BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE COMMISSION ESTABLISHING A STANDARD METHOD FOR CALCULATING THE COST OF PROCURING RENEWABLE ENERGY, APPLYING THAT METHOD TO THE REASONABLE COST THRESHOHLD, AND CALCULATING THE RATE IMPACT DUE TO RENEWAB LE ENERGY PROCURMENTS	)))))))))	**Case No. 11-00218-UT**

COMMENTS BY
THE RENEWABLE ENERGY INDUSTRIES ASSOCIATION OF NEW MEXICO

The Renewable Energy Industries Association of New Mexico ("REIA") submits these comments on the amendments to Commission Rule 572, 17.9.572 NMAC ("Rule 572") proposed and attached to the Commission's November 22, 2011 Notice of Proposed Rulemaking in this docket ("Notice").

GENERAL COMMENTS

Commission's Expansion of the Scope of this Rulemaking Proceeding

As a preliminary matter, REIA notes that, notwithstanding the limited scope of this rulemaking proceeding described in the caption of this case established in the Commission's June 14, 2011 *Order Initiating Rulemaking and Closing Docket* in Case Nos. 08-00198-UT and 11-00218-UT, the scope of the Commission's directive to Staff in that Order (¶ 3) and the scope of the Utility Division Staff's July 14, 2011 Petition and proposed changes to Rule 572 in response that directive, a number of the changes proposed in the Notice would expand that scope to address other significant matters affecting Commission implementation of the Renewable Energy Act ("REA" or "Act"). These expanded matters include not only proposed changes "for defining the requirements of a fully diversified renewable energy portfolio" and addressing the recent

amendment to the REA (NMSA § 62-16-4(A)(3) (2011)) referenced in paragraph 13 of the Notice, but also changes to the Reasonable Cost Threshold ("RCT") percentage, the method for calculating the utility revenues to which that percentage should be applied, annual public utility renewable plan content requirements, utility use of renewable energy certificates ("RECs") generated outside New Mexico to satisfy its New Mexico renewable portfolio standard ("RPS") and procedural requirements for Commission review of annual utility plans.

REIA also notes that the Commission's Notice and proposed changes to Rule 572 are not accompanied by any Commission explanations of the intent or purpose of each of the changes proposed, its effects on public utilities and their customers as compared to provisions in the existing Rule, or why the Commission believes each change is necessary and consistent with its statutory obligation to implement the REA. This makes it even more time-consuming, expensive and challenging for interested participants like REIA, that support Commission implementation of the REA but are not allowed to recover their regulatory costs from customers as public utilities are, to fully present and explain the justifications for its proposals and opposition to certain changes proposed in the Notice, or that may be proposed by other commenters concerning these matters.

REIA believes any Commission changes to Rule 572 in this case should be based on applicable law (i.e., the meaning of the "plain language" in the REA) and an understanding of how those changes may affect the Commission's implementation of the Act, rather than on politics or the identity or number of proponents or opponents of a particular rule change. Two of the principal purposes of the Commission's rulemaking authority under the REA, addressed further below, are to implement the RPS established

in that Act (NMSA § 62-16-4) "consistent with" that Act (NMSA § 62-16-9) and establish and modify the RCT in a manner that "shall take into account" criteria specified in that Act (NMSA § 62-16-4.C). To satisfy those legislative mandates, REIA urges the Commission to fully investigate not only the justifications for, but also the inter-related effects of, all changes proposed to provisions in Rule 572 considered *as a whole*, rather than on a piecemeal basis, and to consider how those changes will affect the Commission's ability to accomplish the purposes of the REA stated in NMSA § 62-16-2. Otherwise, the Commission may adopt changes to Rule 572 without fully understanding their effects and that, as explained below, REIA believes would unreasonably restrict and undermine the Commission's ability to satisfy those legislative mandates and accomplish those legislative purposes.

Applicable Legal Standards and Criteria

REIA urges the Commission to consider the following legal standards and criteria in the REA when determining if and how it should modify Rule 572 in this case:

- NMSA § 62-16-9. **Existing Rules**. "The commission shall establish and amend rules and regulations for the implementation of renewable portfolio standards consistent with the" REA;
- NMSA § 62-16-7. **Commission additional powers and duties**. "The commission shall adopt rules regarding the renewable portfolio standard, including a provision for public utility records and reports;…";
- NMSA § 62-16-4.A. **Renewable portfolio standard**. NMSA § 62-16-4.A (1). Renewable energy shall comprise "no less than" 10 percent of each public utility's "total retail sales to New Mexico customers" by no later than January 1,

2011, 15% of such sales by no later than January 1, 2015, and 20% of such sales by no later than January 1, 2020;

- **Renewable portfolio standard**. "(3) the renewable portfolio shall be diversified as to the type of renewable energy resource, taking into consideration the overall reliability, availability, dispatch flexibility and cost of the various renewable energy resources made available by suppliers and generators";
- NMSA § 62-16-4.A. **Renewable portfolio standard**. "(4) upon a commission motion or application by a public utility, the commission shall open a docket to provide appropriate performance-based financial or other incentives to encourage public utilities to acquire renewable energy supplies that exceed the applicable annual renewable portfolio standard set forth in this section. The commission shall initiate rules by June 1, 2008 to implement this subsection";
- NMSA § 62-16-4.C. **Renewable portfolio standard**. "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;…"

The Legislature made it clear and unambiguous with the "no less than" language in NMSA § 62-16-4.A that it intended the RPS percentages specified to be *minimum* requirements, subject only to the provisions in § 62-16-4.A(2) addressing annual renewable energy procurement cost limits on certain large "nongovernmental customers" consuming in excess of 10 million kWh per year ("Large Customers") and in §§ 62-16-4.B and C addressing the RCT. NMSA § 62-16-4.A(2) provides that the RPS established in subsection 1 of that section "shall be reduced as necessary" to implement the annual limit of RPS compliance costs on Large Customers which, as of January 1, 2012, is fixed at the lower of two percent of that customer's annual electric charges or $99,000, unless the latter is adjusted by the Commission "for inflation." Absent legislative change, that annual Large Customer cap will not increase (other than "for inflation") on January 1, 2015 when the RPS increases from its current 10% to "no less than" 15% of "each public utility's total retail sales to New Mexico customers," or on January 1, 2020 when the RPS increases to "no less than" 20% of "each public utility's total retail sales to New Mexico customers." Thus, absent a legislative increase of those fixed, annual Large Customer rate caps prior to January 1, 2015, to the extent the cost of a public utility's satisfaction of the Legislature's higher RPS percentage requirements in the REA exceeds those Large Customer limits, the Commission should expect that utility will claim greater reductions to its "statutory" RPS requirements based on those caps.

As provided in the above-cited sections in the REA, the Legislature delegated to the Commission authority to establish and modify the RCT in a manner that not only takes into account the five criteria in NMSA § 62-16-4.C, but also allows public utilities to satisfy the RPS percentages in the Act "consistent with" that Act. Thus, one important

understanding and consideration for the Commission in this case is the need to ensure that the provisions in Rule 572 addressing the calculation of a public utility's annual RCT limit or cost ceiling and its renewable energy procurement costs allow each utility to satisfy the minimum RPS requirements in the REA, adjusted for the annual Large Customer cap, to the greatest extent possible. REIA believes Commission adoption of RCT provisions in Rule 572 that would not achieve that result would be contrary to the meaning of the plain language in the REA and have the effect of sabotaging its legislated objectives.

Another important understanding and consideration for the Commission in this case is that the RCT criteria in § 62-16-4.C make clear the Legislature's intent that, when establishing and modifying the RCT, the Commission's implementing rules should allow the RCT to operate as a mechanism that balances the factors enumerated there. Notably, none of the plain language in that section of the REA, or in § 62-16-4.D addressing what each public utility's plan must demonstrate, provides or suggests that least or lowest cost of compliance (i.e., for RECs available) should be the sole or even primary criteria relied on by the Commission or a public utility when assessing the reasonableness of a particular renewable plan or any particular proposed procurement, as some parties previously have advocated.

The Legislature's adoption of an RCT balancing mechanism rather than a "least" or "lowest" cost criteria or standard for public utility renewable energy procurements in the REA makes sense as written when the Commission considers that some types of renewable procurements that may be used to satisfy a utility's RPS, such as purchases of RECs bundled with energy or from distributed generation ("DG") connected to a utility's

system, will provide long-term ("life cycle") avoided fuel, line loss, system peak demand reduction ("shaving") and possibly other (e.g., avoided or delayed peaking capacity costs, greenhouse gas emission reduction) benefits to a utility and its customers that cheaper unbundled REC-only purchases from generators outside a utility's service area will not provide. This feature of the REA also makes sense considering the Act's delegation of authority to the Commission to implement and determine compliance with that Act. As the Commission observed in Case No. 07-00157-UT, "[i]f the Legislature had intended the development of renewable energy in New Mexico to proceed at the discretion and judgment of utilities, it would have enacted a completely different law that merely provided for cost recovery for projects utilities choose to embark upon, perhaps with reasonable cost caps."[1] As the Commission recognized there, its rule implanting the REA should not simply serve to rubber-stamp public utility renewable plans or limit the Commission's authority to consider the diversity mandate and other criteria and standards in the REA.

REIA does not mean to suggest here that it does not believe the Commission should review renewable energy plans proposed by public utilities to ensure their procurement costs are reasonable, or that the Commission should adopt changes to Rule 572 providing that "lowest cost" procurements of RECs are not reasonable or should not be considered by a public utility or approved by the Commission in the context of the reasonableness of a utility's overall renewable procurement plan. "Lowest cost" procurements for RPS compliance may be reasonable in that overall plan context that includes consideration of all renewable procurements proposed by a utility and its applicable Large Customer and RCT limits. REIA does submit, however, that changes to

[1] Final Order, Case No. 07-00157-UT, p. 22, n. 9.

Rule 572 that would limit or remove the Commission's discretion to require a public utility to pursue alternatives to such "least cost" REC purchase proposals in a particular plan, such as the new "least cost option" provision proposed in Rule 572.7.G (addressed further below), would neither be consistent with the aforementioned legal criteria and standards for Commission review of public utility renewable energy plans in the REA or wise from a regulatory or public policy point of view.

The Commission's Past Experience with Rule 572 and IOU Procurement Plans

When assessing changes to Rule 572 at this juncture since passage of the REA, the Commission has the benefit of and should consider the years of its experience with application of its existing Rule 572 to the renewable energy plans of the State's three investor-owned, electric public utilities ("IOUs"), Public Service Co. of New Mexico ("PNM"), El Paso Electric Co. ("EPE") and Southwestern Public Service Co. ("SPS") in terms of their current and prospective satisfaction of the minimum RPS requirements in the REA and the Commission's minimum renewable diversity requirements. As of Commission review and approval of their latest (July 1, 2011) plan filings addressed in Case Nos. 11-00263-UT (EPE) and 11-00264 (SPS), both EPE and SPS are on track to fully satisfy a 10% RPS and satisfy or exceed their 20% solar and wind (but not "other") diversity requirements in 2012 *without* any Large Customer cap or RCT reductions to those percentages of their "total retail sales to New Mexico customers" in the REA.[2] As a result of those IOUs' past and latest procurement plans and the manner in which they

[2] *See* Case No. 11-00263-UT, EPE Plan, pp. 3-4; Acosta Direct, pp. 15-18, Exs. RA-2 & 3; Evans Direct, pp. 6-11, Exs. EDE-1 through EDE-3; and Stipulation approved by Final Order (showing EPE is on track to satisfy or exceed all of its diversity requirements, including its 2011 solar "deficiency" and its "full RPS requirement of 10%" for 2012 and 2013, including minimum two-year extension of its Small and Medium-Sized REC Purchase Programs, without any Large Customer or RCT reductions to its RPS); Case No. 11-00264-UT, Berg Direct, pp. 6, 10-16, Sakya Direct, pp. 8-9, 32 (representing that SPS will meet or exceed its diversity requirements, except for the "other" category, and full RPS percentages in 2012 and 2013 and that "it is likely that some large customers could reach their statutory limit" for the first time in 2013).

have interpreted and applied the RCT under existing Rule 572, participating parties did not challenge their RCT calculations and the Commission concluded in its final orders addressing their past plans that it was unnecessary to resolve any differences in the RCT calculation methods used by the parties.

In stark contrast, the Commission's records in Case Nos. 10-00373-UT and 11-00265-UT show that PNM fell substantially short of satisfying its minimum 20% solar diversity requirement in 2011 and could claim satisfaction of its solar diversity requirement in 2012 *only* if the Commission accepted its Large Customer cap and contested and unresolved RCT *reductions* to its 10% statutory RPS in 2012. The record in Case 11-00265-UT shows that PNM also claimed in its last (2011) plan case that, due to those two RPS reductions, it was required to satisfy a "net" or effective RPS percentage of *only* 7.4% in 2012 and 7.5% in 2013 (or, based on PNM's revised, contested and unapproved RPS calculations in its post-hearing "compliance filings," an even lower "net" or effective RPS percentage of between 6.8% and 5.8% in 2012, depending on three supplemental procurement alternatives described).[3]

In both Case Nos. 10-00373-UT and 11-00265-UT, REIA filed post-hearing briefs and Exceptions to the Recommended Decisions asking the Commission to resolve the RCT method disputes presented based on the PNM-specific facts and records in those cases and the absence of any resolution of those issues in the Commission's last RCT rulemaking docket, No. 08-198-UT. Unfortunately, the Commission declined to do so in either of those cases.[4]

[3] *See* Case No.. 11-00265-UT, PNM Plan, pp. 6, 9 "Corrected" Tables 1 and 2; 12/14/11 PNM "Compliance Filing" and 12/19/11 PNM Errata thereto.

[4] The Commission's Final Order in Case No. 11-00265-UT (¶ 9) stated: "The Commission does not currently require any particular method for determining the cost of renewable energy but is currently

REIA suggests that this record of PNM's claims concerning its ability (or inability) and plans to satisfy the Commission's current, 20% solar diversity requirement and the full or "statutory" RPS percentages in the REA for calendar years 2011, 2012 and 2013, compared to EPE's and SPS's claims and positions concerning those requirements, is reason for the Commission (and public) to ask a number of questions in this rulemaking proceeding. Why have EPE and SPS, but not PNM, been able to present the Commission with procurement plans that will satisfy the current 10% RPS in the REA and meet or exceed the Commission's minimum 20% solar diversity requirement without any RCT-based RPS reductions in 2012 and 2013? Did existing provisions in Rule 572 cause that REA compliance difference between PNM, on the one hand, and EPE and SPS on the other? Or were those REA compliance differences caused by different procurement decisions and the use of different RCT calculation methods by the management of those public utilities?

REIA submits that the Commission's records show very clearly that those current REA compliance differences between PNM and New Mexico's other two IOUs resulted from distinct procurement decisions by PNM (primarily its selection of 22 MW of owned PV facilities rather than procurement of equivalent solar via a power purchase agreement) that EPE and SPS did not make coupled with PNM's post-resource approval switch from a levelized to a non-levelized method (that neither EPE nor SPS have used) to calculate and justify the annual procurement costs and rate impacts of its owned solar resources when applying its RCT,. This distinction among the IOUs, as well as another portion of

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conducting a rulemaking proceeding (Case No. 11-00218-UT) aimed at standardizing the calculation methodology. The Commission's approval of PNM's Plan as modified should not be taken as an endorsement of any particular method for purposes of Case No. 11-00218-UT."

the Commission's Final Order in Case No. 11-00265-UT concerning PNM, raises several other important issues in this rulemaking case that appear to relate primarily to PNM.

Because this is rulemaking proceeding is "legislative" in nature, REIA presumes any changes to Rule 572 adopted here will operate prospectively on public utility renewable procurement plans filed after those changes become effective. This raises an issue unique to PNM about how any Rule 572 changes addressing the calculation of renewable energy costs will apply to the calculation of the costs of PNM's procurements this year and in future years from its owned 22 MW of PV and 0.5 MW Solar Demo with Batteries projects approved in Case No. 10-00037-UT. Resolution of that issue, in turn, will affect the application of the RCT to whatever "supplemental" procurement plans PNM files in compliance with the Commission's Final Order in Case No. 11-00265-UT which, as noted earlier, did not address how PNM should calculate the annual procurement costs from those owned solar resources in 2012, 2013 or 2014. Nor does it appear likely to REIA that the Commission will be able to resolve that lingering, PNM-specific cost calculation issue concerning those solar resources in this proceeding prior to the February 20, 2012 date when that "supplemental" PNM filing" currently is due.

On January 12, 2012, PNM filed a Motion for Rehearing and Request for Variance in Case No. 11-00265-UT requesting, *inter alia*, that the Commission extend the deadline for it to propose "specific procurements that would enable PNM to meet the RPS in 2014 or sooner and propose revisions to its Solar REC Incentive Program ("SIP") by approximately three additional months, until April 30, 2012. That Motion also requests that PNM be allowed to treat that filing as satisfying its July 1, 2012 annual plan filing requirement under 17.9.572.19 NMAC. There is no way for REIA (or anyone else)

to know at this time if the Commission will be able to issue a final order in this case prior to that extended April 30, 2012 date if the Commission grants that PNM Motion, or how a final order in this case might affect that PNM "supplemental" filing. [5]

These latest PNM developments raise additional public policy issues of concern to REIA in this proceeding. Is it the Commission's desire or goal here to make "standardized" changes to Rule 572 at this time that will *reduce* all of the IOUs' renewable procurement obligations in order to make it *easier* for PNM to *claim* compliance with its "statutory" RPS and diversity requirements between now and 2015? Or is it the Commission's desire and goal in this case to adopt changes to Rule 572 that make it possible for *all* of New Mexico's electric IOUs to achieve the maximum reasonable compliance with those requirements during that time period and in 2015, when the minimum RPS percentage in the REA increases to 15%, consistent with a reasonable RCT and other provisions in the REA?

REIA submits the Commission's goal in this case should be the latter. REIA believes this is an important policy issue the Commission should address at the outset of its final order in this case. Clearly, what is at stake in this proceeding is the Commission's satisfaction of its legislative mandate to implement the REA in a manner that achieves the purposes of that Act.

[5] REIA opposed PNM's Motion for Rehearing and Request for Variance because it believes granting that Motion would exacerbate numerous problems created by the Final Order in Case No. 11-00265-UT. Those problems include, but are not limited to, the fact that it would further delay Commission resolution of the PNM-specific SIP extension and RCT calculation issues addressed in that case while accelerating the time for PNM to file, and for interested parties and the Commission to have to begin reviewing and address, PNM's next procurement plan addressing 2013 and 2014 before this rulemaking proceeding concludes and its effects on those plans, if any, are understood.

COMMENTS ON SPECIFIC RULE PROVISIONS AND PROPOSED CHANGES

REIA's comments and justifications for its proposed changes to Rule 572 and to the changes proposed in the Notice shown on "Exhibit 1" hereto are set forth below.

572.7.G ("fully diversified renewable energy portfolio")

20% Solar Diversity Requirement

REIA opposes the reductions to the current 20% solar and wind diversity requirement percentages proposed in the Notice for several reasons. The public and utility customer benefits of those resource diversity percentages were considered, addressed and fully justified by the Commission in its Final Order in Case No. 07-197-UT. The Commission found in that Order (p. 36) that "a 20% of the RPS target for solar energy is consistent with the solar resource in the state, and is reasonably likely to be achievable within the limitations on overall costs that the Commission has established."

Today, as was the case in 2007, New Mexico's solar potential for both customer-owned DG and utility-scale installations remains second only to Arizona in the United States. No justification for lowering the existing 20% solar diversity percentage at this time is provided in the Notice.

Moreover, as noted earlier, the Commission's records addressing SPS's and EPE's renewable procurement plans since that Order was issued show that a 20% solar diversity requirement *was* reasonably achievable by 2012 within the Commission's *existing* RCT with reasonable and timely planning by IOU management to achieve that and, in fact, will be achieved by those two IOUs this year *without* any RCT-based reductions to their RPS and solar REC requirements. SPS and EPE are currently on track to satisfy or exceed all of the existing resource diversity requirements in Rule 572 in

2012 and 2013, with the exception of SPS's inability to satisfy the "other" resource category, apparently for technical reasons in its service area. As also noted, PNM alone currently does not have plans in place that will allow it to satisfy its *full* 20% solar diversity requirement in 2012 or 2013 (i.e., without RCT-based reductions to its projected RPS for those years). As also noted, that PNM solar shortfall is due to PNM management's solar resource procurement decisions and its reliance on RCT calculation methods for utility-owned solar resources that have not been used by EPE or SPS to date.

The Commission should not lower its existing 20% solar diversity requirement for New Mexico's three IOUs in light of solar's declining costs, reliability, availability, potential dispatchability (currently being studied by PNM due to Commission approval of its 0.5 MW Solar Demo with Batteries project in Case No. 10-00037-UT), life-cycle costs and benefits, and other "public benefits, addressed generally in the REA, §§ 62-16-4.A.3, C(4) and (5) and D(2). As stated in the REA, §§ 62-16-2.A.(1) and (2), those "public benefits' include "opportunities to promote energy self-sufficiency" by residential, governmental and commercial and industrial customers and "economic benefits" in the form of green jobs and equipment sales and purchases in New Mexico.

The Commission also should not lower its current solar diversity requirements for New Mexico's three IOUs simply make it easier for PNM, the State's largest electric IOU, to be able to *claim* compliance with the REA in the future. That would neither be fair nor sound public policy, particularly after SPS and EPE have demonstrated that an IOU can not only meet but exceed the Commission's existing 20% solar diversity target within the RCT when it is reasonably interpreted and *without* RCT-based reductions to the "statutory" RPS in the REA.

"Other" Technology Diversity Requirement

REIA does not oppose the Commission's proposal to reduce its "other technologies" diversity requirement percentage from the existing 10% to 5%. REIA presumes that proposal is based on past demonstrations and variance requests by public utilities that provider technical constraints prevent them from being able satisfy the existing 10% requirement.

DG Diversity Requirements

REIA recommends that the Commission increase the minimum DG percentage requirements in subsections G(1) and (2) to 3% in 2013 and 2015 and to 6% beginning 2015. Commission adoption of these DG percentage increases at this time would be consistent with the findings in NMSA §§ 62-16-2.A(1) and (2) that the REA is intended to "promote energy self-sufficiency" and "bring economic benefits in New Mexico."

As noted earlier and explained to the Commission in Case No. 07-00157-UT, DG also offers benefits to public utilities and *all* of their customers (not just customers installing DG) by reducing a utility's fuel costs and system line losses, reducing or "shaving" peak (summer) demands on utility systems, and by contributing to the peaking capacity (MW) utilities need to satisfy their system peak reserve margin requirements which may result in utility deferrals of investment in additional non-renewable peaking capacity to satisfy those requirements (i.e., avoided capacity costs).[6] Witnesses for New Mexico's DG industry previously have provided testimony to the Commission showing that the REC incentives approved by the Commission for DG pursuant to the REA to date have produced economic benefits to the State in the form of good-paying "green jobs" created by small businesses and purchases of solar DG equipment in New Mexico.

[6] See, e.g., PNM's July 2011 Integrated Resources Plan, p. 83, Table 8-6.

For example, in PNM's last (July 2011) Plan case, REIA provided the following testimony concerning DG in New Mexico:

> Positive Energy [Inc.] is a prime example of this job growth in New Mexico's solar industry. Positive Energy has grown from four employees in 2005 to over 46 full-time equivalent employees in 2011. Virtually all of our growth in employees has come from areas served by utilities that offer REC programs. Similar job growth has occurred for a number of other New Mexico companies entering the solar industry….Positive Energy's ability to retain and continue to hire employees, invest in equipment, lease space and make longer term business commitments is significantly affected by the continuing availability and certainty of REC incentives offered by PNM and the other investor-owned electric public utilities in New Mexico under DG programs approved by the Commission.[7]

In Case No. 11-00263-UT, Sunspot Solar Energy Systems, LLC, a DG provider in EPE's south central New Mexico service area, addressed the economic benefits of DG installations there:

> Sunspot currently has twelve employees and its solar installation operations provide a substantial amount of business to other businesses in New Mexico. For example, over the past two years, Sunspot has ordered approximately $2 million worth of PV panels made in New Mexico by Schott Solar. Sunspot also purchases all of its solar racks from companies in New Mexico, such as Unirac located in Albuquerque. Sunspot also purchases the other supplies it needs to install PV systems from businesses located in New Mexico, including inverters sold by New Mexico distributors.[8]

Commission adoption of the increased DG diversity percentages proposed by REIA will help sustain these employment and other economic benefits of DG in New Mexico. It also will help sustain New Mexico's growing solar industry in general as the State moves forward with efforts to help provide the transmission capacity and other requirements for it to attract the investment necessary for New Mexico to become an exporter of utility-scale solar to other states. Moreover, a number of developments in

[7] Case No. 11-00265-UT, Sadewic Direct, p. 15.
[8] Case No. 11-00263-UT, Honek Testimony in Support of Stipulation, p. 2.

New Mexico since 2007, when the Commission established the current DG percentage targets, support the DG percentage increases REIA recommends the Commission adopt.

By way of background, in Case No. 07-157-UT, the Commission initially proposed a higher 10% DG target by 2011, increasing to 15% in 2015 and to 20% in 2020. As discussed in its Final Order in that case (p. 28), that initial Commission proposal would have translated to a slightly higher percentage of total electric sales by 2011, the same percentage of total electric sales by 2015 and a lower (by 1%) percentage of total electric sales by 2020 compared to Arizona's DG requirements in effect five years ago. As explained in that Final Order (p. 37), however, the Commission lowered the DG percentage targets initially proposed to the current percentage levels for the following reasons:

> …The primary form of distributed generation discussed in this case is solar PV, which is a relatively expensive technology. As with other renewable energy technologies, the Commission expects costs to decline with continued deployment. However, at current and projected costs, the distributed generation target of 10% of the RPS in the proposed rule makes it particularly difficult to meet the Commission's diversity goals within reasonable overall costs for the RPS. Furthermore, even aggressive deployment of distributed generation is unlikely to bring utilities close to this target prior to 2020. Therefore, the Commission should set targets that are more realistic, which the Commission finds to be 1.5% of the RPS for DG from 2011 through 2014, increasing to 3% of the RPS in 2015.

As of this year, *each* of the State's IOUs has been able to exceed the very modest 1.5% DG diversity target in existing Rule 572 within the existing RCT. That success has been due in large part to (i) Commission approval (and in some cases modification) of public utility DG REC purchase program proposals that have offered reasonable incentives for DG RECs, (ii) federal and State tax incentives for investments in renewable energy systems, and (iii) an amendment to the New Mexico Public Utility Act

("PUA") making it clear that non-taxable customers, such as government agencies and schools, can use third-party system ownership structures to finance the up-front capital costs of those systems without being treated as regulated "public utilities" under the PUA.[9]

According to their latest (July 2011) procurement plan filings, the installed DG percentages projected by the State's IOUs in 2012 and 2013 are as follows:

PNM: 7.1% of "Net RPS" (2012); 8.6% of "Net RPS" (2013)[10]
EPE: 2.0% (2012) and 2.4% (2013)[11]
SPS: 3.5+%+ (2012) and 3.5% (2013).[12]

According to EPE's and SPS's July 2011 Plan filings, those IOUs will be able to achieve those DG percentages in 2012 and 2013 without exceeding their RCT. EPE's July 2011 Plan filing reported that EPE will be able to reach the 2.0% and 2.4% DG levels in 2012 and 2013 as part of overall renewable procurements that will have a *negative* RCT impact of approximately $4.2 million in 2012 and $5.1 million in 2013[13] (i.e., that provide net rate *benefits*, rather than incremental net costs, to EPE's customers).

EPE's initial July 2011 Plan filing indicated EPE will be able to reach the 2.0% and 2.4% DG levels in 2012 and 2013 *without* considering any of the additional DG that may result from implementation of its the new Large System REC Purchase Program in

[9] NMSA § 62-13-13.1.
[10] Case No. 11-00265-UT, Plan, p. 9, "Corrected Table 1." Note: the "Net RPS" percentages indicated are based on claimed Large Customer cap and RCT reductions to the applicable 10% RPS in the REA.
[11] Case No. 11-00263-UT, Acosta Direct, Ex. RA-3. Note: These were *not* "net RPS" percentages. The DG percentages stated in Mr. Acosta's Direct testimony did not include projections of DG resulting from Commission approval of the subsequent Stipulation in that case modifying EPE's Small and Medium System REC Purchase Programs and implementing a new Large System REC Purchase Program, effective January 1, 2012.
[12] Case No. 11-00264-UT, Sakya Direct, p. 17 and Attachment RMS-1. Note: These are not "net RPS" percentages. As explained in Ms. Sakya's referenced testimony, the figures on Attachment RMS-1 assume that at least half of system applications then pending would be completed in nine months. As stated there, if all then pending DG applications become operational, "SPS can meet its DG requirements through at least 2018" as shown on Attachment RMS-1.
[13] Case No. 11-00263-UT, Evans Direct, Ex. EDE-1; Stipulation, ¶ 4.b.

2012 pursuant to the subsequent uncontested Stipulation approved by the Commission's Final Order in Case No. 11-00263-UT. Moreover, EPE projects reaching those DG percentage levels without having filed any tariffs with the Commission allowing third-party participation in *any* of its REC purchase programs, as *both* PNM and SPS have. The absence of such third-party participation authority in EPE's current DG REC purchase program tariffs is significant in terms of projected DG participation rates in EPE's service area because, as noted earlier, that authority is not only helpful, but often necessary to finance DG systems desired by governmental customers (e.g., county buildings, public schools) and non-profit entities (e.g., religious institutions) that cannot take advantage of federal or state tax incentives for investments in those systems.

Further, since 2010, based on declining solar PV cost expectations, the Commission has approved modifications to *each* of the IOUs' DG REC programs that have significantly reduced the REC incentives offered for new customer applicants and shortened the REC purchase contract lengths offered, thereby reducing the cost of those programs to those utilities and their customers for satisfying the RPS. Each of the currently "open" DG REC purchase programs approved by the Commission for the three IOUs (in Case Nos. 10-00196-UT (SPS), 10-00037-UT (PNM) and 11-00263-UT (EPE)) offer REC incentives that *continue to decline* on either a capacity application or time period basis. Thus, the lower current and projected per MWh cost of public utility compliance with the higher DG requirements proposed by REIA beginning in 2013 should not prevent any of the State's IOUs from satisfying its RPS or the Commission's other resource diversity targets, including maintenance of the existing 20% solar diversity

requirement, within the RCT if *reasonable* RCT provisions are adopted by the Commission in this proceeding.

New "Least Cost" Provision

REIA opposes Commission adoption of the following language to this subsection proposed in the Notice: "Selection of the renewable energy resources that constitute the amount of the remaining renewable portfolio standard requirement that is not addressed by meeting the above diversity requirements shall be the least cost option to ratepayers." As discussed above, this "least cost" requirement is inconsistent with the balancing of costs and benefits approach in the REA and would unreasonably and unnecessarily restrict the Commission's discretion to reject a particular "least cost" procurement proposed by a public utility in a particular case where alternative procurements available may better satisfy the broader purposes of the REA and thereby better promote the public interest.

For example, in Case No. 11-00373-UT, the Commission rejected certain "least cost" proposals by PNM to purchase unbundled wind RECs in the context of the record there. That Commission decision is now on appeal to the New Mexico Supreme Court. REIA did not urge the Commission to reject those PNM proposals and took no position on that Commission decision. REIA simply points out here that this, or any similar "least cost" procurement requirement addition to Rule 572, would effectively eliminate the Commission's discretion to reject "least cost" procurement proposals by public utilities in future procurement plan cases so long as the Commission's diversity requirements are satisfied, regardless of the relative costs and benefits of any procurement alternatives available to a public utility and applicable RCT considerations.

572.7.J ("levelized accounting")

So far as REIA can determine, the term "levelized accounting," also used in 572.7.L defining "life cycle cost," would affect only procurements from renewable resources that are owned and included in a utility's "rate base." Issues concerning how these provisions may apply to procurements from PNM's previously approved owned solar resources and RCT claims are addressed below.

572.7.L ("life-cycle cost")

REIA supports changes to Rule 572 that would require public utilities to use levelized life-cycle costs, including avoided costs, to calculate the annual cost and rate impact of projected procurements from renewable energy resources that are owned by a utility and the utility intends to rely on "rate base" treatment to recover the capital costs of those resources from its customers in rates. REIA recommends that the phrase "all avoided costs determined in accordance with section 11.D of this Rule" should be added to this definition to make clear that those benefits should be included in this "life-cycle cost" determination.

The definition proposed in the Notice does not make it entirely clear if all such life cycle costs and benefits would be determined by the Commission only once, at the time a resource or procurement not previously approved by the Commission is proposed, or if a public utility would be required to reexamine its calculation of those costs when applying the RCT in future procurement plan cases. The new language proposed in 572.16.E addressing changes in estimated life cycle costs would indicate the latter. REIA's recommendations regarding clarification of that section are addressed below.

As REIA understands it, proposed subsection 2 of this section would require a utility with an investment in a renewable resource qualifying for *any* type of federal or state tax incentive to "normalize" or amortize the benefit of that incentive over the useful life of that resource on an equal or straight-line basis when computing the cost or rate impact of procurements from that resource for application of the RCT even if the utility is able to benefit from all or a greater portion of that incentive sooner, either by reducing its tax liability or from a cash "grant." REIA generally supports this tax benefit levelization because it is consistent with the broader cost levelization approach for utility-owned renewable resources afforded rate base treatment addressed above.

Consistent with its position in PNM's 2011 Plan case (No. 11-00265-UT), REIA believes the Commission should consider the need for utility consistency regarding these cost and tax benefit levelization methods when it considers any future renewable energy procurement plan filings by PNM, including the "supplemental" filings required by the Commission's Final Order in that case. In this regard, REIA also refers the Commission to the prepared Direct testimony recently filed by PNM in support of its Application for approval of a Renewable Rider in Case No. 12-00007-UT.

In that case, PNM submitted testimony indicating that: (1) it has applied for a federal American Recovery and Reinvestment Act ("ARRA") treasury cash grant rather than an investment tax credit ("ITC") for its $97 million investment in the owned PV and Solar Demo projects proposed and approved in Case No. 10-00037-UT; (2) existing ITC normalization requirements by the Internal Revenue Service do not apply to that Grant due to recent Congressional passage of a section of a "Defense Bill" in December 2011 "retroactively eliminating the normalization requirement for the Grant"; and (3) though

PNM will receive the benefit of that entire grant "shortly after completion of the facilities," PNM is proposing (as REIA understands it) to amortize the amount of that grant "over the life of the underlying plant" for ratemaking purposes using a "Net Operating Loss" Accumulated Deferred Income Tax "asset" *addition* to its rate base calculation in its proposed Renewable Rider based on language in paragraph 22(f) of the Amended Stipulation approved in Case No. 10-00086-UT.[14] PNM's Application and prepared Direct Testimony in Case No. 12-00007-UT also address the *annual* rate impacts of its proposed Renewable Rider on customers in 2012 and 2013 (the same years addressed in PNM's 2011 Procurement Plan), addressed further below.

REIA took no position on any provisions in the Amended Stipulation in Case No. 10-00086-UT other than to support PNM's withdrawal of the New Interconnected Customer Rider it proposed prior to settlement of that case. Moreover, REIA currently does not know what the signatories to the Stipulation or the Commission understood paragraph 22(f) of that Stipulation to mean, or if or how the subsequent Congressional passage of the retroactive tax law change eliminating the normalization requirement for that Grant may have affected that understanding.

REIA simply notes here that PNM's recent Renewable Rider Application illustrates the difficulty of treating the RCT as an annual (rather than life-cycle) "rate impact" test when the Commission allows a public utility to engage in this sort of "piecemeal" ratemaking process addressing approval, planning and cost recovery of procurements from "rate-based" renewable resources in *five different Commission proceedings* (Case Nos. 10-00037-UT, 10-00086-UT, 10-00373-UT, 11-00265-UT and 12-00007-UT) over a two-year period. As REIA noted in its Initial Post-Hearing Brief in

[14] Case # 12-00007-UT, Harland Direct, pp. 6-14; Lavorne-Marriage Direct, p. 11 & Ex. SLM-1 (ls. 28,35).

Case No. 11-00265-UT (p. 38), Cynthia Bothwell, PNM's principal resource planning witness in all of its renewable procurement plan cases since 2008, testified in Case No. 10-00037-UT where PNM requested Commission approval for its acquisition of 22 MW of PV and Solar Demo with Batteries projects that:

> The levelized method using life cycle cost per 17.9.572.11 NMAC…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*.[15]

The Notice also proposes to include "the revenues that the utility forecasts resulting from the sale of all RECs" in the calculation of "life cycle cost." REIA questions whether this inclusion is appropriate given the possibility, if not likelihood, that a public utility may not be able to project such revenues from RECs from a particular renewable resource on a "life cycle" basis. For that reason, it would seem more reasonable for a public utility to report such revenues as a separate line item on its presentation of projected procurement plan costs in its plan that reduces those costs in the year such revenues are actually credited and passed through to its customers, presumably through the utility's Fuel and Purchased Power Cost Adjustment Clause.

572.10.D (Large Customer cap reduction to RPS)

This section addresses how public utilities should calculate the Large Customer cap which, pursuant to the REA (§ 62-16-4.A(2) and Rule 572.10.C, reduces a utility's statutory RPS and the RECs a utility needs to satisfy that RPS and the Commission's resource diversity requirements. The current language in this section does not address the situation recently encountered by the Commission (again, with respect to PNM) in Case

[15] Case No. 10-00037-UT, Bothwell Rebuttal, p. 2 (emphasis added).

No. 11-00265-UT where PNM was authorized to implement substantially higher base rates for all of its customers, including its Large Nongovernmental Customers, shortly after it filed its 2011 Plan and before the Commission's public hearing on that plan was conducted. Such a base rate change may have a substantial effect on a utility's Large Customer cap reduction to its statutory RPS because, pursuant to 572.10.C, that cap is "the lower of two per cent" of a Large Customer's "annual electric charges" or $99,000, and pursuant to the REA (§§ 62-16-4.A and D), utilities are required to satisfy the applicable RPS percentage based on projections of their "total retail sales to New Mexico customers" in the calendar year following the July 1 date of their annual procurement plan filings. Thus, except for Large Customers for which the $99,000 cap is lower than two percent, higher utility rates for Large Customers in the year addressed by a particular utility procurement plan will increase the amounts of renewable costs a utility may recover from them in that year before their annual cap is reached, and that will change the utility's Large Customer cap adjustment, if any, to its projected RPS for that year.

To address this situation, REIA recommends the Commission adopt the following proviso at the end of the first sentence in this section: "; provided, however, if a public utility is authorized to implement any changes to its base rates after the date on which it files such a plan and before a public hearing addressing that plan concludes, the commission may consider those changes for the purpose of determining this procurement reduction." This proposed language would be consistent with the Commission's Final Order in Case No. 11-00265-UT (¶ 5) requiring PNM to calculate its RCT requirement for 2012 using the higher rates approved by the Commission in Case No. 10-00086-UT and implemented by PNM prior to the hearing on PNM's 2011 Plan. It also would

provide advance notice to public utilities and all interested parties of this Commission policy so they can address if they wish the effects of such a recent base rate change on a proposed procurement plan before the Commission's record in a plan case closes.

572.11.B (Calculation of Annual RCT Dollar Limits)

For the reasons addressed above, clarification of how a public utility should calculate its annual RCT cost limit or ceiling is one of the most critical issues in this proceeding, particularly for PNM and all affected parties in its service area. This issue involves not only the Commission's applicable RCT percentages, but also *which* revenues must be included in (or excluded from) a public utility's annual calculation of its "customers' aggregated overall annual electric charges" to establish that annual cost limit. As shown in the record in Case No. 11-00265-UT, these considerations are inter-related and may affect a utility's claims concerning its ability to satisfy its RPS within its applicable RCT in a particular calendar year.

Under existing Rule 572.11.B, the RCT increases to 2.5% in 2013, to 2.75% in 2014 and will not increase to 3% until 2015. As REIA interprets the Notice, the proposed "3%" change to this section would increase the Commission's RCT to that level earlier. Since the "Effective Date" section (572.5) is left blank in the Notice, however, it is not clear to REIA when that RCT increase would become effective.

No reason for the RCT increase proposed is provided in the Notice. REIA therefore presumes it is proposed due to Commission concerns that the RCT percentages in the existing Rule may not be sufficient to allow public utilities to satisfy the statutory RPS in the REA between now and 2015.

As discussed above, it does not appear to REIA that the RCT percentages in the existing Rule have prevented EPE or SPS from submitting procurement plans that have put them on track to meet their full ("statutory") RPS and full diversity requirements (except for the "other' category for SPS) in 2012 or 2013. As also discussed earlier, PNM alone among the IOUs has interpreted provisions in the existing Rule in ways to support claimed RCT-based reductions to its projected RPS and reductions of the RECs it needs to satisfy its solar diversity requirements. For these reasons, it appears to REIA that the RCT percentage increase proposed in the Notice may be intended to primarily address PNM's current and projected REA compliance deficiencies prior to 2015.

Whether or not it increases the RCT percentage as proposed in the Notice, REIA recommends that the Commission adopt the following revised language in section 11.B to clarify the revenues from a utility's "overall annual electric charges" that should be included to calculate the utility's annual RCT limits:

> The RCT applicable to any calendar year addressed in a public utility's annual renewable energy portfolio procurement plan is three percent <u>(3%)</u> of the utility's reasonably projected revenues in that year from all of its customers' aggregated overall annual electric charges, including reasonably projected revenues from its base rates in effect on the date on which the utility files such a plan with the commission, its Fuel and Purchased Power Cost Adjustment Clause and Energy Efficiency Rate Riders, but excluding revenues from franchise fees, gross receipts taxes, any voluntary renewable energy program, any underground rate riders and unbilled revenues; provided, however, if a public utility is authorized to implement any changes to its base rates after the date on which it files such a plan and before a public hearing addressing that plan concludes, the commission may consider those changes for the purpose of determining the utility's RCT and whether the cost of its plan, as proposed by the utility or modified by the commission, would exceed the RCT. To reasonably project its revenues and apply its RCT as provided in this subsection, a public utility shall use its most recent retail sales volume (MWhs) projections for the calendar year(s) addressed in its plan, which may take into account projected reductions of retail sales volumes due to commission-approved energy efficiency programs, provided that such projected reductions are reasonably supported by evidence submitted by the public utility at the time its plan is filed with the Commission.

REIA believes the foregoing clarifications are necessary because, based on its review of IOU procurement plans filed with the Commission in the past, the sources and calculation of the revenues included in (and excluded from) their RCT limit calculations are not always transparent. REIA believes inclusion of a utility's revenues from Efficiency Rate Riders in this calculation is reasonable for several reasons.

First, those revenues are from the "overall electric charges" by a public utility to its customers. Second, the Efficient Use of Energy Act, which authorizes IOUs to recover the costs of approved energy efficiency and load management programs for their customers, describes those programs as "cost-effective resources that are an essential component of the balanced resource portfolio that public utilities must achieve to provide affordable and reliable energy to public utility customers."[16] For example, PNM likewise describes its demand-side programs in its 2011 Integrated Resources Plan ("IRP") as "resources" that provide peak demand "savings" and reductions for PNM's and its customers' benefit.[17]

As discussed further below, REIA believes the RCT percentage increase to 3% prior to 2015 proposed in the Notice *is* justified and reasonable *if* the Commission does not adopt the clarifications recommended above *or* adopts the new provision proposed in 572.11.E that would *reduce* the calculation of a utility's annual RCT limit by the revenues from Section 62-16-4A(2) NMSA (i.e., Large Nongovernmental) customers above the amount of those revenues "multiplied by the applicable statutory percentages found in that Section, adjusted for the dollar caps in that Section." As discussed below, REIA opposes Commission adoption of that revenue reduction proposed in 572.11.E

[16] NMSA, § 62-17-2.
[17] 2011 PNM IRP, pp. 41, 83 (Table 8-6).

because it is inconsistent with the RPS provisions in the REA (§ 62-16-4.A) and would result in substantial reductions to the RCT limits applicable to PNM (due to the amount of its annual retail revenues from its Large Customers) and possibly the other IOUs that would unreasonably limit their ability to satisfy the RPS percentages in the REA, adjusted for the Large Customer cap in that Act. If, on the other hand, the Commission adopts REIA's recommendation to reject that change to 572.11.E, adopts the changes to 572.11.B recommended above and a levelized method for calculating the cost of procurements from a utility-owned renewable resource accorded rate base treatment for ratemaking purpose, REIA believes the acceleration of the RCT increase to 3% proposed in the Notice may not be necessary to ensure that PNM and the other IOUs will have the annual RCT limits necessary to satisfy the RPS percentages in the REA to the greatest extent possible between now and 2015.[18]

REIA also recommends the Commission change the phrase "In modifying the reasonable cost threshold" immediately preceding subsection (1) of 572.11.B to "When applying the RCT" to clarify that the Commission will take into account the criteria in the REA incorporated in subsections (1) through (5) when applying the RCT to a particular public utility procurement plan. REIA believes that any modification of the RCT by the Commission can only be accomplished through its rulemaking process, such as this proceeding, whereas Commission application of the RCT to a particular utility procurement plan will occur in the sort of annual adjudicatory plan review proceedings required by the REA and implemented under Rule 572.16. This clarification also would

[18] REIA assumes the Commission has established this as one of its policies based on ¶ B of its recent Final Order in Case No. 11-00265-UT requiring PNM to "make a supplemental filing proposing specific procurements that, if approved, would enable PNM to meet its Renewable Portfolio Standard in 2014 or sooner, if possible."

notify all interested parties in a utility procurement plan proceeding of the need to address the specific RCT legal criteria that the REA (§ 62-16-4.C) requires the Commission to "take into account."

572.11.D(2) (Purchases of unbundled RECs)

As REIA understands it, this section would include public utility purchases of RECs from DG in its service area. REIA recommends the addition of the phrase "line losses" to the language proposed in the Notice for the reason stated below.

REIA believes additional guidance in this section would be helpful addressing how a public utility should address adjustments "for any effects of the energy production or delivery on the utility's cost of fuel and purchased power or capacity, line losses, transmission or distribution requirements," since this has been a disputed issue in past PNM procurement plan cases. For example, the records in Case Nos. 11-00263-UT and 11-00265-UT show that, in their most recent plan filings, EPE's RCT calculation adjusted its DG program costs to reflect "all-in" avoided fuel and capacity benefits based on the avoided cost of a combustion turbine, whereas PNM took the position that no such benefits apply to its DG program costs "[b]ecause no energy is included in a REC-only purchase."[19]

In this regard, REIA notes that, in its Final Order in Case No. 07-00157-UT (p. 12, n. 3) the Commission stated: "Avoided cost is the difference between the net present values of the renewable energy and the conventionally-generated electricity it is replacing." EPE's recognition in Case No. 11-000263-UT that DG provides it with avoided capacity cost benefits appears to be consistent with that Commission definition

[19] *Compare* Case No. 11-00263-UT, Evans Direct, Ex. EDE-1 with Case No. 11-00265-UT, Bothwell Direct, p. 15 and Ex. CBD-4.

of avoided cost. REIA also notes that, in Case No. 11-00265-UT, PNM witness Cynthia Bothwell testified that, when determining if PNM's procurements of renewable energy allowed it to defer adding new minimum-sized, 40 MW gas peaking plant, PNM considers the aggregated peak capacity of *all* of its renewable resources, not just from its bundled renewable resources.[20]

REIA believes that, even if the record in a particular utility plan case does not support adjustment of DG Program costs to reflect avoided capacity cost benefits, even PNM recognizes that DG provides avoided fuel and line loss benefits to a public utility and its customers because it reduces the amount of fuel the utility needs to procure to serve customers that use DG to satisfy much of their demand and eliminates the system line losses associated with that reduced fuel delivery requirement.[21] The fact that no energy is included in a REC-only purchase does not eliminate those benefits.

REIA also believes the following additional Commission guidance in this section concerning the information a public utility should present in a procurement plan case addressing whether any additional procurement cost adjustments should be made for the effects of DG on a utility's "capacity, transmission, or distribution requirements" in this section would help resolve disputes about those matters faster and more efficiently in future plan cases:

[20] Case No. 11-000265-UT, 10/25 Tr. 79-87 (Bothwell); *see also* July 2011 PNM IRP, p. 7 (noting that meeting its reserve requirements with incremental capacity of smaller aeroderivative gas turbines that "can be started and stopped with minimum run times without cost penalties" and "can deliver better fuel efficiencies under operating conditions of varying dispatch" reduces capital costs; *id.* pp. 47, 50 (addressing PNM's reliance on capacity from its solar and wind resources "to meet system load and reserve margin requirements.").

[21] *See* Case No. 10-00086-UT, prepared Direct Testimony of PNM witness James Mayhew, pp. 92-93 ("Short-term benefits of distributed generation include lower fuel and purchased power costs and reduced losses. Long-term benefits include capacity savings for generation and cost deferral savings for transmission." Mr. Mayhew also testified there that "[i]f the energy from the distributed generation occurs at the time of peak, there is some potential reduction in the cost of PNM's demand response programs.").

> For the purposes of determining whether such purchase costs should be adjusted for any of these effects and quantifying any such adjustments, a utility shall address each of those effects in its annual plan, including all assumptions and supporting workpapers and its most recent available information concerning the extent to which the utility is relying on such purchases, either separately or aggregated with its other renewable procurements, to delay its procurement of any non-renewable energy resource.

Alternatively, if the Commission deems it appropriate, it could include the foregoing provision in 572.16.B addressing information to be included in a utility's plan.

572.11.D(3) (Purchase of bundled energy and RECs)

REIA's comments concerning 572.11.D(2) also apply to this section addressing purchases of renewable energy bundled with RECs. The Notice proposes adding the following language to this section: "Avoided costs shall be limited to items that can be shown to result in actual reductions in costs to ratepayers." REIA does not understand how this language would clarify avoided cost calculations for the IOUs and interested parties, or avoided cost determinations by the Commission, particularly with respect to purchases of renewable energy bundled with RECs from rate-based, utility-owned resources for which cost levelization is proposed in the Notice.

In this regard, REIA notes that, in the Commission's prior rulemaking proceeding, PNM supported Commission adoption of the following language to determine the "incremental rate impact" of the cost of procurements from bundled renewable resources:

> For bundled renewable energy resources that include capacity, energy and/or renewable attribute components, the incremental costs shall be the levelized cost of the renewable resource less the sum of the following:
>
> (a) levelized avoided capacity cost using the most recent costs from a generally acceptable source, such as EPRI Technical Assessment Guide (TAG) for the most comparable combined cycle or combustion turbine technologies which produce capacity similar to that of the renewable resource, adjusted for specific locational characteristics associated with New Mexico generation, and including non-fuel fixed and variable costs associated with the comparable

generator, and other incremental costs such as transmission and interconnection costs;

(b) levelized avoided fuel costs derived from one or more publicly available, generally accepted price forecasts that the utility relies upon for planning purposes and fuel contract prices, if applicable;

(c) reasonable expected levelized cost of avoided CO2 regulation compliance that shall be $20 per metric ton beginning in 2013 and escalating at 2.5% per year thereafter, until actual CO2 regulation compliance costs are known.[22]

PNM represented to the Commission in Case No. 10-00037-UT that, for the purpose of applying the RCT, it calculated the costs of its projected procurements from its proposed owned 22 MW of PV and Solar Demo with Batteries projects consistent with the foregoing proposed Rule 572 amendments.[23] Moreover, in its latest (July 2011) plan filing, EPE used a similar, levelized and avoided cost method to determine the incremental costs of its bundled renewable energy procurements.[24]

REIA recommends that the Commission adopt language in 572.11.D(3) and D(4) addressing avoided costs that is substantially the same as the foregoing avoided cost language recommended by PNM in Case No. 08-00198-UT to provide clearer guidance about the calculation of the costs of procurements of renewable energy bundled with RECs. REIA also recommends the Commission add a new informational provision in this section, or in 572.16.B, similar to that recommended above for 572.11.D.2 to help resolve potential disputes about any adjustments that should be made to the cost of the bundled energy and REC purchases addressed in this section.

572.11.D.(4) (Determination of Avoided Capacity Costs)

[22] Case No. 08-00198-UT, 1/15/2010 Comments of PNM in Response to Revised Noticed of Proposed Rulemaking, "Attachment A," proposed 572.11.D(3).
[23] Case No. 10-00037-UT, Bothwell Rebuttal, pp. 8-9.
[24] Case No. 11-00263-UT, Evans Direct, pp. 7-8 and Ex. EDE-1.

As noted earlier, the determination of the amount and timing of any avoided capacity cost adjustments to the cost (rate impact) of a renewable procurement has been a contentious issue in past PNM procurement plan cases. The Notice proposes the following language in this section: "Avoided costs shall be limited to items that can be shown to result in actual reductions in costs to ratepayers." REIA's comments above concerning the problems with adding this language in 572.11D(3) are equally applicable in this section. REIA believes that language does not clarify this matter.

As noted earlier, REIA believes that DG also can provide avoided capacity cost benefits to a utility and its customers. If the Commission adopts the broader avoided cost language proposed by REIA in 572.11.D(2) and (3) addressed above, this section would not be necessary.

As stated earlier, REIA agrees with the principle that the determination of the amount and timing of avoided capacity cost adjustments to the cost (rate impact) of a renewable procurement should be utility-specific. Regardless of the language adopted by the Commission to address avoided capacity costs, REIA recommends the Commission adopt the following new provision in this section, or in 572.16.B, similar to that recommended above for 572.11.D.2, to help resolve potential disputes about this matter:

> For the purpose of determinations under this section, a utility shall address in its annual plan its most recent available information concerning the extent to which the utility is relying on procurements from renewable resources, either separately or aggregated with other renewable renewable resources, to delay its procurement of any non-renewable energy resource.

572.11.D.(5) (Determination of Environmental Benefits)

See comments above concerning recommended inclusion of "reasonable expected levelized cost of CO2 regulation compliance." Whether or not that recommendation is

adopted, REIA recommends that the word "shall" be inserted in lieu of "may" in the language proposed in this section.

As proposed, the language in this section would require that "environmental benefits" be "identifiable and quantifiable" before they can be used to adjust the "incremental cost of a renewable energy acquisition." If such benefits are both "identifiable and quantifiable," they *should* be included when calculating the cost of a particular renewable energy procurement.

No justification is provided for the use of "may" here, which would give a public utility discretion to exclude such "identifiable and quantifiable" benefits when calculating its procurement costs. Adoption of the word "shall" would be consistent with the REA (§ 62-16-4.C(5)) requiring the Commission to "take into account…other factors, including public benefits that the commission deems relevant" when modifying and applying the RCT. "Identifiable and quantifiable" environmental benefits are relevant to public utility calculations of the costs of renewable energy procurements given the Legislatures' finding in the REA (§ 62-16-2.A(1)) that "the generation of electricity through the use of renewable energy presents opportunities to…preserve the state's natural resources and pursue an improved environment in New Mexico."

572.11.D.(6) ("Incremental Costs")

REIA opposes addition of the definition of "incremental costs" in the first sentence proposed in this section because it does not clearly explain what is meant by "actual expected cost to rates for the procurement year being tested." To REIA's knowledge, the Commission has not determined in past public utility procurement plan cases to date *when* a utility will actually recover the costs of projected procurements from

its customers in rates, or *how* that rate impact period will relate to "the procurement year being tested."

One example of this fact is PNM's recent Application in Case No. 12-00007-UT for approval of a Renewable Rider (addressed earlier) that would allow PNM to recover in rates in 2012 and 2013 certain stipulated amounts of renewable procurement costs previously approved by the Commission and incurred by PNM after December 31, 2010. The timing of PNM's recovery of those costs (impacts on customers' rates) was not proposed by PNM or determined by the Commission in the PNM procurement plan cases where those renewable procurements and costs were presented for Commission approval. Moreover, it will not be known if and when those proposed annual rate impacts will occur until the Commission addresses that Application in a final order in that case. Unless and until the Commission decides that it will determine in every public utility procurement plan case *when* the utility can recover the incremental costs of a particular plan from its customers in rates, Commission adoption of this sort of language in Rule 572 would be essentially meaningless and create more public confusion and disputes among interested parties than it would resolve.

The Notice also proposes the following language in this section: "For a renewable energy project which is or is intended to be placed into rate base, and where cost recovery is levelized pursuant to 17.9.572.12(D), incremental cost shall be computed using levelized accounting for purposes of the RCT." REIA supports Commission adoption of this provision for such rate-based projects. REIA notes, however, two issues that *prospective* application of this provision may leave unresolved concerning the PNM-

owned 22 MW of PV and Solar Demo with Batteries projects previously approved by the Commission in Case No. 10-00037-UT.

When a levelized cost calculation method is used to calculate the cost of procurements from a renewable resource which a utility proposes to include in its rate base, consistent levelized cost treatment of those procurements from one plan year to the next is necessary when applying the RCT. For example, it would not be reasonable for a public utility or the Commission to use a non-levelized method to calculate the costs of its procurements from such a resource in one plan year and switch to a levelized cost approach for its procurements from that resource in a subsequent plan year, since that would defeat the purpose of cost levelization over the projected useful life of a particular resource and would distort the incremental costs and rate impacts of those procurements from year to year for RCT purposes.

This raises the issue of how this proposed language, adopted by the Commission prospectively, would apply to the cost of future procurements by PNM from the owned 22 MW of PV and Solar Demo with Batteries projects previously approved by the Commission in Case No. 10-00037-UT. As shown in the Commission's record in that case, PNM used a levelized method, including avoided capacity costs, to calculate the cost of the procurements it projected from those proposed resources for the purpose of applying its RCT there. As also shown in the Commission's records in Case Nos. 10-00373-UT and 11-00265-UT, PNM subsequently switched to a non-levelized method, excluding avoided capacity costs, to calculate the incremental costs and rate impacts of its procurements of bundled energy and RECs from those owned solar resources in 2011, 2012 and 2013. As shown there, that RCT cost method change by PNM had the effect of

increasing the costs of those procurements in the early years of the lives of those resources (compared to their levelization) with the expectation that the cost of procurements from those resources will decrease annually due to the sort of depreciation cost amortization and "normalization" of renewable energy tax incentive benefits PNM is authorized to use in the ratemaking process. That effect had a substantial impact on PNM's RCT, RPS and solar diversity claims and proposed plans in both of those cases.

In both Case Nos. 10-00373-UT and 11-00265-UT, REIA asked the Commission to reject that PNM RCT cost method change for numerous reasons, including the need for RCT cost calculation method consistency from one procurement plan case to the next when a public utility asks the Commission to rely on a levelized cost approach to justify the cost and rate impacts of owning a renewable resource, rather than purchasing it from another provider using a PPA. In both of those cases, however, the Commission declined to resolve that PNM-specific RCT cost calculation issue. Thus, that issue remains unresolved to date even though, as noted earlier, the Commission's Final Order in Case No. 11-00265-UT ordered PNM to make a "supplemental filing" in 60 days "proposing specific procurements that, if approved, would enable PNM to meet the Renewable Portfolio Standard in 2014 or sooner, if possible."

At some point in the future (not clear from the record in Case No. 11-00265-UT), the levelized costs of PNM's procurements from its owned 22 MW of PV and Solar Demo with Batteries projects will be higher than their non-levelized costs. Thus, if the Commission does not adopt a consistent levelized cost method to determine the cost of PNM's procurements from those resources in 2012 and subsequent years and were to apply the cost levelization requirement proposed in 572.11(6) to those future PNM

procurements, that would have the effect of *reducing* the RCT headroom available to PNM to satisfy its RPS and diversity requirements in *both* the early and later years of operation of those resources.

A second issue concerning the PNM-owned 22 MW of PV and Solar Demo with Batteries projects previously approved by the Commission raised by the cost levelization provision proposed in this section is whether the Commission would consider those or similar projects "placed in rate base" where, as shown in PNM's recent Application for approval of a Renewable Rider in Case No. 12-00007-UT, PNM is seeking to recover the post-2010 costs of its procurements from those resources through a rate rider rather than include them in the rate base it used in its most recent general rate case (No. 10-00086-UT) to support its current rates. For all of these reasons, REIA continues to maintain here, as it did in Case Nos. 10-00373-UT and 11-00265-UT, that to reasonably address PNM's renewable energy procurement plans for 2012-2014, it is necessary for the Commission to resolve the PNM-specific RCT cost calculation issues concerning its owned solar resources raised by REIA and other parties in those cases based on the specific factual records there and in Case No. 10-00037-UT, rather than basing resolution of those issues on the outcome of this rulemaking proceeding.

572.11.D.(7) ("Incremental Cost Estimates; Rebuttable Presumption")

The language proposed in this section includes the following provision: "however, a utility may elect to claim as a rebuttable presumption that incremental costs of a specific resource is [sic] materially the same as in the prior-year's test." REIA does not understand the purpose of, or necessity for, this provision. Absent an explanation of that purpose or necessity, REIA recommends that language be removed.

572.11.E ("Reduction of Large Customer Revenues from Calculation of RCT Limit)

REIA strongly opposes Commission adoption of this new language in 572.11.E for a number of reasons. As REIA understands this language, it would have the effect of reducing the "plan year" revenues from "all customers' overall annual electric charges" a public utility would be required to use to determine its annual RCT limits by a minimum of 98% or more of its revenues from its Large Nongovernmental Customers covered by the annual cap for those customers in the REA, § 62-16-4.A(2). In particular, the Commission's records show that this effect on and reduction of each public utility's annual RCT limits would be very substantial for PNM and would simply serve to support current and continuing PNM claims that, due to RCT "constraints," it is unable to achieve greater satisfaction of its statutory RPS and needs less solar energy RECs to satisfy its 20% solar diversity requirements between now and 2015.

For example, as shown on PNM's November 10, 2011 Response to Hearing Examiner's Bench Request in Case No. 11-00265-UT, PNM projected that $76.1 million (8.4%) of its $899.9 million total retail revenues in 2012 would come from charges to its Large Non-governmental Customers. Reducing those total PNM revenues by approximately 98% of those Large Customer revenues pursuant to the language proposed here (i.e., "the retail jurisdictional revenues from Section 62-16-4A(2) customer multiplied by the actual statutory percentages found in that section"[25]) would reduce PNM's RCT limit (at the current 2.25% level) in

[25] *See also* Case No. 11-00265-UT, Bothwell Direct, Ex. CDB-3 Corrected (showing that only one of the 26 PNM customers to which the Large Customer cap applied in 2011-2012 was subject to the $99,000 rather than the 2% cap in § 62-16-4.A(2), and that the effect of that cap on all of those customers was to *reduce* PNM's projected RPS by 40,376 RECs in 2012 and 40,778 RECs in 2013, or about 4.5 % of PNM's "RPS Before Adjustments" shown on Ex. CDB-2 Corrected to Ms. Bothwell's Direct testimony.).

2012 by approximately $1.68 million (i.e., $899.1 million x .0225 =$20.23 million versus $824.5 million x .0225).

As noted earlier, in Case No. 10-00373-UT, PNM requested a variance from its 2011 solar diversity requirement based on RCT claims *without* relying on this sort of further Large Customer revenue reduction to the RCT limit it calculated in that case. And in Case No. 11-00265-UT, PNM filed a procurement plan with the Commission claiming a reduction to the amount of solar RECs it needed to satisfy its solar diversity requirements in 2012 and RCT-reduced RPS projections for 2012 and 2013 based on 2010 revenue figures that did not rely on this sort of Large Customer revenue reduction to the RCT limit it calculated (i.e., using its prior, 2010 rates).

Thus, the Commission should understand that one effect of this proposed reduction of each public utility's annual RCT limit would be to allow PNM to justify additional reductions to its statutory RPS and solar diversity compliance requirements between the effective date of such a change and 2015, and possibly in subsequent years when the RPS, but *not* the Large Customer cap, increases as provided in the REA. This effect on PNM's ability to maximize its satisfaction of its RPS and solar diversity requirements would be particularly severe if the Commission does not increase the RCT to 3% at the same time, as proposed in 572. 11.B. As noted earlier, the potential effects of both of these RCT *limit* proposals, as well the other RCT cost calculation method proposals in 572.11 taken together, on each of the IOUs need to be carefully considered and understood in this proceeding.

No justification for this proposed reduction of a public utility's annual RCT limits is provided in the Notice. The Commission should reject this proposed change to Rule 572.11 for a number of reasons.

First, this RCT limit reduction would substantially undermine the Commission's ability to achieve the objectives of the REA by requiring public utilities to submit annual renewable energy procurement plans that maximize their satisfaction of the "statutory" RPS percentages in the REA and the Commission's diversity requirements (defined in Rule 572 as percentages of a utility's RPS). The adverse effects of this change on the Commission's ability to achieve those objectives in REA would be even greater beginning in 2015 when the RPS in the REA increases to 15%, unless the Legislature increases the Large Customer cap beginning that year. This would occur because the more a public utility's cost of compliance with the "statutory" RPS percentages in the REA exceeds the Large Customer cap, the more a public utility can reduce the "statutory" RPS as provided in §62-16-4.A(2).

REIA does not believe the Legislature intended the Commission to implement the RCT in a manner that would have this effect of defeating accomplishment of the purposes of the REA. This proposed change also would be inconsistent with the "Objective" of the Rule stated in 572.6 that "[t]he purpose of this Rule is to implement the Renewable Energy Act…and to bring significant economic development and environmental benefits to New Mexico."

Second, as noted earlier, the RPS established by the Legislature in the REA (§62-16-4.A(1)) are *minimum* percentages applied to "each public utility's total retail sales to New Mexico customers" for an applicable year. As also noted, pursuant to §62-16-4.A

(2) and Rule 572.10.C, the "statutory" RPS in the REA is reduced by the cost of a utility's annual renewable procurement cost that exceed the annual Large Nongovernmental Customer cap for a public utility's customers. Any such RPS reductions reduce the cost of annual utility compliance with the RPS for *all* of a utility's customers. The Large Customer revenue reduction proposed in 572.11.E would entitle public utilities to claim an even greater Large Customer cap reduction to the statutory RPS in the REA that is not authorized by any language in the REA and, as discussed earlier, would unreasonably limit the Commission's authority over public utility procurement plans to accomplish the purposes of that Act.

Third, so far as REIA is aware, the alleged justification for this proposed reduction of the annual RCT limit (e.g., in Case No. 11-00265-UT) is that it is necessary to prevent unreasonable or "undue" rate discrimination (prohibited in the New Mexico Public Utility Act ("PUA"), NMSA § 62-8-6) between a public utility's Large Nongovernmental Customers and its other customers because, otherwise, the cost of a utility's annual procurement plan may have a higher percentage rate impact on customers not subject to the annual Large Customer cap than customers protected by that cap. That legal argument is contradicted by both the REA, §62-16-4.A (2) and the PUA.

The prohibition against unreasonable rate discrimination in the PUA, NMSA § 62-8-6, provides, in pertinent part: "No public utility shall as to *rates or services*, make or grant any *unreasonable* preference or advantage to any corporation or person *within any classification* or subject any corporation or person *within any classification* to any *unreasonable* prejudice or disadvantage." (Emphasis added). As the Commission doubtless is aware, that statute only prohibits different rate or service treatment by public

utilities of customers "within any classification" that has no reasonable or rational basis. Thus, for example, it does prohibit electric utilities from charging customers in different rate classes (residential, commercial, industrial, etc.) different rates under different service conditions based on their different usage and cost-causation characteristics.

The Legislature, in its wisdom, provided specific annual rate caps in the REA for nongovernmental customers "with consumption exceeding ten million kilowatt-hours per year" that it did not provide for other public utility customers, thereby creating two different classifications of customers for the purpose of a public utility's recovery of its annual renewable energy procurement costs approved by the Commission. That different legislative treatment—the reasonableness of which REIA believes the Commission should urge the Legislature to reconsider at this time—established that "discrimination" between those customer groups *as a matter of law*.

Thus, that different legislative treatment can not be legitimately characterized as unreasonable or "undue" rate or service discrimination, and any such legal characterizations simply argue with the plain language in the REA (§ 62-16-4) addressing the RPS.[26] Simply put, had the Legislature intended the Commission to apply the same annual rate caps on public utility renewable energy procurement costs to a public utility's Large Nongovernmental Customers and all of its other customers, it could and would have stated that in the REA.

572.12.C and D ("Cost Recovery for Renewable Energy")

[26] REIA also notes that, in PNM's prepared Direct testimony in Case No. 12-00007-UT supporting its Application for approval of a Renewable Rider, PNM witness Lavorne-Marriage testifies (p. 18) that no cost shifting between customers subject to and not subject to the Large Customer cap would result from PNM's application of that cap as proposed in that Renewable Rider.

Proposed new subsection C would provide: "The utility shall use the utility's Commission approved fuel and purchased power clause to pass through any revenues received by the utility from selling a REC. If the utility does not have a Commission approved fuel and purchased power clause to pass through the revenues received by the utility from selling a REC, then the utility shall book the associated revenues as a regulatory liability and use its cost of capital from its most recent rate case as the carrying cost, unless otherwise ordered by the Commission." REIA believes this change to this section is reasonable. REIA would simply note that, as discussed above addressing 572.7.L, if this provision is adopted by the Commission, it would seem more appropriate for public utilities to show such REC sales revenues in their annual procurement plans as separate line items that reduce the projected costs and rate impact of that plan in the "plan year" addressed, rather than as part of any "life cycle" cost calculation.

Proposed subsection D of this section would provide: "The Commission shall require a utility to use levelized accounting to recover the cost of a rate-based project that the utility incurred to comply with the RPS." As noted earlier, REIA supports Commission adoption of the requirement that, when a public utility asks the Commission to approve, and the Commission does approve, its acquisition of an owned renewable energy resource for which the utility intends to request rate base treatment, rather than procurement of substantially the same renewable capacity through a PPA based on a comparison of the life cycle costs of such available alternatives, the Commission should require the utility to use a levelized accounting method, including avoided costs, to calculate the cost of future procurements from that resource during its useful life.

REIA understands the language proposed in this subsection to mean that, in this situation, a public utility would be required to recover the capital, operations and maintenance, depreciation, tax and other expense costs of such a resource in the same, levelized manner. REIA assumes the justification for this requirement is consistency if the Commission intends to treat the RCT as an annual rate impact test (as some parties have advocated), rather than as an annual limit on each public utility's renewable procurement plan costs (as REIA previously has advocated).

REIA supports adoption of proposed subsection D whether or not the Commission treats the RCT as an annual rate impact test in the revised Rule. Otherwise, Commission approval of public utility selections of owned rather than PPA-acquired renewable resources based on utility life cycle cost comparisons will distort the RCT.

That said, REIA notes that the Commission's recent Final Order in Case No. 11-00265-UT together with PNM's even more recent application for Commission approval of a Renewable Rider in Case No. 12-00007-UT present *current* issues concerning consistency between that utility's RCT procurement cost calculations and its recovery of its procurement costs that deserve similar and immediate attention by the Commission at this time. Based on its review of PNM's Application and supporting prepared testimony in Case No. 12-00007-UT, it is REIA's understanding that, although PNM relied on a levelized cost approach in Case No. 10-00037-UT to justify its decision to acquire 22 MW of PV and its 0.5 MW Solar Demo with Batteries Project within its RCT, the Renewable Rider proposed in Case No. 12-00007-UT would not use levelized accounting to determine the "plant in service" cost component of the amounts to be recovered from

PNM's customers in 2012 in 2013.[27] However the Commission resolves PNM's Renewable Rider Application and PNM's next procurement plan filings required by the Final Order in Case No. 11-00265-UT between now and August of this year, REIA believes the Commission should require the same sort of consistency between PNM's RCT cost calculations for its rate-based solar resources and PNM's recovery of the costs of procurements from those resources that appears to be proposed in the Notice.

572.13.I (Utility Use of Out-of-State RECs for RPS Compliance)

The Notice proposes the following new provision in this section: "Any state having a mandatory renewable portfolio standard that accepts renewable energy certificates for energy produced and delivered in New Mexico on a non-discriminatory basis for compliance with its RPS shall be deemed to be part of an active regional market for RECs for the purposes of section C(2) of this rule." The REA, NMSA § 62-16-5.B(1)(b), provides that electric energy associated with RECs used to satisfy the RPS in the Act must be "consumed or generated by an end-use customer of the public utility in New Mexico *unless* the commission determines that there is a national or regional market for exchanging renewable energy certificates." (Emphasis added). The REA does not define "regional" and, to REIA's knowledge, the Commission has not investigated or determined if such a "regional" market currently exists.

REIA interprets this proposed provision to establish another state's acceptance of RECs associated with energy produced and delivered in New Mexico on a "non-discriminatory basis" as the standard a public utility could rely on to show that a "regional" market exists and thus support a proposed purchase of RECs associated with renewable energy generated outside New Mexico to satisfy its New Mexico RPS. The

[27] *See* Case No. 12-00007-UT, Lavorne-Marriage Direct, pp. 5, 8 and Ex. SLM-1.

language proposed does not address what evidence a utility would have to provide to satisfy this "non-discriminatory" standard in a particular plan case. For example, if a utility shows simply that another state has adopted a similar rule or law, but there is no record of that state ever accepting RECs from any renewable energy generators in New Mexico to satisfy its RPS, would that provide a sufficient basis for Commission approval of a proposed purchase of RECs from that state to satisfy a utility's RPS in New Mexico?

REIA also has some concerns about the potential impacts of this proposal if the Commission also adopts the requirement proposed in 572.7.G (addressed earlier and opposed by REIA) that a public utility choose "the least cost option to ratepayers" to satisfy its "remaining" RPS after satisfying its minimum diversity requirements. As discussed above, under the REA, §§ 62-16-2.A(1) and (2), 62-16-4.A(3) and C, Commission determinations of the reasonableness of a public utility's overall procurement plan to satisfy its RPS and diversity for a particular "plan year" require the balancing of a number of considerations within the concept of the RCT. Those considerations include "opportunities to promote energy self-sufficiency, preserve the state's natural resources and pursue an improved environment in New Mexico," "economic benefits to New Mexico" and "overall reliability, availability, dispatch flexibility and cost of the various renewable energy resources made available by suppliers and generators." A public utility's acquisition of a REC will provide differing amounts and types of benefits to that utility and its customers relative to those statutory considerations depending on the source of that REC.

For example, a public utility's procurement of additional DG in its service area, or bundled renewable energy and RECs from a generator in New Mexico, will provide

greater *and longer term* "energy self-sufficiency," natural resource, improved environment, economic benefits in New Mexico, avoided fuel and line loss benefits to a utility and its customers, and possibly availability and dispatch flexibility benefits to a utility than its purchase of unbundled RECs from an out-of-state generator of renewable energy. That is to say, all RECs potentially available to a New Mexico public utility to satisfy its RPS are not the same, except for "paper compliance" purposes. They do not have the same worth and typically are offered at different prices. Unless the Commission clearly preserves its authority to take these value differences into account, this proposed provision could result in a situation where the Commission undermines its authority to implement the REA in a manner that achieves the "findings and purposes" of that Act by allowing a public utility to satisfy a significant portion of its RPS with purchases of "least cost" unbundled RECs from generators in other states when the utility has sufficient RCT headroom to select alternative renewable energy procurements offering greater and longer-term value, at a higher price per REC, that better achieves the Act's objectives.

To address the foregoing concerns, if the Commission adopts the language proposed in this section, REIA recommends the following language be added as well:

> If a utility proposes procurement of RECs from energy produced and delivered outside New Mexico based on this provision, the utility shall show that the state where the energy was produced and delivered accepts RECs produced and delivered in New Mexico on non-discriminatory basis for compliance with its RPS and that the proposed procurement is reasonable taking into consideration the findings and purposes in the Renewable Energy Act, Section 62-16-2 and the overall reliability, availability, dispatch flexibility and cost of the various renewable energy resources made available by suppliers and generators. Nothing in this section shall limit the Commission's authority to reject a public utility's proposed procurement of RECs from energy produced and delivered outside New Mexico in a particular plan based on those considerations.

<u>572.16 (Annual Plan Filing Requirements</u>)

REIA believes substantial differences of opinion and confusion persist among public utilities and interested parties about the meaning of the phrase "new renewable energy resource" in subsection A(1) of this section requiring that each annual plan include "the cost of procurement in the next calendar year. It is REIA's understanding that some parties (e.g., SPS in Case No. 11-00264-UT, Commission's Utility Division Staff in Case Nos. 10-00373-UT and 11-00265-UT) have interpreted that language to mean that utility and Commission application of the RCT applies only to the costs of procurements from "new" renewable resources not previously approved by the Commission. Others (e.g., PNM in Cases Nos. 10-00373-UT and 11-00265-UT) have asserted the RCT applies to the cost of all renewable energy procurements described in a plan, including procurements from resources previously approved by the Commission.

REIA therefore urges the Commission to clarify this language in the Rule. If the Commission intends the RCT to apply to the cost of all renewable energy procurements described in a public utility's annual plan, including procurements from resources previously approved by the Commission, adoption of REIA's recommendations above concerning how the IOUs' annual RCT limits should be calculated is all the more necessary to ensure that the Commission will be able to implement the REA, including the RCT, in a manner that achieves its legislative purposes.

REIA also recommends the addition of the following language to this subsection: "including work papers identifying all cost calculation methods, inputs and assumptions used to determine that cost for all procurements from each renewable resource." This informational requirement would help the Commission and all interested parties identify and understand the bases for a utility procurement cost calculations without the need for

time-consuming and expensive discovery. Obtaining this information at the time a utility files it annual plan is particularly important in Commission cases such as these that the Commission is required to decide in six months or less.

REIA recommends adoption of the following new informational requirement in subsection 2 of this section: "the projected incremental rate impact of the plan in the next calendar year on customers with average energy usage in each of the utility's rate classes, including work papers showing all assumptions and inputs used for those projections. Some IOUs have provided this type of customer rate impact information as part of their procurement plan filings,[28] while others (e.g., PNM) typically have not.

This information would be very helpful to inform the Commission about the timing of the *actual* incremental rate impacts of the cost of a particular procurement plan on a public utility's customers if the Commission intends the RCT to operate as a rate impact test. For example, PNM did not provide this sort of rate impact information in its 2011 or 2012 Plan filings in Case Nos. 10-00373-UT and 11-00265-UT where it claimed RCT constraints in 2012 and 2013. In its recent Application for a Renewable Rider in Case No. 12-00007-UT, however, PNM provided information addressing the rate impacts of that Rider on each of its customer rate classes.[29] That information indicated, for example, that the Renewable Rider proposed would increase rates in 2012 to PNM "North" Residential customers using an average of 600 kWh per month and "Small Power" customers using an average of 4000 kWh per month by $1.38 per month ($6.90 for Aug. through December 2012) and $9.86 per month ($49.30 for Aug. through December 2012, respectively. When one considers the current cost of filling a car with a

[28] *E.g.*, SPS in Case No. 09-258-UT,Sakya Direct, Attachment RMS-3.
[29] See Case No. 12-00007-UT, Lavorne-Marriage Direct, Ex. SLM-5.

tank of gas, those incremental rate impacts from the cost of PNM's renewable procurements may not seem as unreasonable as some may argue to the Commission.

Proposed subsection A(2) would appear to eliminate the requirement in the existing subsection that each utility's annual procurement plan also address the amount of renewable energy the utility plans to provide in the calendar year commencing "16 [sic] months" after its filing with the Commission,[30] again with no explanation for or justification of this change. It is REIA's understanding that the purpose of that requirement was to inform the Commission earlier whether a public utility is engaging in the longer term renewable procurement planning necessary to allow it to satisfy its minimum RPS and diversity requirements beyond the "plan year" addressed.

REIA is not aware of any justification for the proposed removal of this annual procurement plan information requirement. To the contrary, its removal appears to be inconsistent with the Commission's Final Order in Case No. 11-00265-UT requiring PNM to submit, prior to July 1 of this year when its 2013 Plan normally would be due under existing Rule 572, a "supplemental" filing to its 2011 Plan proposing specific procurements that, if approved, would enable PNM to meet the RPS in 2014 or sooner, if possible. REIA therefore recommends restoration of this requirement, as corrected in the above-referenced Commission Errata Notice, in a new subsection 3 of this section.

REIA recommends the Commission also adopt the following language in a new subsection 4 of this section concerning the plan information requirement for the calendar year beginning 18 months after the filing of plan: "and identifying and explaining all cost calculation methods, inputs and assumptions used to project the cost of all procurements

[30] *See* Commission's 9/25/07 Errata Notice in Case No. 07-00157-UT amending the Final Order in that case to reflect that the Commission intended this provision to refer to a calendar year beginning 18 rather than 16 months after each plan filing.

from each renewable resource identified." This information is necessary for the Commission and interested parties to understand the bases for any RPS reductions projected by a public utility for that calendar year based on its RCT calculations.

REIA proposes similar additional informational language in subsection 6 (subsection 4 as proposed in the Notice) for the same reason. REIA also proposes similar additional information language in subsection 7 (subsection 5 as proposed in the Notice) for the same reason, as well as a language requiring that the proposed 3-year utility analysis include current and projected compliance with the Commission's diversity requirements. This information will help the Commission determine in a more timely manner if a utility does not appear to be pursing plans that will put it on track to satisfy those future requirements, particularly when they increase in 2015 pursuant to the REA.

REIA recommends adoption of the additional informational requirement language proposed in subsections B(1) through B(3) of this section shown on "Exhibit 1" hereto to conform with the recommendations in subsection A addressed above.

REIA recommends adoption of the following new informational requirement in subsection B(4): "a description of the mechanism(s) the utility has been authorized by the commission to use or proposes to use to recover the costs of its proposed plan and their impact on the utility's ability to comply with the requirements of the Renewable Energy Act and this Rule." This information requirement is necessary to allow the Commission to *enforce* the provision proposed by the Commission in subsection C (shown in subsection D of Exhibit 1 hereto)-.

The Commission's proposed subsection D provides: "The commission shall consider future economic costs and benefits of a procurement, including reduction in fuel

cost risk, when determining whether to approve a requested procurement plan." REIA assumes the purpose of this provision is to clarify the Commission's apparent position in Case No. 10-00373-UT that it retains discretion under the REA to reject particular procurements proposed in a plan based on its consideration of such cost and benefits. If that is correct, REIA supports Commission adoption of that language and recommends the phrase "but not limited to" be added to it as shown on Exhibit 1 hereto (reformatted as subsection E).

REIA proposes clarifying language for subsection E as shown on Exhibit 1 hereto (reformatted as subsection F) that is self-explanatory.

The Commission's proposed subsection F appears to impose a new "verified protest" obligation on parties distinct from the Commission's ordinary intervention requirements. REIA understands "verified protest" to mean one that is accompanied by a sworn affidavit attesting to all facts relied on in a protest. REIA believes this new requirement is overbroad and could be interpreted to impose an unreasonable additional regulatory burden on parties interested in addressing concerns with a public utility's proposed procurement plans for the following reasons.

The REA (§ 62-16-4.E) provides that "[t]he commission shall approve or modify a public utility's procurement or transitional procurement plan within ninety days and may approve the plan without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary." Thus, the REA does not require any person or entity interested in intervening in a utility's procurement plan case to file such a protest—verified or not—if the Commission determines *sua sponte* or based on a protest by another person or party that a hearing is required (which historically

has been the case). Moreover, REIA does not understand the purpose of requiring that a protest be "verified" when typically the "facts" a protesting would need to rely on to support such a protest are the contents of the utility's proposed plan and supporting testimony and exhibits. Interested parties typically have to rely on discovery requests, after they are allowed to intervene in a case under the Commission's procedural rules, to obtain any further "facts" supporting a protest.

The biggest problems REIA has encountered concerning participation in the annual renewable procurement cases filed by public utilities with the Commission (apart from their simultaneous and, in the case of PNM's plans, continuously ongoing and unresolved nature) have been delays in obtaining relevant information through discovery given the applicable 180-day limit for Commission decisions, little time for possible settlement negotiations and insufficient time for members of the Commission's Office of General Counsel and commissioners themselves to review the hearing record, parties' post-hearing briefs, recommended decisions by hearing examiners and exceptions to those recommended decisions. If one of the Commission's objectives in this proceeding is to adopt procedures that will encourage earlier interested party participation without imposing unnecessary additional regulatory burdens and costs on such participation and earlier development of the record in utility procurement plan cases, REIA recommends that the Commission eliminate the "verified" protest requirement proposed in the Notice and adopt the following provisions in lieu of the last sentence proposed in subsection F (reformatted as subsection G on Exhibit 1 hereto):

> Any interested party wishing to protest a procurement plan shall do so by protest demonstrating to the commission's reasonable satisfaction that a hearing is necessary within 21 days after the filing of the utility's procurement plan. Prior to that deadline, the commission may determine on its own motion without any such

protest that it is necessary to conduct a hearing on a plan and, if so, shall determine as soon as possible whether to extend the time to address the plan for an additional ninety days as authorized in NMSA §62-16-4.E and whether to designate a presiding hearing examiner. If the commission designates a presiding hearing examiner, as soon as possible thereafter, the hearing examiner shall conduct a pre-hearing conference to establish a procedural schedule, including a deadline for interventions, and upon request by any participant, shall establish expedited discovery response deadlines. The procedural schedule established by any designated hearing examiner should be designed to allow presentation of a recommended decision or certification of stipulation at least thirty days prior to the deadline for commission review of a plan in NMSA §62-16-4.E. Once the commission determines a hearing will be conducted, no protests of a plan need be filed by any interested party filing a formal motion to intervene and no protest filed by an intervening party shall limit the scope or substance of that party's intervention.

572.18 (Review by Commission)

REIA recommends addition of the phrase "required in section 16 of this Rule" in this section simply to clarify that the information "required" includes, when applicable, a "demonstration that the plan is otherwise in the public interest" as provided in proposed 572.16. REIA also recommends deletion of the reference to "interim plan" here, consistent with the Commission's proposed deletion of that phrase in 572.16.B.

Respectfully submitted,

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