

## ***PNM's Renewable Procurement Plan for 2010 – Status Update***

### ***Commissioner Jason Marks***

**September 24, 2009 – PNM's proposals for changing its solar distributed generation programs have been temporarily withdrawn in order to allow time for negotiations between the company and renewable industry stakeholders and other solar advocates.**

This past Tuesday, the PRC issued a procedural order that rejects the portions of PNM's 2010 renewable energy plan concerning modifications to its distributed generation programs as well its ability to comply with the Commission's solar and other resource diversity rules on the grounds that this portion of the plan was incomplete. PNM is directed to re-file the rejected portions of its plan after it has concluded the negotiations that are currently in progress between the company and stakeholders from the renewable energy industry and solar advocates. The PRC's procedural order came in response to joint filings from PNM and these stakeholders, who all wished to obtain some negotiating space to see whether differences could be resolved prior to litigation of the issues before the PRC. The PRC's order directs that the less controversial portions of PNM's 2010 renewable energy plan (a biogas contract and proposed purchases of wind RECs) to move forward on the original schedule for a hearing in October, and reserves the legal question of whether PNM can propose programs not detailed in their July 2009 plan, such as company-owned distributed generation, in the 2010 replacement filing.

### ***Background on the Renewable Portfolio Standard***

New Mexico's Renewable Energy Act (REA) is the state law that requires utilities to obtain a set percentage of their electricity supply from renewable sources. Currently, investor-owned utilities must get 6% of their retail electricity sales from renewables. This increases to 10% in 2011. In 2007, I joined others in successfully lobbying to amend the REA, adding standards of 15% by 2015 and 20% by 2020 for the investor-owned utilities, and bringing the rural electric co-ops under the law beginning in 2015.

Although the REA requires a diversity of renewable resources, utilities had focused on near-term costs when conducting their procurements, with the result that virtually all of New Mexico's renewable energy was coming from wind power. Making effective use of our state's excellent wind resource is a good thing, but a variety of considerations suggest that it is strongly in our state's long-term interests to also develop our solar resource. That's why in 2007, then-Commissioner Ben Ray Lujan and I put forward and passed rules at the PRC that took some of the decision-making power away from utilities by establishing diversity targets for solar and distributed generation (and also biomass or geothermal). Solar must be 20% of the renewable portfolio in 2011 (20% solar carve-out multiplied by the 10% renewable standard = 2% of all retail electric sales from solar in 2011). The distributed generation carve-out, which is on top of the solar

target, is 1.5% of renewables, increasing to 3% by 2015.

Under the REA, utilities must submit an annual plan to the PRC documenting their previous year's compliance and stating their plan for meeting the coming year's requirements. The PRC can accept, modify, or reject a utility's plan. Plans submitted in 2008 and this year need to include a plan to achieve the PRC's resource diversity targets. Thus, in their 2008 submissions, all three investor-owned utilities added new incentive programs for customer-owned solar PV systems and other forms of distributed generation. The PRC approved these programs, in two cases increasing the incentive payment (aka "REC payment") amounts above what the utilities desired, based on evidence that higher payments would be needed to attract sufficient participation.

***PNM's Proposed Plan for 2010 – As filed in July (DG provisions are now on hold)***

For their annual plan filing in July, PNM proposed several changes to their distributed generation programs. With respect to residential-scale solar PV, PNM proposed a 1 MW/year cap on new systems. Because this residential cap is approximately double recent volume, PNM says that they do not expect it to have any actual impact under normal or foreseeable market conditions. But if the price of PV was to drop suddenly, the annual cap would serve as a "fire break" until the company, interested parties, and the PRC were able to reset the incentive rate for new participants to an appropriate level.

PNM acknowledged that it was proposing material changes and limits

for commercial-scale (10 kw and above) systems. Citing declining costs for PV components and systems, they proposed to reduce the REC payment for commercial-scale systems from 15 cents/kwh to 13 cents. They proposed to limit total participation in the commercial-scale program to 4.1 MW and set a maximum system size of 250kw. The overall limit is intended to cap the utility's exposure to supporting customer-owned PV systems at approximately the level required by the PRC's distributed generation carve-out rule.

PNM also proposed to shift the paradigm for distributed generation from customer-ownership to one of utility-ownership. In the future, PNM would like to contract for solar companies to install PV systems that would be owned by the utility, but sited out in the community. PNM would pay customers lease payments for housing the systems. I believe that the utility-ownership issue has been particularly provocative as goes beyond support/opposition for renewable energy, tying into philosophical preferences for centralization versus decentralization.

Less controversially, PNM is proposing to enter into a contract to procure "biogas" produced from dairy-farm manure waste. This biogas would be processed to equivalence with pipeline natural gas (methane), introduced into the gas transmission system and then burned at one of PNM's existing gas-fired electric power plants. The company also proposes to purchase wind power renewable energy certificates (RECs) from Southwestern Public Service Company, the utility serving southeast New Mexico.

Finally, PNM had been working on a procurement for a utility-scale concentrating solar power plant. In its 2010 plan filing, it indicated it did not believe it can meet its 20% solar target for 2011 at a reasonable cost and appears to have abandoned those procurement efforts. (El Paso Electric has already signed a contract and is moving forward on a 90 MW concentrating solar plant to serve Southern New Mexico.) Whether it is reasonable for PNM not to pursue the 20% solar target will be a matter addressed in PNM's re-filed plan.

The PRC had set PNM's plan for a public hearing. The biogas and SPS REC purchases will still go forward on October 6, 2009 at our offices in Santa Fe. At a public hearing, a hearing examiner will take cross-examined testimony from PNM's witnesses, interveners who are opposed to PNM's changes, and others and prepare a recommended decision based on this evidence. The Commission will consider the evidence as well as public comments in arriving at a final decision prior to the end of the year.

When the rejected parts of PNM's plan are re-filed, this will start a new case and new procedural clock. The parties are currently negotiating in good faith in order to come up with a revised plan that could gain broader support in the solar community. However, should the negotiations be unsuccessful, PNM is not barred from re-filing a plan similar to what it has already proposed. Opponents then get a new opportunity to protest the plan and request a hearing.

### *Some thoughts*

Our distributed generation incentive programs have been successful to-date.

Prior to the start of PNM's residential PV support program in January 2006, there were less than 50 grid-tied systems in the whole state. Today, there are about ten times that many, and commercial-scale systems are starting to come online. We are accomplishing our goals of bringing resource diversity to our electric supply, gaining experience on both the utility and installer side with how to integrate distributed solar generation into a centralized grid, bringing the costs of PV down through efficiency and competition, and contributing to the state's economic development.

It is important to remember, that while PV costs are declining, it is still an expensive source of electricity. It doesn't get deployed on a broad scale without subsidies. In the case of the utility REC payment programs, the cost of the subsidies goes into the retail rates paid by all customers. So far, the cost impacts of our renewable programs combined on rates have been very modest, less than a tenth of the impact our conventional supply options have had on rates these past few years. Because our investments in renewable programs are a necessary investment in an energy future that is far less dependent on fossil fuels, I strongly believe they are worth our financial commitment. But every program needs to be looked at to ensure that it is the most cost-effective balancing of all of our objectives. For example, when we are able to procure solar and other renewables for lower cost, that means we can get more of these resources into our mix.

## ***Third Party Ownership Case***

At my request, earlier this year the PRC opened a docket in this matter in order to resolve a dispute between renewable energy advocates and some utilities as to whether third-party ownership arrangements are legal under New Mexico law. In third-party ownership arrangements, the third-party owns the renewable generation system that is placed at the customers' premises, and the customer agrees to buy the output of the system for a set price per kilowatt-hour over the life of the contract. (In the standard arrangement, the customer purchases and owns the renewable system, and simply uses the output on site, offsetting purchases they otherwise would have made of grid power.)

From the renewable developer perspective, third-party ownership is simply an alternative means of financing a large system that eliminates the customer's up-front costs. It's also a critical option for non-profits and others that can't take advantage of federal solar tax credits - the third party takes the credits and reduces the cost to the customer accordingly. But from the utility perspective, it looks like an infringement on their exclusive franchise because someone is selling someone else retail electricity.

This is a purely legal question that must be decided at the PRC based on New Mexico statutes and case law. New Mexico statutes state that the furnishing of electricity *to the public* on a retail basis is reserved to utilities. NMSA § 62-3-3(G). Depending on the specific facts of the transaction, several New Mexico Supreme Court cases have

determined that some retail sales of electricity (or natural gas or water) by non-utilities were permissible because the sales were not "to the public." But the Supreme Court has also ruled that some types of retail offerings are indeed barred under the statute when the seller is not a utility.

A very large number of legal briefs have been received in this case, arguing the applicable statutes and Supreme Court decisions from a variety of perspectives. I have read most of the submissions; however, due to the nature of the proceeding I believe it would be best not to comment further on my impression of what I have read at this time.

Please contact my office if you have comments on these or other cases before the PRC.

Jason Marks