

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

Case No. 11-00265-UT

**PUBLIC SERVICE COMPANY OF NEW MEXICO'S
INITIAL POST-HEARING BRIEF**

PUBLIC SERVICE COMPANY OF NEW MEXICO

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In accordance with the instructions of the Hearing Examiner, Public Service Company of New Mexico (“PNM” or “Company”) submits this Initial Post-hearing Brief setting out the Commission rulings it is requesting in this matter and its arguments on the disputed issues which have arisen.

I. SUMMARY OF POSITION

PNM seeks approval of its Renewable Energy Portfolio Procurement Plan for 2012 (the “2012 Plan” or “Plan”) filed on July 1, 2011. The specific approvals PNM is requesting are set forth in the Plan § 10, pp. 1-2 and 18-19¹ as follows:

- The procurement of 1,800 MWh of RECs to be issued in 2011-15 and recovery of all associated costs for the City of Santa Fe hydro REC purchase, described in the Plan p. 8 and Bothwell Direct 8. The price per REC is \$20/MWh and the total price is \$36,000. Staff supports this procurement, no party opposed the procurement and it should be approved.
- Authorization to procure additional RECs from new customer-sited solar distributed generation (“DG”) systems larger than 100 kW_{AC} at a market-based price after those categories of the Solar REC Incentive Program (“SIP”) are fully subscribed. In 2012 PNM proposes to procure up to 5000 MWh from these systems, at the market price resulting from PNM’s 2011 RFP of \$20/MWh.
- A variance from the RCT for the limited purposes of (1) accommodating the continuing growth of customer participation in PNM’s SIP; (2) to procure additional RECs from solar DG facilities sized above 100 kW_{AC} up to 1 MW_{AC} at the price of

¹ All citations to the Plan and prefiled testimony are to the corrected pages of those documents that were admitted into the record at the hearing.

\$20 per MWh; and (3) to undertake the procurement of hydro RECs from the City of Santa Fe project.

- A waiver pursuant to NMAC 17.9.572.11.C from the RPS and the requirement to procure additional renewable resources for 2012 due to the fact that renewable procurement costs in 2012 for PNM's existing resources will exceed the RCT. NMSA Section 62-16-4(B) mandates such waiver.
- A variance from the resource diversity requirements in Rule 572 for "Other" resources due to the limited availability of such resources in 2012.
- The recording as a regulatory asset of actual expenditures of \$283,795 incurred to modify PNM's customer service computer billing systems to accommodate third-party REC transactions for participants in the SIP.
- In addition to the requests made in the 2012 Plan as filed on July 1, 2011, PNM also requests approval of the following procurement proposed in Ortiz Reb. 9-10: approval of PNM's interim proposal to purchase RECs produced by DG systems sized 100 KW and less, pending the Commission's determination of the terms and conditions under which the SIP should be continued for these sized systems. PNM proposes to continue to accept applications for these sized systems after the existing SIP tranches become full, reducing the REC price in each size category by one cent (\$0.01 per kWh) from the last tranche price, and using the same capacity amount steps in the current program – 593 kW for systems 10 kW and smaller, and 450 kW for systems between 10 kW and 100 kW. This interim program would stay in effect for either six months after it begins or until the Commission has issued an order on PNM's SIP continuation proposal for these sized systems, whichever is sooner.

II. DISCUSSION

A. PNM's Good Faith

Staff Witness Lamberson asserted that PNM is not on a path that will lead to the procurement of renewable resources that will enable it to meet the RPS quantity and diversity requirements of the REA and Rule 572 in 2015 and 2020 and that PNM's proposed 2012 plan does not demonstrate a good faith effort to satisfy its RPS. Lamberson Direct 10, 12. Other parties raised questions regarding the different positions PNM has taken with respect to the RCT in this and prior proceedings. The 2012 Plan and the records in PNM's previous renewable plan cases show that PNM has taken seriously its obligations under the REA and Rule 572, has made and is continuing to make a good faith effort to meet RPS and diversity requirements, and is on a path that will enable it to do so. PNM's Plan and the RCT method it advocates reflect PNM's judgment on the proper balance of the competing policy goals of overall renewable energy procurement, portfolio diversity, and customer bill impact. Ortiz Reb. 4. Other parties advocate a different balance that places more emphasis on total renewable procurement or portfolio diversity, but PNM's RCT method and Plan emphasize reasonableness of costs and customer bill impact while procuring as much renewable energy and achieving as much resource diversity as possible within those cost constraints. Reasonableness of costs is a paramount goal of the REA and PNM's concern with rate impact does not warrant the allegation that PNM is not acting in good faith. Branding PNM with the charge of bad faith would require that other parties who also advocate the rate impact RCT, such as the AG and NMIEC, also be deemed to be acting in bad faith.

Pursuant to the Stipulation filed in Case No. 10-00037-UT, PNM proposed a plan in that case that would have allowed it to meet both the RPS and diversity requirements, except for the

“other” diversity requirement. That plan was based on use of a levelized RCT²; the cost of the procurements in the plan would have exceeded both the rate impact RCT that PNM uses in the 2012 Plan and Staff’s proposed cumulative RCT. Several of PNM’s critics in this case—WRA, CCAE, County of Santa Fe, REIA³—supported that plan, but Staff, AG, NMIEC and others opposed the plan and use of the levelized RCT on the ground that it would result in excessive costs. The Stipulation and plan were not approved as a result, although the Commission approved two of the proposed procurements—a solar battery demonstration project and 22 MW of PNM-owned PV. The Commission also approved the SIP, which was much different from the DG program PNM had proposed under the Stipulation.

After the Commission’s rejection of the plan that PNM had proposed in Case No. 10-00037-UT based the levelized RCT, in subsequent plan filings PNM has applied the annual rate impact or revenue requirements RCT that was advocated by the AG in Case No. 10-00037-UT. Staff and others now argue that the annual rate impact RCT is too restrictive and that PNM will never be able to meet the RPS using that RCT method. PNM, however, construes the REA and Rule 572 to require a balancing of competing goals—expansion of the use of renewable energy resources by electric utilities; cost-effective renewable resource portfolios; limiting the cost impact on customers resulting from renewable energy procurement; and encouraging diversity of renewable resources. The Legislature did not intend the RPS to be achieved regardless of the cost; if achievement of the RPS were paramount, there would have been no reason to require the Commission to establish an RCT in the first place. PNM’s 2012 Plan, based on application of the rate impact RCT, incorporates an appropriate balance between

² The various RCT methods proposed in this case are discussed more fully below.

³ REIA is an association of businesses and individuals actively engaged in the renewable energy business. The mission of REIA is to promote renewable energy industry in New Mexico. Sadewic 3.

meeting renewable energy quantity and diversity goals and doing so in a manner that limits the costs to customers and is not economically burdensome.

As discussed more fully below, the record shows that application of the rate impact RCT will not prevent PNM from ever meeting the RPS and diversity requirements. In order to meet the Commission's requirement in Case No. 10-00373-UT that PNM present a "well-designed plan charting a clear course" to achieve 20% solar diversity and 10% "other" compliance by 2013 and in the event the Commission decides that PNM is not constrained by the RCT, PNM included two alternative renewable resource portfolios in its 2012 Plan showing the resources it could procure and the estimated costs if the RCT allowed additional procurements to meet the full RPS and diversity requirements (except for "other" resources) in 2012. Plan § 6, pp. 11-14; Ortiz Direct 4-5 and Reb. 3-4. Mr. Lamberson agreed that his statement in pre-filed testimony that the alternate portfolios would not satisfy PNM's RPS requirement did not properly account for the large customer adjustment. Lamberson Direct 7 and 10/24 Tr. 150-2; Bothwell 10/25 Tr. 299-300. PNM demonstrated the potential for full quantity compliance in the alternative "Full RPS Portfolio" which ignores the RCT constraint on the procurements needed to meet the RPS, although the additional resources were selected on a lowest reasonable cost basis. The additional resources include wind REC purchases based on RFP results, as well as PNM's proposal for continuation of the SIP for solar facilities sized above 100 kW_{AC}, once the applicable SIP categories become fully subscribed. In 2012, the additional resources would increase total procurement costs by \$2.7 million above PNM's proposed 2012 Plan, resulting in a rate impact of 2.89% (compared to the RCT of 2.25%). In 2013, the additional resources would increase total procurement costs by \$3.4 million, resulting in a rate impact of 2.94% (compared to the RCT of 2.5%). Plan p. 12.

PNM further demonstrated the potential for full quantity and diversity compliance in the alternative “Diversity Portfolio” which includes, in addition to the projects and programs included in the Proposed Portfolio, potential renewable energy projects and programs that resulted from PNM’s RFP and that would provide solar RECs sufficient to fully meet the RPS, less reductions due to the large customer rate impact cap, in 2012 and 2013, and also fully meet the resource solar diversity requirements of Rule 572.14. The Diversity Portfolio assumes that there is no RCT constraint on the procurements needed to meet the RPS and diversity requirements and that the only limitation is technical feasibility of “other” resources within the relevant timeframe, although the additional resources were selected on a least-cost basis. The Diversity Portfolio would increase total procurement costs in 2012 by \$4.1 million, resulting in a rate impact of 3.06% and would increase total procurement costs in 2013 by \$4.8 million, resulting in a rate impact of 3.11%.

PNM is not proposing either alternative portfolio, because it does not believe that they appropriately balance the need to limit costs and customer rate impacts with the goals of increasing amount and diversity of renewable resources. But the fact that PNM presented the alternative portfolios shows that it is acting in complete good faith by requesting approval of the portfolio and 2012 Plan which it believes most comport with the REA and Rule 572, but also presenting alternative procurements the Commission could approve if it decides that a different RCT should be applied. The assertions that PNM is not acting in good faith and is not committed to compliance with the REA and Rule 572 are baseless.

B. Economic Development

In support of its argument about the method of calculating the RCT, the County, in particular, argues that higher electric rates in the near term are an acceptable tradeoff to promote desired societal outcomes. O’Hare Direct 5. The County contends, based on Mr. O’Hare’s

discussions with solar industry professionals (O’Hare 18 – 19) that economic development, such as revitalizing the building industry in Santa Fe (O’Hare 3) and the creation of high paying renewable energy jobs, must be given greater weight by the Commission even if it means all PNM customers will face higher electricity costs.⁴

While economic benefits are among the goals of the REA⁵ which the Commission may consider, PNM believes that such benefits, to the extent that they can be shown to exist at all, should not be pursued at any cost. The Legislature made clear that another purpose of the REA is to “protect public utilities and their ratepayers from renewable energy costs that are above a reasonable cost threshold.” Section 62-16-2(B)(3). The manipulation of the RCT that is urged by the County, REIA and others, in the name of economic development, would result in higher electricity rates for PNM ratepayers in Santa Fe and throughout the state.

Setting aside the philosophical difference of opinion about how to balance the interests of ratepayers in ensuring that the cost impacts of renewable energy are reasonable versus providing incentives and subsidies to the rooftop DG industry to foster economic development and job growth in that sector, as urged by the County, REIA and others, the alleged economic development benefits which these parties contend will flow from such subsidies are not supported by the record, are overstated and are without any foundation in economic impact analysis. Dr. Blank, who is both a Ph.D. economist and an Associate Professor of Economics and the Associate Director with the Center for Public Utilities in the College of Business at New Mexico State University, offered his expert opinions on the economic impacts of the various proposed RCT methods and expenditures on renewable resources. Dr. Blank’s expert testimony

⁴The County concedes that the position it urges would result in all PNM ratepayers, including low income rate payers, paying higher electricity costs in the short term. O’Hare 10/24 Tr. 203 – 208.

⁵NMSA 1978, § 62-16-2(A).

should be given greater weight than the non-expert suppositions of other witnesses who have no equivalent expertise in the field and whose testimony was based on no relevant study.

It is misleading to suggest that the RPS has and will have a positive impact on the New Mexico economy. Blank Direct 22. As Dr. Blank explained, net income growth within the State of New Mexico can only be realized in the renewable energy production sector if New Mexico becomes a net exporter of renewable energy by selling it to others outside the state. The Legislature recognized this fact in its seventh finding that “it may serve the public interest for public utilities to participate in national or regional energy trading.” NMSA 1978 § 62-16-2(A)(7). Additional New Mexico jobs and income paid through higher electric bills of New Mexico ratepayers merely represent a transfer of income from New Mexico consumers of electricity to New Mexico installers of facilities. Blank Direct 25.

The evidence of job creation is similarly misleading. Citing to an unidentified document from the New Mexico Green Chamber of Commerce, an entity whose announced purpose is to create new opportunities for business by advocating on behalf of renewable energy,⁶ the County asserts that tens of thousands of jobs could be created in the renewable sector alone by developing all New Mexico’s renewable energy potential. O’Hare Direct 11. However, this is physically impossible without investment in transmission capacity to move the power out of state. Blank Direct 22. Indeed Mr. O’Hare admitted the substantial new job numbers he cites are in part dependent on out-of-state sales of renewable energy. O’Hare 10/24 Tr. 202. The more modest job numbers cited by REIA, *i.e.*, 35 people employed in manufacturing and installation for each MW of installed solar power (Sadewic Direct 14 – 15), are short-term jobs insofar as the New Mexico economy is concerned because they are tied to the demand for new

⁶See, <http://www.nmgreenchamber.com/pages/mission-vision>

installations. Blank Direct 26. It is undisputed that long term jobs in ongoing operation and maintenance of renewable electricity sites are few and relatively small in comparison to the total cost of a renewable project. Blank Direct 26.

The evidence demonstrates that the only way renewable energy production could create a positive economic impact on the State is if New Mexico becomes a net exporter of renewable energy. Until that happens, the effect on net income in the State from procurements made to meet the RPS is negative. Blank Direct 31. The unsupported assertions of economic benefit and job creation is not a sufficient reason to manipulate the RCT in order to allow more renewable energy costs to be passed on to customers.

C. PNM's RPS and Diversity Requirements and Request for RPS Waiver

PNM's projected net RPS requirements for 2012 and 2013 are 487,903 MWh (5.5%) and 498,116 MWh (5.6%). See Plan, Table 1, p. 6. The calculations are based on projections of total retail sales for 2012 and 2013 of 8,843,593 and 8,934,983 MWh. Id.; Bothwell Direct 10 and Reb. 36; Bothwell 10/25 Tr. 299; Lamberson 10/24 Tr. 138-140 (agreeing that his testimony to the contrary at Lamberson Direct 6, 7 and 8 was incorrect). The full 10% RPS of those projected total retail sales are then reduced in accordance with the requirements of Rule 572.10.C for certain qualifying large, non-governmental consumers with consumption exceeding ten million kilowatt hours per year and by application of the reasonable cost threshold ("RCT") to determine PNM's net RPS requirement of 5.5% and 5.6% for 2012 and 2013, respectively. Plan, Table 1, p. 6; Bothwell Direct 10-11.

To determine the reduction from the 10% RPS due to application of the RCT of 2.25% and 2.5% for 2012 and 2013 of all customers' aggregated overall annual electric charges established in Rule 572.11.B, PNM first computed the annual revenue requirements of each renewable procurement in the portfolio in 2012 and 2013, less any annual benefits projected in

those years including avoided fuel costs and applicable losses. PNM then determined the annual customer rate impact by dividing this number by PNM's total revenue in the most recent calendar year—2010—and compared that to the 2.25% and 2.5% RCT. Bothwell Direct 11.

Calculated as percentages of PNM's net 5.5% and 5.6% RPS requirements for 2012 and 2013, PNM's proposed portfolio will achieve the 20% wind and solar diversity requirement in Rule 572.7.G in both 2012 and 2013 and will contain more than four times the required 1.5% of DG in 2012 and more than five times the required DG in 2013. Plan Table 2, p. 9. PNM's portfolio will not meet the required diversity for "other" renewable resources in Rule 572.7.G. Even though PNM has proposed and obtained approval to procure several resources that would help meet the "other" requirement, it has not been successful in procuring such resources and will only have 0.1% of "other" resources in its portfolio in 2012 and 2013. *Id.*; Bothwell Direct 20-22; Lamberson 10/24 Tr. 164-6 (agreeing that "PNM has made fairly substantial efforts to satisfy the other category"). PNM conducted an RFP process for renewable resources in early 2011 and received 15 bids for "other" resources that were deemed viable after the first round evaluation. Bothwell Direct 5-7, 21-22. One of those is the hydro project PNM is requesting approval to procure in this Plan. PNM is continuing to evaluate the other 14 "other" projects, but the earliest in-service date for any of these projects is late 2013. Hence, they will be addressed in PNM's 2013 Plan. Bothwell Direct 22; Ortiz 10/20 135-6.

Staff opposes PNM's request for a waiver from the RPS and the requirement to procure additional renewable resources for 2012 due to the fact that renewable procurement costs in 2012 for PNM's existing resources will exceed the RCT and contends that PNM has not shown a good faith effort to meet the RPS. Lamberson 10/24 Tr. 132. The 2012 Plan, however, is the first instance in which PNM has requested an RPS waiver. PNM's 2011 Plan requested Commission

approval of procurements that would have allowed it to meet the RPS and Staff supported those procurements, but the Commission rejected the 2011 Plan. Id. at 132-3. The only basis for Staff's opposition to PNM's request for an RPS waiver is its disagreement with the RCT method PNM used in the 2012 Plan. If the Commission approves use of an RCT method that constrains PNM's procurement of additional renewable resources, PNM should be granted a waiver from the RPS and the requirement to procure additional renewables that would cause it to exceed the RCT. NMSA § 62-16-4(B).

WRA/CCAIE recommended that "if there is a shortfall in PNM's compliance with the RPS," PNM should be required to make up the shortfall with an 8% premium. Curl Direct 8. A "shortfall" does not result from application of RPS reductions due to the large customer adjustment required by Rule 572.10.C or the RCT. Ortiz Reb. 12; Curl 10/24 Tr. 241. Under the REA § 62-16-4(B), if the RPS is reduced by application of the RCT in a given year, the subsequent statutory annual increases in the RPS are not delayed, but there is no requirement to makeup a "shortfall": "[w]hen a public utility can generate or procure renewable energy at or below the reasonable cost threshold, it shall be required to add renewable energy resources to meet the renewable portfolio standard applicable in the year when the renewable energy resources are being added." See also, Rule 572.11.C. The REA does not require any RPS interest penalty if the RPS is reduced in a year under this provision. Curl 10/24 Tr. 243. There is no basis in the Rule or the REA for a requirement that a utility make up any "shortfall".

D. The RCT Calculation

The RCT methodology PNM used in this case reflects the annual rate impact to customers by using actual resource costs and avoided costs incurred in each plan year. Bothwell Reb. 6, 8. This is the same RCT calculation PNM applied in its 2011 Plans in Case Nos. 10-00199-UT and 10-00373-UT. Bothwell Reb. 7. PNM determined the percentage of

customers' overall annual electric charges which are due to the cost to procure renewable energy to meet the RPS—the annual customer rate impact—by dividing the annual revenue requirements of all renewable procurements in PNM's portfolio in 2012 and 2013, less any projected avoided fuel costs in those years, by PNM's total revenue in 2010 of \$797,277,195, which includes fuel adjustment clause revenue. Bothwell Dir. 16.

Using the rate impact RCT, the projected cost for RCT purposes of renewable resources in 2012 for the existing, approved, and proposed renewable resources in PNM's 2012 Plan is 2.43% of PNM's projected 2010 retail revenues and the projected cost of such resources in 2013 is 2.45%. Bothwell Direct 16 and Tables 4 and 5, Exhibit CDB-4. The costs in Tables 4 and 5 include the price of the renewable energy at the point of sale, the transmission and interconnection costs required to deliver the renewable energy, the operational costs required to deliver the renewable energy, the avoided fuel cost of the units that will be displaced by the renewable energy, and the avoided costs for losses, if applicable. Bothwell Direct 12-16 and Tables 4 and 5, Exhibit CDB-4.

1. Revenues Used in RCT Calculation – The RCT Denominator
 - a. PNM Should Use Known 2010 Revenues

PNM used its revenues in the calendar year prior to the plan filing, which were the 2010 revenues of \$797,277,195, for the purpose of calculating the dollar cap of the RCT for 2012 and 2013. This was the method for determining the revenues to be used in the RCT calculation, that was agreed to by various parties in PNM's Revised 2010 Plan, Case No. 10-00037-UT including CCAE, WRA, and REIA, in order to “avoid speculation and contentiousness.” Curl Direct 5; Bothwell Reb. 10. This was also the method that was agreed to by the parties that developed the consensus rule proposed in the rulemaking in Case No. 08-00198-UT, Revised Notice of Proposed Rulemaking, Exhibit A, 17.9.572.11.D (REIA Ex. 1-6) and is the same method

included in Staff's proposal for the new rulemaking in Case No. 11-00218-UT. Lamberson 10/24 Tr. 125.

The public utilities have not followed a uniform approach to the determination of the revenues used in the RCT calculation. SPS has used the projected revenues in the year prior to the proposed new procurement and decreased the total revenues by those received from the large customers covered by Rule 572.10.C. EPE has used projected revenues for the years of the proposed procurement. Neither SPS nor EPE have based their projected revenues on projected rate increases, but used their current rates applied to projected sales. Bothwell Reb. 10; Lamberson 10/24 Tr. 153 (agreeing that EPE and SPS use their rates in effect at time of filing their renewable plans); EPE's 2012 Plan, Case No. 11-00263-UT; SPS's 2012 Plan, Case No. 11-00264-UT.

Despite the lack of any applicable precedent, other parties argue that PNM should use projected revenues for 2012 and 2013 based on the rates that went into effect August 12, 2011 and on projected retail sales for those years. Since PNM's new rates were not approved until after it had filed the 2012 Plan, PNM could not have developed the Plan based on revenue projections using those rates. Plan development involves evaluation of potential procurements in light of the available headroom within the RCT and resource needs. Lamberson 10/24 Tr. 126. It would not have been reasonable for PNM to develop its Plan using revenue projections based on the assumption that the Commission would approve the rates agreed upon in the stipulation in Case No. 10-00086-UT or recommended in the Certification of Stipulation. That would have overstated 2012 and 2013 revenues by more than 15%. Id.

Nor would it be reasonable to require PNM to go back to the drawing board after approval of the new rates and use those rates to project 2012/2013 revenues, recalculate the

RCT, reevaluate potential procurements in light of revised RCT and propose a revised 2012 Plan. Many aspects of a renewable procurement plan are based on the best available data at the time of the filing. “Leaving the plan open for constant change in projected quantities, including but not limited to load forecasts, revenue projections, fuel costs, participation rates, output rates from intermittent facilities, and status of banked resources, would create a ‘moving target’ both for the utility in its procurement decisions and for the Commission and stakeholders that are examining these decisions in procurement plan cases.” Bothwell Reb. 11.

In arguing that PNM should use its new rates to recalculate the RCT, other parties seek to increase the headroom for the 2012 Plan so as to allow for additional procurements. The new rates, however, will be reflected in the revenues that will be used in PNM’s 2013 and subsequent procurement plans and will allow for increase in the RCT headroom at that time. The recalculation of the RCT using PNM’s new rates to project 2012/2013 revenues and resulting reevaluation of potential additional procurements would certainly have delayed this proceeding. Curl 10/24 Tr. 231. The minimal advancement by a few months of the increase in the headroom that would be achieved by requiring PNM to recalculate the RCT after the implementation of the new rates, which would further require PNM to reevaluate resources and refile its 2012 Plan, does not warrant the disruption of the administrative process with the inevitable increase in time and expense for the Commission and all parties that would entail.

b. Rider Revenue Should Not Be Included

Rule 572.11.B provides that the RCT is a prescribed percent “of all customers’ aggregated overall annual electric charges.” PNM did not include amounts it recovered in 2010 under its Energy Efficiency Rate Riders (“EE Riders”) in calculating the RCT, just as it did not include franchise fees, gross receipt taxes, revenues for sales under PNM’s voluntary renewables program (Sky Blue), and revenues from underground riders. None of these are “electric charges”

within the meaning of the Rule 572.11.B. The EE Riders do not recover costs associated with the provision of electricity, but only recover the costs associated with offering energy efficiency programs to PNM's customers. Bothwell Reb. 12. They include amounts PNM is authorized to recover under NMSA § 62-17-5(G) as incentives to procure energy efficiency and load management resources. The EE Riders are not calculated on a kWh basis, but on a percentage of bill basis. Additionally, except for the fuel adjustment rider that was included in the revenue calculation, riders are not applicable to all retail customers, Bothwell 10/25 Tr. 254, and collections under those riders should not be used to increase costs for all customers. Although not done for PNM's 2012 Plan, revenues associated with renewable procurements that are used to compute the RCT should also be excluded in calculating the RCT so that the need for revenue to cover the costs of renewables does not itself contribute to the need for more renewable procurements. Bothwell Reb. 13.

c. Exclusion of Large Customer Revenues

PNM included large customer revenues in the total 2010 revenues of \$797,277,195 used to calculate the RCT. Since the REA § 62-16-4(A)(2) and Rule 572.11.C cap costs for renewables that can be assessed to large customers at a lower level (2% or \$99,000) than the RCT cap that Rule 572.11.B applies to other customers (2.25% for 2012 and 2.5% for 2013), this overstates the revenues from customers to which the large customer reduction does not apply. Bothwell 10/25 Tr. 256. SPS separates the revenues associated with the Rule 572.10.C large customers from the revenues recovered from its other retail customers before calculating the RCT. This ensures that non-large customers do not pay a higher percentage of their annual electric charges than provided by the RCT. Although it did not do so in its Plan filed on July 1, 2011, PNM submits that it would be reasonable to separately calculate both the RECs required for compliance and the revenues for large customers in calculating the cost caps for both groups

of customers, so that non-large customers are not made responsible for costs associated with procuring renewables based on large customer revenues. Bothwell Reb. 12. If PNM calculated the RCT in this manner, as SPS does, overall retail customer revenues for 2010 would decrease by \$62.4 million, resulting in reduction of nearly 20,000 MWh of RECs needed for RPS compliance in 2012. Bothwell Reb. 13.

REIA submitted the Rebuttal Testimony of Ms. Bothwell in Case No. 10-00037-UT for the purpose of impeaching her testimony in this case that it would be reasonable to separately calculate the cost caps and revenues for large customers to preclude overstating the revenues for other customers in applying the RCT. REIA Ex. 10, p. 4. Ms. Bothwell's Rebuttal in Case No. 10-00037-UT was in response to Staff's recommendation that PNM apply this methodology and stated simply that the REA and Rule 572 do not require or allow this approach. That was an accurate statement—the REA and Rule 572 do not explicitly allow or disallow separate calculation of cost caps and revenues for large customers; they do not speak to this issue one way or the other. Here, Ms. Bothwell simply states that the method employed by SPS, that was recommended by Staff in Case 10-00037-UT, is a reasonable one. Ms. Bothwell's prior testimony does not impeach her testimony here.

If PNM projected 2012 revenues based on projected sales and rates in effect at the time it filed the 2012 Plan to calculate the RCT, as EPE does, total projected revenues would be \$849.6 million less the large customer revenues. Making this change in addition to recalculating the large customer exclusion in the manner SPS does would result in 2012 revenues for the RCT of \$787.2 million – slightly less than the total revenues PNM used in its Plan filing—and the RCT impact for the customers not covered by Rule 572.10.C would be 2.36% instead of 2.43%. PNM would still be limited by the RCT and additional procurements in 2012 would not be

required. Bothwell Reb. 13-14 and Table 6 of Exhibit CDB-2R. For 2013, the projected revenues would be \$796.0 million and the RCT impact for non-large customers would be 2.35% instead of 2.45%. Bothwell Reb. 14 and Table 7 of Exhibit CDB-2R.

2. Costs of Renewable Procurements Used in RCT Calculation — The RCT Numerator

The parties in this case, in previous PNM plan filings and in the rulemaking proceeding in Case No. 08-00198-UT have argued at length about the relative merits of using the annual rate impact methodology PNM proposes for determining the cost of resources to be used in the RCT calculation, versus the levelized method espoused by WRA/CCAIE, REIA and others, versus the incremental method advocated by Staff. The three public utilities have each applied different RCT methods. Bothwell Reb. 9-10 and Ex. CDB-1R. The Commission has once again docketed a proceeding to consider and, hopefully, decide this issue. Case No. 11-00218-UT. Parties will be submitting comments in that rulemaking advocating the RCT method they support. PNM will not, therefore, belabor the issue in this brief, but will only summarize the reasons that support using the rate impact method in this case and not using the other proposed methods.

a. The Rate Impact RCT Method

PNM selected the annual rate impact methodology because it reasonably represents the impact to customers of on-year RPS compliance costs and approximates the bill impact if those costs were to flow directly to customers on their monthly bill. Ortiz Direct 8 and 10/20 Tr. 88. This approach is consistent with the statutory language in § 62-16-4(B) that compares the cost of RPS compliance to the RCT to determine if additional renewable energy acquisitions are required: “If a public utility finds that, in any given year, the cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio

standard would be greater than the reasonable cost threshold as established by the commission pursuant to this section, the public utility shall not be required to incur that cost;” This statutory provision indicates that there will be times when the RPS is constrained by the RCT and, consequently, that the RCT has priority in those situations. Blank 10/21 Tr. 184-186.

To make this statutory comparison, PNM’s RCT method measures the actual rate impact of a renewable resource each year based on the actual costs and benefits of the resource in that year. This will not cause PNM to abandon use of life-cycle analysis for evaluating resource procurements or to select sub-optimal resources in order to stay under the RCT. PNM uses life-cycle, least cost analysis for resource planning in its IRP and for determining the most cost effective renewable resources. Bothwell Reb. 16-17. Even though PNM measures rate impacts for the RCT based on annual costs and benefits, it will still follow all of the best practices for resource planning and will not make “sub-optimal” decisions due to the RCT constraint. Bothwell Reb. 16-18; Bothwell 10/25 Tr. 298-9; Blank 10/21 Tr. 182-3. Staff agrees that the RCT should be based on rate impact and not levelized costs of procurements, although it disagrees with PNM on whether the costs should include those for previously approved resources. Staff also agrees that levelized costs should be used for resource planning but not for the RCT calculation. Lamberson 10/24 Tr. 118-120.

Applying the rate impact RCT will not prevent PNM from ever meeting the statutory RPS as Staff alleges. PNM cannot meet the full 2012 and 2013 RPS requirement due to the costs associated with its existing total portfolio, including growth in distributed solar resources approved in Case No. 10-00037-UT, which in total exceed the RCT in 2012 and are currently projected to meet the RCT in 2013. While PNM is seeking a waiver from procuring additional resources for 2012 because it has reached the RCT limit, it will likely be able to add resources

for 2013 compliance within the RCT although it will still be RCT constrained. Bothwell Direct 16-17. PNM is projecting that in 2013 and beyond it will be able to develop additional renewable resources as the RCT percentage increases, existing procurement costs decrease and PNM's revenues increase, resulting in additional headroom within the RCT. Bothwell Direct 18 and Ex. CDB-5; Blank Reb. 19.

The headroom will increase as the cost of future renewable resources decrease. There have been dramatic declines in solar prices that PNM and the industry expect to continue. Id.; Sadewic Direct 22; O'Hare Direct 18; Blank Reb. 20; Lamberson Direct 21-22; Curl Direct 5 and 10/24 Tr. 224-5. These declines will allow PNM to procure more resources in the future with lower impacts to ratepayers. Bothwell Direct 18 and Ex. CDB-5; Blank Reb. 19. The anticipated future reduction in renewable costs supports meeting the RPS in the near-term with short-term commitments such as one-year REC purchases rather than long-term commitments to technologies expected to evolve and become less costly in the future. This will allow procurement of more renewables at lower cost in the long-run, rather than locking in to higher priced resources that will take up more headroom in subsequent years. Blank Reb. 20.

Staff does not dispute that the cost of approximately forty percent of existing procurements in PNM's portfolio will decline over time, that PNM revenues will grow as a result of load growth and rate increases and that the cost of renewables is declining. Staff agrees that each of these factors will increase the RCT headroom. Lamberson 10/24 Tr. 158-160. Staff has not conducted an analysis to show what renewable resources would be available within the RCT in future years and agrees that there is some advantage to not committing to resources too early. Id. at 161.

REIA notes that the rate impact RCT method does not reflect the costs for renewable procurements actually collected from customers in 2012 and 2013. Neither REIA nor any other party presented any RCT calculation based on this approach. It would subvert the purpose of establishing an RCT to account for costs of renewable procurements only when those costs are actually being recovered from ratepayers. It would be very inappropriate to approve a \$100 million procurement, for example, but ignore the impact on retail customer rates because the plan year did not coincide with a rate case. No utility has applied such an approach and no party advocated it in the rulemaking in Case No. 08-00198-UT. PNM, SPS and EPE each report the costs of the renewable procurements in the plan year, not in the year in which they are recovered, and this aspect of the RCT should not be altered. Bothwell Reb. 14-15.

b. The Levelized RCT Method

Using a levelized approach for determining the RCT as advocated by CCAE/WRA, REIA and others would result in a mismatch between the (lower) costs used in the RCT methodology and the (higher) costs actually paid by ratepayers.⁷ It would “increase renewable energy cost to be recovered from customers and cause more negative economic impact in terms of income taken out of the state economy, thereby slowing economic growth, job creation, and tax revenues.” Blank Reb. 12, 32. It would also increase the differential between the percentage increase in charges from the additional costs of renewable resources for large customers who benefit from the caps in § 62-16-4(A)(2) and the percentage increase other customers would have

⁷Although the County and to a lesser degree the New Mexico Independent Power Producers (“NMIPP”) urge adoption of a “longer-term perspective” and avoidance of what the County terms “myopic-based decisions” that keep customer bills lower in immediate term (O’Hare 13), both parties agree that the use of a levelized cost approach presents “difficulties,” including moving the RCT calculation away from a Plan year measure of rate impacts because the levelized cost of PNM owned resources differs from actual revenue requirements for those resources. Beach 10/24 Tr. 38, O’Hare 10/24 Tr. 198 – 199. Staff witness Lamberson explained that Staff could not support the use of the levelized approach in prior rulemakings or going forward because it did not appropriately reflect the rate impacts on customers. Lamberson 10/24 Tr. 117 and Tr. 120.

to bear. It would be unreasonable to apply the RCT in such a way that this differential is unduly discriminatory to non-large customers. Blank 10/21 Tr. 78-9.

WRA/CCAIE and REIA argue that it is inconsistent for PNM to have requested approval in Case No. 10-00037-UT to procure the 22 MW of PNM-owned PV and solar battery demonstration project using a levelized RCT method and then use a rate impact RCT method in subsequent plans. The Commission, however, has never approved the levelized RCT method and did not base its approval of the 22 MW PV and solar battery demonstration projects on use of that method. Rather, the Commission explicitly stated that it was not basing its approval on use of any particular RCT method: “the total cost to be incurred by PNM in connection with its renewable energy programs will, under any reasonable calculation of its reasonable cost threshold (“RCT”), be less than its RCT. Thus the issues regarding the manner in which PNM has calculated the RCT have also been rendered moot and will not be addressed by the Commission.” Case No. 10-00037-UT, Final Order, p. 3, ¶ 5.

PNM’s use of the levelized approach in Case No. 10-00037-UT was pursuant to the Stipulation in that case, ¶ 16 of which provided that a signatory thereto did not “waive any rights that Signatory may have in any other pending or future proceeding and will not be deemed to have approved, accepted or agreed to or consented to the application of any concept, principle, theory or method set forth in this Stipulation in any other proceeding.” The Commission rejected the Stipulation and there is no legal principle that binds PNM, much less the Commission, to continue to use the levelized method in any subsequent renewable plan simply because the Commission approved two of the procurements that were proposed under the rejected Stipulation which also proposed using the levelized RCT.

c. Staff's Incremental RCT Method

PNM's annual rate impact RCT method looks at the total annual cost of all the renewable energy required in a year to meet that year's *entire* RPS, not just the new resource procurements in that year. Staff's incremental method, on the other hand, looks only at the annual costs of any *additional* renewable energy procured in that year. Although Staff has proposed its RCT method in the plan filings made by PNM, EPE and SPS, no other party has ever endorsed that method. Lamberson 10/24 Tr. 167-8.

Staff's RCT method would allow the total annual cost of renewable energy in 2015 to be as high as 19.5% of total annual revenue (customer bills). For 2020, the percentages could sum to a total of 34.5% of annual retail revenues. Blank Reb. 5-6. These percentages represent, not just increases above existing rates, but incremental cost increases above and beyond what would otherwise be required to deliver safe and reliable electric service and would be on top of other increases. Blank 10/21 Tr. 74, 141-2. Staff's RCT method would allow PNM to expend \$20 million in 2012 and \$23 million in 2013, on top of the \$17 million PNM is spending in 2011 on renewable procurements: therefore \$37 million in 2012 and \$60 million in 2013. Lamberson 10/24 Tr. 154. Staff's method would only recognize that PNM is spending \$114,000 on renewables in 2012 and \$110,000 in 2013 which represents the costs for the Santa Fe hydro project and PNM's proposed purchase of DG from systems over 100 kW at the two cent market price. Id. at 168-70. Mr. Lamberson previously testified that there are problems with Staff's incremental RCT method and that it could cause ratepayers to face rate shock. Id. at 154-6.

Staff's RCT method is inconsistent with the manner in which the REA § 62-16-4(A)(2) requires caps to be applied to large customers which apply to "the additional cost of the renewable portfolio standard to each customer," in other words, to the additional cost burden to customers of the *entire* renewable portfolio standard, not just new resource procurements.

Unlike Staff's incremental RCT method, PNM's RCT method applies the percentage caps provided in Rule 572.11.B to every customer, not just large non-governmental customers, using the same "additional cost of the renewable portfolio standard to each customer" limitation. Bothwell Reb. 24-25. The level of increases Staff's incremental RCT would allow residential customers to bear for renewable procurements would be discriminatory with respect to the caps on large customer increases. Blank 10/21 Tr. 78.

Staff's incremental cost method is inconsistent with the whole purpose of providing for an RCT in the REA § 62-16-4(B)—to protect customers from unreasonable cost increases—, is inconsistent with the legislative intent reflected in the large customer protections found in § 62-16-4(A)(2), and would yield unreasonably excessive and discriminatory increases in small retail customers' bills. Blank Reb. 7-8 and 10/21 Tr. 74. Staff's approach would render the RCT protections meaningless and the Commission should reject it.

d. Avoided Costs of Resources

PNM's rate impact RCT approach subtracts avoided costs from procurement costs in those years when such costs are actually avoided. PNM evaluated each resource to determine the benefits that would result in lower customer costs. Bothwell Direct 11-15. For REC only procurements, such as the SIP RECs, no energy is added to the system; therefore, no fuel, capacity or other costs are avoided. Bothwell Direct 15, lines 4-7; Ortiz Reb. 17 and 10/20 Tr. 67 (colloquy between Messrs. Throne and Ortiz); Blank 10/21 Tr. 63-4 (colloquy between Messrs. Michel and Dr. Blank). If fuel or other avoided costs were considered for DG REC programs, the full cost of those programs, both the REC payment and the net-metering benefit, should be considered. Ortiz Reb. 15-17. NMIPP agrees that PNM's assumption of no avoided cost or net-metering benefit in calculating the cost for RCT purposes of the DG REC procurements is consistent with the Case No. 10-00086-UT Stipulation. Beach Direct 20. For

other resources in PNM's renewable portfolio for 2012, PNM customers are not projected to benefit from any cost savings due to avoided capacity costs, avoided fixed O&M charges, avoided CO₂ costs, or avoided transmission and distribution costs in 2012 or 2013, because no non-renewable projects are being deferred or eliminated in this time period based on renewable procurements. Bothwell Reb. 22-23. Nor do renewables result in fuel price stability, but just the reverse. Renewables increase fuel price volatility risk, due to resource intermittency, variable output and PNM's increased reliance on natural gas to resolve this intermittency. Bothwell Reb. 23. Staff agrees that avoided costs should reflect the cost of current resources being avoided and has proposed this in its proposed amendments to the Rule in Case No. 11-00218-UT, 17.9.572.12.A(4). Lamberson 10/24 Tr. 143-5.

The levelized approach proposed by WRA, CCAE and REIA on the other hand, relies on projected avoided capacity costs and effectively spreads the present discounted value of all projected future avoided costs into each year's fixed annual costs. This incorporates estimated, future avoided costs into the present year's annual costs despite the fact that customers will not benefit today from those future cost savings. Avoided capacity costs, CO₂ costs and other costs should not be incorporated into the calculation of resource costs until such time as they are actually avoided, verified and accurately calculated, because it is only then that customers realize the benefits of these cost savings. Blank Reb. 21; Bothwell Reb. 22. Moreover, PNM's customers are currently paying for existing combustion turbines to meet its peak capacity requirements. If customers were also required to pay for solar resources before any capacity cost savings from such resources were actually realized, they would be effectively paying twice for the same capacity. Avoided capacity costs should be credited to the cost of solar resources when

PNM has to add capacity and the solar capacity available at peak actually reduces the need for additional generation. Blank 10/21 Tr. 40-44. Bothwell 10/25 Tr. 73, 77-81.

It would not be appropriate for PNM to use the same avoided costs that EPE or SPS have calculated for their renewable procurements.⁸ Each utility has a different mix of resources to meet system load requirements. Consequently, even when adding the same type of renewable resource, each utility will have different avoided costs based on its system characteristics and on the resources that are being displaced by a renewable acquisition and when that occurs. PNM's generation mix has a much heavier reliance on coal than EPE or SPS, which both have a higher reliance on natural gas. The utility fuel mix and the operating characteristics of the utility generation portfolio determine the operational impacts from adding renewables on the system. For example, costs to PNM customers have increased due to wind generation, even though natural gas prices have been decreasing, because PNM must curtail a greater amount of coal generation to accommodate the wind, resulting in greater dispatch of the more expensive natural gas. Bothwell Reb. 18-19.

Other parties argue that PNM should use the same avoided costs EPE uses, but EPE's avoided capacity and energy costs are not the same as PNM's. PNM does not need to add capacity in the same time frame as EPE. With regard to energy production, PNM's combustion turbines operate at a significantly lower capacity factor from EPE's (1%-6% for PNM's and 27% for EPE's). Utilizing EPE's method to determine avoided fuel costs associated with solar and

⁸ Mr. Beach conceded that there are differences in the impact of adding renewables from utility to utility. Beach 10/24 Tr. 26-27. Nonetheless, Beach contends that PNM can expect capacity savings of a similar magnitude as those found in a study conducted by R. W. Beck of Arizona Public Service Company ("APS"). However, the savings cited by Mr. Beach are based on a high penetration of renewables in the APS service area and are anticipated savings that may be realized in 2025; the savings in 2010 are zero. Beach 10/24 Tr. 26 – 31. Moreover, the Beck study focuses on three specific renewable technologies, rooftop photovoltaic systems, active daylighting and solar hot water. Beach 10/24 Tr. 30. The latter two technologies would not even qualify as components of a renewable portfolio under the REA. For the all foregoing reasons, the referenced study is irrelevant to the calculation of capacity savings available to PNM.

other renewable resources would extremely overstate avoided fuel costs from which PNM customers would benefit. Bothwell Reb. 20 and Ex. CDB-3R. The on-peak contribution for PNM's solar resources is also different than that of EPE's solar resources of 85%. PNM conducted a thorough analysis of the appropriate on-peak contribution for its solar resources and calculated a projected 55% contribution at the time of summer peak based on the AC rating and a 0% contribution at the time of PNM's winter peak. Bothwell Reb. 20-21 and Ex. CDB-4R. PNM's assumption of a 55% peak capacity contribution for solar resources is prudent. Ortiz 10/20 Tr. 129-130. However, PNM acknowledged that when it had actual data this would be more appropriate to use and may be lower. Bothwell 10/25 Tr. 276-277. In fact, in 2011 the first year of operation of some of PNM's new solar facilities, the peak capacity contribution for solar was only 29%. Bench Request Response to Question 2.

The capacity credit PNM uses for its load management resources is not applicable to its renewable resources. The total peak capacity contribution of all renewable resources is still very small and the addition or elimination of renewable resources does not delay the need for natural gas resource acquisition, as do PNM's load management programs. Bothwell Reb. 21-22; 10/15 Tr. 81-82.

E. Continuation of DG Programs

PNM has more than met its diversity requirement for distributed generation. At present, PNM has several times the 1.5% diversity requirement for DG in 2012 and even the 3% requirement for 2015. It already has enough DG to meet the diversity requirement through 2020 and new applications for participation in the program continue to increase, particularly in the larger size categories, even though REC payment levels are declining. Ortiz Direct 21 and Reb. 10; Bothwell Reb. 28 and 10/25 Tr. 265; Styes 10/20/2011 Tr. 148-149. Even without further expansion of PNM's DG programs, it will meet over 16% of its RPS in 2012 with this expensive

resource, which goes far in explaining why PNM is RCT constrained. Bothwell Reb. 28; Ortiz Reb. 7. The bid responses PNM received to its latest RFP for renewable resources showed that it can procure solar RECs in the market less expensively than the solar RECs it procures under the SIP. Ortiz 10/20 Tr. 63.

Even though the costs of existing procurements will cause PNM to reach the RCT in 2012 and PNM already exceeds its DG diversity requirement for the foreseeable future, PNM proposes to continue REC procurements under the existing SIP as participation continues to grow. PNM requests an RCT variance to exceed the RCT for these procurements. 2012 Plan §§ 1 and 5. No party opposed these requests and they should be granted.

1. DG Systems Greater Than 100 kW_{AC}

PNM proposes to procure RECs under the SIP from new solar DG facilities sized above 100 kW_{AC}, after the categories for those sized facilities become fully subscribed, at a market price determined annually through a competitive bid process. Given the continued growth in program participation, for systems >100 kW the REC price should be set on the basis of competitive prices for the entire renewable energy market, rather than at a level set to encourage the development of DG resources. This will allow these DG systems to compete on a price basis with other DG and solar developers, result in a competitive price level for DG and solar resources and benefit all PNM customers through lower RPS compliance costs. Ortiz Direct 21-22. For solar DG systems sized above 100 kW_{AC} up to and including 1 MW_{AC}, PNM proposes under the 2012 Plan to procure up to 5.0 MW at the competitively determined price of \$20 per MWh (\$0.02/kWh) established through the RFP process PNM conducted in early 2011.

For subsequent plans, in each year when PNM has money available under the RCT, PNM will conduct an all renewables competitive RFP bid process in the spring and request approval in its July Renewable Procurement Plan filing for the least-cost projects that meet the RPS and

diversity requirements. PNM will set aside an amount of additional DG at the lowest reasonable cost (or highest accepted bid price) for which PNM could have procured different resources offered in response to the RFP. The amount PNM will propose to set aside for solar DG will be based on factors including price, diversity, portfolio composition, RCT limitations, and any requirements of the REA and Rule 572. The set aside amount and price will be submitted to the Commission for review and approval in the July 1 procurement plan filed by PNM the year prior to when the SIP expansion is requested. Bothwell Direct 25.

PNM agrees with the proposals of other parties that future SIP contracts should either be limited to eight years or should all expire in 2020, since shorter purchase contracts will not lock in purchase of expensive RECs as long as the current 12 and 20 year contracts. Ortiz Reb. 7. In other respects, however, the above 100 kW_{AC} DG proposals of other parties should be rejected because they would be more expensive than PNM's proposal and would thereby reduce the headroom available for procurement of other resources PNM needs to meet the RPS and diversity requirements.

Staff, the County of Santa Fe and others proposed modifications to the SIP that include higher REC purchase prices than PNM proposes, decreasing the price at specified time intervals rather than capacity amounts, shorter contract periods limited to eight years or 2020 and unlimited participation at each price step. Lamberson Direct 22-3; O'Hare Direct 15-16; Sadewic Direct 19-20. Staff proposes to continue the 1¢/kWh REC reductions per tranche for all SIP size categories with each tranche being open for six months with no capacity limit. Based on the subscription rates experienced in the SIP, Staff's proposal would raise costs by at least another \$3.2 million by 2014 and continuing each year at that rate through 2020, Bothwell Reb. 27 and Ex. CDB-5R. This does not take into account the fact that customers with PV systems

also receive a significant benefit in the form of net metering, on top of the REC purchases by PNM, making solar DG the most expensive renewable resource in PNM's portfolio. Ortiz Reb. 11. The net metering benefit increased with the rate increase approved in Case No. 10-00086-UT, further improving the overall economics of DG systems for SIP participants and reducing the need for price subsidization from other ratepayers. Ortiz Reb. 11.

The County objects to PNM's proposal to procure RECs at an annually determined fair market price for DG facilities sized over 100 kW_{AC}. Instead, the County urges that REC payments be maintained at a level to "incentivize" solar projects (*i.e.*, six cents/kwh with a one cent drop per six months), essentially so the County can enter power purchase agreements without having to pay more for electricity than the retail kWh price charged by PNM. O'Hare Direct 15-16. Ironically, the County acknowledges that its proposal would result in higher rates for PNM ratepayers both within the County of Santa Fe and throughout the State, thus effectively causing all ratepayers to subsidize the County of Santa Fe's acquisition of energy from DG systems. See, O'Hare Direct 5 and 10/24 Tr. 194 and 203. Bothwell Reb. 27-28.

The Commission should not approve continuation of any DG programs with tranches that are time limited rather than capacity limited. The Commission needs to be able to determine if the costs of a procurement are reasonable and within the RCT before it is approved and time based proposals do not provide sufficient certainty as to what the maximum costs and customer impacts will be. DG programs should, therefore, have capacity limits in order to accurately calculate the program impacts so the Commission can ensure that customers are not subjected to unreasonable costs for this procurement. Bothwell Reb. 27.

WRA/CCAIE contend that the Commission should defer adopting measures for continued purchases of DG under the SIP for tranches that have filled until the parties have explored

pricing options, on the ground that PNM's proposed use of an annually determined market price may lock in too high a price. Curl Direct 5-6. But PNM's proposal for continuation of the larger sized PV systems also includes setting annual capacity limits which will prevent excessive procurement of DG at the annual market price. The Commission will be able to revisit the price and capacity levels every year to ensure that the program remains cost effective.

2. DG Systems 100 KW and Lower

REIA, Staff and the County propose that the Commission decide in this proceeding the terms and conditions under which the SIP for the smaller sized systems should be continued. This would circumvent the process ordered by the Commission in Case No. 10-00037-UT.

PNM did not propose a continuation of the SIP for projects sized 100 kW_{AC} and lower when it filed the 2012 Plan because those categories are being subscribed less quickly than the larger sized systems and were not near full subscription. The Commission's Final Order in Case No. 10-00037-UT requires PNM to provide notice no later than 10 days after the date on which the next to last tranche for a size category becomes fully subscribed (which has still not occurred) or sooner if PNM has reason to believe that waiting until the next to last category is filled would not provide sufficient time for the Commission to take appropriate action. Forty-five days thereafter, PNM is required to file, and any interested party may file, a proposal regarding whether and under what terms and conditions the program should be continued.

Although REIA wishes to address continuation of the SIP for smaller systems here so it can avoid the expense of participating in another proceeding, it is in the best interest of ratepayers to ensure that the terms and conditions are based on the most recent price information so that unnecessarily high REC levels are not set. In light of the continuing fall in PV prices, proposals for extension of the SIP for the smaller capacity facilities should not be considered before the most up-to-date information on cost and competitive options is available. Ortiz Reb.

8. Under PNM's proposed interim solution, discussed below, there should be no hiatus in the program. Historically, the smaller sized systems have been installed by residential customers with incomes above \$100,000/year who can afford to pay cash for systems with average prices of \$24,000, with recent exceptions due to recent long-term, low interest financing being offered by Santa Fe County. Sadewic 10/25 Tr. 26-28. Unlike the Legislature, REIA does not believe the RCT should constrain cost expenditures that subsidize customers who wish to install these expensive systems and sell the RECs to PNM to be paid for by all PNM customers. Sadewic 10/25 Tr. 39.

Staff's proposal for systems 100 KW and less begins with REC prices 4.4 times marginal market price (the price PNM could otherwise purchase RECs for) while REIA's proposal begins with REC prices 3.4 times the marginal market price, resulting in annual increased costs to ratepayers of over \$1.8 million for Mr. Lamberson's proposal and nearly \$1 million for Mr. Sadewic's. Bothwell Reb. 29 and 10/25 Tr. 201-2. REIA projects that its proposal for systems sized under 100 kW alone would cost \$313,000 in 2012 and \$726,000 in 2013 or 1.5% of the RCT budget in 2012 and 3% in 2013. Sadewic 10/25 Tr. 20. But without capacity limits, REIA cannot give any assurance that the costs would not be the higher amounts that PNM projected based on historical performance. This compares to less than \$161,000 in 2012 for PNM's interim proposal even if all the tranches offered under the interim proposal were filled which seems unlikely. Ortiz 10/20 Tr. 50-51. REIA's proposal for continuing the SIP for the smaller sized systems would raise costs by at least another \$1.5 million annually by 2014 or \$1 million over the current market price, based on the subscription rates that PNM has been experiencing in the SIP. Bothwell Reb. 28-29, 10/25 Tr. 207-213. Under REIA's proposal, these impacts would continue at or above the \$1.5 million rate through 2020. Bothwell Reb. 28 and

Ex. CDB-6R. The additional cost would double the amount that ratepayers would spend on the most expensive category of renewable energy and limit the amount of lower cost renewable resources that can be added by PNM which could further increase environmental benefits. Bothwell Reb. 29-30.

The County also recognizes that the prices of roof-top solar DG have declined and are projected to continue to decline; none the less, the County recommends speculating about future costs by setting REC incentives for systems of 100 kW or less for the next two or three years to avoid any decline in the roof-top solar business in Santa Fe. O'Hare Direct 17–18. However, the County admits that it did no technical analysis to arrive at its recommended REC incentive amounts or its suggestion that the incentives may be needed for another 2 or 3 years. Instead, the County simply echoed the thoughts of the solar industry and admits it would modify its recommendations in accordance with testimony from the solar industry. O'Hare Direct 19. The County's approach, like REIA's, would burden ratepayers with higher costs which are speculative and may prove to be unnecessary as an incentive, simply to create a safety net for this industry – even before the need for such a net has been shown.

Adherence to the schedule set in Case No. 10-00037-UT assures that the issues will be considered in the context of the most current market information and protect ratepayers from unnecessary costs. During the interim, while proposals for continuation of the SIP for the smaller sized systems are being considered, PNM's interim proposal to continue to accept applications for these sized systems after the current SIP tranches become fully subscribed⁹, should be approved. PNM's interim proposal follows the design of the current program, in that it

⁹ Mr. Sadewic incorrectly stated (Sadewic 10/25 Tr. 10) that PNM's interim proposal would require the parties "to renegotiate the incentive program no later than six months from now." Sadewic 10/25 Tr. 10. The interim proposal would take effect after the existing tranches become filled. Any renegotiation would take place after proposals for terms and conditions for continuation of the SIP for these sized systems have been filed in accordance with the schedule established by the Commission in Case No. 10-00373-UT.

continues the step down in the price in each size category by one cent (\$0.01 per kWh), using the same price steps in the current program – 593 kW for systems 10 kW and smaller, and 450 kW for systems between 10 kW and 100 kW. The interim program would remain in effect for either six months after it goes into effect or until the Commission has issued an order on PNM’s REC purchase continuation proposal, whichever is sooner. The interim proposal also incorporates the 8 year REC purchase contract term recommended by Mr. Sadewic and Mr. Lamberson. Ortiz Reb. 9-10.

The DG continuation proposals of Staff and others would add higher cost resources when lower cost alternatives are available, making PNM’s customers pay unnecessarily higher costs for renewable compliance. Adding unjustified higher cost resources limits the amount of lower cost resources that can be added by PNM, lowers PNM’s RPS requirement and lowers the environmental benefits from procurement of renewable resources. Bothwell Reb. 29-30. Staff’s advocacy of higher-priced DG procurements is inconsistent with its concern that PNM will be unable to meet the statutory RPS within the RCT in the future. The long-term high cost DG procurements Staff advocates would jeopardize PNM’s future ability to increase renewable resources within the RCT, since continuing high costs will be incurred and included in customer rates over the life (or contract term) of the renewable resource. Id. The Commission should reject the DG proposals of Staff and others and approve PNM’s market price proposal for systems larger than 100 KW and interim proposal for systems 100 KW and less.

F. Billing System Costs

PNM should be granted approval to recover the costs to modify its customer billing systems to enable the procurement of RECs directly from a third-party owner of a solar system located on a retail customer’s site. The modifications were only necessary because of the changes to NMSA 1978 § 62-13-13.1 which became effective January 1, 2011, allowing

third-party developers to construct solar DG facilities on the site of a public utility's retail customer and to sell the energy to the retail customer. Ortiz Direct 23-24. WRA/CCAЕ contend that PNM should only recover these costs through base rates, but since these costs were only incurred for the purpose of procurement of RECs to meet the RPS, under § 62-16-6(A) and Rule 572.11.C, recovery of those costs should be allowed as renewable energy costs. The Commission has approved comparable administrative costs related to renewable procurements for PNM and other utilities, *e.g.*, WREGIS costs, PNM's costs for conducting a self-build biomass assessment in Case No. 04-00311-UT (pursuant to a stipulation to which CCAЕ was a signatory) and administrative costs related to SPS' solar DG program in Case No. 10-00015-UT. Ortiz Direct 28; Lamberson Direct Ex. RDL-6.

No party has questioned the need for PNM to separately bill customer participants in the SIP and account for REC purchases from third-party owners of DG systems. Staff and others, however, have questioned the need for the billing system modifications and argue that PNM should have waited until there were more participants in the SIP with DG systems owned by third-parties. This would not have been a reasonable or acceptable course of action.

The cost for manual billing for each DG customer and each third-party DG owner would be \$40 per bill. Styes Reb. 7. Each participant in the SIP with a third-party owned DG system creates the need for two bills each month. The contract terms are 20 years. The bills are complicated, involving demand rates, on and off-peak energy rates and seasonally differentiated rates. Currently there are 49 third-party participants and applicants which will result in 23,520 bills over the course of the DG contracts. This would cost \$940,800 to manually bill (assuming salaries for billing technicians stayed the same for the entire 20 year period), compared to the cost for the billing system upgrade of \$283,795 which only translates to \$12.06 per bill. Styes

Reb. 3-4, 7. There is no reason to believe the 45 pending applicants will not interconnect their systems, particularly given the fact that each application represents a significant investment of time and expense, and it is likely that there will be additional third-party applications. Styes Reb. 5-6 and 10/20 Tr. 193.

Not only would hand-billing be more than three times as expensive, it was not a reasonable option for the further reason that it inherently creates an increased level of error. Lamberson 10/24 Tr. 138. PNM's automated Banner billing system contains numerous end-to-end billing checks that verify accuracy at every stage; manual billing does not incorporate these checks. Styes Reb. 5. Although there were implementation start-up issues with Banner when it was first activated, those initial problems have long since been resolved. Curl 10/24 Tr. 239-40. There is no evidence of any errors to date with the automatic billing system upgrades for third-party DG billing. Id. at 141.

The total \$283,795 costs for the billing system upgrade were entirely reasonable and prudent. Cognizant, the provider for changes to Banner, was selected through a competitive request for proposal which determined that the provider's services and prices for making changes to the billing system were fair and reasonable. Styes Reb. 4. PNM and Cognizant conducted an extensive requirements analysis to identify the multi-step, complex system modifications needed to accommodate third-party billing. Styes Direct 5, Exhibit KS-4 and 10/20 Tr. 187-9. That process alone required several weeks of lengthy meetings between PNM's billing system and DG program personnel and Cognizant. Only those changes which were necessary were identified, approved by PNM's internal expert team and made by Cognizant. Id. There is no evidentiary basis for any suggestion that Cognizant padded its bill or performed unnecessary work. Given the extensiveness of the billing system modifications and the care taken to

determine exactly what changes were needed, the total costs to make the changes are clearly reasonable and prudent and PNM should be granted approval to recover those costs.

G. PNM's Request for a Variance from "Other" Diversity for 2012 and Plan to Meet Diversity Requirement by April 5, 2013

None of the "other" projects for which PNM received bids in response to the RFP would be available by April 5, 2013; therefore, PNM has requested a variance from the "other" diversity requirement for 2012. Plan pp. 9-10; Ortiz Direct 9-10; Bothwell Direct 20-21. PNM meets the requirements of Rule 572.14.B for an exemption from the diversity target for "other" resources because compliance is prevented by technical constraints or limitations, *i.e.*, the unavailability of the resources necessary to fulfill the requirement. As required by Rule 572.14.C, PNM has described its plan for achieving a fully diversified portfolio in a timely manner.

Staff recommends approval of a variance from "other" diversity only if PNM uses a different RCT method than it used in the 2012 Plan. Lamberson Direct 5 and 10/24 Tr. 130-2. Staff, however, agrees that PNM could not procure sufficient "other" resources to meet diversity requirements and that unavailability of sufficient "other" resources could constitute a technological constraint within the meaning of Rule 572.14.B. Lamberson 10/24 Tr. 130-1. (PNM discusses actions in Bothwell Direct pp 21-22). Staff agrees that PNM has made fairly substantial efforts to satisfy the "other" diversity requirement. *Id.* at 164-6; see also, Bothwell Direct 21-22. PNM's request for a variance from the diversity requirements of Rule 572.7.G is supported by the testimony submitted and the record, meets the requirements of Rule 572.14 and Rule 572.19 and should be granted.

The Final Order in Case No. 10-00373-UT, ¶ 4, required PNM to include in its 2012 Plan a "well-designed plan charting a clear course" to achieve 20% solar diversity and 10% "other"

compliance by April 5, 2013. The Plan p. 9 Table 2 shows that PNM's Proposed Portfolio achieves 20% solar diversity in 2012 and 2013 and also shows that PNM is already compliant with the wind and DG diversity requirements in Rule 572.7.G. As discussed above, PNM has not been able to identify sufficient available non-solar/non-wind resources to meet the 10% "other" diversity requirement contained in the Rule by 2013, but is proposing to acquire RECs associated with energy production of a hydro-electric facility owned by the City of Santa Fe in order to increase PNM's "other" diversity. Plan p. 9; Ortiz Direct 9; Bothwell Direct 8-9.

Based on the numerous proposals for resources that would qualify for the "other" category that PNM received in response to its RFP which it is evaluating for possible procurement in 2013 or 2014, PNM expects that it will meet the "other" diversity requirement by 2014 or 2015 if these projects prove to be viable. Bothwell Direct 6. PNM's plan to meet the diversity requirement for "other" resources is that, upon completion of its 2011 RFP bid analysis, PNM will determine the least cost feasible alternative(s) to meet the "other" resource diversity requirement, select the best projects and begin negotiations to finalize project details and contracts. In its 2013 Renewable Procurement Plan, PNM will request approval of appropriate projects needed to fulfill the "other" diversity requirement within the RCT and will request Commission approval of such projects. Bothwell Direct 22; Ortiz 10/20 135-6.

PNM commits to do the following to ensure that it maximizes its compliance with diversity requirements within the RCT: (1) issue annual RFPs for new renewable energy projects for supplies up to the full percentage RPS amount or RCT limited amount, whichever is applicable, which should help maintain competitive price pressures on new resource procurements; (2) adjust portfolio costs for annual depreciation of PNM-owned resources, or escalating PPA costs, if applicable, which will directly affect the RCT calculation, assuming that

the incremental costs of previously authorized renewable energy procurements are incorporated into the RCT calculation; and (3) annually assess the factors determining avoided costs, so that renewable resource costs are properly evaluated in the context of changing markets and fossil fuel resource costs. PNM has met the Commission's requirement that it present "well-designed plan charting a clear course" to achieve 20% solar diversity and 10% "other" compliance by April 5, 2013.

III. CONCLUSION

For the foregoing reasons, PNM's 2012 Plan should be approved and the Commission should grant the approvals listed on pp. 1-2 above.

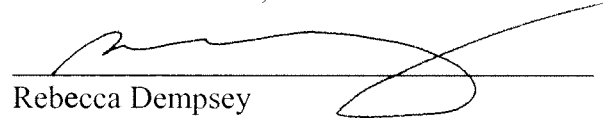
Respectfully submitted,

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **Public Service Company of New Mexico's Initial Post-Hearing Brief** was mailed first-class, postage-paid, or hand-delivered on November 18, 2011 to the following persons whose mailing addresses are listed below and emailed to those persons at the email addresses shown below:

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