing and can extend the time to approve a procurement plan
for an additional 90 days. The Commission may reject procurement plan if it does not
contain the required information. If the Commission rejects a procurement plan, it
may suspend the utility’s obligation to procure additional renewable resources for the
time necessary to file a revised plan, but in such event the total amount of renewable
energy to be procured by the utility does not change.32

The REA provides that a public utility shall recover, through the ratemaking
process, the reasonable costs of complying with the RPS and that “costs that are
consistent with commission approval of procurement plans . . . shall be deemed to be

30 17.9.572.14(A)(1)-(6) NMAC.
31 NMSA 1978, § 62-16-4(E); 17.9.572.18 NMAC.
32 NMSA 1978, § 62-16-4(F); 17.9.572.18 NMAC.
reasonable. Reasonable interconnection and transmission costs to deliver renewable energy to retail New Mexico customers shall not be excluded from recovery. The effect of Commission approval of a renewable plan "shall be a conclusive presumption of reasonableness for costs that are consistent with the approved plan." 

**Evidentiary Standards**

Allocation of the burden of proof is a matter of law. The general rule in administrative proceedings is that unless a statute provides otherwise, the proponent of an order or moving party has the burden of proof. The burden of proof is two-pronged; it includes both the burden of going forward and the burden of ultimate persuasion. The standard of proof in administrative adjudications is, unless expressly provided otherwise, the preponderance of the evidence. As the petitioner, PNM

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33 NMSA 1978, § 62-16-6(A).

34 NMSA 1978, § 62-16-6(B).

35 Case No. 06-00340-UT, Order on Reconsideration filed January 15, 2008, p. 12, ordering paragraph A.


37 3 DAVIS, KENNETH CULP, ADMINISTRATIVE LAW TREATISE § 16.9 at 255-57 (2d ed. 1980). See Int'l Minerals and Chemical Corp. v. New Mexico Pub. Serv. Comm'n, 81 N.M. 280, 283, 466 P.2d 557, 560 (1970) ("Although the statute does not specifically place any burden of proof on [complainant] International, the courts have uniformly imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof").

38 See DAVIS, supra, § 16.9 at 256 ("One can never prove a fact by something less than a preponderance of the evidence") (emphasis in original). See Re Public Southwestern Pub. Serv. Co., Case No. 2678, Recommended Decision of the Hearing Examiner, P.U.R. Slip Copy, 1997 WL 78696 *11 (Nov. 15, 1996) ("No matter how the Commission describes its standard of review, SPS bears the burden of proof in this case. SPS must demonstrate that a preponderance of evidence exists in the record on which to base approval of the requested authorizations surrounding the merger"). This evidentiary standard of proof for orders and decisions issued in administrative adjudications is often confused with the appellate standard of "substantial evidence in the record as a whole," the standard (continued . . .)
bears the burden of demonstrating by a preponderance of the evidence that the Plan under review is reasonable and prudent or otherwise in the public interest.\footnote{17.9.572.14(A)(5) & (A)(6) NMAC; \textit{See 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}, PRC Case No. 05-00352-UT, Final Order Partially Adopting Recommended Decision (Nov. 20, 2008), at 8, 19 (“the utility will be required to show that the amount it pays for the RECs is reasonable and prudent in the utility’s annual procurement proceeding”).}

**B. The 2013 Plan**

PNM filed the 2013 Plan on April 30, 2012, in compliance with the REA, Rule 572 and pursuant to the Commission’s Final Order in Case No. 11-00265-UT, as amended by the Order Granting Motion issued in that case on January 31, 2012, in which PNM was directed to file its 2013 Plan by April 30, 2012, to include proposed specific procurements that would enable PNM to meet the RPS in 2014 or sooner, and to include proposed revisions to PNM’s Solar REC Incentive Program (“SIP”). On July 3, 2012, PNM filed its Amendment to Renewable Energy Portfolio Procurement Plan for 2013 (“Plan Amendment”) with supporting testimony and exhibits, which proposed procurement of additional renewable energy resources conditioned on receipt of a Commission Order in the Sky Blue proceeding, Case No. 10-00018-UT, which requires PNM to make those procurements to source the Sky Blue program.

This Recommended Decision first addresses PNM’s proposals and the positions of the parties with respect to the new procurements under the 2013 Plan; it then addresses

(Continued from previous page)
PNM's proposals and the alternative procurements submitted for the Sky Blue Program.

In the 2013 Plan, PNM seeks approval to make several new procurements for 2013-2014 and approval for two variances. PNM presented testimony and exhibits showing that the 2013 Plan, if approved, would enable PNM to meet the RPS for 2013 and 2014, meet all Rule 572 diversity requirements in 2013 except for “other” renewable resources, and fully meet diversity requirements in 2014, all within the RCT, assuming the proposed projects are completed as scheduled and the level of participation in the DG programs develops as projected. CCAE, First Solar, the Sierra Club, WRA and Staff recommend approval of the 2013 Plan, including each of the requested new procurements, the modifications to the SIP contained in the proposed CSPP, and the requested variances. Staff’s Response requested adoption of an alternative Proposed Recommended Decision, attached as Exhibit A to the Response, based on PNM’s Joint Proposed Recommended Decision (“JPRD”) but making several specified changes, in the form of deletions and insertion of citations, to the language of the JPRD. Staff states in the Response that its “Proposed Recommended Decision recommends approval of the 2013 plan, but deletes discussion of matters that were not fully litigated by the parties and that are not relevant to the Commission’s ultimate approval of the plan.” In their Responses to the JPRD, NMIEC and Interwest oppose approval of the 2013 Plan. Their objections are addressed as appropriate below.

40 Staff Exh. 1 (Lamberson Dir.) at 3-4 (Staff’s proposed modifications to the 2013 Plan stated at Staff Exh. 1 (Lamberson Dir.) at 3-4 are addressed below); WRA/CCAE Exh. 1 (Curl Dir.) at 3, 5.
1. RPS and Diversity Requirements

The 2013 Plan shows that PNM’s projected net RPS requirement is 801,342 MWh of RECs for 2013 and 799,440 MWh of RECs for 2014 and the calculations for those amounts. These RPS projections factor in reduction to the RPS of 82,818 MWh (2013) and 87,184 MWh (2014) in the number of RECs that PNM is required to procure for large non-governmental customers with consumption exceeding ten million kWh per year, pursuant to REA § 62-16-4(A)(2) and Rule 572.10(C). PNM did not calculate any adjustment of the RPS due to application of the RCT for 2013 or 2014 because it projects that the procurement costs for renewable energy and RECs in 2013 and 2014 will be less than the RCT percentages for those years. With the reductions for the Large Customer Cap, PNM’s projected effective RPS is 9.1% for 2013 and 9.0% for 2014. PNM projects that its portfolio of renewable resources, including existing renewable resources and the procurements proposed in the 2013 Plan, will provide 9.1% (2013) and 9.3% (2014) of its retail sales. Staff agreed with PNM’s RPS requirement projections for 2013, but not for 2014. In rebuttal testimony, PNM agreed with Staff’s calculation of the 2014 RPS requirement. Staff and PNM agreed that PNM will be RPS compliant in 2013.

41 2013 Plan at 11 (Corrected), Table 1; PNM Exh. 6 (Gutierrez Dir.) at 2-4.
42 2013 Plan at 11 (Corrected), Table 1, line 4.
43 2013 Plan at 3, § II.
44 2013 Plan at 11 (Corrected), Table 1, line 6.
45 Id. at line 7; PNM Exh. 6 (Gutierrez Dir.) at 12 and Exh. SG-1.
46 Staff Exh. 1 (Lamberson Dir.) at 6.
47 PNM Exh. 3 (Ortiz Reb.) at 6.
With respect to the diversity requirements of Rule 572, under the 2013 Plan PNM will be compliant with the wind, solar and DG requirements in both 2013 and 2014 and will also be compliant with the “other” diversity requirement in 2014, but will need a variance from the “other” category in 2013.\textsuperscript{48} In 2013, wind is expected to provide 78.5\% of the RPS, solar 20.0\% and DG 1.5\%. (DG resources actually comprise 11.5\% of the portfolio, but solar DG in excess of 1.5\% is allocated to the solar category). In 2014, wind is expected to contribute 62.6\%, solar 25.8\%, “other” 10.1\%, and DG 1.5\%, with projected energy from DG resources greater than the 1.5\% requirement counted towards solar diversity.\textsuperscript{49} Staff agrees that the 2013 Plan will satisfy PNM’s 2013 and 2014 diversity requirements with the exception of “other” resources.\textsuperscript{50}

2. RCT Calculation and RPS Compliance Costs

The total annual renewable portfolio compliance costs for 2013 and 2014 under the 2013 Plan are $19.1 million and $23.3 million respectively. This includes WREGIS fees, avoided system losses and avoided fuel costs where applicable, and carrying costs, using a 4.0\% carrying charge rate (the rate in the amended stipulation in Case No. 10-00086-UT) for DG resources, PNM’s existing and proposed owned utility scale solar projects and “other” resources.\textsuperscript{51} Staff agrees the 4.0\% carrying cost

\textsuperscript{48} 2013 Plan, p. 8, § V and Table 1; PNM Exh. 1 (Ortiz Dir.) at 8.

\textsuperscript{49} 2013 Plan, Table 1; PNM Exh. 6 (Gutierrez Dir.) at 16 and Exh. SG-1.

\textsuperscript{50} Staff Exh. 1 (Lamberson Dir.) at 6-7.

\textsuperscript{51} PNM Exh. 6 (Gutierrez Dir.) at 13 and Exhs. SG-3 and SG-4; Tr. (Ortiz) at p. 40 (updating Gutierrez Direct Exh. SG-3 line 22, Column H to $19,142,428).
rate is appropriate. These total costs for PNM's existing and proposed procurements would have an annual portfolio impact of 2.11% and 2.55% for 2013 and 2014 respectively, which is below the 2.5% and 2.75% RCT for those years. Pursuant to the REA and Rule 572, PNM requests Commission approval to recover all of the costs for each of the proposed procurements, including WREGIS costs and carrying charges, in future rates.

PNM used the method for calculating the RCT it used in its 2012 Plan, adjusted per the Final Order in Case No. 11-00265-UT. PNM asserts that this method reasonably represents the impact to customers of on-year RPS compliance costs. WRA/CCAE does not object to using this RCT method in this case. The method is generally consistent with Staff's proposed method in Case No. 11-00218-UT. Staff calculated the revenue requirements of the proposed plan and the RCT based on the methodology Staff has proposed in the rulemaking in Case No. 11-00218-UT, with which PNM is in general agreement except for certain reservations concerning the calculation of plan year revenues and the level of the RCT. Under either RCT proposal, the impact to customers of on-year revenue requirements, when adjusted for

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52 Staff Exh. 1 (Lamberson Dir.) at 13.
53 PNM Exh. 6 (Gutierrez Dir.) at 13 and Exh. SG-1; Staff Exh. 1 (Lamberson Dir.) at 11; Tr. (Ortiz) at 40.
54 2013 Plan at 10; PNM Exh. 1 (Ortiz Dir.) at 32.
55 WRA/CCAE Exh. 1 (Curl Dir.) at 4.
56 PNM Exh. 1 (Ortiz Dir.) at 9; Staff Exh. 1 (Lamberson Dir.) at 11.
57 Staff Exh. 1 (Lamberson Dir.) at 5-6.
avoided fuel costs and avoided system losses, is below the applicable RCT. This evidence is not disputed.

PNM computed the annual RPS compliance cost based on the annual cost for each year of each renewable procurement less avoided fuel costs and avoided system losses. PNM then determined the portfolio RCT impact by dividing the total annual compliance cost by PNM’s forecasted annual revenues. The forecasted annual revenues for 2013 and 2014 include projected revenues from retail energy sales and projected fuel clause revenues. Retail energy sales revenues are the result of multiplying retail rate class energy sales by PNM’s base fuel and base non-fuel rates. Forecasted annual revenues do not include rider revenues such as riders for energy efficiency programs or riders for recovery of renewable projects for RPS compliance. PNM does not project that any capacity costs will be avoided in 2013 or 2014 as a result of renewable procurements.\(^5\)

Procurement costs include WREGIS fees, which consist of an annual fee of $1,500/year, $0.005/MWh for certificate issuance or transfer and $0.01/MWh for retirement. PNM applied an avoided loss credit for all existing and new utility-scale solar resources of 3.85%. PNM determined avoided fuel costs using its production costing model ("PROMOD") to evaluate the cost of fuel with and without the renewable energy from wind, solar and geothermal technologies. The cost difference was the avoided fuel cost due to the renewable energy being added to the PNM system, including integration and lost opportunity costs. PNM submitted the specific

\(^5\) PNM Exh. 6 (Gutierrez Dir.) at 13-14.
avoided costs it used for each resource type.\textsuperscript{59} The avoided costs vary for each type of resource because of differences in the types of generating units that would be displaced by different types of renewable resources.\textsuperscript{60}

3. Existing Resources

PNM’s existing resources include the following:

\textbf{Wind:} Energy and associated RECs from the New Mexico Wind Energy Center ("NMWEC"), about 94,000 MWh of which are currently retired under the Sky Blue Program. If the Commission approves procurements other than NMWEC for sourcing the Sky Blue Program in Case No. 10-00018-UT, all projected NMWEC generation of 525,000 MWh would be used for RPS compliance starting in 2013 at a projected annual procurement cost of $14.3 million in 2013 and 2014 (without accounting for avoided costs or WREGIS fees), and an annual net RPS compliance cost, after taking into account avoided cost benefits, of $1,457,432.\textsuperscript{61}

\textbf{Solar:}

- **PNM-Owned 22 MW PV:** Energy and RECs from generation located at five separate sites, and 500 kW of solar PV generation with battery storage. Projected generation of energy and RECs from these facilities during 2013 and 2014 is 53,909 MWh and 53,635 MWh respectively. The associated annual RPS compliance costs, including WREGIS fees and net of avoided cost benefits, are $7.1 million in 2013 and $3.2 million in 2014. This corresponds to total procurement costs of $8.5 million in

\textsuperscript{59} Id. at 14-15; Tr. (Gutierrez) at 149-152, 170.

\textsuperscript{60} Tr. (Gutierrez) at 139-141, 154-156, 172.

\textsuperscript{61} 2013 Plan at 4; PNM Exh. 6 (Gutierrez Dir.) at 4-5.
2013 and $5.0 million in 2014 without accounting for WREGIS fees, carrying cost or avoided costs.\textsuperscript{62}

- **PNM’s Solar Facilities at Aztec and Algodones:** Energy and associated RECs, totaling approximately 110 MWh of RECs in 2013 and 109 MWh in 2014, with no associated procurement costs.\textsuperscript{63}

**DG: PNM’s Solar REC Purchase Programs:**

RECs associated with energy generated from customer-sited DG facilities under the Small Photovoltaic (“PV”) REC Purchase Program (“Small PV Program”), Large PV REC Purchase Program (“Large PV Program”), and the Solar REC Incentive Program (“SIP”), including the Interim SIP and Capacity Set-Aside step in the SIP approved in Case No. 11-00265-UT. PNM projects that these programs will generate 85,199 MWh of RECs in 2013 and 97,319 MWh of RECs in 2014 at total annual RPS compliance costs of $8.7 million and $9.3 million respectively, including WREGIS fees.\textsuperscript{64} PNM’s Response to Hearing Examiner’s Bench Request filed September 12, 2012 provided the status of the SIP, including the total amount of kW interconnected and pending interconnection for each size category, the Interim SIP and the Capacity Set Aside Program.

Under the Capacity Set Aside step in the SIP, PNM reserves capacity in its annual renewable energy procurement plan for DG facilities sized greater than 100

\textsuperscript{62} 2013 Plan at 5; PNM Exh. 6 (Gutierrez Dir.) at 5.

\textsuperscript{63} 2013 Plan at 5; PNM Exh. 6 (Gutierrez Dir.) at 6.

\textsuperscript{64} 2013 Plan at 4 and Table 2; PNM Exh. 6 (Gutierrez Dir.) at 7-8; PNM Exh. 8 (Styes Dir) at Exh. KS-2.
kW up to and including 1,000 kW, at a price equal to the competitive price established in PNM’s most recent Request for Proposal (“RFP”) process. PNM projects this program will generate approximately 1,186 MWh in 2013 and 4,678 MWh in 2014, with respective total annual RPS compliance costs of $24,694 and $97,366; these amounts are included in the total MWh and cost amounts stated in the preceding paragraph for all procurements of RECs from customer sited DG.65

Other: RECs associated with net-metered energy generation from a hydropower project under a five-year purchase agreement with the City of Santa Fe, approved in Case No. 11-00265-UT. Procurement projections for 2013 and 2014 are 400 MWh per year at a cost of $20 per MWh, totaling $8,326 annually including WREGIS costs and carrying charges.66


The 2013 Plan proposes the new procurements discussed in this section, which PNM selected as the lowest reasonable cost resources that would enable it to meet (i) the RPS in 2013 and 2014, (ii) the diversity requirements in 2013 except for “other” renewable resources and (iii) all the diversity requirements in 2014. PNM claims the 2013 Plan will also position it well for meeting the increased RPS and diversity requirements in 2015 and thereafter.67 WRA/CCAE support PNM’s

65 2013 Plan at 4-5; PNM Exh. 6 (Gutierrez Dir.) at 7-8.
66 2013 Plan at 5; PNM Exh. 6 (Gutierrez Dir.) at 6.
67 PNM Exh. 1 (Ortiz Dir.) at 6-7, 30-31.
acquisition of each of the proposed new resources, including the proposed unbundled wind REC procurements.\textsuperscript{68}

PNM selected the proposed resources through a competitive bid process that began in April 2011. PNM evaluated proposals for bundled energy and RECs, either PPAs or turnkey ownership project in which the contractor would construct the project and PNM would assume ownership upon the commercial in-service date, separately from REC-only bids.\textsuperscript{69} PNM received approximately 278 PPA/turnkey bids and 42 REC-only bids in response to the RFP.\textsuperscript{70} PNM evaluated the bids initially based on technical criteria, including credit quality, team qualifications, project engineering, environmental, siting plan & fuel supply and reliability contribution, and on pricing. Further evaluation of the highest ranked bids examined transmission availability and cost, pricing, credit risk, timing of resource availability and ability to fit under the RCT. For purposes of the 2013 Plan, PNM asked respondents to update their proposals in December 2011 and again in February 2012 to see that current prices were used in the procurement evaluation process.\textsuperscript{71}

PNM evaluated comparable ownership and PPA proposals on a life-cycle cost basis using similar time periods for the expected service life, because of the different characteristics of the two procurement methods. A PPA may have a lower annual cost initially but escalate over time or have fixed annual costs; whereas, the cost of an

\textsuperscript{68} WRA/CCAE Exh. 1 (Curl Dir.) at 3-4.
\textsuperscript{69} PNM Exh. 1 (Ortiz Dir.) at 16.
\textsuperscript{70} Id. at 16-17.
\textsuperscript{71} Id. at 17-18.
owned facility declines over time as the facility depreciates. In addition, an owned facility will provide PNM with energy production and RECs over its useful life, which may be longer than a PPA agreement.\(^{72}\)

REC-only bids were categorized by resource type (wind, solar, “other”) and then ranked by price. To obtain updated pricing from the April 2011 RFP, PNM issued a Renewable REC RFP on January 24, 2012 and received responses on February 10, 2012.\(^{73}\)

Among the Parties taking positions on the procurements, CCAE, First Solar, the Sierra Club and Staff support the procurements proposed in the 2013 Plan. Interwest and NMIEC oppose the procurement schemes proposed in the 2013 Plan and assert, among other arguments made in their responses to the Joint Proposed Recommended Decision, that PNM should be required to deploy alternate procurement strategies. Interwest advocates that PNM procure bundled energy and RECs through long-term PPAs, rather than utility-owned renewable projects or unbundled RECs. NMIEC, on the other hand, advocates that PNM procure only unbundled wind RECs to satisfy its 2013 RPS obligations. Having considered the matters raised and argued in Interwest’s and NMIEC’s responses and PNM’s Reply persuasively rebutting the points made in the respective Responses, the Hearing Examiner finds NMIEC’s and Interwest’s recommendations and other legal arguments

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\(^{72}\) Id. at 19.

\(^{73}\) Id. at 18 and Exh. GTO-3.
and policy prescriptions at turns unconvincing, unsupported in the record and/or misplaced in this proceeding.

a. **PNM-Owned Solar PV Facilities**

PNM proposes to procure 20 MW\(^74\) of PNM-owned PV facilities under a turnkey proposal by First Solar, the same developer that built PNM’s existing solar PV facilities. These facilities will be located at four sites in New Mexico, including two of PNM’s existing solar facility sites (Deming and Los Lunas) and two new sites (Alamogordo and Tome), barring some unforeseen obstacle to construction.\(^75\) PNM has identified other potential sites in the event any of these sites prove unworkable, but it will not affect the total cost of the facilities.\(^76\) PNM filed the contract with First Solar under seal, claiming it confidential and competitively sensitive, pursuant to the Protective Order, ¶ 1.3, but did not offer it into evidence. PNM represented that it is not asking for approval of the contract, but for approval of the procurement of the 22 MW of solar PV in accordance with the terms set forth in the testimony and exhibits filed by PNM in this case.\(^77\) Based on PNM’s representations, the Hearing Examiner

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\(^74\) As discussed below in addressing the Plan Amendment, one of the alternative procurements for sourcing the Sky Blue Program PNM has submitted in accordance with Commission directive is procurement of an additional 2 MW of PNM-owned solar PV. If approved, this would bring the total procurement of PNM-owned solar PV to 22 MW. In his Recommended Decision in Case No. 10-00018-UT issued contemporaneously with this decision today, the Hearing Examiner recommends approval of the “2 MW Alternative” sourcing the Sky Blue Program from the 2 MW of PV capacity blended with NMWEC wind energy and associated RECs.

\(^75\) Tr. (Ortiz) at 107.

\(^76\) Id.

\(^77\) Tr. at 15-16.
held that the issue of the confidentiality of the First Solar contract was moot for the purposes of the hearing.\textsuperscript{78}

The estimated cost of the 20 MW solar facilities is $45.5 million\textsuperscript{79} ($2,273 per kW), which compares favorably to the final net cost to build PNM’s existing 22.5 MW PV facilities of $88.9 million ($4,044 per kW), not counting federal tax credits – a decrease of over 40% on a cost per MW basis – or $59.1 ($2,686 per kW) million with tax credits.\textsuperscript{80} The lower cost is primarily related to declining market prices for PV panels. The 20 MW turnkey project incorporates these price decreases and also takes advantage of available land space at some of PNM’s existing solar facilities to minimize costs for additional land acquisition and achieve further cost savings. It is uncertain whether the recent decreases in panel costs will continue, given proposals for federal import tariffs on panels manufactured in China and debate in Congress regarding continuation of federal tax credits.\textsuperscript{81}

This was the least expensive solar proposal received by PNM. The levelized cost of energy of the 20 MW proposal over the life of the First Solar contract is $77.07 per MWh, compared to the levelized cost of energy from the lowest cost solar PPA proposal of $83.95 per MWh over the same period and the next ranked PNM-

\textsuperscript{78} Tr. at 16-17.

\textsuperscript{79} PNM provided this cost estimate in the Rebuttal Testimony of G. Ortiz filed August 29, 2012, at 3, which is an increase in PNM’s initial estimate of $44.9 million stated in the Direct Testimony of PNM witnesses Ortiz and Gutierrez, and which was subsequently reflected in Staff’s pre-filed Direct Testimony of witnesses Carrara and Lamberson.

\textsuperscript{80} PNM Exh. 3 (Ortiz Reb.) at 3; Staff Exh. 2 (Carrara Dir.) at 4.

\textsuperscript{81} PNM Exh. 1 (Ortiz Dir.) at 10, 22-23, 25; Staff Exh. 2 (Carrara Dir.) at 5.
owned project proposal of approximately $123 per MWh. The updated revenue requirements for these facilities is projected to be $976,609 in 2013 based on the staggered in-service dates of the several installations, and $6,050,822 in 2014 when all of the facilities are in operation for the entire year. This is based on generation of 11,310 MWh in 2013 and 48,470 MWh in 2014, estimated O&M of approximately $256,000 a year or about $5 per MWh, a depreciable life of 30 years and a weighted average cost of capital of 8.19%.

These are the updated 2013 and 2014 cost projections stated in the Rebuttal Testimony of PNM witness Ortiz referred to in fn. 67 above. The changes in the estimate of overall costs and 2013 and 2014 costs were caused primarily by a change in the AFUDC estimate, resulting from changes in the AFUDC rate and the projected in-service dates of the several facilities, and, to a lesser extent, by an increase in interconnection costs. When actual plant balances become known toward the end of 2013, PNM will submit a revised, estimated revenue requirement and a proposed mechanism for cost recovery. Staff considers the cost of this PNM-owned solar PV procurement to be reasonable.

PNM identified several non-financial benefits from ownership of the 20 MW facilities that were important in the comparison of solar resource bids, but which were not accounted for in the financial analysis. These include residual value to the

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82 PNM Exh. 1 (Ortiz Dir.) at Exh. GTO-2; Staff Exh. 2 (Carrara Dir.) at 6.
83 PNM Exh. 3 (Ortiz Reb.) at 3-4 and Exh. GTO-1R.
84 Staff Exh. 2 (Carrara Dir.) at 6.
85 Id. at 7.
facilities and site at the end of the assumed 30-year useful life; the PNM-owned 20 MW facilities will also thereafter continue to provide energy and RECs and at a lower cost-of-service after the asset has been fully depreciated.\(^{86}\) Other benefits of ownership of the 20 MW solar facilities PNM identified are that utility ownership provides PNM operational control of the generation resource and allows it to flexibly integrate the resource into the overall generation portfolio to maintain system reliability and adhere to NERC compliance requirements, whereas a PPA would require PNM to schedule around the requirements of the plant’s operator and manage its own generation resources to accommodate that schedule. Utility ownership also allows PNM more flexibility to implement technological upgrades or expand the sites in the future, such as PNM is proposing to do in this 2013 Plan, without having to renegotiate a PPA with potential price increases.\(^{87}\)

PNM proposed procurement of the bundled energy and RECs from the 20 MW facilities to satisfy the solar diversity requirement rather than unbundled solar RECs because there are not sufficient solar resources developed to provide a sustainable supply of stand-alone RECs to meet this requirement in 2013, 2014, and thereafter. PNM investigated the availability of unbundled solar RECs for its 2013 Plan, but its 2012 REC RFP produced only very limited responses from facilities that were not yet constructed.\(^{88}\) PNM proposed procurement of the bundled energy and RECs under the Lightning Dock geothermal PPA to satisfy the “other” diversity requirement for the

\(^{86}\) PNM Exh. 1 (Ortiz Dir.) at 24-25.

\(^{87}\) Id.

\(^{88}\) Id. at 58-60.
same reason. PNM says there are not sufficient “other” resources developed to provide a sustainable supply of stand-alone RECs to meet this requirement and it is, therefore, necessary for PNM to enter into long-term commitments to assure “other” diversity compliance, not only in 2014, but thereafter.89 “PNM could not have put together a fully compliant Plan with RECs only,” according to PNM witness Gerard Ortiz.90

Without making any new solar procurements, PNM’s existing solar facilities would constitute only 16.2% of its renewable portfolio in 2013. That is less than the 20% required under Rule 572. Moreover, the 16.2% counts DG which exceeds the 1.5% DG diversity requirement as solar. In 2015 the DG requirement will triple when DG diversity increases to 3% and the RPS increases to 15%; consequently, less DG will be counted as solar in 2015. The solar diversity requirement will increase at the same time due to the jump to a 15% RPS.91 The 20 MW solar facilities will also help PNM meet the increases in the RPS in 2015 to 15% and in 2020 to 20%, irrespective of their contribution to meeting PNM’s solar diversity requirement. Even if enough unbundled RECs were available for procurement for a year or two, they would not provide a sustainable supply and would leave PNM further from meeting the increased RPS and diversity requirements in 2015 and 2020.92 PNM noted that in the Case No. 11-00265-UT the Commission recognized that it can take 18 to 24 months to

89 PNM Exh. 1 (Ortiz Dir.) at 26.
90 Tr. (Ortiz) at 80.
91 Id. at 64-66.
92 Id. at 85-86.
develop a project and that the 2013 Plan should meet all RPS requirements by 2014, if not sooner.  

Staff asserts that the Commission held in Case No. 10-00037-UT that a Certificate of Public Convenience and Necessity ("CCN") was required for the 22 MW of PNM-owned solar projects approved in that case and, therefore, recommends that a CCN be approved for the 20 MW PNM-owned solar facilities proposed in this case with a certificated cost of $45.5 million, including approximately $800,000 of AFUDC.  

PNM continues to take the position that the only Commission authorization required for the 20 MW solar procurement is approval pursuant to the REA and Rule 572. Nevertheless, if the Commission determines that a CCN is required for the 20 MW (and for the 2 MW Alternative submitted under the Plan Amendment) as the Hearing Examiner recommends and provides for below, PNM asks that the CCN be granted, provided that any cost overruns are treated in accordance with the Cost Overrun Rule ("Rule 580"), which provides that unless an allowance for contingencies was included in the utility’s certificated estimated cost, cost overruns in excess of 10% will not be included in rates unless the Commission determines that they were prudently incurred.  

In its Final Order in Case No. 10-00037-UT, the Commission issued a CCN subject to the conditions that (1) prior to construction at any of the sites on which the solar facilities were to be constructed PNM was required to obtain all necessary 

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93 Tr. (Ortiz) at 69-70.  
94 Staff Exh. 2 (Carrara Dir.) at 12; Staff Exh. 1 (Lamberson Dir.) at 4.  
95 2013 Plan at 6; PNM Exh. 3 (Ortiz Reb.) at 2-3.
permits and to comply with all applicable environmental requirements, and (2) PNM publish, not less than 30 days before commencing construction, a notice in a newspaper of general circulation serving the area surrounding the solar project providing the location of the site and description of the project.\textsuperscript{96} For the 20 MW of solar facilities proposed in this Plan, as well as the additional 2 MW Alternative procurement for the Sky Blue Program, PNM agrees to the first condition for all existing sites upon which the new solar facilities will be built and to the second condition for any new site. PNM does not consider that expansion of solar facilities at existing sites warrants public notice, since these facilities are already functioning as solar generation sites and the installation of additional panels will not alter the nature of the land use at those locations.\textsuperscript{97}

Staff recommended that the Commission require PNM either to include all necessary information and evidence that it has obtained all necessary permits in future REPP applications or to make compliance filings that it has subsequently obtained all permits.\textsuperscript{98} PNM does not object to providing documentation or an affidavit in a compliance filing that it has obtained the permits necessary for construction and operation of its facilities, but opposes a requirement that such information be provided at the time of PNM’s procurement plan application, since it will not usually be available at that time, or even by the conclusion of the proceeding. PNM submits

\textsuperscript{96} PRC Case No. 10-00037-UT, Final Order Partially Adopting Recommended Decision (Aug. 31, 2010), at 25-26, paras. 63-64.

\textsuperscript{97} PNM Exh. 1 (Ortiz Dir.) at 11-12; PNM Exh. 3 (Ortiz Reb.) at 9.

\textsuperscript{98} Staff Exh. 1 (Lamberson Dir.) at 4.
that the Commission should require in its order approving a new utility-built facility that PNM make a compliance filing that it has obtained all the necessary permits for the construction and operation of the facility prior to commencing operation.99

In conclusion, the evidence shows that PNM selected the 20 MW PNM-owned solar PV facilities pursuant to a reasonable RFP process that identified this resource as the lowest reasonable cost solar resource that would enable PNM to meet the 2013 and 2014 solar diversity requirements and would contribute towards meeting the increased solar and RPS requirements in 2015. The procurement through the turnkey construction contract with First Solar of these 20 MW facilities, and the additional 2 MW solar PV facilities for sourcing the Sky Blue Program under the Plan Amendment and as recommended by the Hearing Examiner in Case No. 10-00018-UT, are in the public interest and should be approved under the REA; therefore, procurement of these facilities is also in the public convenience and necessity and the Commission should issue a CCN for their construction, with the conditions stated above. The procurement costs for the 20 MW facilities and the 2 MW facilities along with associated WREGIS fees and carrying costs are, as reflected in the record, reasonable and should be approved and authorized for recovery in future rates, provided that any cost overruns are treated in accordance with Rule 580.

b. Geothermal Project

PNM proposes to procure a PPA from Lightning Dock Geothermal HI-01, LLC, submitted as Exhibit GTO-4 to the Direct Testimony of Gerard Ortiz, for the

99 PNM Exh. 3 (Ortiz Reb.) at 9.
entire output of a 10 MW geothermal project that would be constructed in 2013 about 20 miles southwest of Lordsburg, placed in service by January 1, 2014, and deliver energy to PNM’s Hidalgo substation. The project will use hot geothermal water to produce steam which will drive a conventional steam turbine-generator combination to produce electrical energy. Due to the length of time needed for construction, Commission approval of this procurement is necessary in this proceeding in order for the project to be in-service by 2014.

The Lightning Dock proposal was the most viable “other” project and the one most likely to be in service in time to meet PNM’s “other” diversity requirement in 2014. It is also scalable, in that the capacity for 2014 is 10 MW, and PNM has the option to increase the PPA to 15 MW in 2015, if Lightning Dock determines there is sufficient thermal capacity. Annual generation is projected to be approximately 80,167 MWh at an annual cost of $97.97 per MWh, for a total cost of $7.9 million in 2014, before adjustments for WREGIS fees, carrying costs and avoided fuel costs, and a projected RPS compliance cost net of avoided costs of $6.1 million. The levelized cost is $106.32 per MWh, which is well below all other viable, non-wind/non-solar bids and compares well with solar bids. This procurement should enable PNM to fully meet its “other” diversity requirement in 2014, contribute to an

100 PNM Exh. 1 (Ortiz Dir.) at 21-22; Staff Exh. 2 (Carrara Dir.) at 7-8.
101 Tr. (Ortiz) at 69-70.
102 2013 Plan at 6; PNM Exh. 1 (Ortiz Dir.) at 19-20; PNM Exh. 6 (Gutierrez Dir.) at 10; PNM Exh. 3 (Ortiz Reb.) at 4-5; Staff Exh. 2 (Carrara Dir.) at 12.
103 Staff Exh. 2 (Carrara Dir.) at 12.
overall level of renewable energy generation that meets the net RPS for 2014 and put PNM in position to meet the increased requirements beginning in 2015.\footnote{PNM Exh. 1 (Ortiz Dir.) at 10.}

Staff does not regard the geothermal project as a dispatchable resource.\footnote{Staff Exh. 2 (Carrara Dir.) at 11.} Although PNM agrees that the geothermal project is a must-take resource and PNM will not be able to dispatch the resource to meet load swings, PNM will be able to call upon the resource to change output if necessary.\footnote{Tr. (Gutierrez) at 168-169.}

Other key terms of the Lightning Dock PPA are a 20-year term; expected annual capacity factor of 85-93%; price, including energy, capacity, O&M, delivery and RECs, beginning at $97.97/MWh in the first year and escalating at 2.75% annually; transmission wheeled through the Tri-State Generation & Transmission system (“Tri-State”) and Columbus Electric Co-operative system, with Lightning Dock being responsible for transmission losses and interconnection costs.\footnote{PNM Exh. 1 (Ortiz Dir.) at 22 and Exh. GTO-4; Staff Exh. 2 (Carrara Dir.) at 7-9.}

Staff considers the costs and terms of the Lightning Dock PPA to be reasonable.\footnote{Staff Exh. 2 (Carrara Dir.) at 9, 11.} Staff also believes that a PPA is a better arrangement for this resource than PNM ownership because it places the cost of development and the majority of the performance risk on the seller.\footnote{Id. at 10.} PNM does not have experience owning, constructing and operating geothermal facilities and the PPA with Lightning Dock
provides risk mitigation for this resource. Staff Witness Carrara, who has personal experience with geothermal power plants, does not consider the geothermal project to be too speculative.

In sum, the evidence shows that PNM selected the proposed 10 MW geothermal PPA with Lightning Dock pursuant to a reasonable RFP process that identified this resource as the lowest reasonable cost and viable “other” resource that would enable PNM to meet the “other” diversity requirement in 2014 and thereafter. Procurement of this resource should, therefore, be approved. The costs of this resource as reflected in the record are reasonable and should be approved and authorized for recovery in future rates, along with associated WREGIS fees and carrying costs.

c. DG REC Procurements From Customer-Sited Solar Systems

(1) Customer Solar REC Purchase Program (“CSPP”)

The Final Order in Case No. 11-00265-UT directed that PNM’s 2013 Plan should include proposed modifications to the SIP. In response to this directive, PNM proposes a modified customer-sited solar DG REC procurement program, termed the CSPP, for systems with an AC capacity rating of 100 kW or lower, to replace the fully subscribed categories of 100 kW$_{AC}$ and lower in the current SIP. The CSPP is a four-year program that would be in place through 2016. PNM developed the CSPP in

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110 Tr. (Ortiz) at 99-100.
111 Staff Exh. 2 (Carrara Dir.) at 10-11.
consultation with the New Mexico Renewable Energy Industry Association ("REIA") and REIA supports approval of this program.\footnote{112}{PNM Exh. 1 (Ortiz Dir.) at 8; PNM Exh. 8 (Styes Dir.) at 3; PNM Exh. 6 (Gutierrez Dir.) at 10; Tr. (Ortiz) at 89.}

The CSPP includes 9 MW\textsubscript{AC} capacity, allocated between systems rated 10 kW\textsubscript{AC} and less (6 MW\textsubscript{AC}) and systems rated 10 kW\textsubscript{AC} up to 100 kW\textsubscript{AC} (3 MW\textsubscript{AC}). Estimated REC procurements are 3,621 MWh in 2013 and 10,617 MWh in 2014 and the cost of these DG procurements is projected to be $153,098 in 2013 and $402,662 in 2014.\footnote{113}{PNM Exh. 1 (Ortiz Dir.) at 10, 28; PNM Exh. 6 (Gutierrez Dir.) at 11.} Primary provisions of the CSPP applicable to the two capacity sizes are as follows:

- **Solar Systems sized up to and including 10 kW:** The subscription capacity allowed each six-month period will be 1,000 kW in 2013 and 2014 and 500 kW in 2015 and 2016. PNM will offer new subscribers a beginning REC price of $0.04 per kWh with a contract term of 8 years from the interconnection/contract effective date. After six months, the price for the next block of capacity will decline by $0.005 per kWh to $0.035 per kWh for new subscribers. The price will continue to decline by $0.005 each six-month period through 2016, until it reaches a floor of $0.025 per kWh.\footnote{114}{PNM Exh. 1 (Ortiz Dir.) at 28; PNM Exh. 8 (Styes Dir.) at 3.}

- **Solar Systems sized above 10 kW up to and including 100 kW:** The subscription capacity allowed each six-month period will be 500 kW in 2013 and 2014 and 250 kW in 2015 and 2016. The REC price will start at $0.05 per kWh in
2013 with a contract term of 8 years from the interconnection/contract effective date and decline by $0.005 each six-month period, until it reaches a floor of $0.025 per kWh.\textsuperscript{115}

If projects with capacity reserved in the SIP are cancelled, the unused capacity will be added to the CSPP tranches in effect at that time on an equivalent dollar basis, adding the amount of capacity which equates to the same amount of costs for REC purchases under the CSPP at the REC prices then in effect.\textsuperscript{116} The cancelled capacity amount will be divided between the 0 to 10 kW\textsubscript{AC} and 10 to 100 kW\textsubscript{AC} size categories on a 2:1 ratio.\textsuperscript{117} PNM says the rollover of cancelled capacity from the SIP into the CSPP ensures that the capacity originally approved for the SIP by the Commission in Case No. 10-00037-UT will be made available to customers on an equivalent dollar basis.\textsuperscript{118} Staff does not oppose this approach for handling cancellations of subscribed capacity in the SIP.\textsuperscript{119}

Undersubscribed capacity in the CSPP at the end of the first six-month period in a year will roll over at the same price into the second six-month period. Once the rolled-over capacity has filled, the new capacity allotment and associated price will start. Any capacity that is undersubscribed at the end of any year in one size category

\textsuperscript{115} PNM Exh. 1 (Ortiz Dir.) at 28; PNM Exh. 8 (Styes Dir.) at 4.
\textsuperscript{116} Tr. (Ortiz) at 90.
\textsuperscript{117} PNM Exh. 3 (Ortiz Reb.) at 6-7; PNM Exh. 8 (Styes Dir.) at 4; Tr. (Ortiz) at 110.
\textsuperscript{118} PNM Exh. 8 (Styes Dir.) at 5-6; Tr. (Ortiz) at 89-90.
\textsuperscript{119} Tr. (Lamberson) at 186-187.
will roll over into the other size category, provided that the other size category was
fully subscribed for that year. PNM selected the proposed starting prices of $0.04 per kWh and $0.05 per kWh for the two system sizes based on its projections of the REC price PNM will be paying for RECs from those sized solar systems under the SIP at the time the CSPP would be implemented. The stepped decline in the REC price of $0.005 per kWh-REC every six months recognizes that applications to the SIP have stayed robust even as the kWh REC price declined, reflecting that the federal tax credit and state tax credit remain in effect and thereby creating value for customers; that net metering is a considerably more valuable incentive than the REC purchase price; and that there has been a decrease in PV equipment prices. The $0.025 per kWh floor price fits within PNM’s RCT budget.

Unlike the December 31, 2020 common termination date for all REC contracts under the Interim SIP, PNM proposes an 8-year term for all CSPP contracts, in order to stagger the contract termination dates under the CSPP, so that PNM can better administer contract terminations. The application and screening process for the CSPP will be the same as the process currently in place under the SIP. PNM submitted a

120 PNM Exh. 8 (Styes Dir.) at 4-5.
121 PNM Exh. 1 (Ortiz Dir.) at 28-29; PNM Exh. 8 (Styes Dir.) at 6.
122 PNM Exh. 8 (Styes Dir.) at 7; Tr. (Ortiz) at 95.
123 PNM Exh. 8 (Styes Dir.) at 9-10.
proposed Sample Rate No. 32 that would implement the CSPP showing the changes proposed to PNM’s existing Rate No. 32 shaded in grey.\textsuperscript{124}

The capacity amounts allocated to the two system sizes is based on the average capacity interconnected in 2010 and 2011 for these system sizes. The allocation of the capacity into six-month blocks allows the total amount of capacity available for the CSPP to be spread throughout the four-year period of the program.\textsuperscript{125} In order to keep the CSPP in effect through 2016 while minimizing the constraints on the RCT, the allotted capacities were reduced in 2015 and 2016 to create headroom in the RCT budget for procurement of other renewable resources to meet the increased RPS beginning in 2015.\textsuperscript{126}

PNM asserts the CSPP provides certainty for the DG contracting community, PNM and its customers as to the terms under which PNM will procure RECs from these solar system sizes for the next four years. PNM witness Gerard Ortiz said this helps DG contractors in their business planning and helps PNM and its customers maintain RCT headroom as RPS requirements increase. According to PNM, REC procurements costs under PNM’s DG programs are a significant portion of PNM’s RPS compliance cost and will remain so throughout the duration of the REC purchase contracts with customers; thus PNM says it is important that PNM be able to accurately predict the amount of capacity and costs it will expend on these programs.

\textsuperscript{124} PNM Exh. 8 (Styes Dir.) at Exh. KS-3.

\textsuperscript{125} PNM Exh. 1 (Ortiz Dir.) at 30; PNM Exh. 8 (Styes Dir.) at 7-9.

\textsuperscript{126} PNM Exh. 8 (Styes Dir.) at 9.
in order for it to effectively plan for other procurements to meet future RPS and diversity requirements.¹²⁷

No party submitted testimony or other evidence in opposition to the CSPP. No party advocated for higher REC prices, more capacity allocations or longer term contracts. Staff supports the proposed CSPP.¹²⁸

(2) Capacity Set-Aside Program

PNM is proposing to reserve up to 2 MW of capacity in both 2013 and 2014 for SIP program participation for DG facilities sized greater than 100 kW<sub>AC</sub> up to and including 1 MW<sub>AC</sub> at the price of $0.02 per kWh, the same price approved for the Capacity Set-Aside Program in Case No. 11-00265-UT.¹²⁹ This is a different price than the competitive price established in PNM's most recent RFP process ($0.04 per kWh); therefore, this is one of the two variances PNM is seeking, as discussed further below.¹³⁰ PNM proposes the 2 MW capacity amount and $0.02 per kWh REC price for the Set-Aside program because it expects to fully subscribe the 2 MW (plus capacity that rolled over to this price step due to cancellations or projects that have exceeded the construction deadline) at $.02 per kWh by the end of 2012. Given that PNM expects to be RPS compliant, DG diversity compliant and solar diversity compliant, and that the market from these sized solar systems remains strong, PNM

¹²⁷ PNM Exh. 1 (Ortiz Dir.) at 30.
¹²⁸ Staff Exh. 1 (Lamberson Dir.) at 12.
¹²⁹ 2013 Plan at 8; PNM Exh. 6 (Gutierrez Dir.) at 11.
had no basis for proposing a higher offering of capacity or price to the Commission.\textsuperscript{131}

Projected REC procurements under the proposed Capacity Set-Aside Program are:

- For 2013 capacity, approximately 3,108 MWh of RECs in 2013 and 4,680 MWh in 2014, with projected costs of $64,683 in 2013 and $97,414 in 2014.

- For 2014 capacity, approximately 3,442 MWh of RECs in 2014, with projected costs of $71,648.\textsuperscript{132}

In conclusion, PNM's proposals for the CSPP and the Capacity Set-Aside program, to be implemented as modifications to the existing SIP, are reasonable and appropriate and should be approved. The proposed modifications allow the customersited programs to continue for the next four years at capacity levels and REC prices that will be known to all interested parties and which still leave headroom within the RCT for PNM to procure other resources necessary to meet its diversity and RPS requirements. The costs of the CSPP and Capacity Set-Aside program are reasonable and should be approved and recoverable in future rates, along with associated WREGIS fees and carrying costs.

\textsuperscript{131} PNM Exh. 8 (Styes Dir.) at 12-13.

\textsuperscript{132} PNM Exh. 6 (Gutierrez Dir.) at 11.
d. Wind REC Procurements

To enable PNM to meet its net RPS, while the proposed new solar and geothermal facilities are under construction, PNM proposes a one time procurement from Southwestern Public Service Company ("SPS") in 2013 of 104,500 MWh of unbundled wind-generated, 2010 vintage RECs at a cost of $4.00 per MWh, for a total 2013 compliance cost of $419,568 including WREGIS fees. This is the least cost procurement PNM identified for meeting the 2013 RPS. PNM submitted a copy of the proposed REC contract with SPS.\(^\text{133}\)

Staff recommended that any unbundled REC or bundled REC and energy purchases be made at year end to minimize carrying costs.\(^\text{134}\) SPS has agreed to delay its receipt of payment for the 104,500 MWh of RECs to the end of 2013\(^\text{135}\) and, as discussed below, PNM has also now obtained the agreement of Tri-State for a year-end sale of the proposed solar energy and RECs. PNM agrees to a Commission condition for future REC purchases which requires PNM to investigate the possibility of delaying any such purchases to the end of calendar years, and to select those purchases if there is not an associated price increase which exceeds the savings in carrying costs.\(^\text{136}\)

PNM does not agree that the Commission should impose a condition requiring that all procurements of bundled energy and RECs occur at year-end. PNM says that

\(^{133}\) 2013 Plan at 6-7; PNM Exh. 1 (Ortiz Dir.) at 10, 26 and Exh. GTO-5; PNM Exh. 6 (Gutierrez Dir.) at 11-12.
\(^{134}\) Staff Exh. 1 (Lamberson Dir.) at 13.
\(^{135}\) PNM Exh. 3 (Ortiz Reb.) at 7.
\(^{136}\) Tr. (Ortiz) at 111-112.
owners of wind and solar facilities have favored delivery of energy under a PPA earlier, rather than later in the year, perhaps because they wish to book the revenue or receive the associated cash sooner, or because the quoted price is tied to a market price that may become more uncertain further into the future; or suppliers may not wish to encumber their facilities with sales that could keep them from making larger energy sales later in the year. Also, because of the intermittent nature of solar and wind energy production, PNM asserts that delaying delivery until late in the year could result in the seller failing to deliver the agreed upon amount of energy.\textsuperscript{137}

In addition to the 104,500 MWh of SPS wind RECs PNM is proposing to meet the 2013 RPS, in the event a new voluntary renewable energy program is not approved in 2012 or in the event the Commission approves procurements for the Sky Blue Program which require some use of NMWEC energy and RECs, PNM also requests approval to make a contingent procurement of up to 94,000 MWh of wind RECs to meet the 2013 RPS. This is the maximum amount of RECs PNM projects it would need if none of the 94,000 MWh of RECs from the NMWEC now used to source the Sky Blue Program are available to meet the RPS in 2013. PNM has not entered into a contract for this contingent procurement, but expects that it would be able to procure 2011 vintage wind RECs at $4.25 per MWh, resulting in a cost of $399,500, not including WREGIS fees, or $400,910 including WREGIS fees. This contingent procurement would increase 2013 RPS compliance costs by approximately

\textsuperscript{137} PNM Exh. 3 (Ortiz Reb.) at 8.
$139,961 and would allow PNM to be fully compliant with the RPS and diversity requirements within the RCT constraint.\textsuperscript{138}

Under several of the Sky Blue alternative procurements submitted under the Plan Amendment, discussed below, some amount of NMWEC energy would be used to source the Sky Blue Program and PNM would need to replace that amount with procurement of an equivalent amount of these contingent wind RECs. The maximum amount of additional wind RECs PNM may need to procure to meet the 2013 RPS would be the entire 94,000 MWh.\textsuperscript{139}

In sum, procurement in 2013 of the 104,500 MWh of SPS unbundled wind RECs and contingent procurement of up to 94,000 MWh of unbundled wind RECs if NMWEC wind RECs are used for the Sky Blue Program, are reasonable and appropriate and should be approved. These procurements will enable PNM to meet the 2013 RPS at the lowest reasonable cost, while the other proposed new procurements that will provide a long-term supply of bundled energy and RECs are brought into service. The costs of such procurements are reasonable and should be approved and authorized for recovery in future rates, along with associated WREGIS fees and carrying costs.

e. Solar REC Procurements

To enable PNM to meet the full solar diversity requirement in 2013, while the proposed new 20 MW PNM-owned solar facilities are under construction, PNM

\textsuperscript{138} PNM Exh. 1 (Ortiz Dir.) at 27; PNM Exh. 6 (Gutierrez Dir.) at 17.

\textsuperscript{139} Id.; PNM Exh. 2 (Ortiz Supp.) at 13-14.
proposes a onetime procurement from Tri-State of 15,000 MWh of unbundled, 2011 vintage solar RECs, associated with generation at the Cimarron Solar facility in northeastern New Mexico, at a price of $40.00 per MWh, for a total cost of $600,225 including WREGIS costs. PNM Witness Ortiz testified that it makes a lot of sense to purchase the unbundled Tri-State solar RECs because it preserves future head room for procuring bundled solar resources. In response to Staff’s recommendation that REC procurement contracts provide for purchase at the end of calendar years in order to reduce carrying costs, PNM has negotiated the issue with Tri-State and obtained Tri-State’s agreement to delay closing of the REC purchase until the end of 2013 without a price increase.

In conclusion, procurement in 2013 of the 15,000 MWh of Tri-State unbundled solar RECs is reasonable and appropriate and should be approved. This one-time procurement should enable PNM to meet the 2013 solar diversity requirement at the lowest reasonable cost, while the proposed new 20 MW solar facilities that will provide a long-term supply of bundled energy and RECs are brought into service. The costs of this procurement are reasonable and should be approved and authorized for recovery in future rates, along with associated WREGIS fees and carrying costs.

C. Plan Amendment

As addressed in detail in the Hearing Examiner’s Recommended Decision on Remand in the Sky Blue proceeding, Case No. 10-00018-UT, PNM and other parties

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140 2013 Plan at 7; PNM Exh. 1 (Ortiz Dir.) at 10, 26-27; PNM Exh. 6 (Gutierrez Dir.) at 12.
141 Tr. (Ortiz) at 55-56.
filed a Stipulation on January 13, 2012 proposing that PNM procure unbundled solar and wind RECs to source a new Sky Blue program. The Commission ordered PNM to file supplemental testimony describing how its voluntary renewable energy tariff could be sourced from either new PPAs or from bundled energy and RECs produced by 2 MW of new PV capacity blended with wind RECs. Each of these alternatives could impact the 2013 Plan, if Sky Blue subscriptions do not fully consume all of the RECs associated with the new procurements, since PNM proposes to use the excess RECs from the Sky Blue program for RPS compliance, and to recover the associated procurement costs as RPS compliance costs.

PNM’s 2013 Plan Amendment and supporting testimony filed on July 3, 2012 addressed the requirement, at Ordering Paragraph C of the Procedural Order issued on June 22, 2012, that PNM file supplemental testimony regarding its amendment to the 2013 Plan to request procurement approval and, if necessary, a CCN for an additional 2 MW of solar PV generating facilities and any other matters pertinent to this proceeding. Accordiingly, the Plan Amendment outlines the alternative procurements submitted for the Sky Blue program and requests (1) conditional approval to procure the resources ordered by the Commission in the Sky Blue case; (2) to the extent that customer subscriptions to the new Sky Blue Program do not fully utilize those resources, to use those resources for compliance with PNM’s RPS, most likely beginning in 2015, but in 2014 for any RECs that would otherwise expire; and (3) to record any costs of those resources, to the extent they are not covered by Sky Blue

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142 PNM Exh. 2 (Ortiz Supp.) at 1.
subscriptions and are used for RPS compliance, as regulatory assets, and to recover the costs, plus carrying charges and WREGIS fees, as RPS compliance costs in the year in which the RECs are used for RPS compliance. PNM proposes to bank any excess Sky Blue RECs to meet the RPS in 2015 or beyond, because the 2013 Plan proposes procurements that will enable PNM to be fully RPS compliant in 2014.143

1. Stipulation and Alternative Sky Blue Procurements

The Sky Blue Stipulation and alternative procurement scenarios submitted by PNM in response to the Commission’s directive in Case No. 10-00018-UT present the following possible procurements for sourcing the Sky Blue Program:

Sky Blue Stipulation. The Sky Blue Stipulation would source the new Sky Blue Program (“Stipulated Program”) with an initial blend of 67% unbundled wind RECs and 33% unbundled solar RECs. 45,000 MWh of 2010 vintage wind RECs would be procured under contracts with Golden Spread Electric Cooperative, Inc., (“Golden Spread”) at a price of $5.99 per MWh REC, for a total cost of $269,550.00. 11,310 MWh of 2010 vintage solar RECs would be procured under contracts with Tri-State, at a price of $37.00 per MWh REC, for a total cost of $418,470.00; another 15,000 MWh of 2011 vintage solar RECs would also be procured, at a price of $40.00 per MWh REC, for a total cost of $600,000.00. The total cost for the solar REC purchases from Tri-State is $1,018,470.00.144

143 Plan Amendment pp. 1-5; PNM Exh. 2 (Ortiz Supp.) at 1-3.
144 Plan Amendment at 2-3; PNM Exh. 2 (Ortiz Supp.) at 3-4; PNM Exh. 7 (Gutierrez Supp.) at 5-6.
2 MW Alternative. The 2 MW Alternative would supply the Sky Blue program with bundled energy and RECs from 2 MW of new solar PV capacity, which would be in addition to the 20 MW PNM has already proposed in the 2013 Plan, blended with either (1) unbundled wind RECs procured under a purchase agreement with Golden Spread ("2 MW/REC" option) or (2) bundled energy and RECs from NMWEC ("2 MW/NMWEC option").

The 2 MW would be procured and constructed under the same contract with First Solar that PNM has negotiated for the initial 20 MW, at approximately the same per unit price, and would be added at one of the sites for the 20 MW of solar PV that PNM proposes in its 2013 Plan. PNM would designate the first 2 MW that come into service in September 2013 for the Sky Blue program. The cost of the 2 MW is $4.5 million. PNM proposes to recover this cost over the same 30 year recovery period as the initial 20 MW. The annual revenue requirement would be $86.35 per MWh in 2013 and $124.84 in 2014, before adding carrying charges or WREGIS fees and before any offsetting avoided costs.

As compared to the $45.5 million cost for the 20 MW solar facilities PNM proposes to procure for the RPS, the only additional costs there would be, if the $4.5 million 2 MW is not fully used for the Sky Blue Program and is charged to the RPS,

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145 Plan Amendment at 3-4; PNM Exh. 2 (Ortiz Supp.) at 6; PNM Exh. 7 (Gutierrez Supp.) at 2; PNM Exh. 3 (Ortiz Reb.) at 6 and Exh. GTO-1R.
146 Tr. (Ortiz) at 113-114.
147 PNM Exh. 3 (Ortiz Reb.) at Exh. GTO-1R.
are the carrying charges which would accrue at 4% until the year in which the procurement is used for the RPS requirements.\textsuperscript{148}

PNM has received preliminary pricing from Golden Spread of $5.99 per MWh for the 2,500 MWh of 2010 vintage wind RECs that could be procured for blending with the 2 MW of solar PV, and a second procurement of 19,000 MWh of RECs of 2010 vintage. The estimated total cost of these wind REC procurements would be $269,550. Under the 2 MW Alternative that uses wind energy plus RECs from NMWEC to blend with the 2 MW solar resource, PNM projects that it would need 2,356 RECs in 2013 and 17,618 RECs in 2014 from NMWEC to source the Sky Blue Program.\textsuperscript{149}

If the Commission determines a CCN is required for the 20 MW of solar facilities proposed in the 2013 Plan and grants a CCN, PNM requests that the CCN also include the 2 MW of additional solar capacity, if the Commission selects the 2 MW Alternative.\textsuperscript{150} This is provided for below and consistent with the Recommended Decision on Remand in Case No. 10-00018-UT.

PNM's procurement under this Alternative of the 2 MW and wind RECs, with or without energy, would be conditioned on the following:

- A Commission order in Case No. 10-00018-UT that would require PNM to use up to 2 MW of solar generation and wind RECs to source the Sky Blue program;

\textsuperscript{148} Tr. (Ortiz) at 116-117.

\textsuperscript{149} PNM Exh. 2 (Ortiz Supp.) at 10-11; PNM Exh. 7 (Gutierrez Supp.) at 5-6.

\textsuperscript{150} PNM Exh. 2 (Ortiz Supp.) at 8.
A Commission order in this proceeding that approves the procurement of the 20 MW of solar facilities that PNM proposed in its 2013 Plan and grants any necessary CCN for those facilities, since construction of the additional 2 MW would be accomplished in conjunction with the 20 MW facilities;

A Commission order in this proceeding approving the procurement of the additional 2 MW of PV and, if necessary, granting a CCN for the 2 MW facility, and approving the procurement of the wind RECs; and

A Commission order in this case that approves the use of any residual RECs from the 2 MW and any residual wind RECs for future RPS compliance, and also authorizes the costs associated with the RECs from the energy production of the 2 MW to be recorded as regulatory assets and recovered as RPS compliance costs, with carrying charges, in the Plan year in which the RECs are used to meet the RPS.  

**PPA Alternative.** The PPA Alternative would supply the Sky Blue program with a 18.2%/81.8% blend of bundled solar PV energy and RECs from a PPA with Tri-State at a price of $107 per MWh-REC for 2013 and at a price $114 per MWh-REC in 2014, that are blended with either (1) wind energy and RECs from NMWEC or (2) wind energy and RECs from the Red Mesa Energy Facility (“PPA/Red Mesa” option) under a PPA with NextEra Energy Power Marketing, LLC (“NextEra”) at a price of $40 per MWh-REC.

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151 PNM Exh. 2 (Ortiz Supp.) at p. 6-7.

152 Plan Amendment at 4-5; PNM Exh. 2 (Ortiz Supp.) at 5-6; PNM Exh. 7 (Gutierrez Supp.) at 2-4.
2. Potential RPS Costs for Using Excess Sky Blue Resources Procured under the Plan Amendment for RPS and Diversity Compliance

PNM asserts that each of the contingent Sky Blue alternative procurements are reasonable and in the public interest. None of the Sky Blue alternative procurements would cause PNM not to meet the diversity requirements or to exceed the RCT in 2013 or 2014.\(^{153}\) The alternatives were designed so that the associated RECs should be fully consumed by the Sky Blue Program, mitigating the risk that non-participants will ultimately bear these costs as RPS compliance costs. However, to the extent that actual Sky Blue subscriptions are lower than PNM’s projections, a portion of the procurement costs under each of the proposed alternatives would not be recovered from Sky Blue participants. Accordingly, the Plan Amendment proposes that any such excess procurements would be banked and used to satisfy PNM’s RPS compliance requirements in 2015 or subsequent years, or prior to expiration of the four-year life of the RECs.\(^{154}\)

PNM would book any unrecovered revenue requirements associated with banked RECs to a regulatory asset for future recovery, either through future Sky Blue subscriptions or as RPS compliance costs. The RPS increases in 2015 to 15% and PNM will need to procure additional renewable resources to meet the higher RPS and the correspondingly higher diversity requirements.\(^{155}\) Authorization to use any unsubscribed RECs from the Sky Blue program’s resources for RPS compliance

\(^{153}\) PNM Exh. 2 (Ortiz Supp.) at 14; PNM Exh. 7 (Gutierrez Supp.) at 12-13.

\(^{154}\) PNM Exh. 2 (Ortiz Supp.) at 11-12, 14.

\(^{155}\) Tr. (Ortiz) at 65, 86, 104.
allows PNM to both (a) pursue new resources for the Sky Blue program, and (b) use any unsubscribed Sky Blue program resources as part of the increased procurements needed to meet the higher RPS.\textsuperscript{156}

If the Stipulated Program or one of the Alternatives described in the Plan Amendment is ordered by the Commission, but the Commission does not approve the contingent RPS procurements, PNM would bear the risk associated with those procurements if Sky Blue subscription levels are lower than estimated. Although the Sky Blue Program has been one of the top such programs in the country, PNM makes no profit on it, and this would be a disincentive to PNM offering a voluntary renewable energy tariff in the future or otherwise undertaking renewable investments, and would undermine the purpose of the REA.\textsuperscript{157} PNM proposes the procurements for both the 2013 Plan and the Sky Blue Program to comply with the REA and Rule 572; therefore, PNM believes it should not be required to bear the risk that Sky Blue subscriptions may not fully consume the resources procured for that program. PNM’s proposal to use excess Sky Blue procurements to meet RPS requirements mitigates the risk for all stakeholders that Sky Blue procurements may exceed subscriptions to the voluntary program, since PNM will need new additional renewable resources in 2015 to meet the increased RPS.\textsuperscript{158}

For each of the procurement alternatives, if no customers subscribe to the new Sky Blue program, the maximum cost exposure to customers in 2015 and thereafter

\textsuperscript{156} PNM Exh. 2 (Ortiz Supp.) at 10.
\textsuperscript{157} PNM Exh. 2 (Ortiz Supp.) at 14; Tr. (Ortiz) at 103-104.
\textsuperscript{158} Tr. (Ortiz) at p. 104, 118-119.
would be all of the Sky Blue procurement costs. The associated revenue requirements associated with the REC procurements, along with REPP carrying charges and WREGIS fees, would accrue as a regulatory asset and be amortized as the RECs are eventually retired for RPS compliance.159 PNM has assumed a carrying charge for costs associated with banked RECs in Case No. 10-00018-UT of 8.64% in the Sky Blue Program because PNM does not anticipate using these RECs for RPS compliance. If these costs are ultimately used for RPS compliance, PNM would recalculate the carrying costs at the 4% carrying cost rate provided in Case No. 10-00086-UT.160

The potential RPS cost impacts for 2013, 2014 and 2015 under the Stipulation and each of the Alternatives are as follows:

- If the Commission approves the Stipulation and PNM’s forecasted Sky Blue subscription level is achieved, there would be no procurement cost impact on the Renewable Plan in 2013; however a surplus of unused Sky Blue RECs and associated costs in the amount of $10,680 would be used for RPS compliance in 2014. The projected maximum RPS procurement cost exposure under the Stipulation would be $715,541 in 2014 and $674,918 in 2015, if there are no Sky Blue subscriptions.161

- If the Commission approves the 2 MW/NMWEC option and PNM’s projected Sky Blue subscription level is achieved, the proposed renewable portfolio cost

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159 PNM Exh. 2 (Ortiz Supp.) at 12.
160 Id.
161 PNM Exh. 7 (Gutierrez Supp.) at 6.
would increase by approximately $3,474 in 2013 and $14,459 in 2014. This incremental cost results from replacing the less expensive NMWEC energy used to meet Sky Blue subscriptions with presumably more expensive renewable procurements. If Sky Blue subscriptions are less than PNM has projected, the RPS cost impact in 2013 and 2014 will be reduced since all of the RECs procured but not used for Sky Blue, will be banked for RPS compliance in 2015 or beyond. The revenue requirement associated with the banked solar RECs will be deferred. If the Commission approves the 2 MW/REC option and PNM’s forecasted Sky Blue subscription level is achieved, there would not be any incremental procurement cost impact on the Renewable Plan in 2013. If there were no Sky Blue subscriptions under this option, the projected maximum RPS cost exposure would be $133,936 in 2014 and $1,425,525 in 2015.

If there were no Sky Blue subscriptions, the projected maximum procurement cost exposure under this option would be $1,425,525 in 2015. This assumes that 1,483 MWh of solar PV RECs at a procurement cost of $130.08 per MWh would result in 2013 costs, including on-year carrying costs, of $200,667, and 4,864 MWh of solar PV RECs at a procurement cost of $124.61 per MWh would result in 2014 costs of $630,383. The estimated on-going revenue requirement would be $552,885

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162 PRC Case No. 10-00018-UT, Tr. 7/17/12 (Ortiz) at 94-95.
163 PNM Exh. 7 (Gutierrez Supp.) at 6-7.
164 Id. at 8-9.
165 Id.
in 2015 which would be booked as a regulatory asset for recovery in 2015. A 4.0% carrying charge was applied for two years for the 2013 procurement costs and one year for the 2014 procurement costs to derive a 2015 procurement cost total of $1,425,525.166

- If the Commission approves the 2 MW/REC option and PNM’s forecasted Sky Blue subscription level is achieved, there would not be any incremental procurement cost impact on the Renewable Plan in 2013. If there were no Sky Blue subscriptions under this Alternative, the projected maximum RPS cost exposure would be $133,936 in 2014 and $1,425,525 in 2015.167

- If the Commission approves the PPA/NMWEC option and PNM’s projected Sky Blue subscription level is achieved, the incremental procurement cost impact on the 2013 Plan is projected to be $31,374 in 2013 and $16,164 in 2014. The projected maximum RPS cost exposure in 2015 under this scenario, if there were no Sky Blue subscriptions, would be $1,441,297.168

- If the Commission approves the PPA/Red Mesa option, there would not be any incremental procurement costs to the Renewable Plan in 2013 or 2014 regardless of the level of Sky Blue subscriptions. If PNM’s projected subscription levels are not achieved, PNM would bank any unsubscribed RECs and costs to meet the higher RPS standards in 2015 or beyond. The projected

166 PNM Exh. 7 (Gutierrez Supp.) at 7-8.
167 Id. at 8-9.
168 Id. at 9-11.
maximum RPS cost exposure in 2015 under this scenario, if there were no Sky Blue subscriptions, would be $2,192,987.169

3. Commission Decision in Case No. 10-00018-UT

This Recommended Decision anticipates the Commission will decide in Case No. 10-00018-UT that the 2 MW Alternative with the NMWEC bundled wind energy + RECS, i.e., the 2 MW/REC option, should be approved for sourcing the new Sky Blue Program and will authorize PNM to accumulate the associated revenue requirements in a regulatory asset as PNM proposed in Case No. 10-00018-UT. Accordingly, in this case, since construction of the additional 2 MW would be accomplished in conjunction with the proposed 20 MW PNM-owned solar PV facilities, procurement of the 20 MW of solar PV proposed in the 2013 Plan and the additional 2 MW should be approved, and the Commission should issue a CCN for those facilities. And, moreover, PNM's requests in the Plan Amendment to use any residual RECs from the 2 MW and any residual wind RECs procured to source the Sky Blue Program for future RPS compliance, and for authorization to recover the costs associated with these residual RECs as RPS compliance costs with carrying charges and WREGIS fees in the Plan year in which the RECs are used to meet the RPS, are reasonable and should be approved in this case.

D. Variances

PNM requests a variance for the “other” diversity requirement in 2013 because it was unable to identify any resources it could procure in 2013 to meet this

169 Id. at 11-12.
requirement. The 10 MW geothermal facility for which PNM proposes to enter into a
PPA will not be operational until 2014. PNM provided the information required for a
variance pursuant to Rule 572.19.170

PNM also requests a variance from the provision in the Case No. 11-00265-UT
Final Order regarding the purchase price for REC purchases under the SIP for PV
systems sized greater than 100 kW_{AC} to 1 MW_{AC}. Pursuant to that provision, the REC
price for these systems under REC purchase agreements with a term through
December 31, 2020 would be established based on the highest accepted REC bid for
RECs purchased in the renewable plan year. This set the price for 2012 at $0.02 per
kWh for the set-aside capacity amount of 2 MW_{AC} approved in that case. In 2013,
application of this pricing provision would set the REC price at $0.04 per kWh for the
Set-Aside Program, which is the highest accepted bid price PNM is proposing for the
one-year procurement of 15,000 MWh of Tri-State solar RECs. PNM requests a
variance to execute contracts in 2013 and 2014 to purchase RECs from customer PV
systems between 100 kW_{AC} and 1 MW_{AC} under the Set-Aside Program at a price of
$0.02 per kWh, rather than at the price of $0.04 per kWh.171

PNM asserts this variance is justified because the proposed Tri-State solar
REC procurement at the price of $0.04 per kWh is only a one-year commitment,
while the customer REC purchase agreements have a term through the end of 2020
and will consume RCT headroom for several years beyond the 2013 Plan year. PNM

170 PNM Exh. 1 (Ortiz Dir.) at 12-13.
171 Id. at 13-14.
stresses it is important for it to maintain headroom in the future since the RPS increases to 15% in 2015. Subscriptions in the categories between 100 kW\textsubscript{AC} and 1 MW\textsubscript{AC} have remained strong in 2012 at a price of $0.02 per kWh, indicating that higher REC payments are unnecessary to support the market for systems of this size. PNM concludes that doubling the REC payment would unnecessarily increase RPS compliance costs which are ultimately paid by customers, with no off-setting benefit.\textsuperscript{172}

PNM’s requested variances are reasonable, supported by the evidence and should be granted.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Hearing Examiner recommends the Commission FIND and CONCLUDE that:

1. The foregoing Statement of the Case, Discussion, and all findings and conclusions contained therein, whether or not separately stated, numbered or designated as findings and conclusions, are hereby incorporated by reference as findings of fact and conclusions of law of the Commission.

2. PNM is certified and authorized to conduct the business of providing public utility service within the State of New Mexico, provides electric utility services within the State of New Mexico, and as such is a public utility as defined by the Public Utility Act, NMSA 1978, §§ 62-1-1 to -6-28 and -8-1 to 13-15 (1953, as amended through 2011).

\textsuperscript{172} Id. at 14-15; Tr. (Ortiz) at 93-94.
3. The Commission has jurisdiction over the parties and the subject matter of this case.

4. Due, reasonable, proper and adequate notice of this matter has been provided to the public.

5. Pursuant to 1.2.2.10(E) NMAC, leave should be granted to amend the 2013 Plan as provided for in the Plan Amendment.

6. PNM's 2013 Plan, as amended, is reasonable as to its terms and conditions and is approved in accordance with and pursuant to the findings, conclusions, decisions, rulings and determinations contained in this Recommended Decision.

7. PNM's 2013 Plan is reasonable, prudent and in the public interest.

8. Pursuant 17.9.572.18 NMAC and the agreement of PNM to a 30-day extension of the 180-day period for review of the 2013 Plan, the Commission's review period for the 2013 Plan expires on November 30, 2012. 173

9. Each of the new renewable resource procurements proposed in the 2013 Plan – the 20 MW PNM-owned solar PV facilities, the 10 MW Lightning Dock geothermal PPA, the 104,500 MWh one-time procurement in 2013 of SPS wind RECs, the 15,000 MWh of Tri-State solar RECs, the contingent 94,000 MWh of wind RECs at a price of $4.25 per MWh-REC, the DG RECs procured under the CSPP and Capacity Set-Aside Programs – are the lowest reasonable cost resources which will

173 See Procedural Order, at 5, para. 10; Tr. at 18.
enable PNM to maximize its ability to meet the RPS and diversity requirements of the REA and Rule 572 within the RCT, and should be approved.

10. The costs for each of the proposed procurements, including WREGIS costs and carrying charges, as set out in this Recommended Decision and the 2013 Plan and supporting testimony and exhibits, are reasonable and should be approved and PNM should be authorized to recover those costs in future rates.

11. The procurement of the 20 MW PNM-owned solar PV facilities under the turnkey construction contract with First Solar, as proposed in the 2013 Plan, is reasonable, prudent and in the public interest and should be approved with a projected cost of $45.5 million, including approximately $800,000 of AFUDC, provided that any cost overruns are treated in accordance with Rule 580. Further, the procurement of the 2 MW PNM-owned solar PV facilities to source the Sky Blue Program at a projected cost of $4.5 million, as set forth in the Plan Amendment, is reasonable, prudent and in the public interest and should be approved. The construction and operation of these facilities will further PNM’s compliance with the RPS and diversity requirements of the REA and Rule 572, and thus will be in the public convenience and necessity. A CCN for these 22 MW solar facilities should be granted subject to and consistent with the decertal provisions set forth below.

12. PNM should make a compliance filing prior to operation of any new PNM-owned solar PV facility constructed pursuant to the approvals granted herein that it has obtained all the necessary permits for the construction and operation of the facility.
13. The procurement of the [NMWEC bundled wind energy + RECs for blending with the 2 MW solar energy + RECs to source the new Rider 30 Sky Blue Program is reasonable, prudent and in the public interest and should be approved.

14. The Commission should approve the use of any residual RECs from the 2 MW and any residual wind RECs procured for the Sky Blue Program for future RPS compliance, if such procurements are not used for the Sky Blue Program. The Commission should also authorize the costs associated with any such residual RECs to be recorded as regulatory assets and recovered as RPS compliance costs, with carrying charges, in the Plan year in which the RECs are used to meet the RPS.

15. For future unbundled REC purchases, PNM should investigate the possibility of delaying any such purchases to the end of calendar years, if there is not an associated price increase which exceeds the savings in carrying costs.

16. The procurement of energy and RECs under the PPA with Lightning Dock for the output from a 10 MW geothermal facility projected to go into service in January 1, 2014 is reasonable, prudent and in the public interest and should be approved.

17. The four-year CSPP, as set forth in the 2013 Plan and PNM’s supporting testimony and exhibits, provides reasonable and appropriate modifications to PNM’s existing SIP for DG solar systems sized up to 100 kW, establishes the amount of capacity, REC price and costs for DG procurements through 2016, help PNM and its customers maintain RCT headroom as RPS requirements increase, and should be approved.
18. The procurement of RECs from customer-sited solar systems sized 100 kW to 1 MW under the SIP Capacity Set-Aside Program, in the amount of 2 MW of capacity in 2013 and 2 MW in 2014, at the price of $0.02 per kWh-REC with a contract term through December 31, 2020, is reasonable, prudent and in the public interest and should be approved.

19. The procurement of 104,500 MWh of unbundled wind RECs from SPS in 2013 is reasonable, prudent and in the public interest and should be approved.

20. The procurement of 15,000 MWh of unbundled solar RECs from Tri-State in 2013 is reasonable, prudent and in the public interest and should be approved.

21. The procurement of up to 94,000 MWh of unbundled wind RECs at a price of $4.25 per MWh, contingent on use of that amount of RECs from NMWEC to source the Sky Blue Program, is reasonable, prudent and in the public interest and should be approved.

22. PNM's request for a variance from the 2013 “other” diversity requirement set forth in 17.9.572 NMAC should be granted.

23. PNM's request for a variance from the provision in the Case No. 11-00265-UT Final Order regarding the purchase price for REC purchases under the SIP for PV systems sized greater than 100 kW<sub>AC</sub> to 1 MW<sub>AC</sub> should be granted, and PNM should be authorized to enter into contracts in 2013 and 2014 to procure RECs from these sized systems at a price of $0.02 per kWh.
IV. DECRETAL PARAGRAPHs

The Hearing Examiner recommends the Commission ORDER that:

A. The findings, conclusions, rulings and determinations made and construed herein are hereby adopted and approved as the findings, conclusions, rulings and determinations of the Commission.

B. Pursuant to 1.2.2.10(E) NMAC, the Plan Amendment is approved consistent with this Recommended Decision.

C. PNM's 2013 Plan, as amended, is approved and adopted.

D. The following specific procurements are approved, subject to the conditions set forth in this Recommended Decision:

1) 20 MW PNM-owned solar PV facilities and additional 2 MW PNM-owned solar PV facilities to source the Sky Blue Program.

2) 2,356 MWh of NMWEC bundled wind energy + RECs in 2013 and 17,618 MWh in 2014 for blending with the 2 MW solar energy + RECs to source the Sky Blue Program.

3) Geothermal energy + RECs from a 10 MW geothermal project under the PPA with Lightning Dock.

4) Procurement of solar DG RECs from customer-sited facilities under the CSPP and Capacity Set-Aside Program approved herein, as proposed by PNM in the 2013 Plan and set forth herein.

5) 104,500 MWh of unbundled wind-generated, 2010 vintage wind RECs from SPS.
6) Up to 94,000 MWh of wind RECs to meet the 2013 RPS if all or some of the 94,000 MWh of RECs from the NMWEC now used to source the Sky Blue Program are not available to meet the RPS in 2013.

7) 15,000 MWh of unbundled, 2011 vintage solar RECs from Tri-State.

E. The costs for each of the proposed procurements as set forth in this Recommended Decision, including WREGIS costs and carrying charges, are approved and PNM is authorized to recover those costs in future rates.

F. A CCN for the 22 MW solar PV facilities is GRANTED subject to the following conditions:

1) Prior to the commencement of construction of any solar project at a location at which no PV facilities are already installed, PNM shall obtain all necessary permits and shall comply with all environmental requirements to such project; and

2) For construction of any discrete solar project at a site not currently used for solar generation, not less than 30 days prior to acquiring the land for the solar project, or, if such land has already been acquired as of the date of this Final Order, not less than 30 days before commencing the construction of the solar project to be located on the acquired land, cause public notice to be issued in a newspaper of general circulation serving the area surrounding the solar project, with such notice to contain the exact location and description of the solar project, and the following statement:

Within 15 days from the publication date of this Public Notice, any person objecting to the construction or operation
of this proposed solar facility may file a protest to the Commission setting forth the person’s objections. All such protests should reference Case No. 12-00131-UT and be addressed to Records Bureau Chief, Records Division, New Mexico Public Regulation Commission, P.O. Box 1269, Fe, NM 87504-1269.

3) PNM shall file an Affidavit confirming the publication of the public notice no later than 3 days after receipt of the Affidavit of publication from the newspaper. In the event the protest is not resolved informally by PNM or by an Order of the Commission within 30 days after the public notice is issued, PNM shall not commence construction of the protested solar project until further order of the Commission.

G. The use of any residual RECs from the 2 MW and any residual wind RECs procured for the Rider 30 Sky Blue Program for future RPS compliance, if such procurements are not used for the Sky Blue Program is APPROVED and authority is hereby GRANTED to record the costs associated with any such residual RECs as regulatory assets and recover such costs as RPS compliance costs, with carrying charges, in the Plan year in which the RECs are used to meet the RPS.

H. For future unbundled REC purchases, PNM shall investigate the possibility of delaying any such purchases to the end of calendar years, if there is not an associated price increase which exceeds the savings in carrying costs and shall report the results of such investigations in its annual report filed pursuant to 17.9.572.17 NMAC.

I. PNM’s request for a variance from the 2013 “other” diversity requirement is GRANTED.
J. PNM’s request for a variance from the provision in the Case No. 11-00265-UT Final Order regarding the purchase price for REC purchases under the SIP for PV systems sized greater than 100 kW\textsubscript{AC} to 1 MW\textsubscript{AC} is GRANTED, and PNM is authorized to enter into 8-year contracts in 2013 and 2014 to procure RECs from these sized systems at a price of $0.02 per kWh.

K. PNM’s Response to Hearing Examiner’s Bench Request, filed September 12, 2012, is hereby admitted into the evidentiary record pursuant to 1.2.2.35(K) NMAC.

L. The evidentiary record is closed.

M. PNM shall comply with all requirements and conditions placed on it in this case, including matters involving related and future cases before the Commission.

N. In accordance 1.2.2.35(D) NMAC, the Commission has taken administrative notice of all Commission orders, rules, decisions and other relevant materials in all Commission proceedings cited in this Order.

O. Any matter not specifically ruled on during the course of this proceeding or in this Order is disposed of consistent with this Order and the Commission’s Rules.

P. This Order is effective immediately.

Q. Copies of this Order shall be sent to all persons on the attached service list as indicated thereon.

R. This docket is closed.
ISSUED at Santa Fe, New Mexico this 7th day of November 2012.

NEW MEXICO PUBLIC REGULATION COMMISSION

[Signature]

Anthony F. Medeiros
Hearing Examiner

RECOMMENDED DECISION
PRC Case No. 12-00131-UT
BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE
COMPANY OF NEW MEXICO'S
RENEWABLE ENERGY PORTFOLIO
PROCUREMENT PLAN FOR 2013,
PUBLIC SERVICE COMPANY OF NEW MEXICO,
Petitioner.

Case No. 12-00131-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Recommended Decision, issued November 7, 2012, was delivered in the manner indicated below to each of the following persons:

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NEW MEXICO PUBLIC REGULATION COMMISSION

[Signature]

Elizabeth Saiz, Law Clerk

CERTIFICATE OF SERVICE  
PRC Case No. 12-00131-UT