

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO'S RENEWABLE)
ENERGY ACT PLAN FOR 2021 AND PROPOSED)
2021 RIDER RATE UNDER RATE RIDER NO. 36)**

Case No. 20-00124-UT

RECOMMENDED DECISION

October 14, 2020

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Carolyn R. Glick, Hearing Examiner for the New Mexico Public Regulation Commission (Commission), submits this Recommended Decision to the Commission pursuant to 1.2.2.37(B) NMAC. The Hearing Examiner recommends that the Commission adopt this Recommended Decision in its Final Order.

I. STATEMENT OF THE CASE

On June 1, 2020, Public Service Company of New Mexico (PNM) filed its Application for Approval of Its 2021 Renewable Energy Act Procurement Plan (2021 Plan) and Rider No. 36 Rate for 2021. PNM seeks approvals of:

1. its 2021 Plan, which proposes no new procurements;
2. its proposed revised Renewable Energy Rider rate of \$0.0085525 per kWh;
3. its collection of the revenue requirement of the Sky Blue regulatory asset through its Renewable Energy Rider;
4. variances from the requirements of 17.9.572 NMAC that are inconsistent with the 2019 amendments to the Renewable Energy Act; and
5. to the extent necessary, a variance from the data filing requirements of 17.9.530 NMAC.

On June 10, 2020, the Commission issued its Initial Order which: (1) appointed the undersigned as Hearing Examiner to preside over this case; (2) suspended the effectiveness of Advice Notice No. 569 until further order of the Commission; and (3) extended the time period for disposition of PNM's Application to the 180-day statutory maximum, November 28, 2020.

On June 11, 2020, the Hearing Examiner issued her Order Scheduling Prehearing and Setting Deadline for Filing Objections that PNM's Plan Does Not Contain the Required Information. This Order (1) scheduled a June 22, 2020 prehearing; (2) set a June 22, 2020 deadline for filing objections that PNM's 2021 Plan does not contain the required information;

and (3) set a June 26, 2020 deadline for filing responses to any objections. No objections were filed.

Following the prehearing, the Hearing Examiner issued a Procedural Order which, among other things, scheduled a public hearing to begin on September 24, 2020, and set deadlines for filing prefiled testimonies.

The following persons filed motions for leave to intervene:

- The Coalition for Clean Affordable Energy;
- New Energy Economy;
- The New Mexico Affordable Reliable Energy Alliance and Special Participant Greater Kudu (together, NM AREA);
- Bernalillo County;
- Western Resource Advocates;
- The Albuquerque Bernalillo County Water Utility Authority;
- The City of Albuquerque; and
- Interwest Energy Alliance.

On July 15, 2020, PNM filed an Affidavit of Publication, attesting that notice of this case was (1) published in the *Albuquerque Journal* on June 26, 2020; (2) published in the *Alamogordo Daily News* on June 30, 2020; (3) published in the *Las Cruces Sun-News* on June 30, 2020; and (4) published in the *Union County Leader* on June 24, 2020.

An evidentiary hearing was held on September 24 and 25, 2020. The following witnesses testified:

For PNM:

- Nicholas Phillips, Director of Integrated Resource Planning, PNM
- Shane Gutierrez, Engineer IV in PNM's Planning and Resources Department
- Thomas Baker, Manager, Cost of Service, PNMR Services Co.
- Heidi Pitts, Senior Pricing Analyst, PNM

- Alaric Babej, Product Development Project Manager, PNM

For NM AREA:

- Greg Meyer, Principal, Brubaker & Associates, Inc.

For Staff :

- John Reynolds, Utility Division Director
- Beverly Eschberger, Economist — Advanced
- Marc Tupler, Economist

The following exhibits were admitted into evidence:

PNM Exhibits:

- 1 Direct Testimony of Nicholas Phillips
- 2 Direct Testimony of Shane Gutierrez
- 3 Rebuttal Testimony of Shane Gutierrez
- 4 Direct Testimony of Thomas Baker
- 5 Rebuttal Testimony of Thomas Baker
- 6 Supplemental Testimony of Thomas Baker
- 7 Direct Testimony of Heidi Pitts
- 8 Direct Testimony of Alaric Babej
- 9 Supplemental Testimony of Alaric Babej
- 10 PNM Response to Bench Request

NM AREA Exhibits:

- 1 Direct Testimony of Greg Meyer
- 2 Rebuttal Testimony of Greg Meyer

NEE Exhibits:

- 1 PNM's Responses to NEE's First Set of Discovery Requests
- 2 PNM's Responses to NEE's Second Set of Discovery Requests

Staff Exhibits:

- 1 Direct Testimony of John Reynolds
- 2 Supplemental Testimony of John Reynolds
- 3 Direct Testimony of Beverly Eschberger
- 4 Direct Testimony of Marc Tupler

Commission Exhibit:

- 1 Amendment to Renewable Energy Portfolio Procurement Plan for 2013 and Direct Supplemental Testimony of Gerard Ortiz and Shane Gutierrez, filed in Case No. 12-00131-UT on July 3, 2012

II. SUMMARY OF (1) PNM'S 2021 PLAN; (2) DISPUTED ISSUES; AND (3) THE HEARING EXAMINER'S RECOMMENDATIONS

1. PNM's Proposed Renewable Energy Act Plan for 2021

PNM seeks approval of its Renewable Energy Act Plan for 2021 (2021 Plan). PNM does not propose any new procurements in 2021 to meet the Renewable Portfolio Standard (RPS). PNM's 2021 RPS requirement is 20%, or 1,584,892 MWh/renewable energy certificates (RECs). PNM projects that it will exceed this RPS requirement by 351,703 MWh/RECs using already approved RPS resources. The RECs that PNM will use to meet its 2021 RPS will come from three wind energy purchased power agreements (PPAs), a geothermal energy PPA, PNM-owned solar facilities and PNM's distributed generation (DG) programs. No party nor Staff opposes PNM's 2021 Plan, and it should be approved.

2. Recovery of Sky Blue Regulatory Asset Revenue Requirement

PNM recovers its RPS compliance costs through its Renewable Energy Rider, and PNM seeks approval to recover through its Rider in 2021, its claimed \$2.3 million revenue

requirement of its Sky Blue regulatory asset. The Sky Blue regulatory asset consists of the unrecovered costs of PNM's Sky Blue voluntary renewable energy program, which is sourced from a blend of solar and wind energy. The under-recovery of the costs of the program has arisen in part because of undersubscription in the program. When the Commission approved the Sky Blue program in 2012, it authorized PNM to record the costs associated with any residual RECs procured, but not used, for the Sky Blue program, in a regulatory asset and to recover such costs along with carrying charges, as RPS compliance costs, in the plan year in which the RECs are used to meet the RPS. The Commission Order that authorized the regulatory asset did not authorize a specific percentage carrying charge or return, but PNM's witness in that case proposed a 4% carrying charge if the RECs were used for RPS compliance. In this case, however, PNM claims that it was authorized to recover an 8.64% carrying charge. The total carrying charges that PNM seeks to recover are \$654,468.

The New Mexico Affordable Reliable Energy Alliance (NM AREA), New Energy Economy (NEE) and the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) oppose PNM's request to recover the Sky Blue regulatory asset revenue requirement in this case. They argue that PNM has not provided sufficient information to support such recovery and such information needs to be provided before recovery can be authorized. Staff agrees that PNM should be required to provide additional information, but supports a Commission decision in this case to avoid the continued accrual of carrying charges. Staff, however, does not agree with the amount of the regulatory asset that PNM seeks to recover, in part because Staff opposes recovery of any carrying charges. NM AREA, NEE and ABCWUA all argue that if the Commission grants PNM's request to recover the Sky Blue regulatory asset revenue requirement, the Commission should allow PNM only to recover carrying charges of 4%. NM AREA also argues that PNM should recover the regulatory asset revenue requirement over five years, not one year as proposed by PNM.

PNM's request to recover the revenue requirement of the Sky Blue regulatory asset should be denied because PNM has not complied with the requirements of the Commission's

2012 Order that authorized the regulatory asset. That Order authorized PNM to recover costs associated with “residual RECs,” along with carrying charges, in the plan year in which the residual RECs are used to meet the RPS. Residual RECs are RECs allocated to the Sky Blue program but not used to satisfy Sky Blue subscriptions because of under-subscription in the program. It turns out that PNM already has retired most of the residual RECs and presumably recovered the cost of those RECs in the years that they were retired. It appears that only about 6,022 residual RECs are available to be retired in 2021. Most of the RECs for which PNM seeks cost recovery are RECs that PNM swapped out for the residual RECs and which PNM says are borrowed or owed to the Sky Blue program. The Commission’s 2012 Order did not authorize PNM to accumulate costs associated with “borrowed” RECs in the regulatory asset and recover those costs for RPS compliance. It only authorized PNM to accrue costs associated with the residual RECs. This specific authorization, had it been followed, would have minimized the amount of carrying charges included in the balance of the regulatory asset because it allows carrying charges to accrue only for the four-year life of the residual RECs. PNM also has not complied with the Commission’s 2012 order because it has included costs in the regulatory asset that are not “costs associated with the residual RECs,” such as education and marketing costs of the Sky Blue program. Additionally, PNM has not submitted evidence of the reasonable costs associated with the 6,022 residual RECs that are available to be retired in 2021. Such evidence would be the per MWh/REC cost of the procurement, the per REC issuance and retirement fees and 4% carrying charges.

Denial of PNM’s request to recover the Sky Blue regulatory asset revenue requirement does not mean that PNM cannot recover, outside of regulatory asset recovery, the costs of swapped or borrowed RECs used to comply with the RPS. Recovery outside regulatory asset recovery means that PNM cannot recover carrying charges on those costs. However, PNM cannot recover such costs in this case because, as already stated, PNM has not provided evidence of the reasonable cost associated with those RECs.

Additionally, PNM may seek to recover in a future renewable energy plan case, through the regulatory asset authorization, the costs associated with residual RECs and 4% carrying charges. However, PNM must comply with the requirements of the Commission's 2012 Order, which it has not done in this case.

On a going forward basis, PNM should not be allowed to recover carrying charges, or a return, on the Sky Blue regulatory asset. PNM is not entitled to recover carrying charges on the regulatory asset; whether to permit carrying charges is in the Commission's discretion. Allowing carrying charges on the regulatory asset places too great a burden on PNM's customers who do not subscribe to the Sky Blue program, but pay those carrying charges.

3. Revised Renewable Energy Rider Rate

PNM's proposed revised Renewable Energy Rider rate to be effective in 2021 should be rejected because it incorporates recovery of the \$2.3 million revenue requirement of its Sky Blue regulatory asset. A revised rate of .826¢ per kWh, which incorporates removal of recovery of the \$2.3 million, should be approved. Under this revised rate, the monthly bill for an average-use residential customer using 600 kWh per month would increase from \$73.49 to \$73.87, a 37¢ or 0.51% increase. The monthly bill for an average-use small power customer would increase from \$197.30 to \$198.23, a 93¢ or 0.47% increase.

4. Termination of the Sky Blue program

Evidence in this case shows:

- Since April 2014, the costs of the Sky Blue program have exceeded its revenues;
- The Sky Blue program currently costs PNM's non-subscribing customers approximately \$18,000 per month;
- PNM has been largely unable to sell residual Sky Blue RECs to offset the regulatory asset;

- There is dissatisfaction with the Sky Blue program among its subscribers, due in part to a lack of understanding of the program; and
- Increasing subscription levels in the program would be difficult because of the high price of program participation.

A PNM witness testified that (1) the Sky Blue program probably is not sustainable through its expected life; (2) approximately ten customers leave the program every month; and (3) less customers are willing to pay a premium for renewable energy as the cost of renewable energy falls. PNM currently is studying a Sky Blue replacement program. However, a PNM witness did not know when PNM will file a petition to approve a replacement program and could not commit to a filing date.

Based on this evidence, NEE recommends that the Commission order PNM to file an application within 30 days of issuance of a final order in this case to terminate the Sky Blue program. ABCWUA says that there is no reasonable expectation that the Sky Blue program will ever succeed and recommends that the Commission terminate the Sky Blue program, presumably through a final order in this case.

The REA does not require utilities to offer voluntary programs for purchasing renewable energy, but says that the Commission may require utilities to do so. The Commission does require utilities to offer such voluntary programs in Rule 17.9.572. However, the Commission can grant a variance from this requirement.

The evidence in this case shows that the Sky Blue program should be terminated and PNM should be granted a variance from the requirement in Rule 572 to offer a voluntary renewable energy program. However, the final order in this case cannot terminate the program because the Notice to PNM Customers of this case, which was published and mailed or emailed to PNM customers, did not give notice that the scope of this case would include whether to terminate the program. Therefore, the Commission should adopt NEE's recommendation that

PNM file an application to terminate the Sky Blue program within 30 days of issuance of a final order in this case.

III. STANDARD OF PROOF

The standard of proof in administrative adjudications is, unless expressly provided otherwise, the preponderance of the evidence. Case No. 12-00131-UT, Recommended Decision at 16 (11-7-12), adopted in relevant part by Final Order (12-11-12). Preponderance of the evidence means the greater weight of the evidence. *Campbell v. Campbell*, 1957-NMSC-001, ¶ 24, 62 N.M. 330. It is evidence that, when weighed with that opposed to it, has more convincing force. It has superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. *Black's Law Dictionary* 1431 (11th ed. 2019).

IV. THE RENEWABLE ENERGY ACT AND RULE 572

The Renewable Energy Act (REA) requires public utilities providing retail electric service in New Mexico to include renewable energy in their electric energy supply portfolios and to meet the REA's renewable portfolio standard (RPS). The RPS is the percentage of retail sales of a public utility to New Mexico customers that must be supplied by renewable energy. Under the REA, for public utilities other than rural electric cooperatives, the RPS currently is 20%. NMSA 1978, § 62-16-4 (2019).

The Legislature significantly amended the REA in 2019. Under the previous version of the REA, the RPS did not increase after January 2020. *Id.*, § 62-16-4(A) (2011). Under the current, amended version of the REA (the Amended REA), the RPS increases to 40% on January 1, 2025, to 50% on January 1, 2030 and to 80% on January 1, 2040. Compliance with the 80% standard shall not require a public utility to displace zero carbon resources in the utility's generation portfolio on the effective date of the Amended REA, which was June 14, 2019. *Id.*, § 62-16-4(A)(3) – (5). No later than January 1, 2045, zero carbon resources shall supply 100% of

all retail sales of electricity in New Mexico. Reasonable and consistent progress shall be made over time toward this requirement. *Id.*, § 62-16-4(A)(6).

If, in a given year, a public utility determines that the average annual levelized cost of renewable energy that would need to be procured or generated for purposes of compliance with the RPS would be greater than “the reasonable cost threshold” (RCT), the public utility shall not be required to incur that excess cost; provided that the existence of this condition excusing performance shall not operate to delay compliance with the RPS in subsequent years. *Id.*, § 62-16-4(E). Before the 2019 amendments, the REA directed the Commission to establish the RCT. *Id.*, § 62-16-4(C) (2011). By Rule, the Commission established the RCT at 3% of plan year total revenues. 17.9.572.12 NMAC. Under the Amended REA, the Legislature defined the RCT as an average annual levelized cost of \$60.00 per megawatt-hour (MWh) at the point of interconnection of the renewable energy resource with the transmission system, adjusted for inflation after 2020. *Id.*, § 62-16-3(E) (2019). A public utility is not precluded from accepting a project with a cost that would exceed the RCT. When a public utility can generate or procure renewable energy at or below the RCT, it is required to do so to the extent necessary to meet the RPS. *Id.*

The Amended REA reduces the level of projected sales to which the RPS percentage is applied by the projected level of sales purchased by customers through an approved voluntary program for purchasing renewable energy. Sales of renewable energy purchased through a voluntary program are not subject to charges by a public utility to recover costs of complying with the RPS. *Id.*, § 62-16-7(B) (2019).

The Amended REA eliminates the following language that was previously in the REA:

[T]he renewable portfolio shall be diversified as to the type of renewable energy resource, taking into consideration the overall reliability, availability, dispatch flexibility and cost of the various renewable energy resources made available by suppliers and generators[.]

Id., § 62-16-4(A)(4) (2011). The Commission’s Rule 17.9.572 NMAC (Rule 572), which implemented the above statutory provision, defines a fully diversified renewable energy

portfolio as one in which (1) at least 30% of the RPS requirement is met using wind energy; (2) at least 20% is met using solar energy; (3) at least 5% is met using other renewable technologies such as biomass, geothermal or landfill gas; and (4) at least 3% is met using distributed generation. Rule 572.7(G) NMAC.

Rule 572 was last amended in 2014, and parts of Rule 572 are inconsistent with the Amended REA. The Commission docketed Case No. 19-00296-UT, which is pending, to consider amendments to Rule 572 to comply with the Amended REA. The Commission docketed Case No. 20-00158-UT, which is also pending, to consider whether rate riders should continue to be used to recover RPS costs and, if rate riders should continue to be used to recover RPS costs, whether such rate riders should be line-loss adjusted.

V. PNM’S REQUESTED VARIANCES

PNM seeks variances from the following provisions of Rule 572 that it believes are inconsistent with the Amended REA:

1. Rules 572.7(C), 572.12 and 572.14(C), relating to calculation of the RCT, because the Amended REA now defines the RCT;
2. Rules 572.7(G) and 572.11, which set forth diversification requirements for renewable portfolios, because the Amended REA deleted the requirement that a renewable energy portfolio be diversified as to the type of renewable energy resource;
3. Rules 572.7(L) and (M), 572.12 and 572.16, which provide for adjustments to the RCT and RPS for Exempt and Large Capped Customers, because the Amended REA eliminated Exempt and Large Capped Customers; and
4. Rule 572.17(C)(2), which states that RECs used for RPS compliance do not require physical delivery of the associated electric energy to a public utility, because the Amended REA requires associated electric energy to be delivered a public utility.

PNM requests the variances so that the Amended REA can be applied in this case without updating Rule 572. Phillips Direct at 17-18.

Staff agrees that the above provisions of Rule 572 are inconsistent with the Amended REA and recommends that PNM's requested variances be granted. Reynolds Direct at 15. NM AREA also recommends that the requested variances be granted. Meyer Direct at 1-3.

In Case No. 19-00159-UT, PNM requested these same variances. The Commission granted variances from Rules 572.7(C), 572.12, 572.14(C), 572.7(L) and (M), 572.12, 572.16 and 572.17(C)(2), to the extent necessary, finding that they are superceded by the Amended REA. Case No. 19-00159-UT, Recommended Decision at 49-51, 61 (12-2-19), adopted by Final Order Adopting Recommended Decision (1-29-20). Following this precedent, variances from these Rules should be granted in this case as well to the extent necessary. *See Tri-State Generation & Transmission Ass'n v. New Mexico Pub. Regulation Comm'n*, 2015-NMSC-013, ¶ 24 ("If there is a conflict or inconsistency between statutes and regulations promulgated by an agency, the language of the statutes shall prevail. An agency by regulation cannot overrule a specific statute.") (quoting *Jones v. Emp't Servs. Div. of Human Servs. Dep't*, 1980-NMSC-120, ¶ 3, 95 N.M. 97).

In Case No. 19-00159-UT, the Commission said that it was not clear that the Amended REA's elimination of the diversity mandate explicitly conflicted with Rule 572's diversity requirements. The Commission found that a decision on the issue was unnecessary because PNM's 2020 Plan satisfied Rule 572's diversity requirements. Case No. 19-00159-UT, Recommended Decision at 51. In this case, PNM's 2021 Plan falls short of Rule 572's 5% "other" diversity requirement, so a decision on the issue is necessary. Phillips Direct, Exh. NLP-2 at 3 of 12. Since the Commission issued its Final Order in Case No. 19-00159-UT, it issued an order in a Southwestern Public Service Company (SPS) renewable energy act plan case in which it found that Rule 572's diversity requirements are inconsistent with the Amended REA because the Commission cited the now deleted diversity language in the previous version of the REA as authority when it adopted the Rule 572.11 diversity requirements in 2007. The Commission therefore granted SPS a variance from Rule 572.11. Case No. 19-00134-UT, Recommended Decision at 17, 38 (3-30-20), adopted by Final Order Adopting Recommended Decision (4-22-

20). Following this precedent, PNM's request for a variance from Rules 572.7(G) and 572.11 should be granted.

PNM also requests a variance from the data filing requirements of 17.9.530 NMAC (Rule 530) to the extent that it is required. Rule 530 specifies the data that a utility must file in support of new rate schedules. PNM states that Rule 530 requires filing of extensive data schedules that are unnecessary for review and approval of PNM's proposed Renewable Energy Rider Rate. Phillips Direct at 18. Staff recommends granting the variance and states that the Commission has granted such variances in past cases. Reynolds Direct at 15-16. PNM's request for a variance is reasonable and should be granted.

VI. PNM'S APPROVED RENEWABLE ENERGY RESOURCES AND THEIR COSTS

A. WIND RESOURCES

1. New Mexico Wind Energy Center

PNM uses RECs from the New Mexico Wind Energy Center (NMWEC) to comply with the RPS. The NMWEC is a 200 MW wind generation facility in eastern New Mexico that is owned and operated by NextEra Energy Resources and began operating in October 2003. Under a 25-year PPA, PNM purchases all of the energy and RECs produced by the NMWEC. In Case No. 17-00129-UT, the Commission approved extending the term of the PPA to 2045. A portion of the NMWEC output is used to supply energy and RECs for PNM's voluntary renewable energy program, Sky Blue. PNM expects to acquire 606,106 RECs and 606,661 RECs from the NMWEC in 2021 and 2022, respectively, for RPS compliance. The cost under the PPA is \$27.25 per MWh/REC in 2021 and 2022. Gutierrez Rebuttal, Exh. SG-1 Rebuttal at 2-3; Reynolds Direct, Att. JJR-3.

2. Red Mesa Wind Energy Center

PNM uses RECs from the Red Mesa Wind Energy Center to comply with the RPS. The Red Mesa Wind Energy Center is a 102 MW wind facility in Cibola County. PNM has a 20-year PPA to procure energy and RECs from the Facility. PNM began purchases under the PPA in January 2015. PNM expects to acquire 208,223 RECs in 2021 and in 2022 for RPS compliance. The cost under the PPA is \$31.44 per MWh/REC in 2021 and \$32.07 per MWh/REC in 2022. Gutierrez Rebuttal, Exh. SG-1 Rebuttal at 2-3; Reynolds Direct, Att. JJR-3.

3. La Joya Wind Facility, Phase 2

PNM will use RECs from the La Joya Wind Facility, Phase 2 (La Joya II) to comply with the RPS. La Joya II is a 140 MW wind facility in Torrance County. On January 30, 2020, the Commission approved a 20-year PPA for PNM to purchase energy and RECs from this facility. Phillips Direct, Exh. NLP-2 at 3. Construction on La Joya II began in May 2020, and the Facility is expected to be in service by the end of 2020. Phillips Direct at 9. PNM expects to acquire 537,163 RECs in 2021 and in 2022 for RPS compliance. The cost under the PPA is \$17.48 per MWh/REC in 2021 and 2022. Gutierrez Rebuttal, Exh. SG-1 Rebuttal at 2-3; Reynolds Direct, Att. JJR-3.

B. SOLAR RESOURCES

PNM owns 117 MW of solar photovoltaic generation that it uses to comply with the RPS. The table on the next page identifies each facility by size, the expected generation in MWh/RECs in 2021 and 2022 and the cost per MWh/REC in 2021 and 2022.

Year Constructed	Facility Size in MW	MWhs/RECs		Cost per MWh/REC	
		2021	2022	2021	2022
2006 or earlier	0.03 ¹	80	79	\$0	\$0
2011	22.5	46,469	46,234	\$106.29	\$100.83
2013	20 ²	45,314	45,087	\$69.80	\$68.41
2014	23	59,959	59,659	\$59.63	\$58.62
2015	40	95,468	94,752	\$0	\$0
2019	50	138,950	137,908	\$54.23	\$52.14

Phillips Direct, Exh. NLP-2 at 5 of 12; Gutierrez Rebuttal, Exh. SG-1 Rebuttal at 2-3; Reynolds Direct, Att. JJR-3.

In Case No. 19-00195-UT, the Commission, in July 2020, approved two solar energy PPAs. One PPA is for all of the output from the 50 MW Jicarilla Solar I facility, expected to become operational by April 30, 2022. The second PPA is for all of the output from the 300 MW Arroyo Solar facility that is expected to become operational by June 30, 2022. While the PPAs were approved as system resources, PNM plans to use the RECs acquired under these PPAs for RPS compliance. Gutierrez Direct at 8-9.

PNM expects to acquire 386,239 RECs in 2021 and 1,297,293 RECs in 2022 from solar energy resources, for RPS compliance. Gutierrez Rebuttal, Exh. SG-1 Rebuttal at 2-3.

C. DISTRIBUTED GENERATION

PNM pays per REC incentives under several distributed generation (DG) REC purchase programs. All of the programs except one are closed to new participants. The first such program was approved in 2006. Participants in the programs must sign contracts with PNM, and PNM agrees to pay a per REC incentive to participants for the length of the contracts. Contracts from the 2006 program have begun expiring. After the contract expiration date, PNM no longer pays incentives to the DG system owner. Phillips Direct, Exh. NLP-2 at 6-8 of 12.

¹ RECs from these facilities are weighted at 3-to-1 for RPS compliance purposes.

² Excludes a 1.5 MW solar facility dedicated to supplying PNM's Sky Blue Program.

The table below shows, for 2021 and for each program, the number of MWhs/RECs PNM expects to acquire under the program and the per MWh/REC cost under the program:

Program	MWh/RECs	Cost per MWh/REC
Small PV RECs	5,484	\$0.00
Large PV RECs	15,844	\$150.00
SIP RECs \$0.14 - \$0.05	34,658	\$85.63
2012 DG Capacity Reservation	989	\$20.00
2013 DG Capacity Reservation	3,821	\$20.00
2014 DG Capacity Reservation	3,324	\$20.00
2015 DG Capacity Reservation	533	\$20.00
2016 DG Capacity Reservation	974	\$11.46
2018 DG Capacity Reservation	228	\$2.50
2019 DG Capacity Reservation	218	\$2.50
2020 DG Capacity Reservation	1,918	\$2.50
2021 DG Capacity Reservation	0	\$0.00
2022 DG Capacity Reservation	0	\$0.00
CSPP RECs	23,425	\$34.55
CSPP Extension	10,741	\$2.50

Gutierrez Rebuttal, Exh. SG-1 Rebuttal at 2-3; Reynolds Direct, Att. JJR-3. PNM expects to acquire 102,156 RECs in 2021 and 105,765 RECs in 2022 from its REC purchase programs for RPS compliance. Gutierrez Rebuttal, Exh. SG-1 Rebuttal at 2-3.

D. GEOTHERMAL RESOURCE

PNM uses RECs from the Dale Burgett Geothermal Facility (also known as the Lightning Dock Geothermal Facility) to comply with the RPS. The Dale Burgett Geothermal Facility generates electricity using geothermal resources and is in the Animas Valley in Hidalgo County. The Commission approved a 20-year PPA for PNM to purchase energy and RECs from this Facility. The plant went into service in 2014. Based on projections by the plant operator, PNM expects to acquire 77,000 RECs in 2021 and 2022 for RPS compliance. Phillips Direct, Exh. NLP-2 at 6. The cost under the PPA is \$95.84 per MWh/REC in 2021 and \$98.24 per MWh/REC in 2022. Gutierrez Rebuttal, Exh. SG-1 Rebuttal at 2-3; Reynolds Direct, Att. JJR-3.

In his Direct Testimony, PNM witness Gutierrez said that PNM has a PPA for the “full output produced by Lightning Dock[.]” In his response testimony, Staff witness Reynolds stated that Mr. Gutierrez’s statement is incorrect and PNM is only obligated to purchase a maximum of

77,000 MWh annually from the Lightning Dock Geothermal Facility. Mr. Reynolds said that PNM should not purchase more than 77,000 MWh annually from the Lightning Dock Geothermal Facility without Commission approval. Reynolds Direct at 8-9.

In Rebuttal Testimony, Mr. Gutierrez agreed that PNM is obligated to purchase only 77,000 MWh annually from the Lightning Dock Geothermal Facility. He also agreed that PNM cannot purchase more than 77,000 MWh annually from the Facility to comply with the RPS. However, he said that PNM should be allowed to purchase more than 77,000 MWh annually from the Facility without Commission approval if the excess over 77,000 MWh is not used for RPS compliance, but to provide a resource when PNM has insufficient resources for load serving or reliability. Gutierrez Rebuttal at 4-5.

Mr. Reynolds agreed that PNM should be allowed to purchase more than 77,000 MWh annually from the Lightning Dock Facility without Commission approval if the excess over 77,000 MWh is not used for RPS compliance purposes. However, he said that such purchases should not be subject to the terms of the PPA, but should be arm's length, market-based purchases. Tr. at 303.

VII. PNM'S 2021 RENEWABLE ENERGY ACT PLAN

For 2020 and thereafter, the Amended REA requires a public utility to file a Renewable Energy Act plan that includes:

1. The cost of procurement for new renewable energy required to comply with the renewable portfolio standard;
2. The capital, operating and fuel costs on a per-megawatt-hour basis during the preceding calendar year of each nonrenewable generation resource rate-based by the utility, or dedicated to the utility through a power purchase agreement of one year or longer, and the nonrenewable generation resources' carbon dioxide emissions on a per-megawatt-hour basis during that same year;

3. Information, including exhibits, as applicable, that demonstrates that the proposed procurement:

- a. Was the result of competitive procurement that included opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options;
 - b. Has a cost that is reasonable as evidenced by a comparison of the price of electricity from renewable energy resources in the bids received by the public utility to recent prices for comparable energy resources elsewhere in the southwestern United States; and
 - c. Is in the public interest, considering factors such as overall cost and economic development opportunities; and
4. Strategies used to minimize costs of renewable energy integration, including location, diversity, balancing area activity, demand-side management and load management.

NMSA 1978, § 62-16-4(G) (2019). Rule 572 sets forth more detailed information that must be included in a public utility's Renewable Energy Act plan. 572.14(B).

PNM proposes no new RPS renewable energy resource procurements, so Subsections 62-16-4(G)(1) and (3) are inapplicable. Appendix A to PNM's 2021 Plan contains the information required in Subsection 62-16-4(G)(2). *See* Phillips Direct, Exh. NLP-2, Appendix A. PNM's 2021 Plan identifies PNM's strategies to minimize costs of renewable energy integration, as required by Subsection 62-16-4(G)(4). *Id.* at 10-12 of 12.

PNM calculated its 2021 and 2022 RPS requirements to be 1,584,892 and 1,585,466 MWh/RECs, respectively. *Id.* at 2 of 12. PNM calculated its 2021 and 2022 RPS requirements by multiplying its net forecasted New Mexico retail kWh sales (net of voluntary renewable energy sales) by 20%, as shown in the table below, taken from Exhibit SG-2 to PNM witness Gutierrez's Direct Testimony:

	2021	2022
Forecasted NM retail MWh sales	8,894,850	9,140,217
Less: voluntary renewable energy sales	970,388	1,212,886
Net forecasted NM retail kWh sales	7,924,462	7,927,331
Renewable Portfolio Standard	20%	20%
RPS Requirement in MWh	1,584,892	1,585,466

Gutierrez Direct, Exh. SG-2 at 1.

PNM anticipates generating 351,703 RECs in excess of its 2021 RPS requirement and 1,246,640 RECs in excess of its 2022 RPS requirement. Gutierrez Rebuttal, Exh. SG-1 Rebuttal at 2-3; Tr. at 61-62 (Gutierrez). The actual amount of excess RECs will depend on actual renewable energy production, actual retail sales and the level of participation in PNM's voluntary renewable energy programs. Gutierrez Direct at 3. PNM's estimated costs of its 2021 and 2022 Plans are \$43,105,694 and \$49,597,169, respectively, net of avoided costs. Gutierrez Rebuttal, Exh. SG-1 Rebuttal at 1.

NM AREA observed that Exhibit SG-2 does not include lines that track PNM's REC bank (RECs not needed to meet the RPS in the plan year), which were included in a similar exhibit that PNM provided in its last renewable energy act plan filing. NM AREA witness Meyer prepared an exhibit that includes lines that track PNM's REC balances, and he proposed to substitute his exhibit for Exhibit SG-2. Meyer Direct at 4-6.

PNM does not object to including the annual REC bank balances in its annual renewable energy plan filings. PNM witness Gutierrez said that Mr. Meyer's exhibit is incorrect because it does not (1) account for all prior year banked RECs; or (2) reduce the REC bank by the estimate of 2021 RECs to be used to meet the expected 2020 RPS shortfall. Gutierrez Rebuttal at 3-4.

The REA defines the Renewable Cost Threshold (RCT) — the cost above which a utility is not required to add renewable energy to meet the RPS — as \$60 per MWh. Some of PNM's existing procurements cost more than \$60 per MWh. *See Reynolds Direct*, Att. JJR-3. However, PNM is entitled to recover the costs of these procurements because the Commission approved them for RPS compliance before the 2019 amendment to the REA that established \$60 per MWh as the RCT. Case No. 06-00340-UT, Final Order on Reconsideration at 12, ¶ A (1-15-08) (effect of approval of renewable energy act plan “shall be a conclusive presumption of reasonableness for costs that are consistent with the approved plan.”).

PNM's 2021 Plan satisfies the REA's requirements, is unopposed and should be approved.

VIII. PNM'S REQUEST TO RECOVER THE SKY BLUE REGULATORY ASSET REVENUE REQUIREMENT THROUGH ITS RENEWABLE ENERGY RIDER

The Sky Blue program is PNM's voluntary renewable energy program for residential and business retail customers. While the Sky Blue program began as a wind energy-only voluntary energy purchase program in 2003, the current Sky Blue program is a mix of wind and solar energy that has been in effect since May 1, 2013. The rate premium in Rider No. 30 for participation in the Sky Blue program is \$0.017 per kWh above PNM's standard rates. Participating customers may purchase either 100 kWh blocks of energy or a percentage of their electric consumption up to a “Maximum Stated Percentage,” which is defined in Rider No. 30 as 80% beginning in calendar year 2020. *Babej Direct* at 3.

The solar resource that supplies the Sky Blue program is a solar PV facility at PNM's Manzano Solar Energy Center in Valencia County, New Mexico. *Id.* The size of the facility is 8 MW. Of the 8 MW, 6.5 MW is used for RPS compliance and the remaining 1.5 MW is dedicated to the Sky Blue program. *Tr.* at 59 (Gutierrez). The wind resource that supplies the Sky Blue

program is the New Mexico Wind Energy Center (NMWEC) in Quay and De Baca Counties, New Mexico. Babej Direct at 3.

The Commission approved the current Sky Blue program in Case No. 10-00018-UT in December 2012. One of the options proposed in that case was to source the Sky Blue program with a blend of solar and wind resources, with the solar resources from a 2 MW solar facility and the wind resources from the NMWEC. Testimony in the case was that the entire output of the 2 MW of solar energy capacity would not be fully purchased by Sky Blue customers initially. To address the mismatch between energy production from the 2 MW of PV capacity and Sky Blue participation, PNM proposed to bank the excess RECs and book the revenue requirement associated with the banked RECs to a regulatory asset. The banked RECs would be retired to satisfy Sky Blue subscriptions as they increased, and the deferred revenue requirements would be collected through Sky Blue premiums. Case No. 10-00018-UT, Recommended Decision on Remand at 35-36 (11-7-12). PNM estimated that energy production would match Sky Blue subscriptions by 2015. *Id.* at 35. The Recommended Decision on Remand in Case No. 10-00018-UT states that PNM proposed to apply a carrying charge rate of 8.64% to the balance of the regulatory asset from the time that it was created until it was recovered “*through the Sky Blue Program.*” *Id.* at 37 (emphasis added). It further states:

To the extent these banked RECs cannot be used for Sky Blue subscriptions prior to the RECs entering the fourth year of their statutory life, as stated above *PNM has sought Commission approval in Case No. 12-00131-UT* to use them for RPS compliance, and to recover the deferred cost associated with these RECs as RPS compliance costs in the year they are used for RPS compliance. *In that event, the carrying charges would accrue at the 4 percent rate* until the year in which the procurement is used for the RPS requirements. To minimize the use of the banked RECs for RPS compliance, PNM will retire RECs for Sky Blue purposes on a first-in, first-out basis.

Id. at 37-38 (emphasis added).³

³ See also *id.* at 33 (stating that, if the \$4.5 million cost of the 2 MW is not fully used for the Sky Blue program and is charged to the RPS, the only additional costs would be the carrying charges, “which would accrue at 4% until the year in which the procurement is used for the RPS requirements.”).

The Recommended Decision on Remand in Case No. 10-00018-UT recommended that the new Sky Blue program be sourced from a 2 MW solar facility and the NMWEC. *Id.* at 56, ¶ 7. Neither the Findings of Facts section nor the Decretal Paragraphs section of the Recommended Decision on Remand addresses PNM's proposal to create a regulatory asset. The Commission, in its December 2012 Post-Remand Final Order in Case No. 10-00018-UT, approved the solar/NMWEC wind proposal but reduced the size of the solar facility to 1.5 MW to reduce the risk of under-subscription in the Sky Blue program. Case No. 10-00018-UT, Post-Remand Final Order at 3, ¶ 9 (12-11-12). The Commission ordered:

With regard to any RECs produced by the 1.5 MW solar PV facilities that are not used for the voluntary program, PNM must use reasonable and prudent efforts to sell such RECs if they have not been used within one year of production; and the proceeds from such sales will be used to reduce the regulatory asset[.]

Id. at 4, ¶ C(b).

While Case No. 10-00018-UT was pending, also pending was Case No. 12-00131-UT, in which PNM sought approval of its Renewable Energy Portfolio Plan for 2013. As part of Case No. 12-00131-UT, PNM requested approvals: (1) to procure the resources proposed in Case No. 10-00018-UT to supply the Sky Blue program; (2) to the extent that customer subscriptions to the new Sky Blue program did not fully use those resources, to use those resources for compliance with PNM's RPS, most likely beginning in 2015, but in 2014 for any RECs that would otherwise expire; and (3) to record any costs of those resources, to the extent they are not covered by Sky Blue subscriptions and are used for RPS compliance, as regulatory assets, and to recover the costs, plus carrying charges and WREGIS fees, as RPS compliance costs in the year in which the RECs are used for RPS compliance. Commission Exh. 1 at 1. PNM proposed to bank any excess Sky Blue RECs to meet the RPS in 2015 or beyond, because the 2013 Plan proposed procurements that would enable PNM to be fully RPS compliant in 2014. Case No. 12-00131-UT, Recommended Decision at 48-50 (11-7-12). The carrying charges would accrue at 4% until the year in which the procurement was used for RPS compliance. *Id.* at 52. PNM witness Gerard Ortiz explained:

PNM has assumed a carrying charge for costs associated with banked RECs in Case No. 10-00018-UT of 8.64% because PNM does not anticipate using these RECs for RPS compliance. If these costs are ultimately used for RPS compliance, PNM would recalculate the carrying costs at the 4% carrying cost rate provided in the Amended Stipulation in Case No. 10-00086-UT, assuming that PNM's proposed Renewable Rider is approved by the Commission.

Commission Exh. 1 at 12. Paragraph 22(d) of the Amended Stipulation to Conform to Commission Order filed in Case No. 10-00086-UT on August 11, 2011 states:

As of the date of implementation of revised rates provided by this Amended Stipulation, the carrying charge applicable to any renewable procurement cost recorded by PNM as a regulatory asset pursuant to a Commission order and subject to recovery under the Renewable Rider shall be 4% (four percent).

PNM witness Gutierrez submitted testimony in Case No. 12-00131-UT that calculated the maximum additional 2015 RPS cost if no customers subscribed to the new Sky Blue program. In doing so, he applied a 4% carrying charge. Commission Exh. 1, Gutierrez Supp. at 7-8.

The Recommended Decision in Case No. 12-00131-UT recommended approval of PNM's 2013 Plan, as amended, including procurement of NMWEC energy and RECs and 2 MW of solar energy and RECs to source the Sky Blue program. Case No. 12-00131-UT, Recommended Decision at 66, ¶ D(2). The Recommended Decision also recommended that the Commission order:

The use of any residual RECs from the 2 MW and any residual wind RECs procured for the Rider 30 Sky Blue Program for future RPS compliance, if such procurements are not used for the Sky Blue Program is APPROVED and authority is hereby GRANTED to record the costs associated with any such residual RECs as regulatory assets and recover such costs as RPS compliance costs, with carrying charges, in the Plan year in which the RECs are used to meet the RPS.

Id. at 68, ¶ G. In its Final Order in Case No. 12-00131-UT, the Commission said:

We decline to approve the 2 MW solar photovoltaic plant component as part of the instant case. Instead, we address that component through our *Post-Remand Final Order* issued today in Case 10-00018-UT. . . . The Commission finds, however, that the remainder of the RD does justice to the cost and pricing aspects overall, and it is in the public interest.

Id., Final Order at 1-2, ¶¶ 3-4 (12-11-12). Accordingly, the Commission ordered:

The RD is ADOPTED, APPROVED and ACCEPTED, with the following limited modifications: a) excision of the 2 MW solar PV component that is addressed in our *Post-Remand Final Order* issued today in Case No. 10-00018-

UT; and (b) the effective date of the forthcoming advice notice to be filed pertinent to this case shall be January 1, 2013.

Id. at 2, ¶ B.

In this case, PNM asks for authority to recover, through its Renewable Energy Rider in 2021, the revenue requirement of the Sky Blue regulatory asset, which it claims to be \$2,317,250 million. Babej Direct at 2; Baker Direct, Exh. TSB-9. The \$2,317,250 revenue requirement is (1) the estimated \$2,271,814 Sky Blue regulatory asset balance as of December 31, 2020, including 8.64% carrying charges; plus (2) \$45,436 in carrying charges, to accrue at 4% while the regulatory asset is being recovered in 2021. Baker Direct, Exhs. TSB-9 and 10; Tr. at 81-84 (Baker). PNM seeks to amortize the \$2,317,250 revenue requirement over one year. Baker Direct at 10. The regulatory asset balance represents the under collection of Sky Blue program costs, which consist of (1) the revenue requirement of the 1.5 MW of the PNM-owned solar facility; (2) energy purchases under the NMWEC PPA; (3) education and marketing expenses; (4) WREGIS fees associated with registering and retiring REC's; and (5) carrying charges accrued at an 8.64% rate. *Id.* at 9. The table below shows the calculation of the regulatory asset balance.

PNM Exhibit TSB-10
2021 Renewable Energy Rider
Estimated Balance of the Sky Blue Regulatory Asset

Line No.	A	B	C	D	E	F	G	H
	2013 Actuals Revenue Requirement	2014 Actuals Revenue Requirement	2015 Actuals Revenue Requirement	2016 Actuals Revenue Requirement	2017 Actuals Revenue Requirement	2018 Actuals Revenue Requirement	2019 Actuals Revenue Requirement	2020 Projected Revenue Requirement
1 Sky Blue Program Costs								
2 1.5 MW Solar	-	656,783	557,398	426,009	401,961	327,353	306,930	299,292
3 NMWEC (Sky Blue portion)	283,964	473,286	405,158	406,354	420,393	421,118	414,524	389,958
4 Education & Marketing	56,789	79,258	73,476	58,641	64,005	56,596	69,060	2,380
5 WREGIS Fees	-	-	-	1,187	(44)	231	228	228
6 Total Revenue Requirement	340,753	1,209,327	1,036,033	892,190	886,316	805,298	790,742	691,857
7								
8 Sky Blue Program Revenue	530,701	846,537	758,127	561,285	617,311	590,146	552,373	533,433
9								
10 (Over)/Under Collection	(189,948)	362,790	277,905	330,905	269,006	215,152	238,369	158,424
11 Beginning Balance								
12 Carrying Charges - 8.64%	(471)	2,346	22,560	54,481	86,489	117,883	145,692	180,232
13 (Over)/Under Collection including Carry Charges	(190,419)	365,137	300,465	385,386	355,495	333,034	384,060	338,656
14								
15 Cumulative (Over)/Under Collection	(190,419)	174,717	475,182	860,568	1,216,063	1,549,097	1,933,158	2,271,814
16								
17								
18 Assumptions:								
19 Carrying Charges		8.64%						

Id., Exh. TSB-10.

The under-recovery of the revenue requirement has arisen because of (1) undersubscription in the Sky Blue program; and (2) the price of the solar resource compared to the NMWEC wind resource. Babej Direct at 8. The Sky Blue program currently has

approximately 4,000 subscribers, who subscribed to 15.3 GWh through the program in 2019. At this level of energy subscription, the regulatory asset balance has accumulated approximately \$18,000 per month. *Id.* at 7.

As required by the Commission's Final Order in Case No. 10-00018-UT, PNM attempted to sell excess Sky Blue RECs. However, it was only able to make one sale of 40 RECs in 2016. Two potential sales fell through in 2017 and 2020. *Id.* at 6. In his Direct Testimony, PNM witness Babej said that PNM estimated having 19,708 excess RECs on December 31, 2020 associated with generation from the Manzano solar facility and allocated to the Sky Blue program, available to be retired for RPS compliance in 2021. *Id.* This is an estimated number because the actual amount will depend on actual generation from the Manzano facility. Tr. at 64 (Gutierrez); 90 (Baker); 165 (Babej). However, in Supplemental Testimony, Mr. Babej revised the 19,708 number to 19,016. He reduced the 19,708 number to reflect removal of the 40 RECs sold in 2016 and 652 expired RECs that were registered with WREGIS in 2015 but never retired. Babej Supp.

The REA states that RECs may be carried forward for up to four years from the date of issuance to establish compliance with the RPS. NMSA 1978, § 62-16-5(B)(4) (2019). Mr. Babej was unable to determine why the 652 RECs were not retired. Babej Supp. at 5. Mr. Babej said that there also may be RECs registered with WREGIS in 2016 that have expired. Tr. at 208-09. Mr. Babej did not know whether costs associated with the expired RECs are included in the regulatory asset balance. When asked whether PNM seeks to recover costs associated with the expired RECs, Mr. Babej did not answer the question, but said that he views the regulatory asset balance and the REC balance "as two very separate issues." *Id.* at 188. He said that costs reflected in the regulatory asset are not necessarily REC costs. *Id.* at 189. PNM's position is that the balance of the regulatory asset is not tied to the balance of RECs retired through the program. Rather, according to PNM, the balance of the regulatory asset is the difference between the revenue requirement of the Manzano facility and any other costs not completely recovered through Rider No. 30 (Voluntary Renewable Energy Program) and the revenues

generated by the program. Babej Supp. at 6-7. Mr. Babej said that the regulatory asset balance should not be tied to the balance of RECs. Tr. at 193-94; 207 (“I don’t think that there is necessarily a connection directly to RECs and the balance of the regulatory asset.”).

The estimated 19,016 RECs that PNM says are available to be retired are associated only with solar generation from the Manzano facility. PNM retires RECs associated with generation from the Manzano solar facility and allocated to the Sky Blue program on a first in, first out basis. Therefore, Mr. Babej testified, “PNM has been able to retire RECs from the Sky Blue portion of Manzano that were not used for Sky Blue, or sold to third parties, prior to their expiration for RPS purposes, and replace the RECs with newer vintage RECs from the RPS portion of Manzano on a one for one basis.” Babej Supp. at 4-5; Tr. at 210-11 (Babej). This practice was referred to at the hearing as “swapping.” Tr. 224 (Meyer). Mr. Babej’s testimony indicates that (1) PNM has already retired RECs for RPS compliance associated with generation from the 1.5 MW of the Manzano facility dedicated to the Sky Blue program but not used for that program, *i.e.*, “residual RECs”; and (2) the Sky Blue regulatory asset consists in large part of costs associated with RECs associated with generation from the 6.5 MW of the Manzano facility not dedicated to the Sky Blue program, but swapped for the residual RECs.

Exhibit TSB-10 shows that costs of the Sky Blue program incurred in 2013 and 2014 are part of the regulatory asset balance. However, Mr. Babej said that all RECs associated with generation from the Manzano facility in 2013 and 2014 and allocated to the Sky Blue program have been retired. Tr. at 200; Babej Supp., Exh. AJB-Supp. at 2. And, it appears that, at most, only 6,022 RECs associated with generation from the Manzano facility from 2016 and 2020 and allocated to, but not used for, the Sky Blue program are actually available to be retired. Babej Supp., Exh. AJB-1 Supp. at 2.⁴ It further appears from Mr. Babej’s testimony that the 19,016

⁴ The table on page 2 of Exhibit AJB-1 Supplemental titled “Annual WREGIS Generation and Retirements” shows, by year, the number of RECs associated with generation from the Manzano facility and allocated to Sky Blue. The 652 such RECs from 2015 have expired. Tr. at 189 (Babej). The remaining number of unretired RECs from 2016 to 2020 totals 6,022. However, Mr. Babej acknowledged that some of the RECs associated with generation in 2016 may have expired, depending on the date of issuance of the RECs, see

RECs that are estimated to be available to be retired in 2021 are RECs that are “owed” to the Sky Blue program. Mr. Babej explained that the RECs are owed to the Sky Blue program because, between 2013 and 2020, 24,961 MWh of Manzano production was allocated to the Sky Blue program (estimated for May through June of 2020), but only 5,252 MWh was used by the Sky Blue program.⁵ Babej Supp., Exh. AJB-1 Supp.; Tr. at 203-06 (Babej). These “owed” RECs apparently are mostly RECs that have been swapped for the residual RECs already retired.

In his Direct Testimony, Mr. Baker said that the Sky Blue regulatory asset consists in part of the cost of energy purchases under the NMWEC PPA. Baker Direct at 9. This is confirmed in Exhibit TSB-10 which includes, as part of the costs in the regulatory asset, NMWEC costs that total \$3,214,755. However, Mr. Babej testified that NMWEC RECs that are not retired for Sky Blue are retired for RPS purposes each year, and the costs of these RECs is recovered through PNM’s Renewable Energy Rider. Babej Supp. at 7; Tr. at 195-96 (Babej). Mr. Babej was unable to state whether the cost of the NMWEC RECs recovered through the Renewable Energy Rider is also part of the regulatory asset. Tr. at 195-98.

NM AREA witness Meyer initially did not object to PNM’s recovery of the revenue requirement of the Sky Blue regulatory asset through PNM’s Renewable Energy Rider, subject to reducing the carrying charge to 4% and amortizing recovery over five years instead of one year as proposed by PNM. Meyer Direct at 6-8. However, after reviewing PNM’s response to a bench request issued by the Hearing Examiner, Mr. Meyer said he opposes Commission approval of PNM’s recovery of the revenue requirement of the Sky Blue regulatory asset in any amount in this case because PNM has not provided sufficient information to support such recovery. Tr. at 221. Mr. Meyer said that PNM should document the number of RECs associated with generation from the Manzano facility and allocated to the Sky Blue program that have expired. Mr. Meyer estimated that 5,800 of such RECs may expire by the end of 2020. Tr. at 221-26.

NMSA 1978, § 62-16-5(B)(4), which is in WREGIS records that are not in evidence, nor were they moved into evidence. Tr. at 208-09.

⁵ 24,961 minus 5,252 is 19,668 MWh/RECs. Mr. Babej got to the 19,016 number of MWh/RECs by subtracting from 19,668 the 652 expired RECs. Babej Supp. at 4.

Mr. Meyer also said that PNM should document the number of RECs associated with generation from the NMWEC and allocated to the Sky Blue program that were used for the Sky Blue program and RPS compliance. *Id.* at 226-27. Mr. Meyer questioned whether PNM's use of swapping was authorized by the Commission and recommended that PNM provide proof of such authorization. *Id.* at 224-28. Mr. Meyer summarized that NM AREA does not oppose PNM's recovery of the prudent costs of the Sky Blue program, but that PNM has provided insufficient information to justify such recovery in this case. *Id.* at 239, 245 ("We have no way of knowing what the proper valuation for Sky Blue is at this time, given what I will call the lack of documentation, complete documentation surrounding the regulatory asset and the claimed RECs that have expired.").

If the Commission approves PNM's requested recovery of the revenue requirement of the Sky Blue regulatory asset, Mr. Meyer recommends approval of (1) a 4%, not 8.64%, carrying charge; and (2) a five-year amortization of the regulatory asset. Mr. Meyer said that a 4% carrying charge reflects a reasonable balancing of interests of shareholders and ratepayers and the cost of long-term debt. Meyer Direct at 7; Tr. at 229, 257-58. He said that he generally supports five-year amortizations for costs associated with extraordinary events if the ratepayer impact is not significant. He said that a five-year amortization is appropriate for the Sky Blue regulatory asset because the additional cost would not significantly impact ratepayers, would allow timely recovery of a regulatory asset that accumulated over eight years and would take into account the economic challenges facing ratepayers because of the COVID-19 pandemic. Meyer Direct at 7.

Staff joins in NM AREA's recommendation that PNM produce the information requested by Mr. Meyer. Tr. at 283 (Reynolds). Nevertheless, Staff recommends that the Commission act in this case on PNM's request for recovery of the revenue requirement of the Sky Blue regulatory asset because delaying action would allow the regulatory asset balance to grow. Thus, the information provided by PNM would be for compliance verification purposes. If the balance of the regulatory asset could be frozen or its accumulation could be mitigated, Staff doesn't oppose

deferring a decision to another case. *Id.* at 295, 304 (Reynolds). Staff does not agree with the amount of the revenue requirement of the regulatory asset that PNM seeks to recover, but says that whatever amount of the revenue requirement that the Commission determines is reasonable and prudently recorded should be recoverable through PNM's Renewable Energy Rider. *Id.* at 289-90 (Reynolds). Staff made two objections to the amount of the revenue requirement of the regulatory asset that PNM seeks to recover. First, Staff said that the amount to be recovered should be exclusive of any carrying charge. Staff identified no language in the Commission's Post-Remand Final Order in Case No. 10-00018-UT that authorizes a carrying charge. Additionally, Staff said that even if a carrying charge were deemed approved in Case No. 10-00018-UT, such a carrying charge does not appear to apply to recovery from sources other than Sky Blue participants. Reynolds Direct at 22. Staff's second objection to the amount PNM seeks to recover is that PNM should be held responsible for allowing RECs to expire and therefore should not be allowed to recover the cost of such RECs. Tr. at 286, 306 (Reynolds).

ABCWUA, relying on Mr. Meyer's and Mr. Reynold's testimonies, argues that the Commission should deny PNM's request to recover the Sky Blue regulatory asset revenue requirement. ABCWUA also argues that if the Commission grants PNM's request, it should approve carrying costs of 4%, not 8.64%. ABCWUA argues that a 4% carrying charge is consistent with PNM's testimony in Case No. 12-00131-UT. ABCWUA's Initial Post-Hearing Brief at 5.

NEE, relying on Mr. Meyer's testimony, also recommends that the Commission deny PNM's request to recover the Sky Blue regulatory asset revenue requirement. NEE also recommends that, because PNM failed to notify the Commission until this case of the increasing balance of the regulatory asset, the Commission (1) deny PNM recovery of all of its cumulative under-collection of Sky Blue costs or perhaps deny PNM recovery of such costs incurred after 2015 because PNM represented to the Commission in Case No. 10-00018-UT that Sky Blue revenues would match costs by 2015; and (2) permit only a 4% carrying charge ending after

2015. NEE's Initial Post-Hearing Brief at 10. NEE also argues that the Commission should disallow carrying charges to accrue on the regulatory asset going forward. *Id.* at 9.

PNM disagrees with Staff's, NM AREA's and NEE's recommendations on carrying charges. PNM asserts that the Commission's Final Order in Case No. 10-00018-UT authorizes it to recover an 8.64% carrying charge on the Sky Blue regulatory asset "until the point where PNM utilizes the RECs for RPS compliance and thus rolls the under-collection into the renewable rider. At that point PNM will incur carrying charges at 4%." Tr. at 74 (Baker). PNM witness Baker explained that the 4% carrying charge would apply once the regulatory asset is moved to the Renewable Energy Rider on January 1, 2021. *Id.* at 84 (Baker). Mr. Baker was shown PNM witness Ortiz's testimony in Case No. 12-00131-UT in which Mr. Ortiz said that if the banked RECs are not used for the Sky Blue program but for RPS compliance, PNM would "recalculate" carrying costs at 4%. Mr. Baker acknowledged that it was PNM's position in Case No. 12-00131-UT that the Sky Blue regulatory asset would accrue 4% carrying charges if the Sky Blue RECs were used for RPS compliance. However, he believed that it was inappropriate to rely on Mr. Ortiz's testimony because his understanding is that the Commission, in Case No. 12-00131-UT, "deferred all Sky Blue determinations to the 10-00018-UT case."

PNM objects to a five-year amortization period because it would increase the carrying charges to be recovered by \$181,745 and therefore would cost customers more. Baker Rebuttal at 5-6.

PNM, relying on Section 62-16-5(B)(2) of the REA, asserts that the Commission cannot deny PNM recovery of the costs of expired RECs. PNM's Post-Hearing Brief in Chief at 16. Section 62-16-5(B)(2) states, "The commission shall not disallow the recovery of the cost associated with any expired renewable energy certificate." NMSA 1978, § 62-16-5(B)(2) (2019).

PNM's request to recover the revenue requirement of the Sky Blue regulatory asset through its Renewable Energy Rider should be denied for many reasons. Most of these reasons result from PNM's refusal to recognize that the Commission authorization for PNM to record a regulatory asset and recover the costs associated with unused Sky Blue RECs as RPS compliance

costs is in the Commission's Final Order in Case No. 12-00131-UT, not the Commission's Final Order in Case No. 10-00018-UT. PNM witness Baker's assertion that the Commission's Final Order in Case No. 12-00131-UT deferred all Sky Blue determinations to Case No. 10-00018-UT is simply wrong, as demonstrated by the language in the Final Order in Case No. 12-00131-UT. The Final Order in Case No. 12-00131-UT states, "We decline to approve the 2 MW solar photovoltaic plant component as part of the instant case. Instead, we address *that component* through our *Post-Remand Final Order* issued today in Case No. 10-00018-UT." (emphasis added). The Final Order in Case No. 12-00131-UT does not state that the Commission would address all issues relating to the Sky Blue program in its Post-Remand Final Order in Case No. 10-00018-UT. Rather, the Commission said that it "adopted, approved and accepted" the Recommended Decision issued in Case No. 12-00131-UT with the following "limited modifications:" "excision of the 2 MW solar PV component" and a change to the effective date of the advice notice. Therefore, the Commission adopted Decretal Paragraph D(2) of the Recommended Decision in Case No. 12-00131-UT, which states, as modified to change 2 MW to 1.5 MW:

The use of any residual RECs from the [1.5] MW and any residual wind RECs procured for the Rider 30 Sky Blue Program for future RPS compliance, if such procurements are not used for the Sky Blue Program is APPROVED and authority is hereby GRANTED to record the costs associated with any such residual RECs as regulatory assets and recover such costs as RPS compliance costs, with carrying charges, in the Plan year in which the RECs are used to meet the RPS.

If this Decretal Paragraph D(2) does not apply, as PNM claims, then PNM has no authority to record a regulatory asset and recover the cost of unused Sky Blue RECs for RPS compliance because nothing in the decretal paragraphs of the Recommended Decision on Remand or the Post-Remand Final Order in Case No. 10-00018-UT authorizes PNM to do so. Finding No. 8 of the Commission's Post-Remand Final Order says that excess energy and associated energy eventually may be used for RPS compliance, but this isn't repeated in the decretal paragraphs. This finding must be read to refer to the authorization in Decretal Paragraph D(2) of the Recommended Decision in Case No. 12-00131-UT. This authorization

was granted per PNM's requests in its Amendment to Renewable Energy Portfolio Procurement Plan for 2013, filed *in Case No. 12-00131-UT*, for authority to "use the resources approved in the Sky Blue case for compliance with PNM's renewable portfolio standard ("RPS"), to the extent that customer subscriptions to the new Sky Blue program do not fully utilize those resources" and to "recover the costs for the procurements to the extent they are used for RPS compliance, plus carrying charges and WREGIS fees, as RPS compliance costs." Commission Exh. 1 at 1. This is confirmed by the statement in the Recommended Decision on Remand in Case No. 10-00018-UT that, "[t]o the extent that these banked RECs cannot be used for Sky Blue subscriptions prior to the RECs entering the fourth year of their statutory life, as stated above *PNM has sought Commission approval in Case No. 12-00131-UT* to use them for RPS compliance" Recommended Decision on Remand at 37-38 (emphasis added).

Therefore, the terms of the authorization in Decretal Paragraph D(2) of the Recommended Decision in Case No. 12-00131-UT govern consideration of PNM's request to recover the Sky Blue regulatory asset revenue requirement. Key to consideration of PNM's request is Decretal Paragraph D(2)'s repeated references to the "residual RECs." Decretal Paragraph D(2) does not authorize PNM to accumulate costs associated with "borrowed" or "swapped" RECs in the Sky Blue regulatory asset and recover those costs for RPS compliance: it very specifically authorizes PNM to accumulate costs associated with "residual RECs" and recover those costs for RPS compliance only in the plan year in which the RECs are used for RPS compliance. The evidence indicates that, at most, only 6,022 residual RECs associated with generation from the Manzano facility between 2013 and 2020 and allocated to the Sky Blue Program are unretired. Remaining residual RECs associated with generation from the Manzano facility and allocated to the Sky Blue Program apparently already have been retired for RPS compliance. Additionally, residual RECs associated with generation from the NMWEC and allocated to the Sky Blue program also have already been retired for RPS compliance. Decretal Paragraph D(2) of the Recommended Decision in Case No. 12-00131-UT authorizes PNM to recover the costs associated with those residual RECs only in the year in which the RECs are

used to meet the RPS. PNM did not do so and has lost its ability to recover the costs associated with all but, at most, 6,022 residual RECs through regulatory asset recovery.

The Hearing Examiner in Case No. 12-00131-UT did not pick the language in Decretal Paragraph D(2) out of thin air. That language came from PNM witness Gerard Ortiz's supplemental testimony in Case No. 12-00131-UT, in which he requested:

A Commission order in this case that approves the use of any residual RECs from the 2 MW and any residual wind RECs for future RPS compliance, and also authorizes the costs associated with these residual RECs to be recorded as regulatory assets and recovered as RPS compliance costs, with carrying charges, in the Plan year in which the RECs are used to meet the RPS.

Commission Exh. 1, Ortiz Supp. at 7. Similarly, PNM witness Shane Gutierrez, in his supplemental testimony in Case No. 12-00131-UT, testified that the monthly revenue requirement associated with residual RECs “will be charged to a regulatory asset *for recovery contemporaneously with the use of the banked RECs for RPS compliance.*” Commission Exh. 1, Gutierrez Supp. at 7 (emphasis added).

Decretal Paragraph D(2)'s specific authorization, had it been followed by PNM, would have minimized the amount of carrying charges included in the balance of the Sky Blue regulatory asset because it allows carrying charges to accrue only for the four-year life of the residual RECs. This is consistent with PNM witness Gerard Ortiz's supplemental testimony in Case No. 12-00131-UT that “[f]or any level of under-subscription in the Sky Blue program, PNM proposes to bank the unused Sky Blue RECs for RPS compliance in 2015 or thereafter *before they reach the final year of their four-year statutory life.*” *Id.*, Ortiz Supp. at 12 (emphasis added). The revenue requirement of the Sky Blue regulatory asset that PNM seeks to recover includes carrying charges accrued since 2014 and to accrue during 2021 while the regulatory asset is amortized. The total carrying charges that PNM seeks to recover are \$654,648. Of that amount, \$609,202 is carrying charges on the regulatory asset from January 1, 2013 to December 31, 2020 (carrying charges were negative in 2013), calculated at an 8.64% rate, and \$45,436 in carrying charges on the average regulatory asset balance of \$1,135,907 during 2021, calculated at a 4% rate. Baker Direct, Exhs. TSB-9 and 10. PNM's failure to request recovery of the costs

associated with residual RECs in the year that they were used for RPS compliance has ballooned the balance of the regulatory asset because carrying charges have accrued for more than four years on the regulatory asset balance.

Contrary to PNM's position, Decretal Paragraph D(2) clearly ties the balance of the Sky Blue regulatory asset to the balance of residual RECs: it authorizes PNM to record "the costs associated with such residual RECs" in a regulatory asset and to "recover such costs," along with carrying charges, as RPS compliance costs. Decretal Paragraph D(2) does not authorize recovery of non-related REC costs, such as education and marketing costs. Shane Gutierrez's testimony in Case No. 12-00131-UT demonstrates that PNM understood that the balance of the regulatory asset is tied to the balance of residual RECs: Mr. Gutierrez calculated the additional 2015 RPS cost if no customers subscribed to the Sky Blue program and all MWh/RECs allocated to the Sky Blue Program were used for RPS compliance. He calculated that additional cost by multiplying the per MWh procurement cost of each MWh/REC by the projected number of residual RECs plus 4% carrying charges. Commission Exh. 1, Gutierrez Supp. at 7.

PNM's argument that the regulatory asset balance is not tied to the REC balance hinges on the Hearing Examiner's statement in the Recommended Decision on Remand in Case No. 10-00018-UT that "[i]f the RECs are used for RPS compliance, the deferred revenue requirements in the regulatory asset will be recovered as an RPS compliance cost." PNM's Post-Hearing Response Brief at 2 (quoting Recommended Decision on Remand at 36). PNM ignores that three sentences earlier in the same paragraph, the Recommended Decision on Remand states that "PNM proposes to bank the excess RECs and *book the revenue requirement associated with the banked RECs to a regulatory asset.*" (Emphasis added). Reading the paragraph as a whole, the "deferred revenue requirements" referred to in the sentence emphasized by PNM refer to the revenue requirements associated with the banked RECs, not the revenue requirement of the Sky Blue program. In any event, the sentence relied on by PNM was not repeated in either the Decretal Paragraphs of the Recommended Decision on Remand or the Post-Remand Final Order in Case No. 10-00018-UT.

PNM's additional argument that "it is not practicable to account for unrecovered revenue requirements together with associated RECs," PNM's Post-Hearing Response Brief at 3, is belied by its own exhibits admitted into evidence in this case. Exhibit SG-1 Rebuttal to Shane Gutierrez's Rebuttal Testimony states the revenue requirement of PNM's 2021 Plan, Tr. at 62-64 (Gutierrez), broken down by procurements. This Exhibit calculates the total cost of each procurement on a per MWh/REC basis by adding a "\$/MWh-REC" cost and a "\$/MWh-REC" WREGIS cost, and multiplying that dollar amount by the number of MWh/RECs estimated to be generated. For example, for the NMWEC procurement in 2021, the total cost is a \$27.25 per MWh-REC cost plus a \$0.008 per MWh-REC WREGIS cost multiplied by 606,106 RECs. Exh. SG-1 Rebuttal at 2.

While Decretal Paragraph D(2) does not state the authorized percentage of the carrying charge, PNM clearly proposed a 4% carrying charge if the residual RECs were used for RPS compliance. The 8.64% carrying charge applies only if the cost of the residual RECs are recovered through the Sky Blue program.

PNM cannot be authorized in this case to recover through the regulatory asset, the costs associated with approximately 6,022 residual RECs associated with generation from the Manzano facility and allocated to the Sky Blue program, along with carrying charges, because PNM has not submitted evidence of the reasonable costs associated with those RECs. The 2021 per REC cost of \$121.86 that PNM calculated for the vintage Sky Blue RECs is not based on evidence of the actual costs associated with the RECs. Rather, \$121.86 is the claimed revenue requirement of the Sky Blue regulatory asset — \$2,317,329 — divided by the claimed number of RECs available to retire — 19,016. Following this methodology, the 2021 cost of each of the 6,022 residual RECs would be \$384.81: \$2,317,329 divided by 6,022. A \$384.81 per REC cost is clearly unreasonable in light of PNM's calculation of the per REC cost of the RECs associated with the 6.5 MW of the Manzano facility used for RPS purposes to be \$69.80 per MWh/REC. Gutierrez Rebuttal, Exh. SG-1 Rebuttal at 2; Tr. at 60 (Gutierrez).

In summary, the following are the terms of the regulatory asset authorization:

- The costs authorized to be recorded in the regulatory asset are “costs associated with residual RECs.” These costs shall be recorded on a per REC basis and are limited to the per MWh/REC cost of the procurement, the per REC WREGIS issuance fee, the per REC WREGIS retirement fee and 4% carrying charges.
- The per REC cost must be recovered as an RPS compliance cost before the end of the four-year life of the residual REC. “Swapping,” as referred to in the hearing, is not permitted.
- The per REC cost must be recovered as an RPS compliance cost in the year in which the REC is used to meet the RPS.

Additionally, in a renewable energy procurement plan case in which PNM proposes to recover, as RPS compliance costs, the costs associated with residual RECs in the regulatory asset, it should include as part of its filing in that case, for each residual REC that it proposes to use for RPS compliance purposes in the plan year, (1) the issuance date of the REC; and (2) the date of the end of the four-year life of the REC.

Denial of PNM’s request to recover the revenue requirement of the Blue Sky regulatory asset in this case does not mean that PNM cannot recover, *outside of regulatory asset recovery*, the cost of RECs associated with generation from the Manzano facility and “owed” to the Sky Blue program that are used to comply with the RPS. “A public utility that procures or generates renewable energy shall recover, through the ratemaking process, the reasonable costs of complying with the renewable portfolio standard.” NMSA 1978, § 62-16-6(A). However, PNM cannot recover such costs through its 2021 Renewable Energy Rider because, as stated above, PNM has not submitted evidence of the reasonable cost of such RECs. The reasonable cost of such RECs is the per MWh/REC cost of the procurement plus the per MWh/REC WREGIS issuance and retirement costs, multiplied by the number of MWh/RECs, which is how PNM calculates the cost of procurements used to comply with the RPS in its renewable energy act plan

cases. *See, e.g.,* Gutierrez Rebuttal, Exh. SG-1 Rebuttal at 2-3. The reasonable cost would not be related to the under-recovery of the Sky Blue program revenue requirement and would not include carrying charges nor education and marketing expenses. If PNM seeks to recover in a future renewable energy act plan case, as an RPS compliance cost, the cost of RECs associated with generation from the Manzano facility and “owed” to the Sky Blue Program, it should include as part of its filing in that case:

1. the number of such RECs;
2. the per MWh/REC procurement cost, separately by year if the RECs are associated with generation in different years;
3. the per MWh/REC WREGIS issuance and retirement costs;
4. the issuance date of each REC; and
5. the date of the end of the four-year life of each REC.

Unfortunately, the REA prohibits the Commission from disallowing recovery of the cost associated with any expired REC. NMSA 1978, § 62-16-5(B)(3). This is unfortunate because, as Staff witness Reynolds said, it absolves PNM of responsibility for letting the RECs expire and requires ratepayers to pay the cost of replacement RECs that would otherwise be unnecessary. Tr. at 286. Letting the RECs expire is especially egregious given that PNM projects a 30,605 REC shortfall in 2020, Gutierrez Rebuttal at 3 as corrected at Tr. at 52, to which the expired RECs might have been applied, Tr. at 299 (Reynolds). However, PNM cannot recover the costs of expired RECs through its Renewable Energy Rider because expired RECs cannot be used for RPS compliance. *See* Pitts Direct, Exh. HMP-4 at 1 (PNM’s proposed 18th Revised Rider No. 36; stating, under “Description,” that “[t]his Rider is established to recover Renewable Portfolio Standard (“RPS”) compliance costs.”).

If the Commission decides to allow PNM to recover some or all of the revenue requirement of the Sky Blue regulatory asset in this case, it should (1) only allow recovery of carrying charges of 4% from December 1, 2013 through December 31, 2020; and (2) order amortization of the recovery over five years. While the decretal paragraphs of the Final Order

and Recommended Decision in Case No. 12-00131-UT do not authorize a specific percentage carrying charge, PNM proposed a 4% carrying charge in that case, as PNM witness Baker acknowledged in this case, and the Amended Stipulation approved in Case No. 10-00086-UT requires using a 4% carrying charge. Additionally, NM AREA witness Meyer made persuasive arguments for using a 4% carrying charge. Mr. Meyer also made persuasive arguments for amortizing the Sky Blue regulatory asset over five years.

Regardless of whether the Commission allows PNM to recover all or a portion of the Sky Blue regulatory asset revenue requirement in this case, the Commission should adopt NEE's recommendation to not allow recovery of carrying charges on the Sky Blue regulatory asset going forward. PNM is not entitled to accrue carrying charges, or a return, on the regulatory asset. Whether to permit carrying charges is in the Commission's discretion. See Case No. 15-00261-UT, Corrected Recommended Decision at 129-31 (8-15-16), adopted in relevant part by Final Order Partially Adopting Recommended Decision (9-28-16). Allowing recovery of carrying charges on the regulatory asset places too great a burden on PNM's customers who do not subscribe to the Sky Blue program.

IX. REVISED RENEWABLE ENERGY RIDER RATE

PNM seeks approval of a revised Renewable Energy Rider rate of \$0.0085525 per kWh. PNM calculated this revised rate by dividing a 2021 revenue requirement of \$67,769,085 by its projected 2021 sales subject to the Rider. Pitts Direct at 3-5. This proposed revised rate should be rejected because it recovers the Sky Blue regulatory asset revenue requirement, which PNM should not be allowed to recover.

The 2021 plan revenue requirement, less the revenue requirement of the Sky Blue regulatory asset, is \$65,451,835. PNM Exh. 10 at 1-2. The revised Renewable Energy Rider rate necessary to recover \$65,451,835 is \$0.0082600 per kWh, an 8.1% increase over the current Rider rate of \$0.0076413. *Id.* at 2. Under this revised rate, the monthly bill for an average-use residential customer using 600 kWh per month would increase from \$73.49 to \$73.87, a 37¢ or

0.51% increase. The monthly bill for an average-use small power customer would increase from \$197.30 to \$198.23, a 93¢ or 0.47% increase. *Id.*, Exh. HMP-3 BR.

A revised Renewable Energy Rider rate of \$0.0082600 per kWh is just and reasonable and should be approved.

X. REQUIREMENT FROM CASE No. 19-00158-UT

In Case No. 19-00158-UT, in which the Commission approved PNM's proposed Solar Direct Program, PNM indicated that it would survey a sampling of customers to understand their interest in a potential Sky Blue alternative program. PNM agreed to provide the survey results to the Commission in its next renewable energy act plan case (this case). Case No. 19-00158-UT, Recommended Decision at 43 (3-10-20), adopted by Final Order (3-25-20). Accordingly, Decretal Paragraph K of the Recommended Decision in Case No. 19-00158-UT, which was adopted by the Commission, states:

PNM shall survey all of the customer subscribers in its Sky Blue voluntary program, as well as other PNM customers, regarding future voluntary programs and provide the Commission with the results of that survey by the next RPS case.

Id. at 60, ¶ K.

In this case, PNM witness Babej reported on PNM's survey, which PNM emailed to 27,171 customers. The customers included Sky Blue subscribers, customers with rooftop solar and customers not participating in any renewables program. The survey launched on January 20, 2020 and closed on March 9, 2020. There were 2,009 responses with 1,351 completions. Babej Direct at 12-15.

The results of the survey showed that Sky Blue customers were satisfied with the program. Key drivers of satisfaction with the program were (1) the lack of a program contract term and the ability of customers to change their subscriptions at any time; (2) information provided about how the program supplies renewable energy; (3) the cost of subscribing; and (4) the knowledge that subscribers support renewable energy. The key driver of dissatisfaction with the program is the information provided about how the program works. PNM's interpretation

of these results is that the more customers want to understand the program, the less satisfied they are with the program. PNM believes this is likely due to the complex nature of the program's fluctuating blend of solar and wind energy. Approximately 75% of Sky Blue subscribers expressed no preference between solar and wind energy as sources of renewable energy for the program. Among those customers with a preference, 86% preferred solar to wind energy. *Id.* at 15-16.

The survey results showed some interest in the Sky Blue program among non-subscribers: approximately 36% of non-subscribers ranked their interest in the Sky Blue program in the top-two box scores on a scale of 1 to 10. However, 35% of non-subscribers ranked their interest at 5 or below. The main reason for non-interest was the premium price of the program. *Id.* at 17.

Customers who participate in the Low Income Home Energy Assistance Program (LIHEAP) were twice as likely to state that they were not interested in purchasing renewable energy. Furthermore, among LIHEAP customers that subscribed to the Sky Blue program, over 60% expressed interest in switching to a community solar program if one were offered by PNM. *Id.* at 18-19.

Based on the results of a question concerning subscribing to a community solar program, PNM concluded that customers are very price sensitive to subscribing to a voluntary renewable energy program: when asked at what point the customer likely would not participate in a community solar program, 23.5% of respondents said that the program must show cost savings, 20.3% said the program must not involve an additional cost, 30% said the program must not involve more than a one to ten percent cost increase, 14.8% said the program must not involve more than a 14.8% cost increase and 11.4% said that the program must not involve more than a 16-20% cost increase. *Id.* at 19-20.

Based on the results of the survey, PNM concluded that increasing participation in the Sky Blue program would be difficult because of the high price of program participation. Mr.

Babej concluded, “Customers understand that the cost of renewable energy continues to fall and asking for a high premium does not match their perception of current market forces.” *Id.* at 20.

Mr. Babej testified that the low subscription levels began when the current PNM Sky Blue program began in May 2013. The Final Order approving the current program required all 12,000 subscribers to the previous Sky Blue program to be removed from the program and to re-enroll in the new program. Very few original subscribers re-enrolled in the new program and participation in the new program has varied between approximately 3,500 and 4,000 subscribers. PNM held focus groups to attempt to understand why former program participants did not reenroll in the new program. Many former participants said that they did not know that they were no longer enrolled in the program. Others said that paying extra for renewable energy was not attractive because the cost of renewable energy was declining. *Id.* at 9-11.

PNM conducted a win-back campaign through the Fall of 2016 to early 2017 to attempt to increase participation in the program. This campaign was successful in increasing participating customers by 44%. However, most of the customers who joined only subscribed to the minimum participation level of a single 100 kWh block, so the increased participation did not significantly increase energy sales. Since the win-back campaign ended, the program has lost approximately ten customers per month, indicating that constant recruitment of new participants would be necessary to maintain the participation level achieved through the win-back campaign. *Id.* at 11.

PNM witness Babej said that the Sky Blue program probably is not sustainable through its expected 20-year life. Tr. at 176. PNM plans to replace the Sky Blue program with a program that will better serve customer needs at an attractive price point that ensures sustainability. The replacement program would be sourced from both solar and wind resources. If a price premium is required, PNM says that, based on the survey results, it should result in no more than a 10% bill increase because anticipated customer demand drops by almost one-half at the price premium threshold. PNM would incorporate into the program a robust customer education component to better inform participants of how their participation influences the production of

renewable energy. PNM believes that a replacement program also should encourage low-income participation, possibly through incentives. Babej Direct at 21-23. In his Direct Testimony, Mr. Babej said that PNM intended to file a petition to propose a replacement program in the Fourth Quarter of 2020, depending on the circumstances surrounding the COVID-19 pandemic. *Id.* at 22. However, at the hearing, Mr. Babej said that PNM does not intend to file such a petition in 2020 because PNM is still studying the issue. Tr. at 174. He did not know when PNM will file a petition and could not commit to a filing date. *Id.* at 177, 191.

XI. REQUIREMENTS FROM CASE No. 19-00159-UT

In its Final Order in PNM's last renewable energy act plan case (Case No. 19-00159-UT), the Commission ordered PNM to address the following three matters in its next renewable energy act plan case (this case).

A. REASONABLENESS OF COST OVERRUN

In Case No. 19-00159-UT, the Commission approved recovery of \$9.3 million for the cost of a 50 MW PNM solar photovoltaic project built by Affordable Solar (the Affordable Solar Project) through PNM's Renewable Energy Rider. The Commission had approved this project in PNM's 2017 renewable energy act plan case (Case No. 17-00129-UT). In Case No. 17-00129-UT, PNM estimated the cost of the Affordable Solar Project to be \$8,674,518. Case No. 17-00129-UT, Recommended Decision at 64 (10-17-17); Final Order Partially Adopting Recommended Decision at 2, ¶ 4 (11-15-17). In Case No. 19-00159-UT, NEE argued in its posthearing brief that PNM should only be allowed to recover \$8.7 million — not \$9.3 million — through its Renewable Energy Rider for the cost of the Affordable Solar Project (a difference of \$673,657). The Commission approved PNM's request to recover \$9.3 million for the Affordable Solar Project through its Renewable Energy Rider, subject to potential refund in this case of the \$673,657 difference. The Commission explained that in Case No. 17-00129-UT, it approved the reasonableness of the \$8.7 million cost estimate, but that it had not approved the

reasonableness of any costs in excess of the estimate. Because the evidentiary record in Case No. 19-00159-UT lacked evidence on the details of the cost overrun, the Commission ordered PNM to provide in this case “evidence demonstrating the reasonableness of the cost overrun.” The Commission tentatively approved the excess cost for recovery, but said that “the excess cost should be accrued in a regulatory liability that will be subject to refund in the next case if the cost overruns are not proven to have been reasonably and prudently incurred.” Case No. 19-00159-UT, Recommended Decision at 52-55 (12-2-19), adopted by Final Order Adopting Recommended Decision (1-29-20).

In this case, PNM has again changed the estimated revenue requirement of the Affordable Solar Project. PNM witness Baker testified that the updated projected revenue requirement of the Affordable Solar Project is \$8,758,620, an increase of only \$84,102 or 0.97% from the \$8,674,518 projected revenue requirement in Case No. 17-00129-UT. The revenue requirement is still only projected because the actual 2020 revenue requirement of the Project will not be known until the end of 2020. Baker Direct at 13-14.

The table on the next page shows the components of the Affordable Solar Project revenue requirement that changed from 2017 to the present.

PNM Table TSB-2		
PNM-Owned 2019 Solar Facilities (50MW)		
Line No.		2020
1	Total Estimated Revenue Requirement (17-00129-UT)	\$ 8,674,518
2		
3	Change to Projected Revenue Requirement:	
4	Savings on Capital Investment	(74,829)
5	Impacts of Tax Cuts and Jobs Act (Note 1)	(131,745)
6	Update to WACC Due to Lower Debt Rate	(192,954)
7	Refined Operating Expense Projection	(278,504)
8	Elimination of ITC Amortization (Note 2)	762,133
9	Total Change in Projected Revenue Requirement	84,102
10		
11	Updated Projected 2020 Revenue Requirement	\$ 8,758,620
12	(Line 1 + Line 9)	
13		
14	Note 1: Tax Cuts and Jobs Act eliminated bonus depreciation for utilities and lowered the federal income tax rate from 35% to 21%.	
15	Note 2: PNM originally forecasted to begin amortizing ITC beginning 2020. PNM now estimates it will begin amortizing ITC beginning 2021.	

Id. at 14.

As the table shows, the primary driver of the increase in the Affordable Solar Project revenue requirement from 2017 is the timing of ITC amortization, which increases the revenue requirement by \$762,133. PNM witness Baker explained that when PNM estimated the 2020 revenue requirement in Case No. 17-00129-UT, it assumed that PNM would be out of a consolidated net operating loss (NOL) tax position in 2019 and therefore could begin amortizing ITC beginning in January 2020. When PNM filed its 2020 renewable energy act plan in Case No. 19-00159-UT, PNM had a more accurate estimate that it would be out of a consolidated NOL tax position in 2020 and therefore would be able to begin amortizing ITC beginning in January 2021, one year later than earlier projected. As the table also shows, the \$762,133 increase in the revenue requirement from the ITC amortization is mostly offset by lower actual

capital costs, impacts of the Tax Cuts and Jobs Act, a lower return on rate base caused by a lower cost of debt and refined estimates for operating expenses. *Id.* at 15.

The reduction in the projected Affordable Solar Project revenue requirement from Case No. 19-00159-UT to this case (a reduction of approximately \$500,000) is primarily driven by a reduction in the allocation of operations and maintenance (O&M) expense to the Affordable Solar Project because of PNM's change in how it allocates O&M expense among PNM-owned solar facilities. PNM historically allocated O&M among its owned solar facilities based on the MW capacity of each facility. After consulting its Solar Planning Department, PNM determined that a more accurate method is to allocate O&M expense based on the number of inverters a facility has, which is a primary driver of O&M expense. The change in allocation method shifted O&M expense back to other PNM-owned solar facilities. *Id.* at 16.

PNM asks that the Commission terminate the requirement for it to record a regulatory liability because PNM asserts that the cost for the Affordable Solar Project is "reasonable and approved by the commission." *Id.*

Staff recommends that the Commission wait until after February 28, 2021 to determine whether the cost overrun was reasonably and prudently incurred. February 28, 2021 is the due date for PNM to file a report that reconciles actual 2020 Rider revenues with actual 2020 procurement costs. However, because the currently estimated difference in revenue requirements is relatively small, Staff recommends that the Commission grant PNM's request to terminate the requirement that PNM record a regulatory liability, subject to review after PNM's filing of its February 28, 2021 report. If the reconciliation shows a much larger difference in revenue requirements for the Affordable Solar Project, Staff recommends that the Commission revisit the need for PNM to record a regulatory liability next year, when PNM files its next renewable energy act plan. Eschberger Direct at 13-14.

In Rebuttal Testimony, PNM agreed with Staff's recommendation that the Commission wait until after PNM makes its February 28, 2021 filing to determine whether the cost overrun was reasonably and prudently incurred. However, PNM believes that it is unnecessary to adopt

an additional review requirement in this case because the February 28, 2021 reconciliation filing already provides the Commission the opportunity to review whether the actual costs to be recovered through the Renewable Energy Rider are consistent with costs approved in prior renewable energy act plan cases. Baker Rebuttal at 6-7.

Because the actual 2020 revenue requirement of the Affordable Solar Project will not be known until the end of 2020, the Commission should wait until after PNM makes its February 28, 2021 filing to determine whether the cost overrun was reasonably and prudently incurred. PNM should be required to continue to record the regulatory liability, and this issue should be addressed again when PNM files its next application for approval of its renewable energy act plan in 2021. Whether any cost overrun was reasonably and prudently incurred does not appear to be within the scope of the annual February reconciliation filing, which was described, when it was approved, as simple true up of Rider revenues and procurement costs. See Case No. 12-00007-UT, Recommended Decision at 28-30 (6-19-12), adopted in relevant part by Final Order (8-14-12).

NEE does not address whether PNM should be required to continue to record a regulatory liability, but makes two recommendations related to the change in the projected revenue requirements of the Affordable Solar Project. First, NEE recommends that the Commission reduce the revenue requirement of the Affordable Solar Project by an amount that reasonably compensates ratepayers for the lost time value of the ITC benefit that they did not receive in 2020. NEE recommends that, if necessary, the Hearing Examiner issue a bench request to obtain the information necessary to make NEE's suggested adjustment. NEE's Initial Post-Hearing Brief at 13. Second, NEE recommends that the Commission order PNM, in its next renewable energy act plan case, to (1) allocate projected O&M expenses among each of its PNM-owned solar resources based on actual historic O&M expense data; and (2) show that those amounts are reasonable. This recommendation is based on NEE's objection to PNM changing its method of allocating O&M costs after the Commission approved PNM's owned solar resources. *Id.* at 14-15.

NEE's recommendation to reduce the revenue requirement of the Affordable Solar Project by an amount that reasonably compensates ratepayers for the lost time value of the ITC benefit that they did not receive in 2020 should be rejected because NEE cites no legal support for doing so, and it is too late to issue a bench request for the needed information because the record is closed. PNM's Post-Hearing Response Brief at 9. NEE's recommendations relating to allocation of O&M expenses among PNM-owned solar resources should be rejected because there is no prohibition on a utility changing cost allocation methods. This happens frequently in rate cases, and PNM provided compelling reasons for changing the way it allocates O&M expenses among its owned solar facilities.

B. LIGHTNING DOCK REPORTING REQUIREMENTS

The Commission first approved the Lightning Dock PPA geothermal procurement in 2012 in Case No. 12-00131-UT. Production at the Lightning Dock Facility significantly fell short of projections for several years, caused in part by equipment failures. To rectify these failures, Lightning Dock decided to repower the plant with utility grade power generation equipment. Case No. 17-00129-UT, Recommended Decision at 53-57. In Case No. 17-00129-UT, the Commission approved an Amended PPA between PNM and Lightning Dock which required Lightning Dock to repower its Facility as it proposed. *Id.*, Final Order Partially Adopting Recommended Decision at 5-8.

Subsequently, PNM entered into Amendment Nos. 1 and 2 to the Amended PPA. PNM also entered into a Consent Agreement between Lightning Dock and Wilmington Trust, National Association as collateral agent holding security for the benefit of the project lender, BNP Paribas. In Case No. 18-00158-UT, Staff expressed concerns about Amendment No. 2 and certain provisions of the Consent Agreement, founded in Staff's conclusion that the contractual provisions at issue appeared to have shifted the risk of performance or non-performance inherent to the Lightning Dock procurement to the potential detriment of PNM ratepayers. As a means of addressing some of Staff's concerns while at the same time holding out a good faith

compromise of the matter for the time being, Staff recommended that PNM be required to address five matters in direct testimony in every future renewable energy act plan case. PNM agreed to Staff's recommendation. The Hearing Examiner recommended amendments to Staff's reporting recommendations. Case No. 18-00158-UT, Recommended Decision at 38-43 (11-16-18). The Commission adopted the Hearing Examiner's recommended amendments and ordered PNM to address with supporting testimony in every future renewable energy act plan case, the following matters about the Lightning Dock procurement:

1. State the annual energy output by the Dale Burgett Facility for the prior calendar year and the first three months of the following year;
2. Identify any change or supplement, including assignments, to the PPA or the Consent Agreement, and explain whether PNM believes the change or supplement is material;
3. Report about any seller Events of Default in the prior calendar year and up until the filing date of the testimony;
4. Report about any future bankruptcy proceeding related to the Lightning Dock procurement during the prior calendar year and up until the filing date of the testimony; and
5. Report about changes, if any, to PNM's credit analysis of Lightning Dock and CYRQ Energy (Lightning Dock's parent company) and, if no credit analysis was performed that year, include a simple explanation of why no new credit analysis was required.

Case No. 18-00158-UT, Recommended Decision at 48-49 (11-16-18), adopted in relevant part by Final Order Partially Adopting Recommended Decision (11-28-18).

PNM complied with the reporting requirements in its next renewable energy act plan case (Case No. 19-00159-UT). In Case No. 19-00159-UT, the Commission adopted the following paragraph of the Recommended Decision:

The Hearing Examiner also notes the improved production under the Lightning Dock PPA. However, because the improvement has been so recent and for a relatively short period of time, the Hearing Examiner recommends that PNM continue to comply with the reporting requirements established in Case No. 18-

00158-UT and that the need to continue the reporting requirements be evaluated in PNM's next annual Renewable Energy Plan filing in 2020.

Case No. 19-00159-UT, Recommended Decision at 45, 62.

PNM filed testimony in this case addressing the reporting requirements. See Phillips Direct at 20-22; Gutierrez Direct at 11-12. Mr. Gutierrez testified that Lightning Dock's production in 2019 was 58,092 MWh, slightly higher than the developer's estimate of 55,000 MWh. Lightning Dock's production in the first three months of 2020 was 16,331 MWh. Gutierrez Direct at 12. Mr. Phillips testified that (1) there were no changes to the Amended PPA or Consent Agreement; (2) there were no events of default in 2019 or 2020 through June 1, 2020 (the filing date of PNM's Direct Testimony); (3) there were no bankruptcy proceedings in 2019 or 2020 through June 1, 2020; and (4) PNM did not perform a new credit analysis of Lightning Dock or Cyrq Energy as no events or operational concerns indicated potential changes in the previous credit analysis. Phillips Direct at 20-21.

Mr. Phillips reported that on March 30, 2020, Cyrq Energy informed PNM by letter that a force majeure event — the Coronavirus pandemic — would prevent it from being able to meet the forecasted output for 2020. Cyrq explained that it was unable to perform required maintenance on plant equipment and equipment associated with the geothermal wells because the manufacturers who were to perform the maintenance are in Italy and France and face travel restrictions because of the Coronavirus pandemic. Cyrq anticipates that the Lightning Dock Facility's generation will decrease by 25% or 19,000 RECs. *Id.* at 21-22.

Mr. Phillips said that the concerns that gave rise to the reporting requirements appear to have abated and continued reporting may be unwarranted. However, he said that the reporting requires little resources, and PNM can continue to provide the requested information if Staff finds it valuable. Phillips Direct at 23; PNM's Post-Hearing Brief in Chief at 21 ("PNM thus has no objection to continuing to provide the requested information about Lightning Dock in next year's REA plan."). Staff finds the requested information valuable and wants PNM to continue providing it. Reynolds Direct at 19.

PNM should continue to comply with the reporting requirements ordered in Case No. 18-00158-UT.

C. RENEWABLE ENERGY ACQUISITIONS AS SYSTEM OR RPS PROCUREMENTS/COST RECOVERY

The subject of some questioning in Case No. 19-00159-UT was the continued value of recovering costs of renewable energy procurements through a rider instead of base rates. Several factors were discussed. The Commission adopted the Hearing Examiner's statement that the issues "may ultimately be more appropriate for a rulemaking, but the Hearing Examiner recommends at least an initial discussion in PNM's next Renewable Energy Plan filing." Case No. 19-00159-UT, Recommended Decision at 59. The Commission therefore ordered:

PNM shall include in its next Renewable Energy Plan filing a description of PNM's future intentions regarding the recovery of its REA plan costs through the Renewable Energy Rider. The description should include PNM's intentions for renewable energy resource acquisitions through traditional CCN and PPA approvals versus annual Renewable Energy Plans and its intentions for cost recovery through base rates, the FPPCAC and the Renewable Energy Rider. The description should consider the increases in RPS requirements mandated in Senate Bill 489 of 2019 and describe the reasonableness of PNM's approach.

Id. at 62.

1. Renewable Energy Procured as a System Resource

In this case, PNM said that whether a renewable resource should be presented for Commission consideration through a renewable energy act plan filing or through "traditional CCN/PPA filings" will depend on whether the resource acquisition is needed to comply with RPS requirements or whether the resource was selected as a system resource by PNM portfolio modeling based on superior economics or other characteristics. If the former, PNM says that the resource should be considered in a renewable energy plan case. If the latter, PNM says that the resource should be considered in a traditional CCN/PPA filing. Phillips Direct at 16. Mr. Phillips said that the renewable energy procurements approved in Case No. 19-00195-UT were

proposed by PNM as system resources, but PNM nevertheless intends to use the energy and RECs associated with those procurements for RPS compliance. When asked whether PNM believes it needs Commission approval to use such RECs for RPS compliance, Mr. Phillips said “I wouldn’t think so.” Tr. at 48.

Mr. Phillips said that if a renewable energy procurement is approved in a renewable energy act plan case, PNM will recover the costs of the procurement through its Renewable Energy Rider regardless of whether the procurement is approved as a CCN or PPA. If a renewable energy procurement is approved as a system resource in a CCN or PPA proceeding, PNM will not recover the cost through its Renewable Energy Rider. If the approved system procurement is a PPA with an energy-based charge, PNM will recover the cost of the procurement through its fuel and purchased power adjustment clause. If the PPA has a demand charge, that charge would be recovered through base rates. If the approved system procurement is a CCN, PNM would recover the cost through base rates. *Id.* at 35-36.

2. Cost Recovery through PNM’s Renewable Energy Rider

Since the Commission issued its Final Order in Case No. 19-00159-UT, it opened Case No. 20-00158-UT to consider whether rate riders should continue to be used to recover RPS costs and, if rate riders should continue to be used to recover RPS costs, whether such rate riders should be line-loss adjusted. Case No. 20-00158-UT, Order Granting Staff’s Motion to Bifurcate and Opening New Inquiry Docket into Potential Amendments to NMPRC Rule 17.9.572 NMAC Relating to the Renewable Energy Rate Riders and Line Loss Adjustments (8-5-20). Case No. 20-00158-UT, not this case, is the appropriate case to consider continued use of a rate rider to recover RPS costs. This recommendation is consistent with the Commission’s Final Order Adopting Recommended Decision in Case No. 19-00134-UT, in which Southwestern Public Service Company (SPS) sought approval of its 2020 renewable energy act plan. In that case, an intervenor argued that the Commission should terminate SPS’s RPS Cost Rider. The

Commission declined to rule on that argument, finding that continued use of rate riders to recover RPS costs should be considered in the pending rulemaking to ensure consistent treatment of PNM, SPS and El Paso Electric Company, all of whom currently use rate riders to recover RPS costs. Case No. 19-00134-UT, Recommended Decision at 32 (3-30-20), adopted by Final Order Adopting Recommended Decision (4-22-20).

XII. RECOMMENDATIONS FOR TERMINATION OF THE SKY BLUE PROGRAM

NEE recommends that the Commission order PNM to file an application within 30 days of issuance of a final order in this case to terminate the Sky Blue program as soon as practicable, but not more than 60 days therefrom. NEE's Initial Post-Hearing Brief at 9. In support of this recommendation, NEE cites to the following evidence, set forth above in Sections VIII and X:

- Since April 2014, the costs of the Sky Blue program have exceeded its revenues;
- The Sky Blue program currently costs PNM's non-subscribing customers approximately \$18,000 per month;
- PNM has been largely unable to sell residual Sky Blue RECs to offset the regulatory asset;
- There is dissatisfaction with the program among its subscribers, due in part to a lack of understanding of the program; and
- Increasing subscription levels would be difficult at this time because of the high price of program participation.

Id. at 4.

ABCWUA recommends that the Commission terminate the Sky Blue program. ABCWUA describes the program as a "failure" and asserts that, based on Mr. Babej's testimony, there is no reasonable expectation that the program will ever succeed. Therefore, ABCWUA argues, the regulatory asset will continue to grow and non-subscribing customers will continue to bear an increased cost of RPS compliance. Additionally, given the increasing RPS requirements under

the amended REA, ABCWUA questions the need for voluntary programs going forward.

ABCWUA's Initial Post-Hearing Brief at 5-7.

PNM argues that the Blue Sky program should not be terminated because doing so conflicts with 17.9.572.18(A) NMAC, which requires utilities to offer voluntary renewable energy tariffs. PNM's Post-Hearing Response Brief at 7-8. However, that requirement may be waived. 17.9.572.21 NMAC. PNM also argues that the Blue Sky program should not be terminated until a new PNM voluntary renewable energy program has been approved. PNM says that it "has committed to developing a new program and presenting it for Commission approval." PNM's Post-Hearing Response Brief at 7-8. However, the Commission has no idea of when PNM will present a replacement program for approval because, at the hearing, PNM's witness refused to commit to a date for doing so. Tr. at 177, 191 (Babej). Moreover, ABCWUA raises a valid question about the need for voluntary renewable energy programs going forward.

A preponderance of the evidence shows that the Sky Blue program should be terminated and a variance from 17.9.572.18(A) NMAC should be granted. Pass. 789!*. However, the final order in this case cannot terminate the program because the Notice to PNM Customers of this case, which was published and mailed or emailed to PNM customers, did not give notice that the scope of this case would include whether to terminate the program. Therefore, the Commission should adopt NEE's recommendation that PNM file an application to terminate the Sky Blue program within 30 days of issuance of a final order in this case. Administrative notice should be taken in that docket of the evidence in this case relating to the Sky Blue program and the Sky Blue regulatory asset.

XIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Hearing Examiner recommends that the Commission **FIND AND CONCLUDE** as follows:

1. All findings of fact and conclusions of law contained in all Sections of this Recommended Decision are adopted as findings of fact and conclusions of law of the Commission.
2. PNM is certified and authorized to conduct the business of providing public utility service within the State of New Mexico, provides electric utility services within the State of New Mexico and, as such, is a public utility subject to the jurisdiction of the Commission under the Public Utility Act.
3. The Commission has jurisdiction over PNM and the subject matter of this case.
4. Reasonable, proper and adequate notice of PNM's Application has been provided.

XIV. DECRETAL PARAGRAPHS

The Hearing Examiner recommends that the Commission order as follows:

- A. The findings, conclusions and rulings contained in all Sections this Recommended Decision are adopted and approved as findings, conclusions and rulings of the Commission.
- B. PNM's Renewable Energy Act Plan for 2021 is approved.
- C. PNM's request to recover the Sky Blue regulatory asset revenue requirement through its Renewable Energy Rider is disapproved.
- D. PNM's request for approval of a Renewable Energy Rider rate of \$0.0085525 per kWh to be effective January 1, 2021 is disapproved.
- E. PNM's Advice Notice No. 569 is disapproved and cancelled.
- F. PNM shall file, under a new advice notice, a revised Renewable Energy Rider rate of \$0.0082600 per kWh to be effective January 1, 2021.

G. PNM's requested variances from 17.9.572 NMAC are granted, to the extent necessary.

H. PNM's request for a variance from the data filing requirements of 17.9.530 NMAC is granted.

I. PNM shall include its annual REC bank balances in its annual renewable energy act plans.

J. If PNM seeks to recover in a future renewable energy act plan case, as an RPS compliance cost and outside regulatory asset recovery, the cost of RECs associated with generation from the Manzano facility and "owed" to the Sky Blue program, it shall include as part of its filing in that case:

1. the number of such RECs;
2. the per MWh/REC procurement cost, separately by year if the RECs are associated with generation in different years;
3. the per MWh/REC WREGIS issuance and retirement costs;
4. the issuance date of the REC; and
5. the date of the end of the four-year life of the REC.

K. The following are the terms of the regulatory asset authorization in Case No. 12-00131-UT:

1. The costs authorized to be recorded in the regulatory asset are "costs associated with residual RECs." These costs shall be recorded on a per REC basis and are limited to the per MWh/REC cost of the procurement, the per REC WREGIS issuance fee, the per REC WREGIS retirement fee and 4% carrying charges accruing through the effective date of the final order in this case.

2. The per REC cost must be recovered as an RPS compliance cost before the end of the four-year life of the residual REC. "Swapping," as referred to in the hearing, is not permitted.

3. The per REC cost must be recovered as an RPS compliance cost in the year in which the REC is used to meet the RPS.

L. In a renewable energy act plan filing in which PNM proposes to recover, as RPS compliance costs, the costs associated with residual RECs in the Sky Blue regulatory asset, it shall include as part of its filing in that case, for each residual REC that it proposes to use for RPS compliance purposes in the plan year, (1) the issuance date of the REC; and (2) the date of the end of the four-year life of the REC.

M. Effective on the date following issuance of a final order in this case, PNM shall not accrue carrying charges on the Sky Blue regulatory asset.

N. PNM shall not purchase more than 77,000 MWh annually from the Lightning Dock Geothermal Facility for RPS compliance without Commission approval. PNM may purchase more than 77,000 MWh annually from the Facility without Commission approval if the excess over 77,000 MWh is not used for RPS compliance, but to provide a resource when PNM has insufficient resources for load serving or reliability. Any such excess purchases shall not be subject to the terms of the PPA, but shall be arm's length, market-based purchases.

O. PNM shall continue to record a regulatory liability associated with the Affordable Solar Project discussed in Section XI(A) of this Recommended Decision. In its next renewable energy act plan filing, PNM shall state the updated 2020 revenue requirement of the Affordable Solar Project. If there is a cost overrun from the \$8,674,518 revenue requirement estimated in Case No. 17-00129-UT, PNM shall present evidence demonstrating the reasonableness of the cost overrun. PNM shall state the amount that it over or under-collected from ratepayers for the Affordable Solar Project under its Renewable Energy Rider in 2020 assuming that the updated 2020 revenue requirement of the Affordable Solar Project had been collected from ratepayers under the Renewable Energy Rider in 2020.

P. PNM shall continue to comply with the Lightning Dock reporting requirements ordered in Case No. 18-00158-UT.

Q. Within 30 days of issuance of a final order in this case, PNM shall file an application to terminate the Sky Blue program. Administrative notice shall be taken in that docket of the evidence in this case relating to the Sky Blue program and the Sky Blue regulatory asset.

R. Any matter not specifically ruled on during the hearing or in this Final Order is disposed of consistently with this Final Order.⁶

S. This Order is effective immediately.

T. This Docket is closed.

ISSUED at Santa Fe, New Mexico on October 14, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Carolyn R. Glick
Carolyn R. Glick

⁶ See *State v. King*, 2007-NMCA-130, ¶ 17, 142 N.M. 699 (court may refuse to consider arguments unsupported by authority or analysis); *International Minerals & Chemical Corp. v. New Mexico Pub. Serv. Comm'n*, 1970-NMSC-032, ¶ 8, 81 N.M. 280 (PUA requires that Commission find only the ultimate fact).

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE
COMPANY OF NEW MEXICO'S RENEWABLE
ENERGY ACT PLAN FOR 2021 AND PROPOSED
2021 RIDER RATE UNDER RATE RIDER NO. 36**

Case No. 20-00124-UT

CERTIFICATE OF SERVICE

I certify that on this date I sent to the parties listed below, via email only, a true and correct copy of the Recommended Decision.

Stacey Goodwin Ryan Jerman Leslie Padilla Mark Fenton Carey Salaz Brian Buffington Jeffrey Albright Michael Garcia Amanda Edwards Joan Drake Lisa Tormoen Hickey Nann Winter Keith Herrmann Peter Auh Dahl Harris Andy Harriger Steven Michael Cydney Beadles Pat O'Connell April Elliott	stacey.goodwin@pnmresources.com ; ryan.jerman@pnmresources.com ; leslie.padilla@pnmresources.com ; mark.fenton@pnm.com ; carey.salaz@pnm.com ; brian.buffington@pnm.com ; JA@Jalblaw.com ; mikgarcia@bernco.gov ; AE@jalblaw.com ; jdrake@modrall.com ; lisahickey@newLawgroup.com ; nwinter@stelznerlaw.com ; kherrmann@stelznerlaw.com ; pauh@abcwua.org ; dahlharris@hotmail.com ; akharriger@sawvel.com ; smichel@westernresources.org ; Cydney.beadles@westernresources.org ; pat.oconnell@westernresources.org ; april.elliott@westernresources.org ;	Mariel Nanasi Jane Yee Larry Blank Saif Ismail Stephanie Dzur Ramona Blaber Don Hancock April Elliott Peter J. Gould Kelly Gould Bradford Borman John Reynolds Beverly Eschberger Marc Tupler Michael Smith Ana Kippenbrock Carolyn Glick	mariel@seedsbeneaththesnow.com ; jyee@cabq.gov ; lb@tahoeconomics.com ; sismail@cabq.gov ; stephanie@dzur-law.com ; ramona.blaber@sierraclub.org ; srcidon@earthlink.net ; april@elliottanalytics.com ; peter@thegouldlawfirm.com ; kelly@thegouldlawfirm.com ; Bradford.borman@state.nm.us ; john.reynolds@state.nm.us ; Beverly.eschberger@state.nm.us ; marc.tupler@state.nm.us ; michaelc.smith@state.nm.us ; Ana.Kippenbrock@state.nm.us Carolyn.glick@state.nm.us ;
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DATED on October 14, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Carolyn R. Glick
Carolyn R. Glick, Hearing Examiner