BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF A COMMISSION INQUIRY )
INTO PUBLIC UTILITIES CONSTRUCTING )
AND OWNING DISTRIBUTED GENERATION ) Case No. 15-00355-UT
DEDICATED TO SERVING ONE )
OR MORE RETAIL CUSTOMERS )

NOTICE OF INQUIRY

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("Commission"), on its own motion, is commencing an inquiry into whether public utilities constructing and owning distributed generation facilities that are dedicated to serving one or more specific retail customers provides net benefits or detriments to consumers, the environment, public utilities and the public interest, and whether the Commission should, as a matter of policy, encourage or discourage such arrangements.

Being duly informed,

THE COMMISSION FINDS AND CONCLUDES:

1. In Case No. 15-00185-UT, the Hearing Examiner, on September 30, 2015, issued her Recommended Decision ("RD"), which recommended that the Commission approve the application by El Paso Electric Company ("EPE") for a certificate of public convenience and necessity authorizing EPE to construct, own and operate a 5 megawatts ("MW") solar photovoltaic ("solar PV") generating plant ("the Facility") within the Holloman Air Force Base ("HAFB") in Otero County, New Mexico. The Facility is to be constructed, owned and operated by EPE, and all of the Facility’s costs would be incurred by EPE. However, the full

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cost of the Facility will be recovered by EPE from HAFB, who would be the sole purchaser of the of the Facility’s energy, under a special rate contract “for load retention purposes”. The special rate contract had not yet been finalized and will be the subject of another separate proceeding.¹

2. On October 7, 2015, the Commission issued a Final Order adopting the RD.

3. In her RD, the Hearing Examiner observed that that case raised an issue of possibly first impression before this Commission: whether a public utility should be allowed to build generation plant dedicated to a single customer’s use. She noted that, historically, utilities generally have not been allowed to do so because it could result in a public utility building generating plant with low fuel costs in order to retain an industrial or commercial customer, possibly resulting in unlawful discrimination. RD at pp. 13-14. She also raised the concern that a utility building a renewable energy facility dedicated to a specific customer could result in increasing the risk of stranded costs being borne by other customers as the result of the customer leaving the system before the cost of the dedicated facility had been fully recovered, and by the construction of the facility when the utility already has excess generating capacity on its system. RD at pp. 14-15.

4. Despite those concerns, the Hearing Examiner recommended that EPE be granted its requested CCN because, presumably, EPE’s other ratepayers would be better off by EPE building the Facility for HAFB rather than HAFB: (i) self building the Facility; or (ii) financing the Facility through a third party. RD at 15. Under the latter two scenarios, she determined, EPE would not receive any revenue from the Facility and would lose 20% of

¹ The RD recommended that the CCN issued in that case be rescinded if EPE and HAFB are unable to reach a satisfactory special rate contract and if EPE does not receive Commission approval of any such special rate contract.
HAFB’s load. In contrast, by building the Facility for HAFB, EPE would retain all of HAFB’s load and earn a return on the Facility, thus producing revenues that are available to meet EPE’s revenue requirements. Id.

5. The RD in Case No. 15-00185-UT raises a number of issues that warrant further investigation by the Commission. With the plummeting cost of solar PV and other renewable energy, it has become increasingly attractive to residential and other customers to install those facilities on their premises and at least partially leave their utility’s system. The loss of those customers’ loads can potentially cause or increase the utility’s excess capacity, which could lead to increased rates to other customers. Allowing utilities to retain those loads with arrangements that are similar to those being offered by EPE to HAFB could mitigate any such increases while at the same time fulfilling the Renewable Energy Act’s purpose of encouraging public utility use of renewable energy. See NMSA 1978, § 62-16-2. Thus, one of the issues that should be explored by the Commission is whether the Commission should adopt a policy of encouraging similar arrangements by other utilities, including the construction of facilities dedicated to one or more residential customers, and if so, the terms and conditions that should be imposed on such arrangements. With regard to residential customers, it appears that other states, such as Texas, have initiated, or are contemplating initiating, programs that allow utilities to construct solar PV on residential rooftops that are dedicated to serving that resident.

6. In order to assist the Commission in resolving those issues, the Commission is initiating this inquiry to address the following questions and matters:

A. Which states have adopted, or are considering adopting, programs that allow or encourage utilities in those states to construct and own solar PV or other forms of renewable energy (collectively, “Distributed Generation”) that are dedicated to one or more
specific retail customers, and how are those programs structured; i.e., the types of customers that are eligible to participate in those programs, how the rates charged to the customers are determined, the terms and conditions that are imposed to protect other customers against subsidization of costs and stranded costs, and any other terms and conditions that the Commission should be aware of?

B. Are utility customers generally better off having a utility build and own Distributed Generation dedicated to one more customers that would otherwise leave the utility’s system, when compared to the customer either: (i) self building the Distributed Generation; or (ii) having a third party finance the Distributed Generation? What terms and conditions should be imposed that any net benefits from having the utility build and own the Distributed Generation are in fact realized by the other customers?

C. Should wholly-owned affiliates of utilities be allowed or encouraged to build and own Distributed Generation, instead of, or in addition to, the utilities themselves?

D. Would a utility offering to construct and own Distributed Generation that is dedicated to one or more customers be able to do so at rates that would be lower than the customers’ existing regulated rates, without cross-subsidization from other customers and with a reasonable return on equity? If so, should the rates for the Distributed Generation be determined by: (i) the Commission; or (ii) by the utility with the utility being left at risk of the costs that are allocated to the Distributed Generation in a rate case being higher than the revenues generated by Distributed Generation?

E. NMSA 1978, § 62-8-6 prohibits utilities from granting any unreasonable preferences or advantage to any corporation or person within any classification or subjecting any corporation within any classification to any unreasonable prejudice or disadvantage, with the
exceptions of economic development rates or rates designed to retain load. Should § 62-8-6 be amended: (i) in such a manner that would allow utilities to offer to construct and own Distributed Generation dedicated to low-income customers that are unable to self-build or obtain third-party financing and are thus unable to leave the system; and/or (ii) to permit non-utility businesses or persons to build “solar gardens” that serve apartment buildings or communities without becoming public utilities, thus providing utilities with the opportunity to serve such customers with dedicated Distributed Generation in order to retain their load?

F. Any other relevant issues that are identified by the participants in this proceeding?

7. The Commission finds that the public interest would be served by initiating this inquiry.

IT IS THEREFORE ORDERED:

A. An Inquiry into the issues identified in Paragraph 6 of this Order is hereby commenced.

B. Public workshops shall be held at the offices of the Commission on a date and time to be determined in a future single-signature Order of the Commission.

C. Anyone wishing to submit written comments on one or more of the issues identified in Paragraph 6, or any other relevant issues, should do so within 10 days after the issuance of this Order.

D. One or more Commissioners shall preside over the workshops.

E. This proceeding shall be treated as a non-adjudicatory notice of inquiry for the purposes of NMSA 1978, § 8-8-17 and 1.2.3.1 through 1.2.311 NMAC (Ex Parte Communications.
F. This Order is effective immediately.

G. Copies of this Order shall be emailed to all persons listed on the attached Certificate of Service if their email address are known, and if not known, mailed by regular mail.
ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 18th day of November, 2015.

NEW MEXICO PUBLIC REGULATION COMMISSION

Karen L. Montoya, Chair

Lynda Lovejoy, Vice-Chair

Valerie Espinoza, Commissioner

Patrick H. Lyons, Commissioner

Sandy Jones, Commissioner

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IN THE MATTER OF A COMMISSION INQUIRY INTO PUBLIC UTILITIES CONSTRUCTING AND OWNING DISTRIBUTED GENERATION DEDICATED TO SERVING ONE OR MORE RETAIN CUSTOMERS

Case No. 15-00355-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Inquiry, issued on November 18, 2015, was sent on November 20, 2015, as indicated below, to the following:

Via Email To:

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DATED this 20th day of November, 2015.

NEW MEXICO PUBLIC REGULATION COMMISSION

Kathleen M. Segura, Law Clerk