

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE PUBLIC SERVICE COMPANY )  
OF NEW MEXICO'S RENEWABLE ENERGY )  
PORTFOLIO PROCUREMENT PLAN FOR 2012, )  
 )  
PUBLIC SERVICE COMPANY OF NEW MEXICO, ) Case No. 11-00265-UT  
Petitioner. )  
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**INITIAL BRIEF**

**COALITION FOR CLEAN AFFORDABLE ENERGY**

**SIERRA CLUB**

**AND**

**WESTERN RESOURCE ADVOCATES**

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## **I. POSITION STATEMENT**

The Coalition for Clean Affordable Energy (CCAIE), Western Resource Advocates (WRA) and the Rio Grande Chapter of the Sierra Club (Sierra Club) jointly submit this Initial Brief in this matter.

CCAIE, WRA and Sierra Club take the position that PNM's Renewable Energy Portfolio Procurement Plan for 2012 (Plan) should be rejected, and that PNM should be directed to refile the plan in accordance with an Order of the Commission that instructs PNM to take the following actions:

- A. PNM should be directed to use its currently approved rates, and projected 2012 sales in its estimate of 2012 revenues for purposes of calculating the Reasonable Cost Threshold (RCT).
- B. PNM should be directed to levelize the costs of renewable resources for purposes of calculating the RCT.
- C. PNM should be directed to include avoided capacity costs, transmission costs, distribution costs, expected CO<sub>2</sub> costs, water usage costs, and any other avoided costs in its RCT calculation.
- D. If necessary, PNM should be directed to levelize its rates to customers resulting from renewable resources so that the costs to customers do not exceed the RCT percentage.
- E. PNM should be directed to include all revenues, including those from large power customers, in its calculation of the RCT.
- F. If PNM does not meet the statutory Renewable Portfolio Standard in 2012 or 2013 as a result of its erroneous filing, it should be required to make up

the shortfall at the earliest possible time. The make-up should be increased by 8% to compensate for the delayed implementation of the renewable resources.

- G. If PNM is not required to levelize the cost of renewable resources in its calculation of the RCT, it should be required to make up any early year shortfalls in meeting the Renewable Portfolio Standard percentages due to RCT constraints in early years (which are an artifact of PNM's ownership of solar resources) by increasing the amount of renewable resources in later years where the RCT would not act as a constraint.
- H. PNM should be required to develop a system for developing a market price for generation resource additions under its Solar Incentive Program (SIP) to minimize costs to the system.
- I. PNM's billing system modifications should not be included as a cost of renewable energy procurement in its RCT calculation or any rate rider. PNM may apply to recover such costs as a billing expense in a general rate case.

## **II. INTRODUCTION**

The purpose of this proceeding is to determine whether PNM's Renewable Energy Procurement Plan for 2012 (Plan) is in compliance with the Renewable Energy Act, NMSA 1978 §§62-16-1 through 62-16-8 and the Commission's Renewable Energy Rule, 17.9.572 NMAC. For the reasons set forth in this Initial Brief, PNM's Plan is not in compliance with the Renewable Energy Act and the Renewable Energy For Electric Utilities Rule and it should be rejected. PNM has

requested a waiver for its non-compliance with the Renewable Portfolio Standard (RPS). PNM Ex. 1, p. 2. The waiver should not be granted. PNM should be required to refile a plan that appropriately calculates the RCT and provides for the procurement of renewable energy resources consistent with the intent of the Renewable Energy Act and the Renewable Energy for Electric Utilities rule as expressed in this brief.

**III. PNM'S REVENUE PROJECTION FOR 2012 SHOULD INCLUDE THE RATES FROM ITS MOST RECENT RATE CASE**

The RCT is a cost threshold 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 renewable portfolio standard. 17.9.572.7.C NMAC. The RCT is the cost of renewable resources expressed as a percentage of "all customers' aggregated overall annual electric charges." See 17.9.572.11.B NMAC. The RCT is set at 2.25% in 2012, and 2.5% in 2013. 17.9.572.11.B NMAC; PNM Ex. 8, Bothwell Direct, p. 16 (Corrected).

In its filing, PNM used a flawed method to determine "all customers' aggregated overall annual electric charges" in its calculation of whether its renewable resource costs are within the RCT percentage. As stated by Mr. Ortiz, PNM compared its projected costs for all renewable energy procurements expected to be incurred in 2012 and 2013, less avoided fuel costs, to its 2010 revenues. PNM Ex. 2, p. 8 (Corrected). So instead of using a projection of its electric sales revenues for 2012 and 2013, the years in which it will be procuring the resources, and in which the costs of the renewable resources will be charged to customers, PNM used its 2010 actual

electric sales revenues as its estimate of its 2012 and 2013 revenues. Tr. 10/20/11, p. 30. See also, PNM Ex. 8, Bothwell Direct, Ex. CDB-4 (Tables 4 and 5 Corrected). PNM's estimate of the costs of its renewable resources as a percentage of electric charges therefore is based on a complete mismatch between years – it is using a numerator based on expected 2012 renewable resource costs, and a denominator of 2010 actual revenues. PNM's filing also ignores that the company was granted a significant rate increase in PRC Case No. 10-00086-UT which went into effect on August 21, 2011. This rate increase will significantly increase the denominator, so that the costs of renewable resources as a percentage of 2012 electric charges are a much lower percentage than PNM claims.

PNM took the position at hearing that because it filed this case on July 1, 2011, it would have been too speculative to use anything other than its 2010 rates and revenues as its estimate of total overall electric charges in 2012. PNM Ex. 9, Bothwell Rebuttal p. 11. As a result, PNM has completely mismatched the estimated cost of renewable resources in 2012 with its actual revenue from 2010. Because rates and revenues trend upward, PNM's methodology of using actual historical revenues will always result in an overstatement of the costs of renewable resources as a percentage of revenues.

Updating PNM's RCT calculation to use the rates implemented in August of 2011 is a relatively simple matter.<sup>1</sup> Indeed, REIA Ex.3 already gives an estimate of what the overall electric charges will be. As shown on that Exhibit, PNM expects

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<sup>1</sup> The Hearing Examiner issued a Bench Request on October 25, 2011 requesting an update of PNM's projected 2012 revenues. However, PNM's response changed its projected sales volumes (compare Response Table 1 to CDB-2 Table 2 (Corrected)). The response is not subject to cross-examination and CCAE objects to its admission into evidence. If PNM is required to refile its plan, as CCAE requests, PNM can then properly project its 2012 revenues.

total revenues in 2012 of \$926.4 million and \$936 in 2013. Prefiled Direct Testimony of Cynthia Bothwell, PNM Ex. 8, Attachment PNM Ex. CDB-4 (Corrected). Using the cost of renewables for a full RPS Resource Addition of \$22.1 million (Id.) in 2012 and \$23 million in 2013 results in a percentage increase of 2.38% for 2012 and 2.4% for 2013 (well under the 2013 RCT of 2.5%). Using the cost of renewables for a fully diversified portfolio of \$23.7 million, (Id.) this results in a 2012 percentage of 2.55%, and a 2013 percentage of 2.6%. While the RCT may still be a constraint, this shows that PNM can add far more renewables to its system before being constrained by the RCT, even assuming there is no levelization of costs. Because PNM failed to update its Plan after its rate increase was granted, PNM should now be required to use projected 2012 revenues, redetermine the RCT, reevaluate all the resources that can be added to the system in 2012 and 2013 and refile its plan. See, Tr. 10/24/11 p. 231.

PNM had many opportunities to update its revenue figures. PNM filed corrections to its direct testimony, including its exhibits showing the basis of its RCT calculations, on October 4, 2011. It also filed Rebuttal Testimony on October 17, 2011. It made further corrections at hearing. Tr. 10/20/11, p. 15. It also made updates to billing system costs which were estimated in pre-filed testimony, but for which it had final amounts at hearing. Tr. 10/20/11, p. 139-140. Its witness, Ms. Styes, even agreed on cross-examination that the Commission should rely on the most current information for the purposes of addressing the reasonableness of its claim in this case. Id. p. 144. Nonetheless, PNM asks this Commission to rely on outdated information for purposes of calculating the RCT. PNM could have updated its exhibits at any of those opportunities (if not sooner) to include the effect of its August

rate increase on its projected revenue figures for 2012 and 2013. Instead, it made a clear choice to mismatch the time periods of its costs and revenues in order to overstate the percentage of its rates that the cost of renewables places on its system.

Mr. Ortiz testified that PNM was using a “conservative” approach in its calculation of the RCT. PNM Ex. 2, Ortiz Direct, p.6-7. What actually appears to be the case, is that PNM took every opportunity it could find to overstate the costs of renewable resources and understate its revenues, in an attempt to undermine the Renewable Energy Act. However one characterizes it, PNM’s method violates fundamental principles of matching of time periods for making a comparison between costs and revenues. Tr. 10/20/11 p. 104. It also violates 17.9.572.8 NMAC, which states that the Renewable Energy For Electric Utilities rule will be “liberally” construed to achieve its intended purpose. Because the purpose of the rule is to effectuate the Renewable Energy Act, including procuring diverse and quantity compliant resource additions, and to determine what the percentage the cost increase will be in 2012 as a result of renewable resource acquisitions, then the rule must be construed in a way that actually accomplishes this result and does not skew it to reduce the amount of renewable resources that must be acquired.

PNM also maintains that it should use 2010 revenues as the basis for the 2012 and 2013 RCT calculations because the rule governing the RPS states that for purposes of determining the RPS applicable to large power customers, a public utility will assume that electric rates in effect on the day of the procurement plan filing will be in effect for the year during with the procurement reduction will apply. Tr. 10/20/11, p. 103. Mr. Ortiz argued that for consistency’s sake, PNM should similarly

use 2010 costs and revenues for all other purposes of the RCT. Id. PNM's argument is meritless. The language of the regulation states that the use of actual rate levels on the day of filing is for purposes of determining the RPS applicable to large power customers. 17.9.572.10.D NMAC. It nowhere states that the same condition is applicable for any other customer group, or for the purpose of calculating the RCT. Had the Commission intended that the RCT be calculated in this fashion for all customers, it could have done so, but did not.

As shown, PNM has distorted its filing in this case in a manner that undermines the purposes of the Renewable Energy Act. If it had used a more accurate projection of 2012 and 2013 revenues, it could have come much closer to meeting the RPS requirement of 10% renewables in 2012, and could have met fully met the RPS requirement in 2013. It could also have been able to mostly comply with the Commission's diversity requirements. The result would be that PNM would be required to add more renewable energy resources to its system, (Tr. 10/20/11, p 30-31) and the purposes of the Renewable Energy Act would not be undermined. PNM should be directed to refile its Plan, and properly project its 2012 and 2013 revenues for purposes of calculating the RCT.

#### **IV. THE COST OF RENEWABLE RESOURCES SHOULD BE LEVELIZED FOR PURPOSES OF CALCULATING THE TOTAL RESOURCE COST**

In its filing in this proceeding, PNM calculated the RCT by comparing the company's claimed estimated revenue requirement resulting from its renewable resource portfolio in 2012 and 2013 to its 2010 revenues. In the past, however, rather than comparing the on-year revenue requirement impact in the next two years to the

revenues expected in the next two years, PNM levelized the cost of the renewable resource portfolio for purposes of calculating the RCT. In fact, PNM's witness, Ms. Bothwell, filed testimony in Case No. 10-00037-UT stating as follows:

“A levelized cost methodology is appropriate for several reasons. First, NMPRC Rule 572, NMAC 17.9.572.11.B(4), clearly states that the RCT considers the ‘life cycle cost on a net present value basis of renewable energy resources’. The levelized cost calculation methodology takes into account the net present value. Second, since no formal method of calculating the RCT has been adopted by the Commission, PNM utilized the methodology in the proposed amendments to Rule 572 from Case No. 08-00198-UT. Third, if costs are not levelized, the pricing for long-term renewable procurements can be manipulated upward or downward, leading to under or over-procurement of renewable resources. The levelized method using life cycle cost per 17.9.572.11 NMAC captures the lifetime costs and benefits of adding a renewable resource to a utility portfolio and provides the truest view of the total cost and total impact and benefit of the renewable resources and of the total renewable portfolio standard. If the RCT is calculated on a piecemeal basis, it will encourage projects that are less efficient overall but which squeeze in under an earlier year RCT calculation and will not properly recognize the system costs and benefits of a renewable project over its useful life.”

REIA Ex. 10, p. 2.

As will be shown, in that case Ms. Bothwell accurately predicted the problems that would occur if levelization is not used, and in fact predicted precisely what PNM is proposing in this case: a manipulation leading to under-procurement of renewable resources and an encouragement of projects that are less efficient overall but will

squeeze in under an earlier year RCT calculation. Ms. Bothwell's testimony in that case completely undermines PNM's testimony in this case and shows why the costs of renewables should be levelized in the RCT calculation.

The levelization of the costs of renewable facilities is an issue in this proceeding because PNM owns significant solar facilities. See Dr. Blank Rebuttal, p. 14. Because it owns the facilities, under normal ratemaking methodology, PNM would include the full cost of the facility in rates and then depreciate the plant over its useful life, and each year the cost would go down. Under Purchased Power Agreements the cost to PNM would generally be more levelized. Id. But because PNM owns a 22 MW solar facility, and a 0.5 MW Solar/battery facility, the costs to PNM are front loaded.

PNM obtained approval to construct its 22 MW solar facility from the Commission in Case No. 10-00037-UT. Tr. Vol.2, p.196. In that case, PNM did not inform the Commission that the effect of the approval of the ownership would be to prevent the company from meeting its RPS requirements in the early years of the ownership because of the RCT constraint. Tr. Vol.2, p. 201. In fact, in that case, PNM advocated for, and used, a levelized cost methodology for purposes of justifying its renewable resource acquisition plan (which included owned solar facilities). REIA Ex. 10, p. 2-3. But now that the Commission has approved PNM's ownership of solar resources, PNM has changed course and is advocating that the cost not be levelized in the RCT calculation. This has the effect of A) reducing the total amount of renewables in PNM's portfolio, B) causing sub-optimal choices of renewable resources to be made, and C) allowing manipulation of long-term resource

acquisitions leading to under or over-procurement of renewable resources. While CCAE/WRA/SC are generally supportive of utility ownership of renewable resources, they must be accounted for in a way that does not reduce the obligation of the utility to meet the renewable portfolio standard.

A. PNM's Proposed RCT Calculation Will Result in A Reduction of Total Renewable Resources

If PNM's method of calculating the RCT is upheld, it will only have 5.5% renewable resources in its portfolio in 2012 and 5.6% in its portfolio in 2013. PNM Ex. 2, Ortiz Direct, p. 3 (Corrected). Without the claimed RCT constraint, PNM would be required to have 10% renewables in its portfolio (less the large user reduction). § 62-16-4(A). Unless the Commission requires otherwise, this shortfall will never be made up, because in later years, when the RCT is no longer a constraint, PNM is not required to have more in its portfolio than the percentage set by the Renewable Portfolio Standard.<sup>2</sup> PNM will have successfully undermined the purpose of the Renewable Energy Act by reducing the amount of renewable resources included in PNM's portfolio over the earlier years. This reduction is primarily an artifact of PNM's ownership of solar resources and its changed method of calculating the RTC.

B. PNM's Proposed Method of Calculating the RCT Will Result in Additions of Sub-Optimal Resources

Another consequence of calculating the RCT on a non-levelized basis is that sub-optimal resources will be added to PNM's renewable resource

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<sup>2</sup> In Section VI of this Brief, CCAE/WRA/SC argue that to the extent the RCT constraint (resulting from PNM ownership of facilities) causes PNM to fall short of meeting the 10% RPS, it should be required to make up the difference in later years when the RCT is no longer a constraint.

portfolio if they can meet the RCT in the early years, even though other resources would be less costly when evaluated on a life-cycle basis. For example, if PNM has only \$500,000 headroom under the RCT in year one, and has a choice between a Purchase Power Agreement that is \$499,000 in year one, but is more costly on a net present value basis than another resource that is \$501,000 in the first year but which has a lower life-cycle cost for equivalent renewable energy resources, PNM will have to choose the more expensive contract.

The fact that PNM evaluates resources on a life-cycle basis for purposes of its Integrated Resource Plan (IRP) does not change the outcome. Under PNM's proposed method of calculating the RCT, a renewable resource that would be added next under a life-cycle analysis in an IRP would not necessarily be added because of the PNM-calculated RCT. If PNM adds only the least expensive resource based on a life-cycle analysis and that resource does not fit within the RCT constraint in the early years, then it either must add no resource, add a comparatively more costly resource (as measured by a life cycle analysis) that has a lower cost in the early years, or ask for a variance to not apply the very method that it is proposing in this case. Tr. 10/25/11 p. 243-244. These options make no sense, and point out that PNM's proposed non-levelized RCT methodology is seriously flawed. Conversely, using a levelized, life cycle cost approach assures that only the most economically optimal renewable resources will be selected. CCAE Ex. 1, Curl Direct p. 3.

C. PNM's Proposed Method of Calculating the RCT Allows for Gaming of the Renewable Resource Portfolio

Given the above scenario, a provider of renewable resources can easily game the non-levelized RCT method that PNM is advocating by keeping early year prices down during the period in which PNM's owned resources are most costly, and then increasing the price greatly in later years when PNM's owned assets have been depreciated. Because the RCT method chosen by PNM will allow resources with the lower early year costs to be included in its portfolio instead of less costly resources measured on a life-cycle basis, providers have strong incentives to design Purchased Power Agreements that do just that, much to the detriment of all.

As a result of its use of a flawed methodology for calculating the RCT, PNM should be directed to refile its Plan and to levelize the costs of renewable resources for purposes of calculating the RCT.<sup>3</sup>

V. **PNM DID NOT ADEQUATELY INCLUDE AVOIDED COSTS IN ITS RCT CALCULATION**

In determining the cost of its renewable resources, PNM did not consider the avoided cost that renewable resources provide to the utility system as an offset to the cost of the renewables. CCAE Ex. 1, p. 4-5. For example, a renewable resource can provide capacity to the system, can avoid potential future CO2 costs, can provide fuel price stability, and avoid water usage by coal and gas plants. Id. R. Thomas Beach

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<sup>3</sup> It should be noted that PNM receives tax benefits resulting from ownership of solar resources. PNM recognizes the benefits of those tax credits in the first year after it expends the funds for the acquisition of the resources. Tr. 10/20/11, p. 76. However when it calculates the cost of its renewable resource developments for purposes of the RCT, it spreads those tax benefits out over the life of the project. Id. at 77. The effect of this mismatch is to increase the apparent cost of the renewable development in the first years of the project life as compared with the actual cost to the company, when calculating the RCT. PNM inconsistently levelizes renewables benefits but not costs.

testified that the only benefits that PNM included in its calculation were avoided fuel and avoided line loss costs for non-REC purchases. NMIPP Ex. 1, Beach Direct, p. 8. Mr. Beach also testified that capacity benefits should have been included because the renewable resources contribute to system reliability and can avoid the need to build additional conventional generating capacity, transmission capacity, and distribution plant and can offset fixed O&M costs. NMIPP Ex. 1, Beach Direct, p. 8-9, 17-18. The capacity benefits should recognize that the renewable resources are not always available, but should be accorded the same capacity assumptions as PNM employed in its most and accepted recent IRP. *Id.*, p. 18-19.

PNM should be directed to include avoided capacity costs, transmission costs, distribution costs, expected CO2 costs, water usage costs, and any other avoided costs in its RCT calculation.

**VI. IF THE RCT IS LEVELIZED, THE RATE IMPACTS MAY ALSO BE LEVELIZED TO ASSURE THE IMPACT IS REASONABLE**

It is understandable that the Commission would want to evaluate, and perhaps limit, the rate impacts of renewable resources in a utility's resource portfolio. The Renewable Energy Act, §62-16-4 (C) states in part:

“In establishing and modifying the reasonable cost threshold, the commission shall take into account: (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...”

Thus not only must the Commission consider the life-cycle costs on a net present value basis, but it must also consider the rate impacts on retail rates. One way to assure that the impacts on retail rates are not unreasonable, and also consider life-cycle costs on a net present value basis, would be to levelize the rate impacts along with the levelization of the RCT calculation. Unfortunately, PNM has not even looked at what options may be available for levelizing rates. Tr. 10/20/11, p. 109. Though Mr. Ortiz testified that PNM cannot phase in plant costs due to FASB requirements (Tr. 10/20/11, p.108), he also testified that PNM is accruing the costs of its renewable resources as a regulatory asset for recovery through a rate rider. Tr. 10/20/11, p. 115. Apparently, even if PNM cannot phase in costs from a particular plant, it has other methods of levelizing its revenue stream which would be acceptable from an accounting standpoint. The Commission therefore should order PNM to levelize its rate rider or other recovery method in a manner that assures the rate impacts of renewable resources are not unreasonable. At the very least, given that PNM has not even looked at what options might be available to it to allow it to meet the 10% Renewable Portfolio Standard without being constrained by the RCT, it should be ordered to explore such options and refile a plan which levelizes the rate rider or other recovery method over time using such an option, or explain why it cannot do so.

**VII. TOTAL SALES TO LARGE POWER CUSTOMERS SHOULD BE INCLUDED IN THE RCT CALCULATION**

Subsection B of Section 17.9.572.11 NMAC states that the reasonable cost threshold is a percentage of “all customers’ aggregated overall annual electric charges.” However, in its filing, PNM did not use all customers’ aggregated overall annual electric charges in its calculation of the RCT because it reduced those charges by the amount used by its large power customers. This adjustment is made on PNM Ex. 8, CDB-2 (Corrected). The effect of this adjustment to the total electric charges reduces the denominator in the RCT calculation and therefore increases the apparent cost of the renewable resources as a percentage of revenues. There is no basis for this adjustment to the RCT calculation in either the Renewable Energy Act or the Commission’s Renewable Energy for Electric Utilities rule.

**VIII. IF PNM DOES NOT MEET THE RPS BECAUSE OF ITS ERRONEOUS CALCULATION OF THE RCT, IT SHOULD BE REQUIRED TO MAKE UP ANY SHORTFALLS CAUSED BY DELAYS IN ACQUISITION OF RENEWABLE RESOURCES**

PNM’s filing in this case erroneously calculated the RCT, and PNM should be required to refile its Plan. If PNM does not meet the statutory Renewable Portfolio Standard in 2012 or 2013 as a result of delays caused by its erroneous filing, it should be required to make up the shortfall at the earliest possible time. PNM’s improper method of calculating the RCT unjustifiably causes the RCT to act as an artificial limit on renewable procurement, and a refiling of its Plan may cause a delay in procurement of renewable resources. To avoid the situation where the delay caused by PNM’s erroneous filing causes an under-procurement of renewables, and in the event that the Commission requires PNM to refile and adjust its 2012 revenues and/or

levelize the costs of renewables for purposes of calculating the RCT, the Commission should require that PNM make up any under-procurement. When PNM does make up the lost renewable resources, it should be required to add an additional 8% to the resource acquisition to reflect the loss or delay of renewable energy deployment caused by its flawed filing. CCAE Ex. 1, Curl Direct p. 8. This is consistent with Southwestern Public Service Company's agreement, as approved by the Commission, to add 8% to its solar diversity requirement in a later year to make up for the fact that it was short in the current year. Tr. 10/24/11 p. 227.

**IX. IF PNM DOES NOT MEET THE RPS BECAUSE OF THE RCT, IT SHOULD BE REQUIRED TO MAKE UP SHORTFALLS AT A LATER TIME**

If PNM is not required to levelize the costs of renewables in the RCT, and it does not meet the statutory Renewable Portfolio Standard in 2012 or 2013 as a result of the RCT constraint, it should be required to make up the shortfall at the point in time that the RCT no longer acts as a constraint. As argued in Section IV of this brief, if the costs of renewables in the RCT calculation are not levelized, PNM's ownership of solar facilities will have the unintended consequence of reducing the total amount of renewable resources added to its portfolio over the years, because the RCT will act as a limit in the early years and the RPS will act as a constraint in the later years. To prevent this from occurring, in the event that the Commission does not levelize the costs of renewables for purposes of calculating the RCT, the Commission should require that PNM make up the shortfall at a later point in time by exceeding the RPS when the RCT is no longer a constraint.

Section 62-16-4(A) of the Renewable Energy Act sets forth the minimum amount of renewable resources that must be added to a public utility's system for particular years. The statute does not set forth a maximum, and in fact requires the Commission to encourage public utilities to acquire more than the minimum amount of renewable resources. Because one of the purpose of the Renewable Energy Act is to encourage renewable resources, the Commission should not allow PNM's ownership of the resources to undermine that purpose. If the Commission allows PNM to fall short of the 10% RPS this year and next year as a result of the RCT and PNM's ownership of renewable facilities, PNM should be required to exceed the RPS requirement in later years when the RCT is no longer a constraint. Tr. 10/24/11 p. 243-244.

**X. PNM SHOULD PUT ITS SOLAR DISTRIBUTED GENERATION RESOURCE ACQUISITION REQUIREMENTS OUT TO BID**

In its filing in this proceeding, PNM requested approval of a new RFP bid process that would be applicable to all applicants to the Solar Incentive Program (SIP) with capacity sized over 100 kW up to and including 1MW, once the categories provided for in the SIP for facilities of those sizes become fully subscribed. PNM Ex. 2, Ortiz Direct, p. 20-22. The purpose of this proposal is to incorporate market pricing into its solar REC purchase program. Id., p. 22. PNM intends to issue an RFP in the first quarter of each year to identify procurements that can be included in its Renewable Energy Plan filing to the extent there is room within the RCT. PNM will use the clearing price from the annual RFP to set the REC purchase price for any REC purchases from customer-sited PV systems in a size category (> 100 kW) that has been fully subscribed and as approved in its annual plan. Id.

CCAIE/WRA/SC support market pricing for acquisition of distributed generation resources. CCAIE Ex. 1, Curl Direct, p. 5. However, CCAIE/WRA/SC believe that the program should not fix a price based on a single RFP each year, but should instead use some other more flexible market-based approach to better capture declining costs that are occurring in the solar industry. Tr. 10/24/11, p. 220. PNM witness Ortiz agreed with Mr. Curl that soliciting input for the parties when developing a proposal as to whether, or under what terms, to continue to purchase RECs from PV systems sized 100 kW and more has merit. Accordingly, PNM's proposed method should not be approved, and PNM should be directed to explore other pricing options for this group of customers.

**XI. PNM SHOULD NOT BE ALLOWED TO INCLUDE ITS UNREASONABLE BILLING COSTS FOR DISTRIBUTED GENERATION CUSTOMERS AS A RENEWABLE ENERGY COST**

PNM has proposed to treat billing system modifications costing \$283,795 as renewable energy costs. PNM Ex. 4, p. 3 (updated); Tr. 10/20/11, p.139; PNM Ex. 2, Ortiz Direct, p. 11. According to PNM, the billing system modification was made to provide for automated billing of customers and payment of third-party participants in its SIP. PNM Ex. 4, p.3. PNM seeks to amortize this cost over 3 years. Bothwell Direct, p. 15.

PNM currently has interconnected only 4 third-party systems for participation in its SIP program. It has outstanding applications for 45 more systems. PNM Ex. 4, Styes Direct, p. 11 (updated). Based on these figures, the cost per customer of this billing system is nearly \$6000 – assuming all 45 applications are accepted. Tr. 10/20/11, p. 174-175.

PNM's request to include its billing system upgrade costs as a renewable energy resource cost should be rejected for two reasons. First, the cost is not a cost of procuring renewable energy. §62-16-4(D)(1) states that in July of each year, a public utility shall file a procurement plan that includes "the cost of procurement of any new renewable energy resource in the next calendar year required to comply with the renewable portfolio standard." PNM's billing system modification is not a cost of procurement of a renewable energy resource, but is a typical cost of doing business as an electric utility. PNM should seek to recover billing system expenses in a general rate case. Tr. 10/24/11 p.236.

Second, the billing system upgrade comes at an unreasonable cost. PNM attempts to justify the high cost by showing that the cost is "only" \$12.76 per bill over the next 20 years. PNM Ex. 5, Sykes Rebuttal, p. 7.<sup>4</sup> To arrive at this justification, PNM is using a 20 year levelization, but then turns around and proposes to charge customers based on a 3-year amortization, which has the effect of reducing the headroom under the RCT. Once again, the consistent theme of PNM's filing is that it reduces its planned renewable resources procurements by overstating the costs of renewable resources in the RCT.

PNM claims that the provider for changes to the billing system was selected through a competitive request for proposal. PNM Ex. 4, Styes Direct, p. 5. However, once a contractor (Cognizant) was chosen, that same contractor became responsible for leading a team to identify how much work would need to be done to modify the

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<sup>4</sup> Thus, in a manner inconsistent with its argument that renewable energy costs should not be levelized, PNM is justifying the cost of this very expensive billing system by levelizing the cost over 20 years for purposes of gaining approval of including the cost in its renewable cost rider. However PNM in fact plans on amortizing the cost of the billing system over 3 years. Bothwell Direct, p. 15.

system, and was then responsible for making those modifications. PNM Ex. 4, Styes Direct, p. 4. The contractor had an inherent conflict of interest in that it was to determine and recommend its own scope of work, and then perform the work. The requirement analysis cost \$4,270. Unsurprisingly, the contractor then charged \$202,800 to perform the work that it determined would be required to adequately upgrade the system. Then there was a change order to the requirements analysis that cost an additional \$9,520. Tr. 10/20/11, p. 182-183. It simply is not reasonable to pay \$6000 per distributed generation customer for a billing system to charge and pay those customers.

Though PNM stated that manually billing each customer instead of using a computer program would be unfeasible, and could only be a short term solution, the fact is that PNM has manually billed its large power customers for many, many years. Tr. 10/20/11 p. 167. PNM has at least 32 customers who are manually billed. Id. PNM's witness, Ms. Styes, stated that the large power customer bills have unique contractual requirements, with multiple circuits and demand charges, so manual billing is considered a permanent solution. Id. p. 167-168. According to Ms. Styes, large power bills have many requirements for one customer, whereas for a third-party system its requirements are for many customers. Id. Yet given that currently PNM has only 17 more third party customers than large power customers (if all applications are accepted) it's hard to understand why the company would spend \$6000 per customer to implement a billing system that can be done manually.

Ms. Styes also testified that manual billing of a third-party distributed generation customer would take approximately 2 hours per customer, and used this for a cost

comparison to the billing modification. PNM Ex. 5, p. 7. However, the 2 hour estimate was based not on experience with manual billing of third party distributed generation customers, but on the cost of billing large power customers. Tr. 10/20/2011, p. 176. As she also testified, however, those bills have multiple circuits, demand charges and unique contractual arrangements. It's not at all clear that third party billing of distributed generation customers would be as difficult or time consuming.

## **XII. CONCLUSION**

For the foregoing reasons, the Coalition for Clean Affordable Energy, Western Resource advocates and the Sierra Club urge the Commission to reject PNM's 2012 Renewable Energy Portfolio Procurement Plan and require PNM to refile a plan that appropriately calculates the RCT and provides for the procurement of renewable energy resources consistent with the intent of the Renewable Energy Act and the Renewable Energy for Electric Utilities rule as expressed in this brief.

Respectfully Submitted,

COALITION FOR CLEAN AFFORDABLE ENERGY

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SIERRA CLUB

*Electronically Approved*

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