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**

RESPONSE COMMENTS BY
THE RENEWABLE ENERGY INDUSTRIES ASSOCIATION OF NEW MEXICO

The Renewable Energy Industries Association of New Mexico ("REIA") responds here to certain initial and response comments submitted earlier by other parties and to what REIA understands is Staff's Revised Proposal in its Response Comments concerning amendments to Commission Rule 572, 17.9.572 NMAC ("Rule 572"), proposed in the Commission's November 22, 2011 Notice of Proposed Rulemaking in this docket ("Notice").

Focus and Scope of REIA's Response Comments

On January 27, 2012, REIA submitted extensive Comments on the amendments to Rule 572 proposed in the Commission's Notice, incorporated herein by reference ("REIA's Initial Comments"). REIA's Initial Comments (at 3) urged the Commission to fully investigate not only the justifications for, but also the inter-related effects of, all changes proposed to 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 New Mexico's Renewable Energy Act ("REA"), as stated in NMSA § 62-16-2. REIA reiterates that recommendation here. REIA urges the Commission to consider all proposed changes to Rule 572 in this holistic manner to ensure that the effects of any

changes adopted by the Commission are fully considered and, when implemented, will not unreasonably restrict or undermine the Commission's ability to satisfy those legislative mandates and accomplish those legislative objectives.

The initial and response comments previously submitted by other commenters included recommendations addressing selected provisions in Rule 572 that challenged the justification for, or conflicted with, the changes proposed in the Notice and conflicted with other commenters' recommendations. For that reason, and in response to Staff's February 21, 2012 Motion for an Extension of the Procedural Schedule and the Commission's February 28, 2012 Procedural Order granting that Motion, REIA thereafter participated with Staff and other interested commenters in discussions intended to try to clarify their respective positions, narrow their differences regarding changes to Rule 572, and assist the Commission's resolution of those issues.

As a result of those discussions, Staff revised a number of the changes to Rule 572 that it proposed in its Initial Comments ("Staff's Revised Proposal") to address some of commenters' concerns. Staff also developed an issues "matrix" that it shared with the other participating commenters to assist them with those discussions and a more focused presentation of their response comments, and assist Commission resolution of the issues presented. REIA appreciates that effort by Staff and those participating commenters.

As discussed below, though REIA supports some of the changes in Staff's Revised Proposal, REIA does not support Commission adoption of a number of recommendations in that most recent Staff Proposal that, we believe, would have a significant adverse impact on the Commission's ability to implement the requirements and objectives of the REA in a timely manner. REIA therefore continues to believe that a

number of the changes to Rule 572 recommended in its Initial Comments are justified and should be adopted by the Commission.

That said, REIA believes at this juncture in this case that, due to the number of conflicting recommended changes to Rule 572 submitted by numerous commenters and the effort by participating parties to narrow their differences in their discussions with Staff , Staff's Revised Proposal, which recommends changes to the *existin*g provisions in Rule 572 rather than to the amended Rule as proposed in the Commission's Notice, provides a more manageable reference point than the Rule proposed in the Notice for REIA's Response Comments. Therefore, consistent with those discussions, the narrative portion of these Response Comments focuses on the reasons for what REIA understands to be the primary differences between its recommendations and those presented in Staff's Revised Proposal. Consistent with those discussions and to avoid repetition here of those of its Initial Comments that remain relevant to these Response Comments, REIA also provides as "Appendix A" to these Comments a copy of the "Issues Matrix" developed and circulated by Staff (revised to reflect latest, March 15, 2012, revisions by Staff to its Revised Proposal provided to REIA) that summarizes REIA's positions and further comments on Staff's Revised Proposal and includes, where appropriate, citations to REIA's Initial Comments, incorporated therein by reference.

I. Fully Diversified Portfolio Issues; 572.7.G

Retention of the Commission's 20% Solar Diversity Requirement

For the reasons stated in its Initial Comments (13-14), REIA supports Staff's recommended retention of the existing 20% solar diversity requirement in this section and continues to believe the reduction of that solar requirement to 10%, as proposed in

the Commission's Notice, is not reasonable or justified. In addition, REIA submits that, as a matter of public policy for New Mexico, with its extraordinary potential for further solar industry development and employment, a Commission reduction to its existing minimum 20% solar diversity requirement--representing a mere 2% of each investor-owned utility's ("IOU") total generation mix--at this time would send a very strong, wrong and harmful political and economic message to solar businesses already operating, or considering investing in, New Mexico at the current critical juncture in the development of that industry.

In his initial Comments (at 6), the Attorney General ("AG") urged the Commission to eliminate its existing solar and all other renewable resource diversity requirements altogether and replace them with the general statutory language in NMSA § 62-16-4.A(3) providing that each utility's "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." The AG's justification for that recommendation is his assertion there that "[t]here has been little or no evidence in previous cases as to exactly why a specific set of diversity requirements represents good public policy or benefits ratepayers." The AG also suggested there that, since renewable energy "does not have a finite supply," the Commission need not establish any minimum renewable energy diversity requirements for the electric IOUs and should simply allow them to implement the resource diversity *mandate* in the REA as they see fit. Hedging somewhat on that AG diversification deregulation proposal, NextEra Energy Resources ("NextEra") agreed with the AG "that utilities, *with PRC oversight*, are in the best position to determine the

mix of resources that will comply with the Renewable Energy Act's objectives of fostering renewable energy development without excessive burdens on consumers."[1]

There are a number of legal and public policy problems with those AG and NextEra diversity deregulation recommendations. First, the AG's assertion that "[t]here has been little or no evidence in previous cases as to exactly why a specific set of diversity requirements represents good public policy or benefits ratepayers" is simply incorrect.

As noted in REIA's initial Comments (at 13), the public and utility customer benefits of the Commissions existing solar and other renewable resource diversity percentages were considered, addressed and fully justified by the Commission in its Final Order in Case No. 07-157-UT. The Commission found in that Order (pp. 35-36) that "New Mexico has an abundant supply of excellent locations for the siting of solar energy plants, including many that are close to load centers," and "[t]hus while central station solar energy production is today more costly than wind and biomass, it is not subject to the same limitations on ultimate penetration of these technologies as replacements for fossil fuels." The Commission therefore concluded there 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."

No commenter presented evidence contradicting those prior Commission conclusions or supporting reconsideration of them in this case. To the contrary, as

[1] 2/24/12 NextEra Response Comments at 4 (emphasis added). Since NextEra, like the AG, proposed that the Commission eliminate all of its existing renewable energy diversification requirements, it is difficult to imagine what effective "PRC oversight" of public utility diversification determinations would remain if its and the AG's deregulation proposals were adopted.

explained in REIA's Initial Comments (at 8-14), the Commission's records show that both Southwestern Public Service Co. ("SPS") and El Paso Electric Co. ("EPE") previously have projected they *will satisfy or exceed* the Commission's existing 20% solar diversity requirement this year and in 2013. Moreover, the Commission's records show that recent (2011) projections by Public Service Co. of New Mexico ("PNM") that it will not satisfy its 20% solar diversity requirement in 2012 or potentially in 2013 (i.e., without claimed Reasonable Cost Threshold ("RCT")-based reductions to its projected Reasonable Portfolio Standard ("RPS")) have been due to its management's decisions and proposal to own and rate base, rather than purchase, 22 MW of utility-scale PV facilities and to subsequently rely on revised RCT calculation methods that PNM did not use to justify the cost of those resources when they were proposed and that have *not* been used by either SPS or EPE in their renewable energy procurement plan filings to date.

The Commission's Final Order in Case No. 07-00157-UT (at 34) also noted evidence that, prior to its establishment of the Commission's existing diversity requirements, "[w]ith one exception," (SPS's then proposed acquisition of "a significant biomass resource"), the renewable energy resource acquisitions by the State's public utilities were "focused on minimizing initial costs, to the exclusion of both the long-term benefits of diversification that are set out in the REA and the factors other than cost that are enumerated in the Act." Subsequent electric IOU renewable procurement plan cases provided further evidence to the Commission showing that, to the extent public utilities are not required to satisfy specific minimum renewable resource diversity requirements established by the Commission to implement the diversity considerations enumerated in the REA (§ 62-16-4.A(4)), their management *will* focus on minimizing the utility's short-

term (i.e., "plan year") renewable procurement costs (e.g., by purchasing unbundled Renewable Energy Certificates ("RECs") without energy on a one-time or short-term basis) and will largely ignore the longer-term benefits of other renewable energy procurement options available simply because their initial "plan year" costs are higher.[2] Indeed, when considered with the sort of "least cost" procurement *requirement* and policy *also* advocated by the AG in the past and apparently in this proceeding and by other commenters,[3] Commission elimination of its existing renewable diversity requirements in Rule 572 would virtually guarantee that, going forward, that requirement and "policy" would trump all of the other diversity factors enumerated in the REA that the Commission and electric IOUs are *required* by law to consider, contrary to the plain language in NMSA § 62-16-4.A(4).

The Commission's Final Order in Case No. 07-00157-UT also addressed why there is no legal or public policy justification for the AG's and NextEra's arguments that the Commission should essentially deregulate this aspect of electric IOU compliance with the REA and defer implementation of that Act's diversity requirement entirely to utility management's discretion. Noting that "diversity is mandated by the law and is not an option for utilities," the Commission found there:

> The REA was enacted to achieve certain public benefits by regulating the behavior of electric utilities. If 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.[4]

[2] *See, e.g.*, the Revised 2011 and 2012 Procurement Plans proposed by PNM in Case Nos. 10-00373-UT and 11-00265-UT.
[3] Despite the special annual "cost cap" protection its members continue to enjoy, the New Mexico Industrial Energy Consumers ("NMIEC") likewise have opposed Commission-established diversity requirements on the grounds that "the goal of least cost" should trump the diversification mandate in the REA. *Se, e.g.,* Final Order Case No. 07-00157-UT, p. 26.
[4] Final Order, Case No. 07-00157-UT, p. 22, n. 9.

The Commission's Final Order in Case No. 07-00157-UT (p. 36) reasonably and correctly found that "achieving renewable energy diversity is too important a matter to be given over entirely to the discretion of the state's investor-owned utilities" and that "[t]o do so would be an abdication of our clear statutory responsibility." Neither the AG nor any other commenter provided any legal basis or evidence for the Commission to reconsider or reverse that finding in this case.

The Commission's Final Order in Case No. 07-00157-UT (pp. 22-23) also reasonably concluded that minimum Commission diversity requirements in Rule 572 that are consistent with the diversity factors specified in the REA benefit public utilities "by providing them with advance notice" of the Commission's expectations in that regard. This advance notice to public utilities of the Commission's diversification expectations to ensure implementation of the REA's diversification mandate promotes the very need for "regulatory clarity and certainty" that NextEra states in its Response Comments (pp. 3-4) it (as well as PNM) supports to facilitate development of renewable energy in New Mexico. Elimination of the Commission's existing renewable energy diversification requirements as proposed by the AG and NextEra would be inconsistent with those regulatory and statutory objectives. More importantly, as the Commission concluded in Case No. 07-00157-UT, such deregulation would constitute a complete abdication by the Commission of its statutory responsibility to regulate electric IOUs in a manner that ensures their compliance with the renewable energy diversity mandate in the REA and achievement of the objectives and benefits of that Act.

Staff's Proposed 30% Wind Requirement

As stated in it Initial Comments, REIA also continues to support Commission retention of its existing minimum 20% wind diversity requirement. REIA is not aware of *any* justification by Staff, or by any other commenter or in the record, for Staff's proposed increase of the Commission's existing minimum wind diversity requirement to 30%.

It is REIA's understanding that this Staff-proposed increase of the wind diversity requirement could create future compliance problems for at least one of the electric IOUs (EPE) that may not have the same breadth of wind generation sites in its service area or unbundled wind REC purchase options available to it as the other electric IOUs in the State. REIA therefore does not recommend Commission approval of this Staff proposal.

"Other" Technology Diversity Requirement

REIA does not oppose Staff's proposal, consistent with the proposal in the Commission's Notice, to reduce the existing minimum diversity requirement for "other technologies" from 10% to 5% for the reason stated in its Initial Comments (at 15). Lightning Dock Geothermal's ("LDG") Comments urged the Commission to establish "the same 10% requirement for all three technology groups so that all three groups are subject to consistent standards."

For the reasons stated above and in its Initial Comments, REIA submits that the evidence presented by PNM, SPS and EPE in their respective annual renewable energy procurement plans since the Commission established its existing diversity requirements in Case No. 07-00157-UT support Commission retention of its existing 20% diversity requirements for solar and wind and, due to cost concerns and financing problems, a

lower minimum diversity percentage requirement for "other technologies" that will reasonably encourage their development in New Mexico without creating RCT problems for the State's investor-owned public utilities. As addressed further below, REIA believes that, when calculating the annual incremental costs or rate impacts of any renewable resource procurement proposed by an electric IOU and applying the RCT, in accordance with the REA (§62-16-4.C(5), each public utility and the Commission should take into account the "overall diversity, reliability, dispatch flexibility, cost per kilowatt-hour and life-cycle cost on a net present value basis" and "other factors, including [relevant] public benefits" provided by that resource, including the sort of reliability and avoided capacity benefits of utility-scale geothermal plants described by LDG.

DG Diversity Requirements

Based on the evidence and for the reasons addressed in REIA's Initial Comments (at 15-20), REIA continues to urge the Commission to increase its existing 1 and ½% minimum distributed generation ("DG") percentage requirement to 3% in 2013 and 2014, and to 6% beginning 2015. To summarize those Comments and the Commission's findings in Case No. 07-00157-UT, due to the widespread availability of solar energy for on-premise generation by residential, commercial and non-profit utility customers, including public schools and governmental institutions, particularly during summer periods when public utility systems in New Mexico experience their greatest (peak) demands, solar DG in particular provides *long-term* customer energy self-sufficiency benefits as well as *long-term* peak shaving, avoided fuel and line loss, capacity and environmental (greenhouse gas emission reduction) benefits to public utilities and their other customers that are greater than, for example, one-time purchases of unbundled

RECs for single "plan year" RPS compliance. Moreover, pursuant to the most recent solar DG programs approved by the Commission for each of the State's electric IOUs, the cost (per MWh) of additional solar DG to their customers has declined since 2007, when the existing DG percentage requirements were established, and will continue to decline between now and 2015. Thus, the higher DG requirements proposed by REIA beginning in 2013 should not prevent any of the State's electric IOUs from satisfying its RPS or the Commission's other resource diversity targets, including retention of the existing 20% solar diversity requirement, within the RCT if *reasonable* RCT provisions are adopted by the Commission in this case.

II. RCT Percentage and Calculation of Annual RCT Dollar Limits.

Proposals to Increase the RCT Percentage

As explained in REIA's Initial Comments (at 26-30), clarification of how each electric IOU should calculate its annual RCT cost (or rate impact) limit is one of the most critical issues in this proceeding. This issue involves not only the Commission's applicable RCT percentages, but also *which* revenues should 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 year.

The Commission's Notice proposed increasing the RCT percentage to 3% before 2015 when the "statutory" RPS under the REA increases from 10% to 15%, though it did not make clear when that increase would become effective. REIA's Initial Comments (at 27) proposed revised language in 572.11.B (addressing the RCT) to clarify the revenues

from an electric IOU's "overall annual electric charges" that should be included to calculate the utility's annual RCT limits, regardless of whether the Commission increases the RCT percentage as proposed in the Notice or by any other commenter. REIA addresses that issue below.

REIA understands Staff's Revised Proposal for amending its proposed 572.12.B (572.11.B in the Notice) would increase the Commission's existing RCT percentage as follows:

> **B.** The reasonable cost threshold in any plan year is three percent (3%) of plan year total revenues through 2014, increasing to four percent (4%) of plan year total revenues from 2015 through 2019, increasing to five percent (5%) of plan year total revenues in 2020 and thereafter.

It is REIA's understanding that these proposed RCT percentage increases are based on Staff's belief that they are necessary to ensure that each of the electric IOUs will have sufficient RCT headroom to be able to satisfy its "statutory" RPS in a timely manner, particularly in 2015 and 2020 when the RPS increases to 15% and 20% respectively, reduced *only* by each utility's energy sales to large customers subject to the annual rate caps in NMSA § 62-16-4.A(2) and to qualifying "political subdivisions of the state" customers exempt from renewable energy surcharges under NMSA § 62-16-4.A(3). REIA believes that Staff belief may be justified and would support those RCT percentage increase proposals for the same reason, particularly if the Commission were to adopt (i) the new definition of "plan year total retail energy sales" in 572.7.L(1) of Staff's Revised Proposal (or any similar provision in Rule 572 that excludes sales to large customers subject to the annual rate increase cap in NMSA § 62-16-4.A(2) from the calculation of each electric IOU's "plan year total revenues" used to determine its annual RCT limits), or (ii) proposals by Staff or other parties to exclude consideration of the

avoided costs or other "public benefits" of renewable energy from the calculation of an electric IOU's annual renewable energy procurement costs, *both of which REIA opposes*.

As indicated in its Initial Comments, REIA believes that, if adopted by the Commission, those RCT calculation proposals will virtually ensure that PNM, and possibly SPS and/or EPE as well, will *not* have sufficient RCT headroom to satisfy their statutory RPS in future years unless the Commission increases the RCT percentage in existing Rule 572. In this regard, REIA agrees with Western Resource Advocates ("WRA") and the Coalition for Clean Affordable Energy ("CCAE") that, *consistent with the RCT criteria enumerated in the REA (§ 62-16-4.C)*, it is appropriate, better public policy and more reasonable for the Commission to adopt provisions in Rule 572 that establish a reasonable annual RCT dollar and rate impact (i.e., based on a percentage of each utility's projected "plan year" revenues from "all customers' aggregated overall annual electric charges," as provided in existing Rule 572.11.B) and require consideration of *both* the costs and *benefits* of renewable energy procurements than to adopt new RCT calculation provisions that require the Commission to increase the RCT percentage so public utilities will be able to satisfy the State Legislature's statutory RPS requirements.

Staff's Proposed New Definition of "Plan Year Total Revenues"

Staff's Revised Proposal proposes the following new definition of "plan year total revenues" in 572.7.K which, as provided in Staff's proposed 572.12.B quoted above, would be used to calculate each electric IOU's annual RCT dollar limit:

> **K. plan year total revenues** means plan year projected total retail revenue including:
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> (1) the sum of
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> (a) plan year total retail energy sales multiplied by the company's approved base fuel and non-base fuel retail rates by rate class;
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> (b) projected fuel clause revenues; and

(c) all projected rider revenues, not including:
(i) projected plan year renewable portfolio revenue requirement, and
(ii) projected undergrounding rider contributions in aid of construction.

This definition appears to be very similar to, if not virtually the same as, the revised language proposed by REIA in its Initial Comments (at 27) for 572.11.B with one potentially significant exception. REIA's proposed language for that section included the following proviso to address the situation experienced in Case No. 11-00265-UT where PNM was allowed to implement substantially higher base rates shortly after it filed its 2012 Plan and before the Commission's hearing on that Plan in that case:

> 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.

REIA continues to urge the Commission to adopt the foregoing language or similar language to this or any other provision in Rule 572 that addresses a utility's calculation of its "plan year total revenues" for the purpose of applying the RCT. It is REIA's understanding that WRA and CCAE support similar language in their proposed definition of "customers' aggregated overall annual electric charges" in 572.7. For the reasons discussed below, REIA does not support Commission adoption of the new definition of "plan year total retail energy sales" in 572.7.L(1) of Staff's Revised Proposal that would apply to that term in 572.K.1(a) of Staff's Revised Proposal.

Staff's Proposed Exclusion of All Energy Sales to Qualifying Large Customers from its Definition of "Plan Year Total Retail Energy Sales" in 572.7.L(1).

Staff's Revised Proposal proposes the following new definition of "plan year total retail energy sales" in 572.7.L which, as provided in Staff's proposed 572.12.B quoted above, also would be used to calculate each electric IOU's annual RCT dollar limit:

> **L. plan year total retail energy sales** means weather adjusted retail energy sales in kWh projected for the plan year adjusted for projected energy efficiency reductions based on approved energy efficiency and load management programs in effect at the time of the filing, less:
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> (1) energy sales to large customers that qualify under NMSA 1978 Section 62-16-4A (2); and
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> (2) energy sales to customers exempted pursuant to NMSA 1978 Section 62-16-4A(3).[5]

As explained in REIA's Initial Comments (at 28-29 and 40-44), REIA does not oppose electric IOU adjustments to their "plan year" (or subsequent year) sales projections "based on approved energy efficiency and load management programs in effect at the time of the filing" for the purposes of projecting the sale volume used to project their RPS or the "plan year total revenues" used to determine their annual RCT dollar limits. Nor does REIA oppose removing "energy sales to customers exempted pursuant to NMSA 1978 Section 62-16-4A(3)" from those sales calculations since, as provided in that recently enacted statute, to qualify for that exemption from a utility's renewable energy charges, a customer that is a political division of the State must certify to the State Auditor and notify the Commission and its serving utility that it will spend 2 and ½% of that year's annual electricity charges "to continue to develop within twenty-four months customer-owned renewable energy generation." Thus, it would not be reasonable to require an electric IOU's other customers to pay additional amounts for the

[5] The language in 572.7.L(2) of Staff's Revised Proposal is significantly different than proposed in Staff's initial Comments which referred to the "large customer adjustment" that, as defined in Staff's proposed 572.7.M, is not the same as all "energy sales to large customers that qualify under" § 62-16-4.A(2).

renewable energy procurements those political subdivision customers commit to make themselves in order to satisfy their portion of the utility's statutory RPS.

An electric IOU's energy sales to its large non-governmental customers that are protected by the annual rate cap in NMSA § 62-16-4A(2), however, are a very different matter. Those customers are not, like political subdivision customers may become under 62-16-4A(3), exempt from all utility renewable charges because they certify they will invest *themselves* in customer-owned renewable energy generation. Under § 62-16-4A(2), an electric IOU's RPS is simply reduced by the amount of its "total retail sales to New Mexico customers" necessary to ensure that "the kilowatt hours of renewable energy procured for these [large] customers" is "limited so that the additional cost of the renewable portfolio standard to each [large] customer does not exceed the lower of" two percent of that customer's annual electric charges or $99,000, adjusted by the Commission for inflation. In other words, by statute, this "large customer" provision allows the electric IOUs to adjust (i.e., reduce) their statutory RPS. That statute does not establish or require a limit on the aggregated utility retail "plan year" revenues the Commission can and should require electric IOUs to use to calculate its RCT.

As explained in REIA's Initial Comments (at 40-44), this proposed reduction of an electric IOU's projected "plan year total revenues" by its total energy sales to large customers covered by § 62-16-4A(2) is not reasonably justified by the REA or any "undue" rate discrimination prohibition or other ratemaking principles. Moreover, it would substantially undermine the Commission's ability to achieve the objectives of the REA by unreasonably reducing the amount of RCT money electric IOUs can use to satisfy the "statutory" RPS percentages in the REA and the Commission's diversity

requirements which, as defined in Rule 572, are percentages of a utility's RPS. REIA therefore urges the Commission to reject this and any similar RCT revenue calculation reduction proposals in Rule 572 in this proceeding.

REIA offers one further recommendation concerning claims by other commenters that Commission exclusion of revenues from sales to large customers covered by § 62-16-4A(2) from the electric IOUs' "plan year total revenues" used to calculate the RCT is necessary to prevent unreasonable or unfair shifting of renewable energy costs to a utility's other customers. There is no evidence in this case that any such unreasonable or unfair cost-shifting has occurred to date or will occur in the future if the Commission adopts reasonable RCT calculation provisions in this case.

That said, REIA notes that, though the RPS established in the REA increases to 15% in 2015 and to 20% in 2020, § 62-16-4A(2) does not authorize the Commission to increase the annual caps on rate increases to qualifying large customers (except "for inflation") that may result from the additional renewable energy procurements necessary to satisfy those higher statutory RPS requirements. REIA therefore recommends that, if the Commission is concerned about the possibility of RPS compliance cost-shifting from large to smaller electric IOU customers beginning in 2015, it consider proposing or supporting reasonable amendments to § 62-16-4A(2) in the next session of the New Mexico Legislature that will ensure that, if electric IOUs incur more costs to satisfy the higher 15% RPS established in the REA beginning in 2015, large customers consuming more than 10 million kilowatts of electricity per year will pay a reasonable share of those higher statutory compliance costs.

III. Staff's Proposed Modification of the Notice's Proposed "Least Cost" Requirement Amendment

The Commission's Notice proposed the following new language in 572.7.G addressing the Commission's fully diversified renewable energy portfolio requirements": "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." (Emphasis added). REIA's Initial Comments (at 6-8, 20) addressed why that provision, or any similar "least" or "lowest" cost *requirement* language in Rule 572, is inconsistent with the meaning of the plain language in the REA, would unreasonably restrict Commission oversight of the reasonableness of annual renewable energy procurement plans proposed by electric IOUs, and therefore should not be adopted by the Commission. In addition, as Staff's Revised Proposal appears to recognize and discussed below, Commission adoption of such narrow "least cost" requirement provisions in Rule 572, even for public utility renewable resource procurements beyond those necessary to satisfy the Commission's diversity requirements, would be inconsistent with the definition of, and the criteria for identifying, "the most cost effective resource portfolio" established in the Commission's Rule addressing Integrated Resource Plans for Electric Utilities ("IRP Rule"), NMAC 17.7.3.1, *et seq*.

Staff's Revised Proposal does not recommend adoption of the new "least cost" requirement language in 572.7.G proposed in the Commission's Notice. REIA agrees with that. Staff's Revised Proposal recommends Commission adoption of the following new section 13 to Rule 572:

17.9.572.13 RESOURCE SELECTION:

A. The utility shall determine all commercially available resources or purchases of renewable energy certificates available to the utility, either by ownership or by contract, for the procurement plan year, that will satisfy the RPS and the diversity requirements.

B. Of the resources or REC purchases identified above, the company shall use the net present value methodology to identify the most cost effective additional or new renewable resource(s) necessary and available to satisfy both the annual renewable portfolio standard and the diversity requirements.

C. *In the case that the resources required are not required to satisfy diversity requirements those resources must represent the least cost option available*. (Emphasis added).

Based on its discussions with Staff, REIA understands the purpose and intention of this new section 13 is to codify consistency between the process electric IOUs are required by the Commission's IRP Rule to follow when identifying and determining their "most cost effective resource portfolio" generally (i.e., for both non-renewable and renewable energy resources) and selecting "new" (i.e., not previously Commission-approved) renewable resource procurements for inclusion in their annual procurement plans.[6] REIA supports Commission adoption of Staff's proposed new 572.13, particularly subsection C, and recommends the Commission adopt the following further clarifying language at the end of that subsection: "*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*."

REIA recommends Commission adoption of new 572.13 as proposed in Staff's Revised Proposal and amended above to codify consistency between resource selection criteria in the Commission's IRP and renewable energy rules. Section 7 of the Commission's IRP Rule defines "most cost effective resource portfolio" as "those

[6] *See also* proposed 572.14.B(10) in Staff's Revised Proposal that would require in annual IOU renewable procurement plans "testimony and exhibits demonstrating that the portfolio procurement plan is consistent with the integrated resource plan and explaining any material difference."

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*."[7] It defines "planning period" as "20 years."

Section 9.G of the Commission's electric utility IRP Rule provides further:

> Determination of the Most Cost Effective Resource Portfolio and Alternative Portfolios.
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> (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.
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> (2) Each utility shall discuss how the following factors were considered in, or affected, the development of resource portfolios:
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> (a) load management and energy efficiency requirements;
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> (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*;
>
> (d) transmission constraints; and
>
> (e) system reliability and planning reserve margin requirements.
>
> (3) Alternative portfolios. In addition to the detailed description of what the utility determines to be the most cost-effective resource portfolio, the utility shall develop *a reasonable number of alternative portfolios by altering risk assumptions and other parameters developed by the utility and the public advisory process*.[8]

These provisions in the Commission's IRP Rule quite clearly do not allow an electric IOU to select new renewable energy (or non-renewable energy) resources for its portfolios based solely on a short-term "least cost" criteria. And they certainly do not

[7] NMAC 1.7.3.7.I (Emphasis added).
[8] NMAC 17.7.3.9.G (Emphasis added). *See also* similar resource evaluation criteria in NMSA § 62-17-10.

require the Commission to approve proposed new renewable resource procurements based on such a narrow and short-term (i.e., "plan year") cost criteria.

To the contrary, the "most cost effective" criteria in the Commission's IRP Rule reasonably and properly require electric IOUs to identify and evaluate both the demand-side and supply-side resource options available to them for longer, 20-year planning periods "on a consistent and comparable basis" using much broader cost and benefit criteria than a simplistic "least cost" test. Moreover, a simplistic "least cost" test or requirement in Rule 572 would create inconsistent resource selection criteria for public utilities and the Commission that, contrary to the plain language in NMAC 17.7.3.9.G, would establish an unreasonable bias between potentially available renewable resource options by requiring that they not be evaluated "on a consistent and comparable basis" taking into consideration all of the factors enumerated in that section of that Rule and in the REA, NMSA § 62-16-4.C.

REIA also supports the "most cost effective" language in 572.13.C recommended in Staff's Revised Proposal and as amended above and the rejection of any "least cost option available'" or similar "least cost" requirement language in Rule 572 because, as explained in its Initial Comments, such a "least cost" requirement would be inconsistent with the balancing of "life-cycle" costs and benefits that public utilities and the Commission are *required* by the REA (§ 62-16-4.C) to consider when proposing their annual renewable energy procurement plans and applying the RCT to those plans. As REIA explained in its Initial Comments, in terms of sound public and regulatory policy, a narrow "least" or "lowest" cost requirement in Rule 572 would unreasonably and unnecessarily restrict, if not abdicate entirely, the Commission's discretion to reject a

particular "least cost" procurement proposed by an electric IOU in a particular case (e.g., purchase of cheapest available unbundled RECs offered) where alternative procurements available to the utility at a higher cost, but within the applicable RCT, may better satisfy the broader purposes of the REA and thereby better promote the public interest.

On March 6, 2012, the Commission issued an Order Scheduling Workshop on March 29, 2012 in Case No. 12-00057-UT, the day after the Commission's scheduled March 28 hearing in this case, to explore the possibility and advisability of suggesting amendments to the REA and the Efficient Use of Energy Act that would allow the Commission to evaluate the resource cost and program information in the electric IOUs' renewable energy procurement plans, energy efficiency program reports and integrated resource plans at the same time and/or in a manner that would reduce the frequency of those required filings. Paragraph 1 of that Order notes that, pursuant to NMSA § 62-17-10, electric IOUs are required to file periodic IRPs with the Commission that evaluate "renewable energy, energy efficiency, load management, distributed generation and conventional supply-side resources on a consistent and comparable basis." REIA supports that Commission investigation and consistency goal which provides another reason why the Commission should adopt Staff's proposed "most cost effective" language, rather than any "least cost" requirement provisions, in Rule 572 consistent with the resource selection criteria in the Commission's IRP Rule for electric utilities.

IV. Other RCT Provision and Calculation Issues.

Another significant legal and policy problem with Staff's Revised Proposal is its proposal to require Commission and IOU determination and application of the RCT "by applying a traditional requirements impact for all resources" that excludes consideration

of any avoided capacity costs or other benefits of renewable energy procurements except for "avoided fuel costs." Staff's Revised Proposal addresses these matters in the following subsections of its proposed 572.12 and 572.14:

> **17.9.572.12 REASONABLE COST THRESHOLD:** The reasonable cost threshold is a customer protection mechanism that limits the customer bill impact resulting from annual renewable energy plans *as measured by plan year revenue requirements*.
>
> **A.** A public utility shall not be required to add renewable energy to its electric energy portfolio in any plan year, pursuant to the renewable portfolio standard, where the *annual renewable energy plan revenue requirement* is above the reasonable cost threshold established by the commission pursuant to Subsection B of this section.
>
> ***
>
> **17.9.572.14 ANNUAL RENEWABLE ENERGY PLAN:** An annual renewable energy plan shall include plan year and next plan year data. The plan year shall be presented for commission approval and the next plan year shall be presented for informational purposes.
>
> ***
>
> **C. Plan year revenue requirements.** *For RCT purposes, the plan year revenue requirements shall reflect rate impacts on customer bills and shall be determined by applying a traditional revenue requirements impact approach for all resources, including regulatory assets authorized in prior plan years, used to satisfy the renewable portfolio standard and shall not include normalizations, annualizations and out of period adjustments*.
>
> **(1)** Revenue requirement adjustments *shall only include avoided fuel costs*.
>
> **(2)** Avoided fuel costs are expected or modeled fuel savings that result from the procurement of renewable resources in the plan years. (Emphasis added)

It is REIA's understanding from discussions with Staff that the purpose and intent of the foregoing Staff proposals is to establish that the RCT is a "plan year" rate impact limit and to simplify the calculation of that annual limit by excluding consideration of any avoided capacity costs or other benefits of renewable energy procurements, except for "avoided fuel costs," because any other avoided costs and benefits are difficult to quantify and controversial and because, if those other benefits of renewable procurements are considered, other costs incurred by utilities associated with new renewable resource

procurements also should be considered. REIA urges the Commission to reject these Staff RCT proposals for the following reasons.

In its Initial Comments (at 31-39), REIA addressed the requirement in the REA (§ 62-16-4.C) that, when "establishing and modifying the reasonable cost threshold, the commission *shall* take into account," not only the price of renewable energy at the point of sale to the public utility, but also:

> (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;… (Emphasis added).

The RCT calculation language in Staff's Revised Proposal quoted above is substantially more restrictive than, and plainly inconsistent with, the foregoing RCT factors enumerated in the REA. For example, it would establish the RCT as a "plan year" revenue requirement rate impact limit without allowing consideration of each renewable resource's relative reliability, availability, dispatch flexibility and life-cycle cost on a net present value basis or its avoided capacity costs, utility system peak shaving benefits or "public benefits," such as the reasonably expected cost of avoided CO2, methane and other greenhouse gas emission regulation.[9] The fact that quantification of such avoided costs and benefits may be difficult or controversial is not sufficient to justify this sort of deviation by the Commission from the mandatory RCT criteria established by the

[9] Staff's proposal that the Commission eliminate any consideration of relevant "public benefits" from renewable energy, including the avoided cost of reasonably expected environmental regulations, when applying the RCT is particularly unreasonable at a time when, at least one of the IOUs (PNM) is challenging both U.S. Environmental Protection Agency and New Mexico regulation of emissions from its coal-fired San Juan Generation Station resource on the grounds that less regulation of those emissions will have a lower cost and future rate impact on its customers.

Legislature in the REA, whether proposed by Staff, other commenters or the Commission in this proceeding.

For these reasons, REIA continues to recommend Commission adoption of the changes to 572.11.D addressing the calculation of the cost of each electric IOU's annual renewable resource procurement costs recommended in REIA's Initial Comments (at 33-35). If the Commission does not adopt those REIA recommended changes, REIA believes Commission adoption of the definition of "avoided costs" in 572.7.L recommended by WRA and CCAE in their response comments also would be more consistent with the RCT criteria in § 62-16-4.C of the REA than the narrower "avoided cost" proposals by Staff and other commenters.

V. Annual Renewable Plan Filing Requirements and Other Issues.

REIA's Initial Comments (at 49-56) addressed REIA's recommended changes to Rule 572 concerning annual renewable plan filing requirements for the electric IOUs and are fully incorporated herein by reference. To the extent Staff's Revised Proposal recommends changes that do not include, or are inconsistent with, those REIA recommendations, REIA opposes Commission adoption of those Staff proposals.

REIA does not oppose the recommendation in 572.14.A of Staff's Revised Proposal that would establish a staggering of each of the electric IOUs' plan filings with the caveat that, as noted earlier, REIA generally supports the broader objective referenced in the Commission's recent Order Scheduling Workshop in Case No. 12-00057-UT to explore the possibility and advisability of suggesting amendments to the REA and the Efficient Use of Energy Act that would allow the Commission to evaluate the resource cost and program information in the electric IOUs' renewable energy procurement plans,

energy efficiency program reports and integrated resource plans at the same time and/or in a manner that would reduce the frequency of those required filings.

REIA opposes Staff's recommendation in its Revised Proposal to *remove* the following language from Staff's proposed 572.14 addressing the information that electric IOUs must include in their annual plan filings: "the reductions, if any, to the renewable portfolio standard for procurements for nongovernmental customers with consumption exceeding ten (10) million kilowatt-hours per year and/or due to the reasonable cost threshold, including an explanation and exhibits demonstrating how the reduction was determined." As indicated in its Initial Comments, REIA believes inclusion of such explanations and exhibits in the IOUs' annual plans is necessary and appropriate given the importance of such RPS reduction claims and the relatively short (6-month) time periods interested parties and the Commission have to review those plans. For the reasons also stated in its Initial Comments (at 54-56), REIA supports Staff's recommended elimination of the protest "verification" requirement proposed in the Commission's Notice.

As indicated above, REIA provides as "Appendix A" to these Response Comments a copy of the "Issues Matrix" developed and circulated by Staff that summarizes REIA's current positions and further comments on Staff's Revised Proposal and includes, where appropriate, citations to REIA's Initial Comments.

CONCLUSION

For the reasons set forth in its Initial Comments and these Response Comments, REIA urges the Commission to adopt REIA's recommendations concerning proposed revisions to Rule 572 in this proceeding.

Respectfully submitted,

_/s/_____

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