

## ***Commissioner Jason Marks - Fall PRC Constituent Update***

October 15, 2007

### Topics Addressed:

- Clean Energy Update
- Commission Road Trips (and Qwest Investment Update)
- Albuquerque Commissioner Helps Clovis and Edgewood Water Customers
- PNM Electric Rate Case Status/Executive Compensation
- Marks Family Portrait



*Jason speaking with two members of British Parliament who came to Santa Fe to discuss energy policy.*

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### **Clean Energy Update**

*1) Update on the RPS rulemaking I discussed in my last newsletter:*

On August 7, the PRC adopted new administrative rules for our Renewable Portfolio Standard (RPS) that for the first time create explicit targets for the deployment of solar energy in the state. These rules, which I drafted and sponsored, ask utilities to meet at least 20% of their RPS requirement from solar energy, 20% from wind, 10% from biomass, and 1.5% from distributed generation (DG), no later than 2011. The DG requirement increases to 3% in 2015. Since the state's RPS requires 10% of all investor-owned utility electricity to come from renewable sources in 2011, the 20% solar target equates to 2% of total electricity supply (20% x 10%).

The diversity target percentages replaced the weighting system that had been in the old rules. The Commission's Order found that the weighting system had not been effective in promoting renewable energy diversity. Weights were also found to be ineffective in other states that have tried them. Weighting also results in less than the full amount of renewable energy sought by the RPS statute being supplied; for example, if biomass continued to be counted 2 for 1, utilities

could meet the 10% RPS level with 5% wind and 2.5% biomass, for a total of 7.5% actual renewable energy. The Commission "grandfathered-in" weighting for solar and biomass projects that had been approved under the prior rules, and also allowed weighting for rural electric coop projects initiated through 2010.

Generating assets we put in place today will form the basis of our supply portfolio 20 years from now. We need to reduce the exposure of that future portfolio to the fuel price and environmental risks that are increasingly associated with fossil fuel generation. As I wrote back in July, New Mexico's solar resource has the technical potential to easily supply all our electricity needs, but costs need to be brought down. One way to do this is to take measured steps now to develop our solar resource through utility-scale projects. The RPS diversity targets rules set a target of 2% of all electricity sales from solar by 2011 and 3% by 2015. The plants required to achieve these targets would be large enough to generate economies of scale (80 to 100 megawatts), but not so large as to expose ratepayers to excessive cost risks. There are a number of well-capitalized companies now

ving to build the next generation of solar thermal plants in the Southwest. Our new rule creates demand for such a plant, but does not otherwise interfere with the functioning of markets, so we can expect active competition on price and performance.

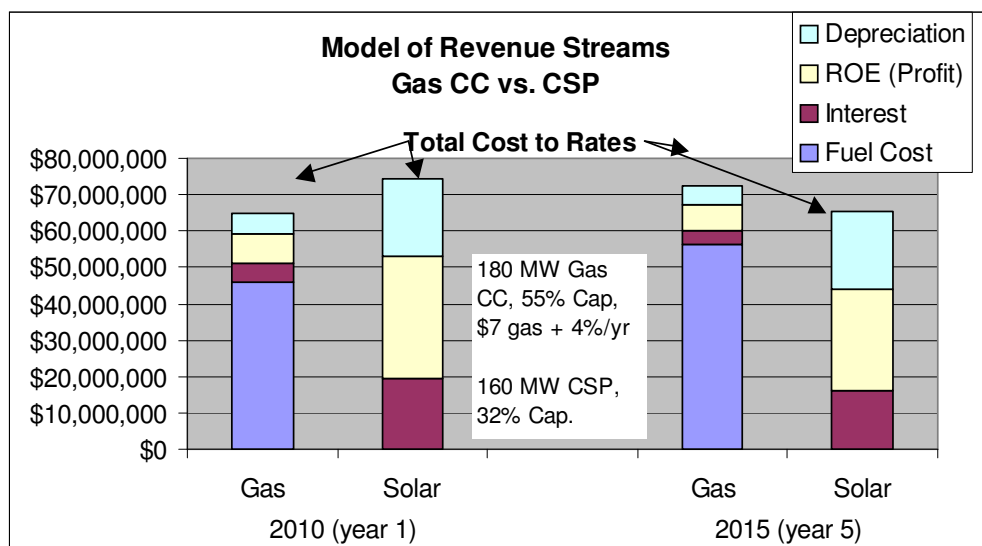
Information offered in the rulemaking indicates that we can expect prices of between 10 and 15 cents per kwh from projects built to meet our new solar targets. The overall rate impact of the diversified renewable portfolio, including utility-scale solar, is expected to be around 2%. Because our rules include a rate impact cap that is fixed at 2% for 2011, if the costs of solar are higher than our projections, utilities will not have to meet the new solar diversity target. Thus, ratepayers are protected from "sticker-shock" as we move towards the diversified energy portfolio the state needs for the future.

**Utility companies, especially PNM and El Paso Electric, opposed the new diversity rules.** It is not clear why, since the rules allow them flexibility to provide less than the designated targets if they were unable to reach the targets after making a reasonable effort to overcome any technical or cost barriers. One interpretation of this opposition is that utilities did not believe they should have to make a reasonable effort to develop the state's solar resources or encourage a modest amount of distributed generation. I hope this is not the case. Utilities also questioned whether it was appropriate for the Commission to determine what types

of resources should be pursued, taking the position that this role should be reserved for utility company executives. Obviously, I disagree, and believe that these types of decisions are best made through public process, and by elected officials, representing the broad public interest.

**Just in the last day or so, we learned that PNM will not be pursuing any further appeals of the RPS diversity rules.** This is a very welcome sign of renewed cooperation towards achieving our state's energy goals.

Ironically, renewable energy plants have the potential to be very good business for utilities. With a gas combined cycle plant, over 70% of the money collected from customers' electric bills passes right through the utility as fuel expense, and only around 10% goes towards shareholder profits. For solar-produced electricity, no fuel cost and low operating expense means that shareholders' return on equity has a draw on over 40% of the revenue stream. Depreciation, which has tax and cash flow advantages, similarly favors solar by a wide margin. These comparisons assume that the utility chooses to own the solar plant after it is built, rather than obtaining its output through a power purchase agreement.



The Commission unanimously supported most aspects of the RPS rulemaking, including elimination of the weighting system, but split 3 - 2 on the adoption of the diversity target percentages. Many of the concepts I used when I drafted the original proposal originated with Commissioner Ben R. Lujan and I want to thank him and Commissioner Sloan for their strong support throughout the process. I would also like to thank all of the individuals and companies that participated in the rulemaking.

## 2) WREGIS

I was appointed to the governing board of WREGIS in August. What is WREGIS?

The Western Region Electricity Generation Information System (WREGIS) is an independent, renewable energy tracking system for the region covered by the Western Electricity Coordinating Council (WECC). WREGIS tracks renewable energy generation from units that register in the system using verifiable data and creates renewable energy certificates (RECs) for this generation.

SB 418, which updated the state's RPS, required that New Mexico participate in such a system and so our rule states that utilities must use WREGIS beginning in January 2008. By using WREGIS throughout the west, we can prevent double counting of the same renewable energy for multiple states, and also assure that renewable energy certificates used to meet a state RPS are not also sold to voluntary green purchasers. The State of California has picked up all of the development costs for WREGIS and will be paying most of its operating expenses; the portion that will need to be recovered from New Mexico is less than \$50,000 per year. My fellow Commissioners and I felt strongly that if New Mexico was to become tied to the WREGIS system, we should have a voice in WREGIS's decision-making. The

WREGIS Committee (governing board) meets monthly by teleconference, with a once per year in-person meeting. I was able to attend the 2007 in-person session last month in Salt Lake City, where WREGIS (and WECC) have their office.

## Commission Road Trips (and Qwest Infrastructure Update)

The Commission took to the road in August and September, holding Regular Open Meetings in Hobbs, Albuquerque and Aztec.

A Taos Open Meeting is set for this week, and we held a meeting in Las Cruces in the Spring. The Commission's presence out in the districts was well received by constituents and local officials. Our Hobbs meeting focused on problems arising from that area's rapid growth and the inability of Southwest Public Service to meet demands for timely temporary and permanent power hook-ups. The utility announced more staff resources were being devoted to the problem areas, and there was a commitment by SPS, the PRC's Utility Division, and local developers to look at developing quality of service standards to address the issues that were raised.

### *PRC Directs Fiber Diversity on the Qwest Network*

The Aztec Open Meeting focused on resolution of long-standing telephone reliability issues in the Farmington area, due to the lack of redundant fiber connections in the Qwest network between Farmington and Albuquerque. The current single fiber path to Farmington has been accidentally cut several times, cutting-off telephone customers in Aztec, Bloomfield, and Farmington from the rest of the state and the rest of the world. After a fiber cut (in Rio Rancho) several years ago brought down San Juan County 911 services, Qwest installed a radio backup to carry public

service telephone traffic when the fiber goes down, but this radio link lacks the capacity and reliability to handle the needs of the growing and diversifying economy in the region. The PRC made installing redundant, diverse fiber to Farmington (and several other Qwest wire centers) a mandatory item in the Order that settled Qwest's AFOR I investment shortfall enforcement case.

It had been hoped that the diverse routing from Farmington would be to Gallup, and then back to Albuquerque, but at our Aztec Open Meeting we learned that cost and right of way issues on the Navajo Nation would make that route impractical. Instead, Qwest proposed a fiber link from Farmington to Durango, with traffic then flowing through Denver and on to Albuquerque. Only a small amount of new fiber was required to complete the Durango link, but New Mexico would have to approve investing AFOR money to upgrade equipment on the Durango to Denver path to increase capacity. The PRC gave informal approval at the Aztec meeting to Qwest spending "New Mexico money" inside Colorado to serve New Mexico customers. Qwest immediately went to work and reliable, high-capacity telephone and data services for San Juan County are expected very soon. Local business, residents, and their elected officials are very pleased.

**The Albuquerque meeting**, held in conjunction with the State Fair, also had a Qwest focus. Qwest staff reported to the Commission on **cable replacement projects** to replace aging infrastructure in Albuquerque's N.E. and S.E. heights neighborhoods, another AFOR I enforcement case settlement item. Over 30 miles of cable have already been replaced, with much more to come. Qwest also reported it has achieved DSL availability

rates of over 90% in many of the closer-in N.E. and S.E. Albuquerque neighborhoods, allaying Commission concerns that residents in lower income neighborhoods would be "redlined."

## **Albuquerque Commissioner helps Clovis and Edgewood Water Customers**

In August, the Commission issued a final Order in a water rate case for New Mexico American Water Company, which supplies water to customers in Clovis and Edgewood (using separate plants). One matter at issue in the Clovis district was the disposition of a \$240,000 surplus the company had accumulated in an escrow account due to an interim contract. Although PRC staff recommended splitting the surplus between the company and its customers, I could see no reason why, after we allowed the company to recover all of its additional costs from the contract, the remaining \$240,000 shouldn't be refunded entirely to Clovis ratepayers. The PRC voted in favor of my amendment to rate case order. According to the Company, the average residential customer in Clovis will receive a one-time credit of approximately \$12.25.

Edgewood customers of NMA Water did not find themselves in as happy a situation. The case came to the Commission with a recommendation for a 44% rate increase in Edgewood. After poring over the schedules, I discovered that allowances for tax payments had been calculated incorrectly for Edgewood. Correcting this mistake reduced the the rate increase to around 35%. This is still too high, and at my request, the PRC has opened a follow-up case to focus on Edgewood operating costs and determine whether NMA is entitled to the full rate increase. A hearing in this matter will occur in early November.

**PNM Electric Rate Case Status Update/Executive Compensation**

PNM filed a request for a sizable electric rate increase in February of this year. Following normal practice, the Commission set a hearing in the case for October, allowing time for discovery and preparation of testimony by PRC staff and intervenors in the case. In August, PNM filed errata changing the amount of the overall rate increase being requested by several million dollars and revising a number of schedules. PRC staff and intervenors moved the Commission to reset the procedural schedule, or in the alternative, to dismiss the rate case and restart the entire process over. Staff and intervenors stated that they did not have time to conduct discovery and file their own testimony on the new PNM material prior to the hearing. PNM argued that the changes it filed were minor and did not support rescheduling the hearing, much less dismissal of the case. The Commission was constrained in revising the procedural schedule by a statutory requirement that rate cases be completed within 12 months, and the necessity to reserve several months for post-hearing briefing and Commission analysis of

the record.

The Commission held a procedural hearing in September. We found that PNM created a “moving target” for the other parties in the case, and that the procedural schedule should be extended. The Commission extended the overall “suspension period” for the case an additional 6 weeks past the 12-month statutory deadline, which PNM stated it would reluctantly accept. The public hearing is now set to begin December 5, 2007.

In August, I received a response to my first “Bench Request” in the PNM Electric Rate Case, which concerned, among other things, how much of PNM’s executive compensation the company was expecting customers to pay for. Here is the answer, showing the total compensation of each senior executive (including salary, bonus, stock compensation, and other perks), and the amount of that compensation the company is requesting to include in the cost of service to be recovered in the electric rate case. Getting all the facts is the first step in determining how much of this compensation is appropriate for ratepayers to bear.

	<b>Total</b>	<b>Electric Rate Case Jurisdictional Retail</b>
Sterba, Jeffry	<b>\$3,599,729</b>	<b>\$637,617</b>
Cobb, Alice	<b>\$898,496</b>	<b>\$179,594</b>
Real, William	<b>\$924,170</b>	<b>\$176,709</b>
Ortiz, Patrick	<b>\$857,652</b>	<b>\$172,204</b>
Eldred, Charles	<b>\$771,343</b>	<b>\$213,628</b>
Horn, Terry	<b>\$377,990</b>	<b>\$36,895</b>
All Other Officers	<b>\$6,834,433</b>	<b>\$1,387,808</b>
<b>Total Compensation</b>	<b>\$14,263,813</b>	<b>\$2,804,455</b>

(1)

## **Marks Family Portrait**

For those of you who might be interested, here is picture of my family that we had taken over the summer. My daughter Niki spent last year working as a production assistant on several movies filmed in Santa Fe and Albuquerque. One was *3:10 to Yuma*, starring Russell Crowe. It was a big thrill for my wife Maxine and I to see Niki's name roll past in the credits when we saw the movie a few weeks ago. Niki is back in college now, taking a semester abroad in Prague, Czech Republic. My son Levi is a freshman at Loyola Marymount University in Los Angeles, where he is the assistant news editor on the college newspaper. Continuing with the education theme, Maxine is a part-time graduate student at UNM, studying art history. We were pleased that our family dog was able to join us for the picture, although he is not in college.



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