BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

POST-HEARING BRIEF OF

RENEWABLE ENERGY INDUSTRIES ASSOCIATION OF NEW MEXICO

Respectfully submitted,

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The Renewable Energy Industries Association of New Mexico ("REIA") submits this post-hearing brief in accordance with presiding Commissioner Mark's directive at the October 24, 2012 evidentiary hearing ("the hearing") in this case.

I. Staff's Proposed "Most Cost Effective Option" Provision: 17.9.572.13.D.

Contrary to Staff's testimony at the hearing,\(^1\) current Rule 572 contains no language requiring that utilities select the "least" or "lowest" cost renewable energy procurement option available when procuring resources not required to satisfy the Commission's diversity or other Renewable Portfolio Standard ("RPS") requirements. Nor do Staff's latest proposed changes to Rule 572 and to the changes proposed in the Commission's NOPR, which were supported by PNM, EPE and SPS in their response comments and were not challenged by any party at the hearing;\(^2\) recommend Commission adoption of such a "least cost" requirement.

In its Response Comments (p. 12 & Staff Resp. Exs. R-A & R-B),\(^3\) Staff explained that its proposed "Revised Rule 572" revised its initial comments to replace the phrase "least cost option" in subsection 13.D (proposed in the Commission's NOPR to be added to current 17.9.572.7.G) with the phrase "most cost effective option" which is the terminology used in the Commission's rule for electric IRPs, as follows: "In the case that the resources required are not required to satisfy diversity requirements those resources must represent the most cost effective option available." As explained in REIA's Response Comments (at 18-22 & App. A, pp. 4-5, 7), REIA supported (and still supports) that Staff proposal because, unlike the "least cost" requirement proposed in the

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\(^1\) 10/24 Tr. 104 (Lamberson).
\(^2\) See PNM Resp. Comments, p. 1 & PNM Ex. 1 (Ortiz Dir.), p. 4; EPE Resp. Comments, p. 2 & EPE Ex. 1 (Evans Dir.), p. 6; Tr. 250-51 (Evans); SPS Ex. 1 (Sakya Dir.), pp. 11-15.
\(^3\) Staff Ex. 1, Ex. RDL-2.
NOPR, which is contrary to the Reasonable Cost Threshold ("RCT") criteria in the Renewable Energy Act ("REA," NMSA §62-16-4.C), the Commission's broader and more balanced criteria for "Determination of the Most Cost Effective Resource Portfolio and Alternative Portfolios" in its Integrated Resources Plan Rule (17.7.3.9.G NMAC) requires utilities to evaluate procurements of renewable energy and non-renewable "conventional supply side resources on a consistent and comparable [i.e., non-discriminatory] basis" that is consistent with those legislated RCT criteria.\(^4\)

As noted in REIA's Response Comments, 17.7.3.7.1 NMAC defines "most cost effective resource portfolio" as "those supply-side resources and demand-side resources that minimize the net present value of revenue requirements proposed by the utility to meet electric system demand during the planning period consistent with reliability and risk considerations." Section 9.G of the Commission's electric utility IRP Rule (17.7.3.9.G NMAC) provides further, in pertinent part:

**Determination of the Most Cost Effective Resource Portfolio and Alternative Portfolios.**

1. To identify the most cost-effective resource portfolio, utilities shall evaluate all feasible supply and demand-side options on a consistent and comparable basis, and take into consideration risk and uncertainty (including but not limited to financial, competitive, reliability, operational, fuel supply, price volatility and anticipated environmental regulation). The utility shall evaluate the cost of each resource through its projected life with a life-cycle or similar analysis. The utility shall also consider and describe ways to mitigate ratepayer risk.

2. Each utility shall discuss how the following factors were considered in, or affected, the development of resource portfolios:
   - (a) load management and energy efficiency requirements;
   - (b) renewable energy portfolio requirements;
   - (c) existing and anticipated environmental laws and regulations and, if determined by the commission, the standardized cost of carbon emissions;

\(^4\)See NMSA § 62-17-10 (establishing "the most cost-effective portfolio" standard for utility integrated resource plans to "evaluate renewable energy, energy efficiency, load management, distributed generation and conventional supply-side resources on a consistent and comparable basis...." (Emphasis added).
transmission constraints; and
(e) system reliability and planning reserve margin requirements. ... (Emphasis added).

To ensure that all concerned would understand the legal distinction between a "least cost option" requirement and "the most cost effective option available" criteria proposed by Staff, REIA's Response Comments (at 19) recommended that the Commission add the clarifying phrase "as provided in the Commission's Rule addressing Integrated Resource Plans for Electric Utilities in NMAC 17.7.3.7.I and 17.7.3.9.G." Mr. Lamberson read Staff's proposed "most cost effective option available" language into the record.  However, the fact that neither he nor any other witness explained the significant difference between that criteria and the "least" or "lowest" cost test repeatedly referred to at the hearing demonstrates the real need for that clarifying language in Rule 572.

Staff acknowledged at the hearing that the RPS and RCT requirements in the REA demonstrate a choice by this State to not adopt a "least cost" test for utility procurements of renewable energy. In sum, in addition to the legal points in REIA's Response Comments, the REA (NMSA §62-16-4.C) and the testimonies of Staff's, PNM's, EPE's and SPS's witnesses support Commission adoption of Staff's proposed "most cost effective option available" language in 17.9.572.13.D rather than the "least cost option to ratepayers" language proposed in the NOPR in 17.9.572.7.G.

II. Staff's Proposed Trade-Off: Higher RCT Percentages in Exchange for Language Eliminating Utility and Commission Consideration of Any Avoided Capacity or Other (e.g., Environmental) Cost Benefits of Renewable Energy Other than Avoided Fuel Costs.

Staff's proposed 17.9.572.14.C would eliminate any obligation for utilities or the

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5 Tr. 115 (Lamberson).
6 See, e.g., Tr. 104, 112, 115-117 (Lamberson).
7 Tr. 108-09, 117 (Lamberson).
Commission to even consider or address any avoided capacity or other avoided cost benefits of renewable energy, other than avoided fuel costs, in their annual procurement plans (without a utility variance request) by providing that, “[f]or RCT purposes,” the cost of a utility’s procurements “shall reflect rate impacts on customer bills and shall be determined by applying a traditional revenue requirements impact approach for all resources,” and “[r]evenue requirements adjustments shall only include avoided fuel costs.” Staff recognizes that there are just as many arguments for as against consideration of avoided capacity costs when calculating a utility’s RPS compliance costs.8

Nevertheless, Staff justifies this proposed significant change to current Rule 572 on the grounds that avoided costs other than avoided fuel costs are: (i) difficult to quantify, “speculative” and controversial; and (ii) avoided capacity cost benefits are not, in its opinion, “contemporaneous” because “they would not necessarily be realized in the same year that the costs of renewable compliance would be realized” and therefore should not (for customer “transparency” reasons) be taken into account if the RCT is intended to operate as an annual renewable plan year “bill impact” limit, as argued by Staff and some of the other parties. (Emphasis added).9 At the hearing, Staff also explained that its recommendation that the Commission increase the RCT to 3% though 2014, 4% from 2015 to 2019 and 5% in 2020 and thereafter was driven by this proposed change and Staff’s other proposed changes to Rule 572 because, if the Commission were to adopt those RCT calculation proposals without also increasing the RCT to those higher levels, it will be more difficult (than under existing Rule 572) if not impossible for the

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8 Tr. 84-85 (Lamberson); see also id. at 83-84, 98 (Lamberson), 238-239 (Evans) (renewable resources need not be “despatchable” to provide avoided capacity cost benefits to utilities).

9 Staff Resp. Comments, p. 4; Tr. 29, 35-36, 77-79, 81, 96, 99-103, 123-124, 127-129, 133-142 (Lamberson); but see REIA’s initial Comments at 33-34 (contradicting Lamberson testimony (Tr. 78-79) that no party proposed standards for showing avoided capacity costs for Staff to consider).
three investor-owned electric utilities in New Mexico to satisfy the RPS requirements and legislative goals of the REA within the RCT.\textsuperscript{10}

Quite clearly, that result would be inconsistent with the Commission's responsibility to administer the REA, including the RCT, in a manner that will achieve the intent and goals of that Act. For that reason and as indicated in its prior written Comments, REIA continues to submit that proposals by Staff and other participants to change Rule 572 to eliminate \textit{any} utility and Commission consideration of avoided capacity and other avoided cost benefits of renewable energy when determining the incremental compliance cost of procurements in a utility's annual plan filing are contrary to the REA. Those proposals conflict with the criteria in the REA (NMSA § 62-16-4.C) which provides that, when establishing and modifying the RCT, the Commission “shall take into account” \textit{not only} “the impact of the cost for renewable energy on overall retail customer rates”—which “impact” is \textit{not} limited in that statutory language to any single utility “plan year,” as Staff and others argue—but also “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 “other factors, including public benefits, that the Commission deems relevant.” Emphasis added\textsuperscript{11}

Moreover, Staff’s testimony on this subject at the hearing shows that its opinion that avoided capacity cost benefits of renewable energy resources will not or cannot be

\textsuperscript{10} Tr. 22, 31-32 50-51(Lamberson); see also Tr. 245 (Evans) and 259 (Sakya) (acknowledging this “trade-off” in Staff’s Rule 572 proposals).

\textsuperscript{11} See also Final Order, Case No. 07-00157-UT, p. 12 and n. 3(“Avoided cost is the difference between the net present values of the renewable energy and the conventionally-generated electricity it is replacing.”); Tr. 229-230, 244-246 (Evans) (EPE has used “EPRI TAG” data for an LMS 100 Combustion Turbine to compute avoided capacity cost of renewable resources in its last four Plan cases; acknowledging that whether a renewable energy resource provides avoided capacity cost benefits is “a fact question.”); 200 (Gilliam) (to determine a utility’s avoided capacity costs, Commission needs to look at each utility separately); accord, 206 (PNM’s counsel, Mr. Phillips).
“realized” by utility customers in the plan year when a utility incurs the compliance cost of procuring those resources in terms of “bill impact” is unsupported by any evidence, illogical, unreasonable and contrary to the Commission’s past and continuing traditional ratemaking practices and the “revenue requirements” approach for applying the RCT that Staff advocates. Staff acknowledges that avoided capacity cost benefits of renewable energy resources should be recognized when calculating a utility’s RPS compliance costs for a particular “plan year” if it can be shown that, due to its reliance on those resources, a utility is able to defer incurring the cost of adding a conventional generation resource that otherwise would have been incurred in that year for it to satisfy its service obligations.12 Examined further on this point by Commissioners, Mr. Lamberson, trained as an economist, agreed that, from a “rate impact” perspective, utility customers “realize” the benefits of such avoided capacity costs when they “are not paying that cost” because their utility bills in that year are less than they would have been otherwise.13

Under the Commission’s established ratemaking practices, the Commission does not approve base rates or rate riders for electric utilities that allow them to flow through their incremental RPS compliance costs for a particular renewable energy plan or the avoided capacity cost benefits of those resources contemporaneously in the “plan year” when those costs are incurred or avoided.14 That ratemaking reality, however, does not negate the fact that a utility’s customers “realize” the benefit of avoiding additional utility generation capacity costs in the year when customers don’t pay for those costs because a

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12 Tr. 100-102 (Lamberson).
13 Tr. 102-103, 141-142 (Lamberson).
14 The sort of renewable energy rate rider recently approved by the Commission in Case No. 12-0007-UT allows PNM to recover historical renewable plan costs approved by the Commission and recorded as “regulatory assets” for future recovery with carrying costs in customers’ rates—not contemporaneous utility recovery of approved plan costs in a particular “plan year.”
utility has deferred investing in additional conventional generation capacity in that year in reliance on the capacity provided by its renewable resources.

Quite simply, Staff’s unsupported “no contemporaneous avoided capacity cost benefit” opinion does not provide the rate impact “transparency” to utility customers that Staff argues the Commission should require because it ignores this ratemaking reality and ensures that no avoided capacity cost benefits of renewables will ever be considered by utilities or taken into account by the Commission when reviewing their annual proposed renewable energy plans.\textsuperscript{15} As noted at the hearing,\textsuperscript{16} this Staff position also unreasonably discriminates against utility procurement of renewable resources because the Commission does allow utilities to recover capacity costs of investments in non-renewable generation resources before the benefits of that additional capacity are needed by a utility to satisfy its Commission-established planning reserve margin requirements or are “realized” by (i.e., shown by evidence to be “used and useful” to) its customers.\textsuperscript{17}

III. Retention of the Commission’s Current Diversity Requirements.

The Commission’s NOPR proposed reducing the existing diversity requirement in Rule 572 from 20% to 10% of the RPS for solar and wind and from 10% to 5% for “other” technologies. REIA’s initial Comments (at 13-20) urged the Commission to retain the existing 20% solar diversity requirement and to increase the existing 1.5% diversity requirement from 10% to 15%.

\textsuperscript{15} See also Tr. 133-139 (Lamberson) (acknowledging to Commissioner Howe the “regulatory lag” inherent in the utility ratemaking process and that this Staff position would not allow utilities or the Commission to consider avoided capacity costs in “net present value” calculations of the costs of renewable resources and ignores the time value of money when applying the RCT).

\textsuperscript{16} Tr. 135 (Howe/Lamberson); 128-129 (Marks/Lamberson).

\textsuperscript{17} Tr. 127-128 (Lamberson); see also, Final Order Approving Certification of Stipulation in Case No. 08-305-UT (establishing PNM’s current 13% planning reserve margin requirement and approving inclusion of cost of PNM’s Lordsburg facility in rates even though it was not needed at that time to satisfy that planning requirement); 11/23/12 REIA Resp. Brief, Case No. 11-00265-UT, pp. 24-25 (addressing how PNM relied on capacity from renewable resources shown on the “Load and Resources” Table in its July 2011 IRP (p. 83) to defer installing a new, minimum-sized 40 MW gas peaking plant prior to 2013 when PNM projected its firm generation capacity would fall below that 13% generation planning requirement).
Distributed Generation ("DG") requirement to 3% in 2013 and 6% beginning in 2015 for three reasons: (i) to promote the "energy self-sufficiency" and "economic benefit" goals of the REA stated in NMSA §62-16-2.A (1) and (2); (ii) because the most recent renewable plan filings by PNM, EPE and SPS show that each of those utilities expects to meet or exceed the existing DG percentage requirements in 2012 and 2013\(^{18}\) within the existing RCT; and (iii) those utilities' costs of procuring RECs from additional DG are continuing to decline in accordance with their Commission-approved REC purchase programs.

In sum, the Commission's modest solar and DG diversity requirements and programs (for a State with such abundant solar resources) have been successful. Staff supports retention of the existing 20% solar and 1.5%/3% (beginning 2015) DG requirements because it is not aware of any basis for changing them and the DG requirements have been "accepted" and successful in promoting the development of that customer premise-sited renewable technology.\(^{19}\) If those requirements in Rule 572 "ain't broke," why should the Commission reduce or eliminate them?

Other participants that oppose continuation of the Commission's solar and DG diversity requirements (e.g., AG and NMIEC) submitted no testimony or other evidence showing that continuation of those requirements, or increasing the DG requirements as proposed by REIA, would make it difficult or impossible for any of the investor-owned electric utilities to satisfy those requirements or their other RPS requirements within the limits of the RCT under current Rule 572. That is not surprising because renewable

\(^{18}\) This was confirmed at the hearing. Tr. 89, 112-114 (Lamberson), 218, 244-45 (Evans), 254 (Sakya). See also PNM 2013 Renewable Plan, Case No. 12-00131-UT, Gutierrez Dir., p.16, Joint Proposed Recommended Decision, pp. 13-14.

\(^{19}\) Tr. 52 (Lamberson).
energy procurement costs are dynamic over time and, as explained at the hearing, solar costs and DG REC prices in particular have been declining and are expected to continue to decline in the future.\textsuperscript{20} Thus, arguments by other participants that retention of the Commission’s existing solar or DG diversity requirements would inhibit the ability of the investor-owned utilities to satisfy their RPS or diversity requirements in the REA within the RC are not supported by any substantial evidence in this case.\textsuperscript{21}

To the contrary, Staff testified that it does not support the changes to the existing diversity requirements proposed in the NOPR, including its “least cost” provision, because that could result in over-reliance by utilities on wind that could adversely affect their operations and defeat the Commission’s diversity goals.\textsuperscript{22} Staff also testified that, if the Commission were to apply the renewable procurement cost and RCT calculation methods it proposes in this case to EPE and SPS procurements of renewable resources that the Commission approved in prior EPE and SPS Plan cases, where those utilities represented that consideration of avoided capacity costs in their procurement cost calculations was appropriate, both of those utilities would exceed their RCT “today.”\textsuperscript{23} This shows (i) that Commission adoption of proposals by Staff and others to eliminate consideration of avoided capacity costs from calculations of utilities’ incremental renewable energy procurement costs, rather than retention of the Commission’s existing solar or DG diversity requirements, would impair the ability of utilities to satisfy their full RPS requirements in future years and (ii) why Staff describes the entirety of its

\textsuperscript{20} Tr. 48 (Lamberson).
\textsuperscript{21} The Commission’s records here and in the IOUs’ most recent Renewable Energy Plan filings with the Commission indicate that, from a technological and cost perspective, the biggest challenge for those utilities continues to be satisfaction of the Commission’s 10% “other” resource diversity requirement. See, e.g., Tr. 255 (Sakya); 2012 EPE Plan, Case No. 12-00217-UT.
\textsuperscript{22} Tr. 53-54, 57 (Lamberson). See also, Final Order, Case No. 07-00157-UT, pp. 23-39.
\textsuperscript{23} Tr. 80 (Lamberson).
proposed changes to Rule 572 as a "holistic" approach that is not "meaningful" in terms of consistency with the objectives of the REA if it is "dissected" by the Commission and "parts are removed and substituted for others."

CONCLUSION

For the reasons addressed in REIA’s Comments and based on the hearing evidence addressed here, REIA urges the Commission to: (i) adopt the renewable energy procurement cost and RCT calculation recommendations in its Comments, including Staff’s proposed “most cost effective option” language in 17.9.572.13.D; (ii) reject proposals by Staff and others to eliminate utility and Commission consideration of avoided capacity and other avoided cost benefits from the calculation of utilities’ annual incremental renewable energy plan procurement costs; and (iii) retain the solar diversity requirement and retain or increase the DG diversity requirement in current Rule. REIA believes Staff’s proposed increases to the RCT are necessary only if the Commission adopts other changes to Rule 572 recommended by Staff that REIA opposed in its Comments that would have the effect of substantially reducing the ability of electric utilities to satisfy the Legislature’s RPS and diversity requirements and goals in the REA.

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24 Tr. 31-32 (Lamberson).
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Post-Hearing Brief of the Renewable Energy Industries Association of New Mexico in the above-captioned case was sent on November 26, 2012 by electronic mail to the following:

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