

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION )  
OF A PROPOSED RULE GOVERNING )  
COGENERATION AND SMALL POWER )  
PRODUCTION )  
\_\_\_\_\_ )

Case No. 12-00332-UT

COMMENTS BY SUNSPOT SOLAR ENERGY SYSTEMS LLC

Sunspot Solar Energy Systems LLC (“Sunspot”), by and through its undersigned counsel, submits these comments on certain amendments to Commission Rule 570, 17.9.570 NMAC (“Rule 570”) proposed in the Commission’s September 27, 2012 Notice of Proposed Rulemaking in this docket (“Notice”). Sunspot is a Native American-owned provider of photovoltaic (“PV”) renewable energy systems and related services for residential, commercial, non-profit and other users of electric power in New Mexico. Based in Las Cruces, Sunspot has significant experience with the design, installation of and demand for such systems, including net-metered qualifying facilities with a rated capacity of 10 KW or less (“Small QFs”), in areas in New Mexico served by El Paso Electric Company (“EPE”) and Public Service Company of New Mexico (“PNM”).

Sunspot supports Commission adoption of its proposed changes to Rule 570.14.C(3) for the following reasons.

**I. Requiring Electric Utilities to Provide Customers with a kWh Carry-over Credit for Excess Energy Produced by Small QFs Appropriately and Reasonably Recognizes the *Distinct* Purposes of Customer Investments in Small QFs and PURPA’s “Avoided-Cost”-Based Rate Provisions.**

Based on Sunspot’s experience, Small solar QFs are installed primarily by residential service customers of electric utilities who want to satisfy their own expected future annual electric power demands, to the extent practicable within their financial

capabilities, during the expected useful lives of those facilities<sup>1</sup> and thereby reduce their future electric utility bills as well as the adverse environmental impacts of their future electric power demands. To accomplish those objectives, Sunspot designs Small solar QFs for those customers based on (i) their annual electric usage reported in their most recent utility bills, (ii) any change in electric usage they expect for any reason after installation of their system and (iii) projected annual production of energy from a system, including PV panel degradation over time.

The installation of Small solar QFs requires a substantial up-front investment by residential customers (in Sunspot's experience, commonly \$10,000-\$20,000) even with the benefits of existing Federal and New Mexico investment tax credits, which are scheduled to expire at the end of 2016. Sunspot also notes that Commission-approved prices offered by investor-owned electric utilities for Renewable Energy Certificates ("RECs") associated with energy produced by Small QFs under their Small QF REC purchase programs are now at their lowest levels since those programs began and will continue to decline over the next two years for new participants in those programs.<sup>2</sup>

For these reasons, Sunspot has not designed or installed in the past, and does not design and install today, Small solar QFs for customers in New Mexico that are intended to supply or sell excess energy to an electric utility on an annual basis. Moreover, Sunspot does not believe there is any sound financial reason for other Small solar QF providers or customers in New Mexico to do so.

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<sup>1</sup> Sunspot provides customers with a 25-year warranty with the PV systems it sells.

<sup>2</sup> For example, the price for RECs from Small solar QFs offered by EPE declines to 4¢/kWh on July 1, 2013 and to 2¢/kWh on January 1, 2014 "until otherwise ordered by the Commission" for contract terms that decline monthly and end on December 31, 2020. EPE 3<sup>rd</sup> Revised Rate No. 33. PNM is currently proposing that the price for RECs from Small solar QFs decline to 4¢/kWh on January 1, 2013 and by \$0.005/kWh each six-month period thereafter to a "floor" of \$0.025/kWh on July 1, 2014 through 2016 for contract terms of eight years. Case No. 12-00131-UT, Ortiz and Styes Dir. Testimonies; proposed Recommended Decision, p. 29.

Rather, the production of excess energy in any month by Small solar QFs generally is incidental in that it results from the combination of monthly fluctuations of kWh production from those facilities, due principally to fluctuations in available sunlight, and fluctuations of customers' monthly electric demands that can result from a variety of factors (e.g., weather, number of household occupants, and so forth). Thus, requiring electric utilities to provide Small QF customers with a monthly kWh carry-over credit for such incidental excess energy produced while they remain on a utility's system properly and reasonably recognizes the intent and purpose of their investment in Small QFs by reflecting the value to them of the energy production expected from those facilities during their useful lives based on a customer's utility's applicable retail energy rates.

In contrast, the primary and distinct purpose and goal of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 824 ("PURPA") were to promote greater production by non-utility independent power producers of domestic energy from both renewable resources and more efficient co-generation facilities *for use by electric utilities to serve their customers* by requiring that utilities interconnect and purchase power from QFs, thereby creating a retail public utility market for such independent power supply throughout the United States. PURPA's "market" objective is recognized in Rule 570.6.A. The essential purpose of the "avoided cost" provisions in the Federal Energy Regulatory Commission's ("FERC") regulations in 18 C.F.R. §§ 292.302 and 292.304 and this Commission's regulations implementing those federal laws (codified in 17.9.570.11 NMAC) is to ensure that, when complying with PURPA's QF interconnection and purchase requirements, utilities and their customers are protected against having to pay unreasonably high power procurement costs (i.e., rates that are not

“just and reasonable”) by providing that utilities are not required to *pay* more than their “avoided costs” (i.e., the additional costs the utility would incur if it generated or could purchase that power from another source) for such independent QF power supplies.

“Avoided cost”-based energy rate calculations by electric utilities do not reflect--and were never intended to reflect--the value to residential customers of energy produced by Small QFs sited on their premises designed and intended to satisfy *their own* future electric power demands. Moreover, under current Rule 570.11.B and proposed Rule 570.11.C, the monthly “avoided cost”-based energy rates calculated by electric utilities and filed annually with the Commission are not based on utility projections of their future “avoided costs” when excess energy may be produced by a Small QF. Pursuant to those provisions, a utility’s “avoided cost” calculations and power purchase rates are based on *historical* utility cost data for “the immediately preceding twelve-month period.”

This historic “avoided cost”-based calculation method produces utility “energy rates” that are substantially less than the energy rates charged utilities to their Small QF customers. *Compare, e.g.*, EPE’s “Purchased Power Service” rates in EPE’s 31<sup>st</sup> Rev. Rate No. 16 (effective March 1, 2012) with EPE’s current 10<sup>th</sup> Rev. Rate No. 1 (“Residential Service Rate”). Thus, allowing an electric utility to pay or credit Small solar QF customers for excess energy based on its historic “avoided cost” data, rather than provide them with a kWh credit that is carried over so it can be used to offset their energy usage in a subsequent month, diminishes the value of such Small QFs to residential customers, thereby unreasonably penalizing them for installing PV systems with a capacity designed to satisfy their expected annual energy usage.

In sum, the proposed changes to Rule 570.14.C(3) more reasonably address the energy self-sufficiency purpose of residential customer investments in customer premise-sited Small QFs and their value to customers than a monthly and final bill utility *payment* to those customers for excess energy produced by Small QFs based on utility “avoided cost” data that is intended to protect electric utilities and their customers against having to pay unjust or unreasonable rates for mandatory utility *purchases* of independent QF power.

**II. The Commission’s Proposed Changes to Rule 570.14.C(3) Also Will Eliminate Any Excess Energy Payment Incentive Offered by Electric Utilities for Customers to Over-size Small QFs.**

Under existing Rule 570.14.C(3), if an electric utility elects to pay or credit a Small QF customer for excess energy produced from such a facility on a monthly basis and when the customer terminates service at the utility’s prevailing “avoided cost” energy rate, that provides a direct monetary incentive for that customer to install a Small QF that produces more energy than the customer expects to use annually during the life of that facility. For the reasons addressed above, however, Sunspot believes there is no *rationale* financial incentive or other reason for customers to install Small QFs of a greater size and rated capacity than is necessary to satisfy their expected future annual electric power demands even if an electric utility provides such payments or credits for excess energy to a Small QF customer. Considering the cost of installing such excess Small QF capacity and the “avoided cost” basis of utility “energy rate” payments or credits, installing such excess capacity would simply lengthen a Small QF customer’s payback period and make such an additional investment financially unattractive and irrational.

For these reasons, Sunspot has not recommended such system capacity over-sizing to any Small QF customers in New Mexico. Moreover, Sunspot has not been asked by any customers in New Mexico with whom it has discussed these financial considerations to install a Small QF that is designed to produce more energy than the customer expects to use annually after that facility is installed.

That said, if the Commission (or any parties) are concerned about providing any incentives to electric utility customers to install Small QFs with greater capacities than needed to satisfy their own energy demands, the Commission's proposed revisions to Rule 570.14.C(3) will reasonably and appropriately address those concerns by eliminating an electric utility's option under the current Rule to pay or credit Small QF customers each month, and upon their termination of service, for any excess energy produced by those facilities. That will eliminate any monetary incentive for customers to over-size Small QFs because they will never receive any financial benefit from such excess energy production. Under this straightforward "use it or lose it" regulatory approach, Small QF customers must use any monthly kWh credit for excess energy generated to offset their actual electric usage in a subsequent month while they remain a utility customer in order to derive any benefit or value from their Small QF's production of excess energy in any month or year.

For the reasons discussed above, Sunspot believes there is no reason for the Commission or other parties to conclude that Commission adoption of the proposed changes to Rule 570.14.C(3) would provide any incentive to customers to over-size Small QFs. Nevertheless, if any electric utilities are concerned for any reason about potential over-sizing of Small QFs as a result of Commission adoption of those proposed Rule

changes, they can propose reasonable limits on the sizes or capacity of Small QFs in their tariffs applicable to Small QFs for Commission approval. For example, Southwestern Public Service Co. has included the following limitation of this type in its Commission-approved 3<sup>rd</sup> Revised Rate No. 52 applicable to its Small Solar Distributed Generation Program for solar systems with a maximum capacity of 10 kW DC, which became effective January 1, 2011:

The Solar System capacity rating shall be based on the DC nameplate output of the Solar System and the Solar System shall be sized to supply no more than one hundred twenty percent (120%) of the average annual consumption on the customer's site, which includes all contiguous property owned or leased by the customer.

**III. The Proposed Changes to Rule 570.14.C(3) Also are Consistent with the Objectives of that Section Stated in Rule 570.6.B and Should Reduce Electric Utility Administrative Costs of Net Metering Small QF Customers.**

Rule 570.6.B provides:

17.9.570.14 NMAC is intended to simplify the metering procedures for qualifying facilities up to and including 10 kW and encourage the use of small-scale customer-owned renewable or alternative energy resources in recognition of the beneficial effects the development of such resources will have on the environment in New Mexico.

The proposed changes to Rule 570.14.C(3) are consistent with both of these objectives. They would simplify the net metering procedures for all electric utility customers with Small QFs in New Mexico by establishing a single, *consistent* and reasonable method for all electric utilities to credit them on a monthly kWh carry-over basis for any excess energy produced by those small facilities so long as they remain on their utility's system. These changes to Rule 570.14.C(3) also will eliminate the administrative burdens and costs to electric utilities associated with an obligation to provide monthly payments or credits and final bill payments to Small QF customers for

excess energy produced by their facilities. They also will eliminate any potential exposure of electric utilities to payments for unused excess energy produced by Small QFs if and when Small QF customers terminate their utility service.

In this regard, Sunspot notes that, pursuant to the “Calculation of Billing For Net Metering Service” section (p. 2) of PNM’s Original Rider No. 24 (“NET METERING SERVICE”) for QFs with a rated capacity no greater than 10 kW, which became effective on January 14, 2009, PNM, the State’s largest electric utility, has been providing its Small QF customers with a monthly kWh carry-over credit for excess energy produced for more than three years.<sup>3</sup> For the reasons addressed above, Sunspot believes residential customers of other electric utilities that install Small QFs should be treated similarly, i.e., provided that, as proposed by the Commission and discussed earlier, all electric utilities are relieved of any obligation to pay Small QF customers that terminate service for any unused credits for excess kWhs produced by those facilities. This consistent, State-wide approach will simplify the Commission’s net metering procedures for all Small QF customers and electric utilities in New Mexico and ensure that all Small QF customers in the State are treated by their electric utility in a reasonable, fair and non-discriminatory manner. It also is consistent with the stated objective in Rule 570.6.B to “encourage the use of” such “small-scale customer-owned renewable or alternative energy resources.

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<sup>3</sup> That section of that PNM tariff also requires PNM to pay customers that terminate service for any unused credits for excess kWhs generated at PNM’s avoided cost-based energy rate. Sunspot presumes that, if the Commission adopts its proposed changes to Rule 570.14.C(3), PNM would terminate that end-of-service payment obligation by filing a revision to that tariff.



## CONCLUSION

Sunspot supports the Commission's adoption of its proposed revisions to Rule 570.14.C(3). Sunspot requests that any other parties or persons that submit written comments to the Commission in this case provide electronic copies of them on the date submitted to the Commission to: Mellow Honek at mellow@ sunspotenergy.com and to its undersigned counsel at the email address provided below.

DATED: November 5, 2012.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing **Comments** by **Sunspot Solar Energy Systems LLC** was sent by electronic mail and/or hand-delivered to the individuals listed below on **November 5, 2012**.

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