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**

RESPONSE COMMENTS BY SUNSPOT SOLAR ENERGY SYSTEMS LLC

Sunspot Solar Energy Systems LLC ("Sunspot"), by and through its undersigned counsel, submits these comments in response to the initial comments submitted by El Paso Electric Co. ("EPE"), Public Service Company of New Mexico ("PNM"), the Utility Division Staff ("Staff"), the New Mexico Rural Electric Cooperative Association, Inc. ("NMRECA"), the New Mexico Attorney General's Office ("AG") and the New Mexico Industrial Energy Consumers ("NMIEC") regarding the amendments to 17.9.570.14.C(3) NMAC ("Rule 570.14.C(3)") proposed in the Commission's September 27, 2012 Notice of Proposed Rulemaking in this docket ("NOPR") concerning net-metered qualifying facilities with a rated capacity of 10 KW or less ("Small QFs").[1]

I. The Commission's Proposed Amendments to Rule 570.14.C(3) are Not Contrary to Federal Law or Commission Rule 570.10.A (2).

The initial Comments submitted by EPE and Staff argue, without any legal analysis, that the amendments to Rule 570.14.C(3), proposed in the NOPR, which apply *only* to Small QFs, are contrary to the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 824a-3 ("PURPA") and Federal Energy Regulatory Commission ("FERC") rules implementing that Act, codified in 18 C.F.R. Part 292. Those legal arguments are not supported by the plain language in PURPA, 16 U.S.C. § 824(a), the FERC

[1] For the reasons stated in Sunspot's initial Comments and here, Sunspot does not share the objection to the proposed changes to Rule 570.14.C(3) stated in the initial Comments by Lincoln Renewable Energy, LLC. Sunspot takes no position on any of the other changes to Rule 570 proposed in the NOPR at this time.

regulations implementing that Act or citation to any legal authority and therefore should be rejected by the Commission.

EPE's initial Comments (at 2-4) argue that "[u]nder the PURPA, electric utilities are required to purchase all electric energy made available by QFs." Staff's initial Comments (at 6) make the same legal argument and argue further that the Commission's proposed change to Rule 570.14.C(3) "also contradicts Section 10.A(2) [sic][2] which mandate a payment to the QF by the end of the next billing period if a 'net amount owed by a utility' at the end of a billing period is '$50 or more.'"

As provided in Rules 570.6.B and 570.14 and noted in Sunspot's initial Comments, the Commission historically has treated metering and billing for Small QF customers, most of whom are residential customers, somewhat differently than for customers that install larger QFs subject to Rule 570 by establishing distinct net metering provisions for Small QFs in Section 14 of the Rule. Staff's objection to the changes to Section 14 in the NOPR because it "contradicts" Section 10.C(2) ignores that and, as discussed below, the language in PURPA and the FERC regulations implementing that Act indicating that those federal laws do *not* require that electric utilities purchase excess energy produced by Small QFs that owners of those facilities do not wish to sell. The language in Section 10.C(2) of Rule 570 cited by Staff therefore does not support Staff's objection to the changes to Section 14.C(3) of that Rule in the NOPR.

EPE's initial Comments (at 3) acknowledge that existing Rule 570, which is intended to implement the FERC's PURPA regulations, provides utilities with "an option to roll over excess energy as a credit to the next bill" for Small QF customers, rather than pay them for purchases of such energy. However, EPE's Comments mis-characterize

[2] The language quoted in Staff's initial comments is in Section 10.C(2) of current Rule 570.

that existing option and the kWh credit requirement for Small QFs proposed in the NOPR[3] as a utility "payment" of "a retail credit," arguing that "[r]equiring utilities to pay a retail credit, rather than allowing that method at the option of the utility and subject to the Commission's review, is contrary to federal law."

To support that legal argument, EPE's Comments attempt linguistically to equate the kWh energy roll-over credit for Small QF customers addressed in the NOPR--which quite clearly and literally is *not* a "payment" by a utility for a "purchase" of excess energy--with a "payment" for such a "purchase," arguing that "[t]he proposed change *effectively compensates* customers for their excess QF energy production at full retail rates, which exceed the avoided cost rates set by the Commission, in violation of PURPA." (Emphasis added). EPE's Comments (at 4) argue further: "*In essence*, Utilities would be *required to 'purchase' energy* from a QF customer at the full retail rate (including transmission, distribution, and customer accounting and services components as well as energy and demand components),[4] rather than at the avoided cost tariff set by the Commission." (Emphasis added).

The reason for EPE's use of its "effectively compensates" and "in essence" language and EPE's placement of quotations around the word "purchase" in its above-quoted Comments is obvious. It shows that EPE understands that its legal argument is not supported by the plain meaning of the language in PURPA or the FERC's regulations implementing that Act unless EPE can show that, *as a matter of federal law,* the kWh

[3] As discussed in Sunspot's initial Comments, the changes to Rule 570.14.C (3) proposed in the NOPR would eliminate the requirement in that section of the current Rule that utilities providing a kWh credit to Small QF customers pay them for any unused credits if they leave the utility's system, thereby providing a "use it or lose it" net metering approach for Small QF customers only.

[4] EPE's comments do not explain why or show that a kWh credit to Small QF customers would include the "customer accounting and service components" and "demand components" of their rates, all or some of which may be recovered in a utility's fixed monthly "customer charges" or "demand charges" (that typically apply only to non-residential customers) and may not be avoided by a kWh credit.

energy credit for Small QF customers addressed in the NOPR constitutes a "payment" by a utility for a "purchase" excess energy from a Small QF.

In this regard, the pertinent language in PURPA in 16 U.S.C. § 824(a) provides:

> Not later than 1 year after November 9, 1978, the Commission [FERC] shall prescribe, and from time to time thereafter revise such rules as it determines necessary to encourage cogeneration and small power production, and to encourage geothermal small power production facilities of not more than 80 megawatts capacity, which rules *require electric utilities to offer to-*
>
> (1) sell electric energy to qualifying cogeneration and qualifying small power production facilities and
> (2) *purchase electric energy from such facilities.* (Emphasis added).

This statutory language plainly requires electric utilities "to offer" to purchase electric energy" from QFs. Its plain meaning does *not* require an electric utility to purchase any excess (or other) energy produced by QFs of any size, as EPE (and Staff) argues, if a QF owner does not wish to sell that energy to that utility. Nor does that statutory language require that QF owners sell excess or other energy produced by their facilities to a utility.

Consistent with that statutory language, the further provisions in PURPA in 16 U.S.C. §§ 824(b) and (d), which provide the statutory authority for the FERC's and this Commission's regulations addressing the "avoided cost"-based rates utilities may not exceed when *paying* for energy *purchased* from QFs, also contain the phrases "purchases," "offer to purchase" and "purchase," as follows:

> **(b) Rates for *purchases* by electric utilities**
>
> The rules prescribed under subsection (a) of this section shall insure that, in requiring any electric *to offer to purchase* electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such *purchase*—
> (1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and

(2) shall not discriminate against qualifying cogenerators or qualifying small power producers.

No such rule prescribed under subsection (a) of this section shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.

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(d) "incremental cost of alternative electric energy" defined

For purposes of this section, the term "incremental cost of alternative electric energy" means, with respect to electric energy *purchased* from a qualifying cogenerator or qualifying small power producer, the cost to the electric utility of the electric energy which, but for the *purchase* from such cogenerator or small power producer, such utility would generate or purchase from another source. (Emphasis added).

Consistent with the PURPA language emphasized above, the FERC's PURPA regulations in 18 C.F.R. §§ 292.302 and 292.304 addressing "Availability of electric utility system cost data" and "Rates for Purchases" likewise repeatedly refer to payments by electric utilities for "purchases" of electric energy or capacity from QFs. For example, 18 C.F.R. § 292.304(a)(2) provides: "Nothing in this subpart requires any electric utility to *pay* more than the avoided costs for *purchases*." (Emphasis added).

Requiring an electric utility to provide its Small QF customers with a kWh credit for excess energy produced by Small QFs when those customers neither invest in those facilities to sell that energy to the utility nor wish to make such a "sale" cannot be reasonably interpreted to be "payment" by a utility for energy it has "purchased." Under these circumstances, an electric utility is not "paying" a Small QF customer for anything of value provided by that customer to the utility; it is simply crediting a customer for the

value of the excess energy that customer produced for its own use from its own investment in a Small QF.[5]

Neither EPE's nor Staff's initial Comments cite any federal legal authority supporting their claims that providing Small QF customers with a kWh credit for excess energy produced by those facilities during a utility's monthly billing cycle constitutes a payment to them for a purchase of that energy by a utility. Moreover, if such kWh credits could reasonably be interpreted under federal law to constitute "payment" for purchases of excess energy, according to EPE's (and Staff's) legal argument, PURPA and the FERC's PURPA regulations would preclude the Commission from authorizing electric utilities to provide such energy credits *rather than payments* to Small QF customers, as the Commission has under existing Rule 570.14.C(3) and, as noted in Sunspot's initial Comments, PNM has been doing since 2009 pursuant to its Original Rider No. 24 ("NET METERING SERVICE" for Small QFs). Notably, neither PNM nor Southwestern Public Service Co. ("SPS") asserted similar legal claims in their initial Comments.[6]

In addition to the problems with the utility "payment" option for Small QF customers in current Rule 570.14.C(3) addressed in Sunspot's initial Comments, there is another fundamental problem with the Commission providing that option *only to electric utilities.* Doing so allows an electric utility to force a Small QF customer, against her or his will, to treat any incidental excess energy produced by a Small QF as a "sale" to and "purchase" by that utility. That is unreasonable and unfair because, as discussed in

[5] In contrast, pursuant to a utility's Commission-approved Renewable Energy Certificate ("REC") purchase program and tariffs, a utility *pays* a Small QF customer for RECs, a commodity distinct from the renewable energy with which they are associated, that it *purchases* to help it satisfy its Renewable Portfolio Standard obligations under the New Mexico Renewable Energy Act ("REA").
[6] PNM's initial comments oppose these Rule 570.14.C(3) changes on other grounds addressed below. SPS's initial comments neither addressed nor opposed those Rule changes.

Sunspot's initial Comments, Small QFs are not designed or intended to "sell" excess energy to an electric utility, but rather are designed and intended, to the extent financially feasible for a residential customer, to produce sufficient electric energy to satisfy that customer's *own* expected future *annual* energy demands.

Indeed, the charts and residential customer "average monthly consumption" and "expected average monthly generation" figures for a 3.83 kW AC solar PV system shown on pages 6-7 of EPE's Comments indicate that, *on an annual basis*, EPE would expect such a Small QF to produce approximately 2 kWhs *less* than a residential customer's average annual consumption of energy. That data confirms that excess energy produced by Small QFs in some months of the year is not intended by a Small QF customer for sale to or "purchase" by a utility. It simply results from a PV system properly designed to satisfy a customer's expected future *annual* energy demands and the combination of monthly fluctuations of kWh production from those facilities and a customer's monthly electric demands.

Sunspot submits that neither PURPA, the FERC regulations implementing that Act, the REA nor the New Mexico Public Utility Act ("PUA") require or provide a legitimate public policy basis for the Commission to authorize a public utility to *force* its Small QF customers to sell excess energy produced by their Small QFs to their utility if they do not wish to do so. If the Commission believes Small QF customers of electric utilities should have the option of electing to *sell* such excess energy to their electric utility for payment rather than receiving a kWh credit they can apply to their own energy usage in a subsequent month, the Commission can and should revise Rule 570.14.C(3) to

provide *Small QF customers* with that option. The Commission can protect electric utility customers' rights in this manner by amending Rule 570.14.C(3) as follows:

> (3) If electricity generated by the customer exceeds the electricity supplied by the grid during a billing period, **at the option of the customer**, the utility shall **either** credit the customer on the next bill for the excess kilowatt-hours generated by:
> (a) crediting or paying the customer for the net energy supplied to the utility at the utility's energy rate pursuant to this 17.9.570 NMAC, **in which case the utility shall pay the customer for any unused credits for excess kilowatt-hours generated at the utility's energy rate pursuant to 17.9.570 NMAC if the customer leaves the system**; or
> (b) crediting the customer for the net kilowatt-hours of energy supplied to the utility. Unused net kilowatt-hour credits shall be carried forward from month to month; provided that if a **customer** opts **to receive such credits**, the utility shall not be required to provide any payment to the customer for any used credits if the customer leaves the system.

II. Opponents' Intra-Rate Class Subsidy Arguments are Inappropriate in this Rulemaking Proceeding and Contrary to NMSA §§ 62-13-13.2.A and B.

EPE's, PNM's and NMRECA's initial comments also oppose Commission adoption of the changes to Rule 570.14.C(3) concerning net metering for Small QF customers on the grounds that this would create potential rate subsidies of residential customers with Small QFs by other residential customers who do not invest in those facilities because it will reduce the volume (kWhs) of sales to Small QF customers a utility relies on to recover its fixed costs of serving those customers. There are several reasons why the Commission should reject these arguments.

First, this is a rulemaking proceeding. There is no record here showing what the "fixed" costs of serving each electric utility in New Mexico's Small QF customers are, how much of those costs are being recovered by each electric utility in New Mexico through its retail kWh energy charges, rather than through its fixed monthly "customer" or "demand" charges, or whether or not the Commission's proposed changes to Rule 570.14.C(3) would *in fact* create any inter-rate class subsidies. These are factual issues

and rate design matters that the Commission historically has addressed, and should address, in individual utility ratemaking proceedings.

Second, as NMRECA notes in its initial Comments (at 3), the New Mexico Legislature established specific criteria and procedures for electric utilities and the Commission to address and follow concerning potential customer rate subsidies from utility interconnections of QFs when it enacted NMSA § 62-13-13 in 2010, amending the PUA. Sections 2.A and B of that statute addressing "INTERCONNECTED CUSTOMERS—UTILITY COST RECOVERY" provide:

> A. Upon request of an investor-owned utility *in any general rate case*, the commission shall approve interconnected customer rate riders to recover the costs of ancillary and standby services pursuant to this section only for new interconnected customers, except that a utility may seek approval of interconnected customer rate riders *in the utility's renewable energy procurement plan filing before January 1, 2011, to be in effect until the conclusion of the utility's next general rate case.* In establishing interconnected customer rate riders, the commission *shall assure that costs to be recovered through the rate riders are not duplicative of costs to be recovered in underlying rates and shall give due consideration to the reasonably determinable embedded and incremental costs of the utility to serve new interconnected customers and the reasonably determinable benefits to the utility system provided by new interconnected customers during each three-year period after which new interconnected rate riders go into effect. The benefits to the utility system, as applicable, include avoided renewable energy certificate procurement costs, reduced capital investment costs resulting from the avoidance or deferral of capital expenditure, reduced energy and capacity costs and line loss reductions.*
>
> B. In a filing made pursuant to Subsection G of Section 62-8-7 NMSA 1978, a rural electric cooperative may implement rates or rate riders by customer class, *giving due consideration to reasonably determinable costs and benefits of interconnected systems, that are specifically designed to recover from interconnected customers the fixed costs of providing electric services.* (Emphasis added).[7]

These statutory provisions make it clear that, if an investor-owned electric utility or a rural electric distribution cooperative believes its interconnection of QFs may result

[7] "Interconnected customer" and "new interconnected customer" are defined in §§ 62-13-13.2.D (2) & (3).

in future inter-customer rate subsidies, the appropriate time and place for it and the Commission to address those matters is in a utility's quasi-judicial ratemaking proceeding where *both* the costs *and* "reasonably determinable" benefits of interconnected QFs can be assessed as factual matters by the Commission—not in a generic, legislative rulemaking proceeding like this.[8] Electric utility (or other commenter) opposition to the changes to Rule 570.14.C(3) proposed in the NOPR addressing net metering of Small QFs on the grounds that it will create "the potential for" cross-subsidies between customers[9] attempts to circumvent the provisions and procedures in NMSA §§ 62-13-13.2.A and B and therefore is contrary to that statute and inappropriate. Moreover, Sunspot believes it would be contrary to Rule 570.6 and neither good public policy nor in the public interest for the Commission to continue to allow individual electric utilities to deny residential customers that invest in Small QFs the ability to retain the full kWh production benefits of those facilities by forcing them to "sell" excess energy produced by those facilities to their utility.

III. EPE's "Changed Circumstances" and "Substantial Evidence" Arguments and References to "History of Net Metering Rulemakings."

The Commission may take administrative notice in a rulemaking proceeding such as this of its records showing that the retail energy rates charged to residential customers by electric utilities in New Mexico generally have been increasing and are expected to continue to increase over time. Rising electric utility energy rates provide sufficient reason for the Commission to re-examine at this time its existing rules governing net

[8] For example, pursuant to NMSA § 62-13-13.2.A, SPS has received Commission approval of a "Distributed Generation Standby Service Rider," SPS 1st Rev. Rate No. 59.

[9] NMRECA's initial Comments (at 4) argue: "The current rule eliminates the potential for any cross-subsidies between customers."

metering for residential customers who install Small QFs to reduce their utility's charges to them for electric energy as much as possible.

EPE's Comments (at 7) argue that the Commission should not amend Rule 570.14.C(3) as proposed in the NOPR "because there is no evidence of changed circumstances that would warrant this substantive policy shift" and that "the Commission is required to have substantial evidence on the record to justify the change," citing NMSA § 62-5-14(C) and *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n,* 115 N.M. 678, 858 P.2d 54 (1993) ("*Hobbs*"). Neither of those authorities supports those EPE arguments.

This is a rulemaking proceeding which is legislative, rather than quasi-judicial, in nature. The Commission's authority to issue and modify its rules derives from NMSA § 8-8-15 and is implemented in accordance with its Rulemaking Procedures Rule, 17.1.120 NMAC. Neither of those authorities requires that the Commission have "substantial evidence on the record to justify" changing its rules prospectively.

NMSA § 62-5-14(C), a subsection of a provision in the PUA addressing "Valuation by the Commission," addresses Commission changes to "its past practices or procedures." That Section states that it applies to "any determination involving the rates or service of a utility." Reasonably interpreted *in pari materia* with NMSA § 8-8-15 and ratemaking provisions in the PUA, that statute applies to Commission determinations concerning the rates or service of an individual utility in a quasi-judicial ratemaking proceeding—not to rulemaking proceedings like this where the Commission's proposed change to its net metering policy for Small QF customers would apply prospectively to all electric utilities subject to Rule 570.

If the Commission (or the New Mexico Supreme Court) were to interpret the substantial evidence requirement in § 62-5-14(C) to apply to Commission rulemaking proceedings, which Sunspot believes neither has to date, the Commission could never change its rules without conducting evidentiary hearings in fully-litigated, quasi-judicial proceedings. That would be an absurd result. It would not only undermine the Commission's rulemaking authority, but also severely limit the ability of members of the public to participate meaningfully in Commission rulemaking proceedings.

Similarly, *Hobbs* did not address a Commission rulemaking proceeding or find that any change by the Commission to its rules must be supported by substantial evidence. *Hobbs* addressed and overturned the former Public Service Commission's attempt to require a gas utility to pay refunds to its customers under its Purchased Gas Adjustment Clause ("PGAC") based on a change to the method that agency previously had approved in "two prior PGAC continuation cases" for calculating those rates without providing any prior notice of that change to that utility.

The Supreme Court's opinion in *Hobbs* quite clearly focused on the unfairness of the "retroactive effect" the Commission's change from its past practice would have on that utility without having been afforded any prior notice of it. In contrast, EPE and the other electric utilities subject to Rule 570 were given prior notice in the NOPR of the change to Rule 570.14.C(3) proposed in this proceeding which, if adopted by the Commission, would operate prospectively—not retroactively.

EPE's Comments (at 7-11) also provide a summary of past "Net Metering Rulemaking" proceedings by the Commission to support its opposition the changes in Rule 570.14.C(3) proposed in the NOPR. As described there, however, the

Commission's primary focus in those prior proceedings was on aspects of QF net metering, such as "size limitations on net metering requirements" (Case No. 2847) and monthly versus annual "true-ups" for excess energy produced by QFs generally (No. 06-00241-UT), that were neither the same nor as narrowly focused as the NOPR's proposed changes to Rule 570.14.C(3), which would *completely eliminate any* "true-up" payments by utilities for *any* excess energy produced by Small QFs.[10] The substance and outcomes of those prior Commission rulemaking proceedings therefore do not provide a good or persuasive reason for the Commission to not adopt the specific and narrowly tailored changes to its net metering rules for Small QFs proposed in the NOPR.

IV. Additional Administrative Burden Claim in NMRECA's Comments.

EPE's Comments (at 3) acknowledge that, under current Rule 570.14.C(3), "utilities have an option to roll over excess energy as a credit to the next bill, *for administrative convenience*." (Emphasis added). Consistent with that characterization of the administrative benefit of a kWh credit, Sunspot has difficulty understanding why it would be administratively more burdensome or costly for any electric utility, including a rural electric distribution cooperative, to provide its Small QF customers with such energy credits than to have to pay those customers for excess energy produced by Small QFs on a monthly basis and when a customer terminates service with the utility.

Nevertheless, NMRECA's comments (at 2-3) assert that the Commission's proposed change to Rule 570.14.C(3) would be administratively burdensome for "many if not all" of its members because of the "tracking system" it would require them to

[10] As noted above, contrary to EPE's statement in its Comments (at 10) that in Case No. 06-00241-UT, the Commission adopted "uniform net metering provisions for all QFs that are currently found in Rule 17.9.570 NMAC," current Rules 570.6.B and 570.14 treat net metering for Small QFs somewhat differently than for QFs larger than 10 kW.

implement and because it may create "accounting problems" for them due to the Rural Utility Service's uniform system of accounting, which the cooperatives "are currently investigating." This is not a quasi-judicial proceeding in which Sunspot, other participants or the Commission can investigate or assess the substance or extent of those administrative burden claims by NMRECA on behalf of its member cooperatives. It therefore seems to Sunspot that the appropriate way for one or more of the electric distribution cooperatives to show the Commission why they should not be required to comply with the proposed change to Rule 570.14.C(3) would be a variance request pursuant to the Commission's Administrative Rules, 1.2.2.40 NMAC.

IV. Requests for "Workshops."

The initial comments by Staff, PNM, AG and NMIEC recommend that instead of addressing the Rule changes proposed in the NOPR as scheduled in the Commission's Procedural Order, the Commission should vacate that schedule and schedule "workshops" for interested stakeholders to address those changes and then report back to the Commission at some unspecified future time. For the reasons stated in its initial Comments and here, Sunspot believes the currently scheduled comment and public hearing process will provide the Commission with sufficient information for it to decide whether to adopt the narrowly-tailored changes to Rule 570.14.C(3) proposed in the NOPR without the need for any "workshops" to address those particular changes. Sunspot is concerned that, if the Commission schedules "workshops before it proceeds to address the rather narrow and straight-forward changes to Rule 570.14.C(3) proposed in the NOPR, that will impose an additional unnecessary and expensive regulatory burden

on Sunspot and other interested members of the public that have limited financial resources to address this particular Small QF metering matter.

The changes to Rule 570.14.C(3) are not interrelated with and would not be affected by any of the other changes to Rule 570 proposed in the NOPR. Sunspot therefore believes the Commission can address the changes to Rule 570.14.C(3) proposed without a workshop pursuant to its existing procedural schedule in this case even if it concludes that workshops would be helpful before it addresses the other changes to Rule 570 proposed in the NOPR,

CONCLUSION

EPE's Comments (at 9) state that, in Case No. 06-00241-UT, the "Commission concluded that annual rather than monthly true-ups had a negative cost impact and provided opportunities for QFs to 'game' the system." Sunspot did not participate in that case and does not know whether such "gaming" claims were directed at QFs generally or specifically at Small QFs, which are the focus of the changes to Rule 570.14.C(3) in the NOPR. Sunspot presumes such concerns in that case were based on the notion that annual "true-up" payments might incentivize customers to deliberately install over-sized QFs with more capacity than necessary to satisfy their expected annual energy demands in order to get paid more for excess energy produced by those facilities.

As discussed in Sunspot's initial Comments, there is no *real* financial incentive for customer to install over-sized Small QFs even if a utility pays that customer for excess energy on a monthly basis because the cost of such excess capacity simply lengthens the customer's payback period for such an investment. Nevertheless to the extent the Commission, utilities or other participants in this case continue to be concerned

about the potential for *Small* QFs to "game the system" by over-sizing those facilities, eliminating *all* monthly and end-of-service "true-up" payments for excess energy produced by them so that Small QF customers will derive no benefit from kWh production they do not use in a subsequent month, as proposed in the NOPR, will eliminate that possibility entirely. For these reasons and those discussed earlier, Sunspot urges the Commission to either adopt the changes to Rule 570.14.C(3) proposed in the NOPR or, in the alternative, revise that subsection of its net metering rule for Small QFs as proposed above to provide electric utility *customers* with the option of electing to receive a kWh carry-over credit for excess energy produced by Small QFs rather than payments for "sales" and utility "purchases" of that excess energy.

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Respectfully submitted,

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION OF A PROPOSED RULE GOVERNING CO-GENERATION AND SMALL POWER PRODUCTION	))))	**Case No. 12-00332-UT**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Response Comments by Sunspot Solar Energy Systems LLC** was sent by electronic mail and/or hand-delivered to the individuals listed below on **November 13, 2012.**

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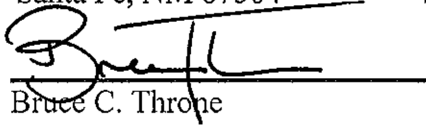

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