

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF EL PASO )  
ELECTRIC COMPANY'S 2009 )  
PROCUREMENT PLAN PURSUANT ) Case No. 09-00259-UT  
TO THE RENEWABLE ENERGY ACT )  
AND NMAC 17.9.572.16 )**

**FINAL ORDER**

**THIS MATTER** comes before the New Mexico Public Regulation Commission ("Commission") upon the Recommended Decision of the Hearing Examiner issued by Elizabeth C. Hurst on November 24, 2009, as well as the Exceptions of intervenor Mark A. Westbrook. Having considered the Recommended Decision and the exceptions, as well as the record in this case, and otherwise being fully informed in the premises,

**THE COMMISSION FINDS AND CONCLUDES:**

1. On July 1, 2009, El Paso Electric Company ("EPE" or "Company") filed its 2009 Annual Procurement Plan ("2009 Plan" or "Application") pursuant to the New Mexico Renewable Energy Act NMSA 1978, Section 62-16-1 *et seq.* (the "REA") and NMPRC Rule 17.9.572 NMAC ("Rule 572"). EPE's 2009 Plan was supported by the direct testimonies and attached exhibits of EPE witnesses Ricardo Acosta and Evan D. Evans also filed on July 1, 2009.

2. On July 16, 2009, an Initial Order Extending Time and Appointing Hearing Examiner was issued extending for good cause the time period for resolution of this matter an additional ninety (90) days, through December 27, 2009, pursuant to NMSA 1978, Section 62-16-4(E) and appointing Elizabeth Hurst, hearing examiner, to preside over this matter.

3. Several parties filed motions to intervene, including Mark A. Westbrook.

4. After notice and hearing, the Hearing Examiner issued her Recommended Decision on November 24, 2009. ("Recommended Decision" or "RD"). The Recommended Decision is incorporated by reference as though fully set forth herein.

5. Westbrook timely filed his exceptions on December 4, 2009. No other exceptions were filed. Westbrook raises three exceptions: (1) Westbrook objects to the use of installation costs from a single vendor in the calculation of the incentive price to be paid to participants for renewable energy certificates ("RECs") in the Small Solar PV Program; (2) Westbrook objects that his tariff changes were rejected as outside of the scope of the hearing, and (3) Westbrook objects to the acceptance by the RD of EPE's proposed capacity limit for EPE's Medium PV program.

6. On December 17, 2009, the Commission issued a Bench Request Order requiring EPE to provide additional information concerning the effects of its proposed limitation on the mid-sized PV on certain customers, contrasting it with a different method of limitation using only the limit of energy consumed on site, and to provide details on certain calculations for the small PV program. EPE timely responded to the Bench Request Monday December 21, 2009, observing the alternate method of limitation on the mid-sized PV program was "a reasonable approach."

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

8. The Commission accepts and adopts the Hearing Examiner's Statement of the Case through the time of the issuance of the Recommended Decision, except as stated herein.

9. The Commission accepts and adopts the Hearing Examiner's Discussion as the Discussion of the Commission, except as stated herein.

10. The Commission accepts and adopts the Hearing Examiner's Findings and Conclusions as the Findings and Conclusions of the Commission, except as stated herein.

11. The Recommended Decision is well taken and should be adopted by the Commission, except as stated herein.

12. **Westbrock's First Exception.** Westbrock takes exception to the Hearing Examiner's recommendation that "... the Commission accept \$7.53 per watt as the updated Small PV installation cost, and order EPE to develop an incentive based on it." RD at 32. This exception relates to the proposal of EPE to lower their incentive payment in the Small PV Program from \$0.13 per REC to \$0.10. Mr Westbrock opposes the reduction. The Hearing Examiner finds the differences relate to different assumptions as to per Watt installation costs of the facilities. EPE's calculation of the incentive payment was based on an assumed installation cost of \$7.20 per Watt, and Mr. Westbrock's was calculated using \$8.00. The Hearing Examiner rejected both of these, and found the weight of the evidence supported the use of \$7.53 because this was the only figure which was recent and applied to EPE's service territory, and was supplied by Mr. Westbrock's own employer as well.

13. This decision in the Recommended Decision is well supported. There is detailed discussion of the reasons the evidence relied upon by EPE and Mr. Westbrock was rejected. See RD pages 29 - 32. All parties agreed the installation costs have been declining, and the dispute was the extent of the decline. The use of \$7.53 as the basis of a calculated incentive price is supported by substantial evidence.

14. Additionally, the RD recommends the assumed cost be accepted by the Commission and that EPE recalculate the actual incentive based upon this figure. This was done in a Bench Request order issued by the Commission Thursday December 17, 2009, and EPE has complied as of Monday December 21, 2009, and provided \$0.112 per kilowatt-hour as well as the methodology and calculations supporting this incentive figure.

15. However, the Commission finds this reduction is extreme, and the Commission chooses instead to reduce the incentive only to \$0.12 per kilowatt hour as the approved modification of the Plan.

16. The discussion, reasoning and findings of the Hearing Examiner are otherwise well supported by the record, and the exception should be denied.

17. **Westbrock's second exception.** Westbrock next objects to the recommendation that his tariff proposals be rejected. In his prepared Direct Testimony, pages 17-18, Mr. Westbrock makes proposals to amend tariff provisions relating to changes in ownership of installed systems, protecting PV program participants by allowing them to transfer their contract to a purchaser of their property with the same terms, and to allow an owner who expands his/her system to continue the terms applying to the original installation.

18. These provisions were rejected as being beyond the terms noticed for the proceeding. However, the Commission rejects this finding, noting that the REA provides that the Commission may accept, reject, *or modify* a utility's Renewable Energy Procurement Plan. Westbrock's proposals are closely related to the matters proposed by

EPE, were raised in direct pre-filed testimony and supported by evidence. The Westbrook tariff proposals are within the scope of this proceeding.

19. The Commission finds that the modification of the EPE's tariffs as proposed by Westbrook specifically regarding change in ownership after installation of a PV system to continue the terms of the original contract for the remaining term of the contract is supported by logic and conforms to Commission policy. This is to provide certainty to program participants that they will have the opportunity to garner the benefits of the incentive rate in effect at the time they install a system and sign a contract with the utility for the duration of that contract. In the case of the sale of the real estate to which the PV system is attached, it may be assumed that the value of the remaining PV incentive contract will be reflected in the sales price. Reducing the risk that the total value of a PV incentive contract might not be recovered should encourage more customers to participate in the program.

20. The suggested modification of EPE's tariff is reasonable and will be sustained. The Exception should be granted to this extent. The tariffs for the Small and Mid-sized PV programs will be modified to include the language contained on pages 17 and 18 of Mr. Westbrook's direct testimony, as follows: "If the ownership of the property on which the system is located is transferred, the new owner of the property may opt in under the same terms of the REC program as the original installation. The term of the agreement shall expire 12 years after the original installation."

21. The suggested modification regarding the owner's expansion of existing installations is inconsistent with Commission policy that incentive rates be proportional

to the cost of a PV installation. Thus it is not approved and the exception is denied as to this proposal.

22. **Westbrock's third exception.** Westbrock objects to the proposed cap on Medium Sized PV installations which is accepted by both Staff and the RD. The RD finds that Medium Sized PV systems should be limited in size to the average monthly demand of the customer for the last 12 months prior to installation of the system. Mr. Westbrock objects that this acts as a dis-incentive to potential customers, and no limitation should be allowed. The limitation is proposed, however, for the legitimate reason that a program without any cap may encourage participants to over-build their systems to effectively become wholesale power producers, which is outside the purposes of this program, which is to support customers' use of distributed generation to meet their own electricity needs. The Commission accepts the need for limits on the size of these systems, and denies the objection on this ground.

23. However, the Commission also finds that the cap as proposed poses difficulties. Using only an average from the customer's last 12-month usage history does not accommodate the circumstances both of new customers which do not have this history, and customers anticipating growth in use as their business expands for whatever reason. The Commission finds the model using a cap or limit on the program based upon actual maximum energy consumed on site is better adapted to the purpose of this limitation and this modification should be substituted for the limitation or cap proposed by EPE and accepted in the Recommended Decision.

**IT IS THEREFORE ORDERED:**

A. Westbrock's First and Third Exceptions are denied.

B. Westbrook's Second Exception is granted in part to require the proposed tariffs for the Small and Medium Sized PV programs to include the language: "If the ownership of the property on which the system is located is transferred, the new owner of the property may opt in under the same terms of the REC program as the original installation. The term of the agreement shall expire 12 years after the original installation."

C. The Procurement Plan is modified as stated to set the incentive payment for the Small PV Program to \$0.12 per kilowatt hour.

D. The Procurement Plan is also modified to provide that the capacity limitation on EPE's Medium Sized PV plan shall be altered to be measured by maximum energy consumed on site rather than the average of the consumer's last 12-month consumption.

E. Except as stated above, the Orders recommended by the Hearing Examiner, as incorporated herein by reference, are ADOPTED, APPROVED, and ACCEPTED as Orders of the Commission.

F. The Recommended Decision is ADOPTED, APPROVED and ACCEPTED in its entirety, except as expressly stated herein.

G. This Order is effective immediately.

H. Copies of this Order shall be sent to all persons listed on the attached Certificate of Service.

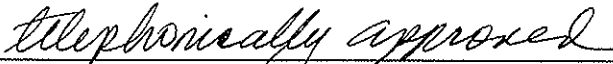
I. This Docket is closed.

ISSUED under the seal of the Commission at Santa Fe, New Mexico, this 22<sup>nd</sup>  
day of December, 2009.

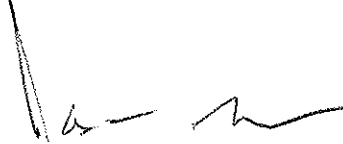
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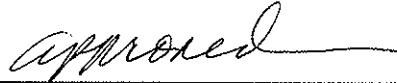
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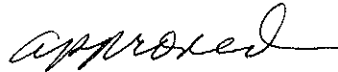
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing **Final Order** issued December 22, 2009, was forwarded on December 23, 2009, by first-class postage paid mail and/or e-mailed to the following:

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Dated this 23<sup>rd</sup> day of December, 2009

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