BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE RENEWABLES STIPULATION AND PUBLIC SERVICE COMPANY OF NEW MEXICO'S REVISED 2010 RENEWABLE ENERGY PORTFOLIO PROCUREMENT PLAN,	)	
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	**Case No. 10-00037-UT**
Petitioner.	)	

FINAL ORDER PARTIALLY ADOPTING RECOMMENDED DECISION

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") upon the Recommended Decision ("RD"), issued August 3, 2010, by Hearing Examiner Anthony F. Medeiros. Having considered the Recommended Decision (attached hereto as Exhibit 1 and incorporated herein by reference) and the record in this case, and being duly informed in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. The Statement of the Case, Discussion, and all findings and conclusions contained in the Recommended Decision are hereby incorporated by reference as if fully set forth in this Final Order, and are ADOPTED, APPROVED, and ACCEPTED as Findings and Conclusions of the Commission, except to the extent expressly modified or disapproved herein.

2. In his RD, the Hearing Examiner recommends that the Commission reject the Revised 2010 Plan filed by Public Service Company of New Mexico ("PNM"). As set forth in the RD, under the Revised 2010 Plan, PNM would have satisfied the RPS requirement only if PNM's proposed 2 for 1 REC weighting for solar projects were approved by the Commission. Based on his recommendation that PNM's REC weighting proposal be rejected by the

Commission, the RD recommends that the Revised 2010 Plan also be rejected on the grounds that PNM failed to comply with the Renewable Portfolio Standard ("RPS") as required by the Renewable Energy Act ("REA"), NMSA 1978, §§ 62-16-1, et seq. and 17.9.572.1 NMAC, et seq, ("Rule 572"). RD at 149 – 150.

3. Exceptions to the RD were filed on August 11, 2010 by Western Resource Advocates and the Coalition for Clean Affordable Energy (collectively, "WRA/CCAE"), the New Mexico Attorney General ("AG"), the New Mexico Industrial Energy Consumers ("NMIEC"), Sun Edison, LLC ("SE"), Renewable Energy Industry Association ("REIA"), PNM, and the Albuquerque Bernalillo County Water Utility Authority ("ABCWUA"). Responses to Exceptions were filed on August 16, 2010 by PNM and NextEra Energy Resources, LLC ("NER").

4. On August 24, 2010, the parties gave oral argument in this case pursuant to the Order Granting Joint Request for Oral Argument on Exceptions to Recommended Decision of Hearing Examiner, issued August 19, 2010. The following counsel gave oral argument for the parties that supported the approval of the Revised 2010 Plan ("Proponents") and for the parties that opposed approval of that Plan ("Opponents"):

Proponents	Opponents
Steve Michel, counsel for WRA/CCAE	Peter J. Gould, counsel for NMIEC
Benjamin Phillips, counsel for PNM	Jeffrey S. Taylor, Assistant AG
Rebecca Dempsey, counsel for PNM	

5. This Final Order's resolution of the issues raised by this case render moot many of the Exceptions raised by the parties. For example, rather than rejecting the Revised 2010 Plan in its entirety, the Commission, in this Final Order, is instead modifying the Plan pursuant to NMSA 1978, § 62-16-4(E). Accordingly, PNM's, WRA/CCAE's, and REIA's

Exceptions to the RD's recommended rejection of the Revised 2010 Plan are rendered moot and will not be addressed by the Commission. Additionally, because the Commission is disapproving all or a portion of some of the programs proposed in the Revised 2010 Plan, the total cost to be incurred by PNM in connection with its renewable energy programs will, under any reasonable calculation of its reasonable cost threshold ("RCT"), be less than its RCT. Thus, the issues regarding the manner in which PNM has calculated the RCT have also been rendered moot and will not be addressed by the Commission. For the sake of brevity and in light of the time constraints of this case, this Final Order may not address other issues that similarly are rendered moot.

I. THE BELEN PROJECT AND THE SOLAR STORAGE PROJECT.

6. Two of the programs proposed by PNM in the Revised 2010 Plan that are not addressed in the RD, and which were not objected to by any party in their Exceptions, are:

A. PNM's proposal to include a one-time purchase of RECs from the Belen Solar Thermal Electric Project ("Belen Project") at a cost of approximately $2,980; and

B. The Solar-Storage Demonstration Project ("Demonstration Project"), which combines distributed PV generation with battery storage to create a system that would provide a dispatchable renewable resource, which PNM estimates would cost approximately $6 million and have approximately $38,000 in operational and maintenance costs per year. RD at 22.

7. In light of the *de minimis* cost of the Belen Project, the relatively low capital cost of the Demonstration Project, the benefits of being able to examine the technical and cost effectiveness of the relatively new technology underlying the Demonstration Project, and the

lack of any party objecting to either of those projects, the Commission finds that these two projects should be approved as proposed by PNM.

II. THE PNM-OWNED CUSTOMER SITED SOLAR PROGRAM ("POCS").

8. The third program by PNM is a PNM-owned, customer-sited ("POCS") solar program wherein PNM would have the option to purchase turn-key solar system projects located at customer sites that are no larger than 1.000 kW and that are offered to PNM by governmental and non-profit customers following a competitive selection process conducted by such customers. The program would extend for three years, with the total amount of capacity acquired under the program limited to 3.33 MW annually, for a total of 10 MW to be acquired.

9. As owner of the systems, PNM would receive all of the energy and associated RECs. The cost of procurements under the program would include the capital costs of acquiring the generating facilities, estimated by PNM at $58,122,042, and the customer billing credits of up to 2 cents per kWh, estimated by PNM to be about $46,800 annually per 1MW of installed capacity. Assuming PNM would acquire the full 10 MW, the annual cost of the customer billing credits would be $468,000. PNM Revised 2010 Plan, p.7.

10. Although this program is not addressed in the RD or the parties' Exceptions, the Commission nonetheless finds that this program should not be approved because the cost of the program is significantly higher than the vast majority of PNM's other existing and proposed renewable energy programs. *See* Ex. RDL-2. Indeed, according to Ex. RDL-2, the only program that is more expensive (when calculated on a $/kWh basis) than this program is the Demonstration Project, which is nearly twice as expensive as this program. However, costs of the Demonstration Project are not directly comparable because they include costs for battery storage as well as for solar electric generation. Moreover, PNM's proposed total investment in

the POCS program is estimated to be $9.7 million, which is nearly nine times greater than the $1.14 million estimated cost of the Demonstration Project. Thus, the overall cost impact of the POCS program would be much greater than the Demonstration Project. In addition, approval of the Demonstration Project will provide the industry, the parties and the Commission with valuable information concerning the technical and economic viability of this relatively new technology. PNM can satisfy its RPS requirement of no less than 1.5% DG in 2011 through 2015 with its Large and Small PV programs, without incurring the additional high cost associated with the additional acquisition of solar DG through the POCS program, as was proposed in the 2010 Revised Plan.

III. THE PROPOSED 2 FOR 1 SOLAR REC WEIGHTING ("Multiplier").

11. The REA requires that utility renewable energy portfolios "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." NMSA 1978, § 62-16-4(A)(3). Furthermore, because renewable energy sources and technologies vary by cost, dispatch flexibility, and availability, a diverse portfolio of resources is needed in order to realize the state's goals of promoting energy self-sufficiency and preservation of the environment and the state's natural resources. *See* NMSA § 62-16-2(A)(1).

12. In Case No. 07-00157-UT, *In The Matter Of Amendments To The Renewable Portfolio Standard Rules Of The New Mexico Public Regulation Commission,* this Commission expressly rejected weighted valuations in favor of specific technology-based diversity targets. As the RD correctly notes (at p. 144), the Commission found in its August 7, 2007 Final Order in that rulemaking (at pp. 17-18):

> Material of record in the present docket leads to the conclusion that percentage set-asides, but not weighting schemes, have been effectively used in other states to promote technology diversification for renewable energy portfolios. Weighted valuation of renewable energy reduces the total amount of renewable energy procured to comply with the RPS, while providing *no apparent benefits to diversity*. Weighting can have the benefit of reducing the cost of RPS compliance to utilities and ratepayers. But, while the Commission prefers lower costs to higher costs, the savings from REC weighting are *artificial*, appearing only because weighting reduces the amount of renewable energy utilities must acquire, not because it enables them to acquire renewable energy more cost-effectively.... For these reasons, the Commission finds that it should *strike* the current language in 17.9.572.14 NMAC and thereby *eliminate* the 2:1 and 3:1 valuation of certain RECs for the purpose of satisfying the RPS.

13. The Commission further found in the rulemaking that "diversity is mandated by the law and is not an option for utilities." FO at 22.

14. Everguard was not a party to the rulemaking proceeding. However, as the RD tries to point out, solar developers like Everguard, *i.e.*, those having "a financial interest in actually seeing such projects built," and "all parties with a policy preference for solar and other renewable energy development" favored the elimination of weights. RD at 144, citing Final Order, Case No. 07-00157-UT, at 16.

15. CCAE was a party in the rulemaking, and it supported the diversification requirements in the proposed rule. CCAE supported eliminating the weighted values for RECs "because this system provides inadequate and imprecise incentives." FO at 15, citing SRC at 5. It should be noted here, however, that CCAE did not believe "that the weights have discouraged large solar projects." *Id.* CCAE stated that it had no doubt that the Commission was within its authority if it elected to set diversity targets, given that diversity is identified as an appropriate goal in the REA. FO at 22, citing Tr. at 48. CCAE stated that, in order for renewable resources to displace fossil-fueled generation, the capacity value of renewables such as wind and, to a lesser extent, solar, must be improved. FO at 30.

16. The RD correctly points out that a weighting mechanism can add nothing to the actual capacity value of solar energy and, indeed, "the result would be dilution of the solar diversity requirement." *Id.* at 149. Weighting merely adds an artificial reward for the utility's investment. *See*, Case No. 07-00157-UT, Final Order at 17-18.

17. We have already spoken, and emphatically so, on the issue of weighting, and we are not persuaded by the record or the arguments in this case to depart from Rule 572 in that regard. The Hearing Examiner's response to the arguments first presented to him and now raised on Exceptions is well reasoned and need not be repeated here. For the reasons stated in the RD, the parties' Exceptions regarding the 2 for 1 multiplier are rejected by the Commission.

IV. THE SOLAR PERFORMANCE PROGRAM ("SPP").

18. The Hearing Examiner recommends that the Commission reject PNM's proposed Solar Performance Program ("SPP"), which is a three-year program that is intended to supplant PNM's existing Small and Large PV programs. One of the more controversial features of the SPP is PNM's proposal to replace net metering with a "buy all/sell all scheme". As explained in the RD, the "buy all" part of the scheme refers to the customer's purchase of all electricity at PNM's tariffed rate, whereas the "sell all" portion of the scheme refers to the fixed amount that would be credited to the customer's bill for each kWh of power produced from the customer's solar DG. RD at 23.

19. The fixed amount that will be paid to each customer depends on the size of the customer's solar system, and the amount of installed capacity that exists at the time a customer elects to participate in the SPP. For example, for solar systems sized up to 100 kW, the credit is 26 cents/kWh, until program participation by customers with systems sized up to 100 kW exceeds 1.8 MW of installed capacity; then the credit for all subsequently accepted applications

is reduced by 2 cents/kWh, or to 24 cents/kWh. After each successive 1.8 MW, the credit for all subsequently accepted applications is reduced by an additional 2 cents/kWh until the credit reaches 16 cents/kWh, at which time it remains at that level for all subsequent customers. PNM proposes varying initial fixed credits for systems sized from 100 kW to 250 kw, 250 kW up to 1,000 kW, and for systems sized at 1 MW or greater. In all cases, the amount of the fixed credits is reduced by 2 cents/kWh to new customers once the total rated capacities of solar systems participating in the program reaches a specified level, until the credit reaches 16 cents/kWh. Once the 16 cent/kWh level is reached, the credit remains at that level and thus is essentially a "floor price". RD at 25.

20. Additionally, applicants with systems at capacity levels above the 100 kW level may propose credit reductions of 2 cents/kWh or 4 cents/kWh, provided that such proposals will not result in a credit amount less than 16 cents/kWh. RD at 25. This feature is referred to by some parties as a "bid down".

21. It is estimated that the SPP will result in the installation of 24 MW of customer-sited distributed generation ("DG") over the next three years at a total cost, over the life of all program contracts, of approximately $102 million, on a net present basis. Expenditures by PNM for the SPP would be limited by the amounts available under the renewable cost threshold ("RCT"), which are calculated by deducting the cost of all approved renewable energy procurements other than the cost of the SPP from the amount available under the RCT.

22. The Hearing Examiner faults the SPP particularly with regard to the proposed replacement of net metering, which the Hearing Examiner describes as a "proven and successful" model, with an "untested prototype which would, by virtue of its buy all/sell all structure, . . .take away a primary reason customers install solar PV systems and facilities. RD at 157. That

primary reason, the Hearing Examiner determined, is the hedge value provided by a solar system against possible future increases in PNM's rates. RD at 158. He further observes that as many as 45 or more states presently have net metering programs and apparently not a single state has ever terminated one. *Id.* On the other hand, the SPP, which was developed without independent analysis or market research, would be the first of its kind. *Id.*

23. The Hearing Examiner further raised the following additional concerns:

A. The SPP is a fundament of a plan that will cost a minimum of approximately $373 million, with a revenue requirement estimated by PNM to be between $30 to $40 million and an increase in retail rates of at least 3% to 5% in 201. RD at 156.

B. Rule 572 requires each public utility to purchase an amount of renewable energy DG equal to 1.5% of the utility's adjusted retail sales each year during the period 2011 through 2014. Under the SPP, PNM has committed itself to purchase, without the 2 for 1 multiplier, an amount of solar DG equal to approximately 8% of retail sales in 2011, and 12% of retail sales in 2012 to 2014. RD at 156-157. Because solar DG is relatively expensive when compared with other possible alternative DG technologies, approval of the SPP would result in PNM's ratepayers absorbing excessive costs associated with buying more DG than required by Rule 572 for the apparent sake of fulfilling the terms of the Stipulation filed with its Revised 2010 Plan. *Id.*

C. The 16 cent/kWh price, which is intended to give in-state developers protection from competition from large integrated firms, should be balanced against the concern that ratepayers not be required to pay more than reasonably necessary in rates to satisfy the objectives of the REA and Rule 572. RD at 168. In the words of the Hearing Examiner, "it would be unfair, unjust and unreasonable to run the risk of erecting a barrier to competition that

has the effect of requiring ratepayers at large to absorb more costs in rates than necessary to incent production of actual solar energy in the state." RD at 169.

24. The Hearing Examiner concludes by stating that "what can be said with a high degree of certainty in this proceeding is that the stipulating parties have not made a persuasive case for elimination of the Small and Large PV programs on record at this time." RD at 164.

25. In its Exceptions, WRA/CCAE defends the buy all/sell all feature of the SPP by asserting that it functions as a proxy for the market and allows prices to be set initially at a level that attracts participation, but quickly ratchets downward in response to sufficient participation. This helps ensure that PNM does not pay more than is necessary to acquire solar DG resources. WRA/CCAE Exceptions at 18. WRA/CCAE also argue that the SPP's "bid down", which allows customers to jump ahead of the queue by offering a discount in the amount they would be paid in two cent/kWh increments, serves as an additional check on SPP pricing. *Id.*

26. WRA/CCAE further asserts that the 16 cent/kWh floor should make no difference in the competitiveness of the SPP's pricing over the three-year term of the program, and was designed to approximate the use of a utility-sited solar PV facility. WRA/CCAE Exceptions at 19. They further point out that every witness that testified on the subject agreed that the floor was not likely to be a price constraint during the three years of the SPP. WRA/CCAE Exceptions.

27. WRA/CCAE also excepts to the Hearing Examiner's determination that the SPP improperly proposes that PNM purchase more DG resources than necessary leading to excessive costs. CCAE/WRA Exceptions at 20. While not addressing the cost of solar DG relative to other DG technologies, such as wind, WRA/CCAE argues that Rule 572's requirement that

utilities have "no less than" 1.5% of DG is not a cap, and does not bar PNM from seeking to include more DG resources than the required minimum of 1.5%. *Id.*

28. WRA/CCAE disputes PNM's $35 estimate of the lost fixed cost recovery attributable to solar DG, but nonetheless contends that net metering would spark difficult and extensive litigation over the right number each year. The SPP, it contends, would avoid that issue altogether by having the DG customer essentially continue to buy its electricity from PNM. If net metering were continued, the lost fixed costs would be recovered by a potentially substantial access fee imposed on the DG customer, or passed on to the general body of ratepayers.

29. WRA/CCAE also essentially argues that net metering will not provide an effective hedge against rate increases if PNM is allowed to impose an access fee on DG customers. The SPP also provides more appropriate compensation than net metering because the SPP specifically credits DG customers with the present value of future gas savings. WRA/CCAE Exceptions at 22.

30. In its Exceptions, PNM joins in WRA/CCAE's exceptions with respect to the Hearing Examiner's recommended rejection of the SPP. PNM Exceptions at 16. PNM also argues that the Small and Large PV programs are more expensive than the SPP and will result in procurements of even more DG than the SPP. Consequently, PNM contends, if the Commission finds that the SPP should be rejected because it is too expensive and will provide too much higher priced DG than required by Rule 572, those grounds would equally justify the termination of the Small and Large PG programs. *Id.*

31. Upon review of the record and the arguments of the parties, the Commission agrees with the majority of the Hearing Examiner's concerns regarding the SPP and its proposed

buy all/sell all scheme. First, the Commission agrees with the Hearing Examiner's observation that the cross-subsidization alleged by PNM is to a certain extent overstated. As stated by the Hearing Examiner, using PNM's own estimates, the unrecovered fixed cost from an average net-metered residential customer is approximately $35 per month. Assuming 700 customers in the Small PV program, the revenue shift would be approximately $294,000 per year, which is relatively insignificant when compared to the Revised 2010 Plan's estimated cost of at least $370 million. RD at 159. Although that amount may grow to levels that may require some modifications to the net metering program, it certainly is not so large as to justify the wholesale rejection of net metering proposed by PNM, or the adoption of an untested significant departure from net metering such as PNM's buy all/sell all scheme.

32. The Commission also agrees with the Hearing Examiner that the stipulating parties have failed to present any evidence or arguments that would justify approval of the proposed 16 cent/kWh price floor. The primary justification offered by WRA/CCAE for that price floor is that it would likely not be reached during the three-term of the SPP. If that is correct, then the price floor serves no purpose and would not achieve its ostensible purpose of protecting New Mexico solar developers from competition from integrated companies. If, on the other hand, the SPP were to generate sufficient participation from customers to a level that would suggest that the fixed credit offered to new participants should be less than 16 cents/kWh, none of the parties dispute the Hearing Examiner's determination that the 16 cent/kWh floor would under those circumstances result in ratepayers paying rates higher than necessary to incent production of actual solar energy in the state.

33. Although the Commission further agrees that the existing Small and Large PV programs and net metering should not be jettisoned at this time, the Commission is persuaded by

the record of this case that those programs should be modified to reflect a more market-oriented approach similar to the one recommended by SunEdison through its witness, Rick Gilliam. In addition to obtaining the generally recognized benefits attendant to flexible demand-responsive pricing schemes, the Commission is also motivated by the evidence showing that the existing REC payments of 13 cents for small PV and 15 cents for Large PV may be higher than necessary. The Hearing Examiner notes, for example, that the record evidence suggests that both the Small and Large PV programs may be "overheating." RD at 168, n. 290. He supports that observation with testimony in this case showing that there were 131 applicants in the Small PV queue and 37 applicants in the Large PV queue. *Id.* The Hearing Examiner's observation is also supported by the fact that the power supplied by Small DG capacity interconnected to PNM's system increased from 89,739 kWh January 2009 to 221,828 kWh in December 2009, and that the amount of power generated from Large DG capacity interconnected to PNM's system increased from 0 kWh in January 2009 to 22,880 kWh in September 2009. Ex. RDL-5 at 2. Taken together, the record in this case shows that the current pricing scheme for DG RECs is higher than necessary, and that the adoption of a more market- responsive scheme will help to ensure that the price of RECs for DG will stay more in line with the market in the future.

34. Although the conceptual underpinnings of Mr. Gilliam's proposal have merit, the Commission finds that his approach should be modified. First, the tranche sizes he proposes (which also reflect the SPP's proposed tranches) should be reduced so that they decline more rapidly than proposed by Mr. Gilliam. Thus, for example, the tranche size for systems with capacities of between 0 and 10 kW would be sized at 0.45 MW. The use of smaller tranches results in REC payments that are more responsive to demand than Mr. Gilliam's proposal, and provide additional safeguards against the level of REC payments for any particular tranche being

higher than necessary. In other words, if the REC payment of a tranche is too high, the amount of solar capacity that would be paid for at that level would be limited, for example, to 0.45 MW for the smaller systems. The size of the tranches, along with the declining REC payments associated with each tranche and other parameters of this modified approach, are shown on Exhibit 2 to this Final Order.

35. In further response to the evidence showing that the existing REC payments may be higher than necessary, the Commission finds that it should reduce the maximum REC payments for systems of 10 kW or less (which are currently defined as "Small PV") from the current 13 cents/kWh to 12 cents/kWh. Consistent with Mr. Gilliam's and PNM's general approach, the REC (or incentive) payments would decline by 1 cent/kWh once each succeeding tranche is filled.

36. With regard to the systems that are larger than 10 kW, we note that PNM's proposed SPP incentive payments that, with the exception of systems with capacities greater than 10 kW to 100 kW, were less than the proposed incentive payments that were to be made for Small PV systems. PNM had proposed SPP incentive payments for systems falling within the 10 kW to 100 kW category that were the same as its proposed payments for the 0 to 10 kW systems. Overall, however, PNM's proposed payment scheme appropriately reflects the larger solar systems' economies of scale; i.e., the per kWh cost of larger solar systems should, in general, be lower than the per kWh cost of smaller solar systems.[1] Thus, rather than approve the same maximum REC (or incentive) payment for all systems larger than 10 kW, as proposed by Mr. Gilliam, the Commission finds that those maximum REC payments should decline as the size of

[1] The one caveat to the foregoing observation is that, despite the current lower REC payment being made to owners of Small PV systems, a substantial amount of Small PV capacity has nonetheless been interconnected to PNM's system. This evidence suggests that the owners of Small PV systems, which are predominantly residential customers, require less of a financial incentive to install solar systems than commercial customers.

the solar systems increases. Consistent with that finding, and as shown in Exhibit 2, the maximum REC payment for systems that are greater than 10 kW but less than 100 kWh is equal to Mr. Gilliam's proposed 14 cent/kWh rate, but the maximum REC payment for subsequent category of solar systems is reduced by one cent/kWh for each subsequent category of solar system.

37. In having the payment rate decline by 1 cent/kWh, rather than 2 cents for each tranche in the systems of 250 kW and smaller, the Commission intends to provide a smoother transition as each tranche is filled. Because there are now two payment steps between tranches, the tranche sizes are not directly comparable to the tranche sizes in the SPP or the Gilliam proposal. E.g., two 1-cent 0.45 MW tranches are equivalent in size to a single 2-cent tranche of 0.9 MW, which is now comparable to the 1.8 MW 2-cent tranche in the SPP.

38. It should be observed that Exhibit 2 contains information in addition to the size categories, tranche size, and REC (or incentive) price for each category and tranche. The other information (which includes, but is not limited to the assumed capacity factor, estimated number of systems, estimated annual kWh and "step cost" are provided for illustrative purposes only, and do not reflect or show any determination by the Commission that these other pieces of information, estimates or assumptions are accurate or should be used by PNM or any other party in any proceeding, including this one.

39. The Commission intends that the "bid-down" provisions for larger sized systems, and other mechanical provisions from the SPP that address participation in the tranches be used under the solar REC incentive programs approved herein, to the extent they are not inconsistent with the approved programs.

40. Although the REC prices in the last tranches shown in Exhibit 2 are relatively low when compared with the current 13 cent and 15 cent prices for Small and Large PV systems, the Commission recognizes the possibility that even these prices may be overtaken by the market, such as further increases in PNM's retail rates, rapid declines in the cost of solar systems, significant improvements in the efficiencies of solar systems, or some combination of the foregoing. In light of that possibility, and to avoid the concerns raised by PNM's proposed 16 cent/kWh floor, the Commission is limiting the life of the new market-responsive pricing scheme with respect to each solar system size category to the MW's of capacity shown for the category shown on Exhibit 2. For example, once the total amount of solar systems with capacities of between less than 10 kW that is added under this new pricing scheme equals 3.15 MW, PNM will not be able to enter into any further agreements with new DG customers with solar systems falling within that category without further authorization from the Commission. However, PNM will continue to be able to enter into new agreements with owners of solar systems with capacities of, for example, more than 100 kW to 250 kW until such time as the total MW of such systems added under the new pricing scheme equals 4.48 MW.

41. Because the new pricing scheme will end when the specified MW maximums are reached, PNM should be required to provide a written notice to the Commission, Staff and the parties to this case that the cumulative number of MWs of DG systems participating in this revised program has reached the cumulative MW for the next-to-the-last tranche for any category of DG. In other words, PNM would be required to provide that notice once the cumulative amount of systems with capacities of less than 10 kW that have been added under this new pricing scheme reaches 2.7 MW. PNM should provide that notice as soon as practicable, but in any event, by no later than ten days after that cumulative number of MWs has been achieved.

Within 45 days after PNM has provided the required notice, PNM shall, and any interested party may, file proposals with the Commission regarding whether and under what terms and conditions the program should be continued. If PNM has reason to believe based on actual participation trends in a particular program that waiting until the next-to-the-last tranche has been consumed will not provide sufficient time for the Commission to take appropriate action as described herein, the company shall provide sooner notice.

42. The Commission further finds that Small and Large PV programs should further be modified with respect to the types of solar systems that would be eligible to receive the REC payments being approved by this Final Order. While not specifically addressed by the RD or the parties in this case, among the many differences between the SPP and the existing Small and Large PV programs is that the latter two programs are limited to solar PV systems, while the SPP includes both solar PV and solar electric thermal systems. Based upon the record in this case, the Commission concludes that there is little or no reason to encourage and support the development of solar electric thermal any less than the encouragement and support that is given to solar PV by the Small and Large PV programs. Thus, in addition to the above modifications to the REC payments, the Small and Large PV programs should be expanded to include solar electric thermal systems, with owners of those systems being entitled to the same benefits as owners of small and large PV systems. Further, in light of that expansion and the subdivision into multiple system size groupings, the Small and Large PV programs should be renamed as the Solar REC Incentive Program.

43. As a general rule, the new REC payments shall be applicable to all owners that have entered into agreements with PNM for the purchase of their REC on and after the effective date of this Final Order. However, as reflected in the record of this case and updated by PNM's

Response ("BRO Response") to a Bench Request Order issued August 27, 2010, there are a substantial amount of applications that were filed by customers with PNM proposing to interconnect solar systems with PNM, but which were not approved or acted upon by PNM as of August 27, 2010. Among other matters, PNM's BRO Response shows that as of that date, there were 203 pending applications from owners of solar systems with capacities of 10 kW or less totaling 844 kW DC, and six applications proposing to interconnect solar facilities with capacities of 1 MW or more that had a combined total capacity of approximately 6.7 MW.

44. Notwithstanding the foregoing general rule, the Commission will automatically grandfather the 203 pending applications for solar systems with capacities of 10 kW or less, insofar as grandfathering those applications will not materially increase the REC costs to be borne by ratepayers. The Commission will also permit the applicants of the remaining pending applications to submit individual requests to the Commission, by no later than 60 days after the applicant is sent the notice by PNM as provided below, to be "grandfathered" on a case-by-case basis from the new REC payments, and to instead be paid the 15 cent/kWh REC payments previously provided under the Large PV Program. The Commission will grandfather those applicants that show that they reasonably and detrimentally relied upon the 15 cent REC payment amount under the Small and Large PV Programs. In determining whether an applicant has satisfied that requirement, the Commission will examine: (A) The amount of money the applicant has already spent on its proposed solar facility and whether such investment was a pre-requisite to filing its interconnection application with PNM; (B) Whether they submitted their applications to PNM before the applicant received or is deemed to have received notice of the filing of PNM's Revised 2010 Plan in the Albuquerque Journal on April 1, 2010, or received such notice in the mail or email from PNM, whichever was earlier; and (C) Any other matter that

the Applicant believes would justify their receiving the existing 15 cent/kWh REC price. To ensure that these applicants are aware of their opportunity to request grandfathered status, PNM shall be required to notify those applicants of their right to do so, the deadline for the filing of their request, and what they will be required to show to be entitled to receive that REC price as provided in this Final Order.

45. For those applicants of the pending applications that do not seek or are not granted grandfathered status, PNM shall pay those applicants a REC price determined on the basis of when those pending applications were determined to be complete by PNM. Thus, for example, PNM would pay the first applicant for a 1 MW solar facility a REC price of 12 cents/kWh until such time as the total amount of interconnected capacity of 1 MW solar facilities added under the revised program equals 2 MW. If, however, the first applicant's solar facility has a capacity of 1.5 MW, and second applicant's solar facility has a capacity of 1.5 MW, the second facility would be paid a weighted REC price that would be equal to one-third of 12 cents/kWh (or 4 cents/kWh) plus two-thirds of 11 cents (7.33 cents/kWh), or 11.33 cents/kWh.

46. With regard to WRA/CCAE's arguments regarding the potential impact of PNM's proposed access fee on the Small and Large PV program, PNM has proposed in its pending rate case, Case No. 10-00086-UT, an access fee of approximately 8.8 cents/kWh on net metered residential customers, and access fees of approximately 2.6 cents/kWh and 2.2 cents/kWh on certain net metered larger customers and universities. Because that rate case is in its early stages, the Commission will not make any final determination as to whether or the extent to which it should approve PNM's proposed access fees. Until the Commission makes that determination, it would be premature for the Commission to make any determination of the potential impact that access fee may have on the incentives of PNM to participate in the Small

and Large PV programs, or whether the Commission should revise the REC payment amounts being approved in this Final Order. The Commission may, either on its own motion or at the request of an interested party, re-examine those issues after it issues its final order in Case No. 10-00086-UT, or in conjunction with that order.

V. THE PNM-OWNED UTILITY SITED SOLAR PROGRAM ("POSP").

47. Among the five procurements featured in the Revised 2010 Plan is the procurement referred to and described in the RD, at 22, ¶ 4 as follows:

> PNM-Owned Utility Sited Solar Program [("POSP")]. In this program, PNM proposes to install 45 MW of solar PV consisting of multiple individual projects ranging in size from 2 MW up to 6 MW at various sites throughout its service territory. PNM estimates that total capital costs for an initial 22 MW of this capacity to be over $101 million and the total capital costs for the entire 45 MW is estimated to be over $205 million. Initial O&M costs are estimated at $24 thousand per MW per year.

48. Additional detail is provided at p. 28 of the RD:

> PNM is proposing to install, own and operate approximately 45 MW of solar PV generation facilities consisting of multiple individual projects of 2 to 6 MW on PNM-owned land at various sites throughout PNM's service area. Each project will use fixed tilt, thin-film PV panels installed in large arrays (or solar fields) with a common block size of 1 MW.[2] The solar panels will be supplied and constructed on PNM sites by First Solar LLC ("First Solar").[3] PNM witness Keith Nix, PNM's Director for Utility Operations Projects, said that fixed tilt panels are secured at a fixed angle facing the path of the sun and do not move to track the sun as it crosses the sky so they gather less sunlight than tracking panels, but they have no moving parts and are, according to Mr. Nix [Keith C. Nix, a witness for PNM], less expensive to install and maintain.[4]

49. PNM witness Cynthia Bothwell, PNM's Manager for Integrated Resource Planning ("IRP"), testified that PNM determined that 45 MW of solar PV facilities, combined with the REC multiplier, will generate the amount of solar energy required to meet the solar

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2 PNM Ex. 6 (Nix Direct) at 5.

3 *Id.* at 11; PNM Ex. 7 (Nix. Reb.) at 11-12.

4 PNM Ex. 6 (Nix Dir.) at 5-6 (additional information regarding the technology is provided there as well).

diversity requirement of Rule 572. RD at 31, citing PNM Ex. 4 (Bothwell Reb.) at 15. (Elsewhere in this Order, we reject the REC multiplier.)

50. The REA does not require, as the Attorney General urges us to find, that only least-cost resources may result in approved rates. The RD is correct in observing, "In adopting the REA, the Legislature clearly understood that the inclusion of renewables into the generation portfolios of the State's investor owned utilities would be more expensive than traditional options. §§ 62-16-2(A)(5) & (B)(3). For this reason, the Legislature stated that utilities would not be required to procure renewables 'that could result in costs above a reasonable cost threshold.' " RD at 73, citing § 62-16-2(A)(5). As acknowledged by the AG's witness, James Cotton, the very purpose of the RCT is to establish an affordability criterion for retail rates. *See,* RD at 73-74.

51. The RD states that the option here under discussion would be much more expensive than solar DG. RD at 147. The proposed 45 MW of company owned PV are indeed expensive to rates in the short-term because they would be ratebased. As the record points out, there are benefits as well as disadvantages to company-owned renewables. The RD tracks two parallel procurement processes: one involving requests for proposals ("RFPs") for "turnkey" projects, the other a "self-build" option with First Solar for Company-owned and sited facilities.[5] RD at 29. PNM has claimed that First Solar's pricing for the solar panels and construction of the project was the most cost-effective for use in the self-build option. RD at 30, citing PNM Ex. 7 (Nix Reb.) at 6 and Ex. KCN-R5.

52. We are encouraged by testimony that, although they are presumably somewhat less efficient than tracking panels, the fixed-tilt panels proposed for use in this project are less

[5] The RD further notes that the procurement process through which PNM reached the decision to pursue the self-build option is a point of serious contention in this case. *Id.* at 29.

expensive to install and maintain. *See*, PNM Ex. 6 (Nix Dir.) at 5-6. We are also encouraged by testimony that the pricing for the solar panels and construction of this project was the most cost-effective for use in the self-build option (see above), and that the Plan takes advantage of a decline in PV panel costs that had occurred up to December 2009. RD at 31, citing PNM Initial Brief at 10; PNM Ex. 7 (Nix Reb.) at 7-8.

53. Still, the parties have raised a number of concerns regarding the process used by PNM in entering into its agreement with First Energy. Although we share some of those concerns, the Commission must balance those concerns with the legislatively declared public interest in deploying and implementing diverse portfolio of renewable energy. *See,* REA at NMSA 1978, § 62-16-2; § 62-16-4(A)(3). The Commission must also carefully balance those concerns with the economic benefits to the State, such as increased employment, increased tax revenues, and, of course, reduced greenhouse gas emissions, that would result from approving at least part of the solar projects at this time, rather than delaying the commencement of these or similar programs by at least a year by rejecting this program in its entirety.

54. After carefully weighing and balancing those concerns, the Commission finds that it should approve the first 22 MW proposed under the PNM-Owned Utility Sited Solar Program ("POSP"). In so doing, we shall expect the same assumptions described as pertaining to that approach to apply to the 22 MW phase of this project the same as they would for the total 45 MW. For example, we expect that PNM will be responsible for site evaluation, selection and acquisition, as well as acquiring any necessary site permits. In addition, we assume that PNM will be responsible for site preparation, including grading, fencing, access, etc. in advance of equipment installation. First Solar would be responsible under its contract with PNM for constructing and commissioning each solar field. PNM will be responsible for construction of

the interconnection facilities that allow the electrical output to flow onto the grid. *See* RD at 29, citing PNM Ex. 6 (Nix Dir.) at 10; *see also*, RD at 30, citing PNM Ex. 6 (Nix Dir.) at 14-15.

55. PNM testified, and the Commission expects, that the total installed cost for the 22 MW project, including land acquisition costs, development costs, construction costs, corporate overhead, carrying costs, and other miscellaneous costs, will not exceed $101,696,689. Nix Dir. at 18.

56. PNM witness Nix indicated that, if the entire 45 MW were approved, construction of all project components would be completed by the end of the first quarter in 2012, with approximately 5-12 MW constructed each quarter. RD at 31, PNM Exceptions at 31. However, we are only authorizing construction of the initial 22 MW proposed under the Plan. It is reasonable to expect, therefore, some acceleration in the completion date. The 22 MW build out should be completed not later than the end of the third quarter of 2011. Moreover, PNM should be required to report to the Commission on a quarterly basis, with copies served on the parties to this case, the extent to which it has completed the various actions required to construct and interconnect the 22 MW of solar facilities approved pursuant to this Order.

57. The 22 MW POSP project as submitted is approved for implementation by the end of the third quarter of 2011, subject to the quarterly reporting requirements set out in this Section. We reserve for future decision in an appropriate case whether to approve any similar PNM-owned utility sited solar program, provided, of course, that PNM demonstrates that its proposed price is the lowest reasonable cost.

58. Because of his recommendation that the POSP be rejected in its entirety, the Hearing Examiner did not address the issue of whether PNM should be granted one or more certificates of public convenience and necessity ("CCNs") pursuant to NMSA 1978, § 62-9-1 in

connection with the construction and operation of the solar systems that were to be acquired under the Program. Because the Commission is approving the first 22 MW of solar proposed under the Program, the Commission should address and resolve that issue in this Final Order.

59. Section 62-9-1 provides:

> No public utility shall begin the construction or operation of any public utility plant or system or of any extension of any plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation.

Under the plain provisions of Section 62-9-1, the issue of whether a CCN should be issued turns on whether the construction and operation of the proposed solar facilities are in the "public convenience and necessity".

60. In its Exceptions, PNM asserts that the Legislature, by the enactment of the REA, has made the public policy determination that the public convenience and necessity are served by the acquisition of renewable resources that are required by that Act. PNM Exceptions at 32. According to PNM, the determination whether the public convenience and necessity will be served will not depend on whether PNM needs the capacity, but on whether the proposed acquisition of solar facilities will enable PNM to satisfy its obligations under the REA and Rule 572.

61. PNM further rebuts Staff's contentions, which were raised before the Hearing Examiner but were not filed in any Exceptions to the RD, that separate CCN proceedings be conducted on each solar projected to be constructed under the POSP. PNM argues that requiring separate CCN proceedings, with each taking 9 to 15 months to complete, would: (A) make it impossible to complete its proposed projects by the then-projected deadline of the first quarter of 2012; (B) jeopardize PNM's ability to meet the overall RPS for 2011 and solar diversity

requirements for 2010; and in general, (C) handicap the utilities' ability to timely comply with the statutory RPS requirements. PNM Exceptions at 31.

62. PNM finally objects to Staff's list of information and studies that, according to Staff, must be conducted before a CCN is issued. Among the information that Staff contended should be required was information concerning the specific cost information for the facilities being proposed, environmental, cultural and ecological impact studies, and a demonstration that no valid public opposition to the project exits. Sidler Direct at 10. PNM argues that Staff could not identify any Commission orders that required the submission of Staff's proposed information, and agreed that no Commission rule or order requires environmental, cultural or ecological impact studies before a CCN can be granted for a facility. PNM Exceptions at 31. Nonetheless, PNM acknowledged that the Commission could condition the CCN to require PNM to obtain all necessary permits and to comply with all applicable environmental requirements. PNM Exceptions at 31-32.

63. The Commission agrees with PNM's assertion that the construction and operation of those facilities by PNM will enable it to comply, or at least partially comply, with the RPS and diversity requirements of the REA and Rule 572, and thus will be in the public convenience and necessity. With regard to Staff's concern regarding cost, PNM has unequivocally stated that the total cost of the authorized 22 MW of solar capacity will not exceed $101,696,689. If the actual costs of those projects exceed that amount, the excess shall be subject to the Commission's Cost Overrun Rule, 17.3.580.1 NMAC, *et seq.* In response to Staff's remaining concerns, the Commission is issuing the requested CCN for the first 22 MW of solar capacity approved by this Final Order, but subject to the following conditions:

A. Prior to the commencement of construction of any discrete solar project, PNM shall obtain all necessary permits and shall comply with all environmental requirements applicable to such project; and

B. Not less than 30 days prior to acquiring the land for the solar project, or if such land has already been acquired as of the date of this Final Order, not less than 30 days before commencing the construction of the solar project to be located on the acquired land, cause public notice to be issued in a newspaper of general circulation serving the area surrounding the solar project, with such notice to contain the exact location and description of the solar project, and the following statement:

> Within 15 days from the publication date of this Public Notice, any person objecting to the construction or operation of this proposed solar may file a protest to the Commission setting forth the persons objections. All such protests should reference Case No. 10-00037-UT and be addressed to Ronald Montoya, Records Bureau Chief, Records Division, New Mexico Public Regulation Commission, P.O. Box 1269, Santa Fe, NM 87504-1269.

An Affidavit confirming the publication of the public notice should be filed with the Commission by no later than 3 days after the publication. In the event the protest is not resolved informally by PNM or by an Order of the Commission within 30 days after the public notice is issued, PNM shall not commence construction of the solar project until further order of the Commission.

64. In light of the foregoing conditions, requiring PNM to file separate CCN applications with respect to each solar facility would likely serve no valid regulatory purpose other than to delay the completion of the solar projects, and make it more difficult for PNM to meet the RPS and diversity requirements of the REA and Rule 572.

VI. COMPLIANCE FILING.

65. In light of the modifications made to the Revised 2010 Plan and the Small and Large PV program required by this Final Order, PNM shall file, within 20 days from the date of this Order, a compliance filing stating whether PNM will comply with its overall RPS requirement for 2011 and if not, the amount (in kWh) that PNM will fall short of that requirement assuming that: (A) Any new renewable energy procurement programs proposed by PNM in Case No. 10-00199-UT are approved; and (B) Any new renewable energy procurement programs proposed in Case No. 10-00199-UT are disapproved.

66. The Commission has jurisdiction over the parties and the subject matter of this case.

67. Due and proper notice of this case has been provided.

IT IS THEREFORE ORDERED:

A. Except to the extent expressly modified or disapproved herein, the Orders contained in the Recommended Decision as set forth in Exhibit 1 are incorporated by reference as if fully set forth herein and are ADOPTED, APPROVED and ACCEPTED as Orders of the Commission.

B. Except to the extent expressly modified or disapproved herein, the Recommended Decision is ADOPTED, APPROVED and ACCEPTED by the Commission.

C. This Final Order (without the Recommended Decision) shall be served on all parties on the attached Certificate of Service via email if their email addresses are known, and if not known, via regular mail. The Recommended Decision shall not be served due to its length and because a copy of the Recommended Decision has already been served upon the parties to this case.

D. This Final Order is effective immediately.

E. This Docket is closed.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 31ST day of August, 2010.

NEW MEXICO PUBLIC REGULATION COMMISSION

DAVID W. KING, CHAIRMAN

JEROME D. BLOCK, VICE CHAIRMAN

JASON A. MARKS, COMMISSIONER

THERESA BECENTI-AGUILAR, COMMISSIONER

SANDY JONES, COMMISSIONER

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE RENEWABLES STIPULATION AND PUBLIC SERVICE COMPANY OF NEW MEXICO'S REVISED 2010 RENEWABLE ENERGY PORTFOLIO PROCUREMENT PLAN	)	
	)	**Case No. 10-00037-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
Petitioner.	)	

RECOMMENDED DECISION

August 3, 2010

CASE NO. 10-00037-UT
FINAL ORDER
EXHIBIT 2

Approved Incentive Program for Net-Metered Customers with PV Systems

Program Category Avg Size	Step Size In MW	Est # of Systems *	Cumulative MW	Incentive REC Rate/kwh	Est. Annual kwh *	Step Cost *
Small PV 0 to 10 KW						
	0.45	180	0.45	$0.120	1,024,920	$122,990
	0.45	180	0.90	$0.110	1,024,920	$112,741
	0.45	180	1.35	$0.100	1,024,920	$102,492
	0.45	180	1.80	$0.090	1,024,920	$92,243
	0.45	180	2.25	$0.080	1,024,920	$81,994
	0.45	180	2.70	$0.070	1,024,920	$71,744
	0.45	180	3.15	$0.060	1,024,920	$61,495
>10 kw to 100 kw						
	0.45	9	0.45	$0.140	1,024,920	$143,489
	0.45	9	0.90	$0.130	1,024,920	$133,240
	0.45	9	1.35	$0.120	1,024,920	$122,990
	0.45	9	1.80	$0.110	1,024,920	$112,741
	0.45	9	2.25	$0.100	1,024,920	$102,492
	0.45	9	2.70	$0.090	1,024,920	$92,243
	0.45	9	3.15	$0.080	1,024,920	$81,994
	0.45	9	3.60	$0.070	1,024,920	$71,744
	0.45	9	4.05	$0.060	1,024,920	$61,495
>100kw to 250 kw						
	0.56	4	0.56	$0.130	1,275,456	$165,809
	0.56	4	1.12	$0.120	1,275,456	$153,055
	0.56	4	1.68	$0.110	1,275,456	$140,300
	0.56	4	2.24	$0.100	1,275,456	$127,546
	0.56	4	2.80	$0.090	1,275,456	$114,791
	0.56	4	3.36	$0.080	1,275,456	$102,036
	0.56	4	3.92	$0.070	1,275,456	$89,282
	0.56	4	4.48	$0.060	1,275,456	$76,527
>250 kw to 1 MW						
	1.25	2	1.25	$0.120	2,847,000	$341,640
	1.25	2	2.50	$0.100	2,847,000	$284,700
	1.25	2	3.75	$0.080	2,847,000	$227,760
	1.25	2	5.00	$0.060	2,847,000	$170,820
Large 1MW +						
	3	2.0	3.00	$0.110	6,832,800	$751,608
	3	2.0	6.00	$0.090	6,832,800	$614,952
	1.5	1.0	7.50	$0.070	3,416,400	$239,148
	1.5	1.0	9.00	$0.050	3,416,400	$170,820
All Programs Together			**24.18**		**55,072,368**	**$5,168,102**
Effective DG % *			6.4%		Cost/MWh	$93.84
Assumed Capacity Factor			*0.26 **			
Annual kwh per MW Installed			*2277600 **			

PNM RPS Reqmt for 2011 (App P 10)		10% RPS	DG @ 3.00%
	RPS Before Lg Cust Adjustment	854,971	25,649
	RPS after Lg Cust Adjustment	789,594	23,688

* Included for illustrative purposes only

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE RENEWABLES STIPULATION AND PUBLIC SERVICE COMPANY OF NEW MEXICO'S REVISED 2010 RENEWABLE ENERGY PORTFOLIO PROCUREMENT PLAN.	)	
	)	**Case No. 10-00037-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO, PETITIONER.	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Final Order Partially Adopting Recommended Decision** issued August 31, 2010, was sent by electronic mail on the same date to the parties listed below, and by regular mail or hand delivered to those indicated:

VIA E-MAIL ONLY TO:

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DATED this 31st day of August, 2010.

NEW MEXICO PUBLIC REGULATION COMMISSION

Ana C. Kippenbrock, Paralegal