

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF EL PASO)
ELECTRIC COMPANY’S 2009)
PROCUREMENT PLAN PURSUANT)
TO THE RENEWABLE ENERGY)
ACT AND NMAC 17.9.572.16)
_____)**

CASE NO. 09-00259-UT

MARK A. WESTBROCK’S EXCEPTIONS TO RECOMMENDED DECISION

I, Mark A. Westbrook, hereby submit my Exceptions to the Recommended Decision in the above captioned case. I humbly request that the Commission will duly consider these exceptions along with the supporting documentation provided in my Proposed Findings and Conclusions and Direct Testimony.

List of Exceptions

1. The RD’s use of an installed cost from a single vendor to calculate the REC incentive for EPE’s Small Solar REC Program is inappropriate.
2. The RD’s assertion that my proposed tariff changes are beyond the scope of this proceeding is unreasonable.
3. The RD’s acceptance of EPE’s proposed capacity limit for their Medium System REC Program does not address my objections to this limit.

Summary of Exceptions

1. The RD's use of an installed cost from a single vendor in EPE's service area to calculate the REC incentive for EPE's Small Solar REC Program is inappropriate. Such a calculation could unfairly impact other vendors if the cited vendor has prices that are at one end of the installed cost continuum.
2. The RD's assertion that my proposed tariff changes are beyond the scope of this proceeding is unreasonable. Other tariff changes were accepted in the RD, and no other venue for these changes was suggested in the RD.
3. The RD's acceptance of EPE's proposed capacity limit for their Medium System REC Program does not address my objections to this limit. Specifically, it does not address my objection that such a limit could still allow certain facilities to oversize their systems, while limiting others to system sizes that will not allow them to offset one hundred percent of their annual energy use. A limit should be based upon a facility's energy consumption, not upon its power demand.

Argument

For the following reasons, the Commission should modify portions of the Recommended Decision.

- 1. The RD's use of an installed cost from a single vendor to calculate the REC incentive for EPE's Small Solar REC Program is inappropriate.**

The RD states on page 32 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." This cost

of \$7.53/watt is based on my testimony of Positive Energy's ballpark cost per watt at the time of the hearing. When EPE's REC program began in March 2009, Positive Energy was the only company with a full office in EPE's service area that specialized in PV system design and installation. There are now no fewer than seven such companies (see the Official Protest in this case). Basing the incentive on a snapshot of cost from the most established company could negatively impact the burgeoning PV industry in southern New Mexico.

A more appropriate cost to use in the analysis is PNM's assumed cost per watt of \$8.00, which I cite in my direct testimony (MAW Direct p. 8-9) and explain my rationale for using in the hearing (Transcript p. 112, lines 4-17). Although the RD states that "Mr. Westbrook's information is from PNM who serves in a different service area", Positive Energy's system costs to customers are uniform throughout the state of New Mexico. Using this installed cost along with the existing incentive of \$0.13/kWh results in a payback period of about twelve years (Westbrock Direct, Exhibit MAW-3, as corrected 9/30/2009), which has been the stated goal of EPE throughout this case.

The RD's proposed reduction of the REC incentive for Small PV Systems from \$0.13/kWh to that calculated using \$7.53/watt installed cost should thus be rejected. EPE's proposed reduction from \$0.13/kWh to \$0.10/kWh should also be rejected and the incentive should stand as approved by the Commission in case 08-00219-UT, at least until it has had a chance to be in effect for a full year.

- 2. The RD's assertion that my proposed tariff changes are beyond the scope of this proceeding is unreasonable.**

I proposed two changes to EPE's Tariffs No. 33 and 34 which would both protect ratepayers and encourage the installation of more renewable energy systems (Westbrock Direct, p. 17-18; as modified in the Proposed Findings and Conclusions of Mark A. Westbrock on p. 7). The RD states on page 34 that my "proposed changes to EPE's tariff's are beyond the scope of this proceeding" and "therefore should be rejected." I do not know of a more appropriate venue for such proposed changes and the RD does not suggest one. The RD does, however, recommend tariff changes proposed by Staff (p. 33-34).

The RD also states on page 34 that my proposed changes "were neither noticed nor fully vetted in this proceeding." To the contrary, these changes were addressed in EPE's Rebuttal Testimony (Evans Rebuttal, p. 19-20) and discussed at length in the hearing (Transcript p. 41-52). Indeed, EPE agreed that one of my two proposed changes could be acceptable to the Company (Evans, Transcript p. 51, lines 11-18 and p. 52, lines 19-23).

My proposed changes are simple, will protect ratepayers, encourage the installation of more renewable energy systems, and will not negatively impact the Company, and should therefore be accepted by the Commission.

3. The RD's acceptance of EPE's proposed capacity limit for their Medium System REC Program does not address my objections to this limit.

The RD accepts on page 33 EPE's proposal to limit the size of systems in its new Medium System REC program to a system size which "cannot exceed the average monthly maximum demand of the customer for the 12 consecutive months prior to

installation of the facility” (Evans Direct, p. 18, lines 10-12). As I argue in my direct testimony (Westbrock Direct, p. 15), a capacity limitation should be based upon the annual energy production of a proposed system and the annual energy use of a facility, not upon the demand of a facility, which is based upon the instantaneous power used by a facility. As stated in EPE’s Tenth Revised Rate No. 3 Cancelling Ninth Revised Rate No. 3, Small Commercial Service Rate, “Maximum demand will be defined at the highest thirty (30) minute average kilowatt load determined by measurement.”

PV systems are sized for facilities based upon how much annual energy they produce, and the instantaneous power demand of a facility is irrelevant to the design of a system. Basing a capacity limit on power demand is irrational and should be rejected.

The RD’s accepted capacity limit could allow some EPE customers to oversize their systems, while limiting other customers to system sizes that are not sufficient to offset their annual energy use and should therefore be rejected.

Conclusion

The three exceptions stated herein are reasonable and in the public interest and should be granted by the Commission. EPE has not shown any willingness to cooperate with the renewable energy industry or with consumer advocacy groups when formulating their renewable energy incentives. This is exemplified by EPE’s Motion to Strike my entire Proposed Findings and Conclusions on October 29, 2009. This Motion was justly denied by the RD. I am also perplexed by the fact that PRC Staff signed on to EPE’s Proposed Recommended Decision without modification, despite the fact that they found errors in EPE plan that remain uncorrected (e.g. Lamberson Direct, p. 15, lines 5-6 and

Lamberson, Tr. p. 124, lines 3-9) and agreed with some of my positions (e.g. Lamberson, Tr. p. 138, line 22).

My proposed exceptions will encourage the installation of renewable energy while having no significant negative impacts on either EPE or its ratepayers. I appreciate the Commission's earnest consideration of my Exceptions to the Recommended Decision.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Mark A. Westbrook', with a long horizontal stroke extending to the right.

Mark A. Westbrook
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Dated: 3 December 2009