

**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**

**PROPOSED FINDINGS AND CONCLUSIONS OF MARK A. WESTBROCK**

I, Mark A. Westbrook, in the above captioned case present the following proposed findings and conclusions.

**I. Small System REC Purchase Program Incentive Rate**

EPE proposed to lower the incentive for its Small System REC Purchase Program for PV Systems from \$0.13/kWh to \$0.10/kWh (Evans Direct, p. 12-13). EPE has not shown a legitimate justification for lowering this incentive, for several reasons. First, their justification is based on a payback analysis, which relies heavily on having an accurate estimate of installed cost of a PV system. EPE based their assumed installed cost on a document for which they did not know the date of publication (Evans, Tr. p. 35, lines 8-10), even though they testified that having an accurate price for the total installed cost of a PV system is important when doing payback analyses (Evans, Tr. p. 35, lines 11-14). In fact, the source in question appears to show a publication date of August 2006 (Evans Rebuttal, Exhibit EDE-3R, page 4).

In addition to being three years old, the source has two more distinct flaws: it was primarily written for stand-alone systems (i.e. not connected to the utility grid) (Evans, Tr. p. 34-35) and it does not include any installation costs (Evans, Tr. p. 32, line 18 – p. 34, line 13), which are a significant portion of the total cost of any PV system.

Although EPE now has 66 PV systems completed, under construction, or planned (Evans Rebuttal, p. 6, line 13), they did not survey the installers of these systems in their territory to come up with an estimated installed cost (Evans, Tr. p.35, line 19 – p. 36, line 4). This would have been a much more accurate method for estimated installed cost than was referencing a publication from another state with an unknown publication date.

Although PRC Staff approved of EPE's analyses, they were also unaware of the publication date of the source for the estimated cost (Lamberson, Tr. p. 123, line 9) or of the fact that the referenced cost estimate did not include installation costs (Lamberson, Tr. p. 123, line 12).

Second, EPE has not shown that continuing at the current incentive of \$0.13/kWh will either cause them to approach the reasonable cost threshold (RCT) or unduly burden ratepayers. To the contrary, EPE indicates that in 2010 they will be at only 28% of the RCT, and in 2011 the billing impact of their proposed procurement plan would actually be negative (Evans Direct, Exhibit EDE-2). EPE did not calculate the billing impact or percentage of the RCT for continuing under the current incentive of \$0.13/kWh (Evans, Tr. p. 55, line 12). Further, EPE has predicted that even with the higher incentive of

\$0.15/kWh and with more than double the current number of participants, the average ratepayer's monthly bill would increase by only \$0.03 (Westbrock Direct, Exhibit MAW-5). It is the opinion of PRC Staff that this level of bill increase could be considered "nominal" (Lamberson, Tr. p. 138, line 22).

Third, PRC staff found "an oversight in the calculations that result in an under collection of the full recovery of the system costs as calculated" (Lamberson Direct, p. 15, lines 5-6). This oversight results in a payback period of 16.1 years (Lamberson, Tr. p. 124, lines 3-9), which is 33% longer than the 12 years that EPE intended (Evans Direct, Exhibit EDE-5). In the Final Order in Case 08-00219-UT, which was the case that determined the current REC incentive, the Commission stated that "the period that best accords with our application of Rule 572 to this case is 12 years" (Final Order, Case 08-00219-UT, page 13). The Recommended Decision in the same case stated that the predicted payback period and the term of payments should be equal (Recommended Decision, Case 08-00219-UT, page 53). Approving a change in incentive that results in a 16 year payback, as indicated by PRC Staff, would therefore be contrary to the Commission's ruling in that case. Further, while Staff's analysis found in this case that 72% of the system cost would be recovered after 12 years (Lamberson Direct, Exhibit RDL-2, p. 1), the Recommended Decision in Case 08-00219-UT stated that

Staff's recommendation that a DG [distributed generation] customer only recover 80% of his installation costs through incentives should not be followed because it risks providing an insufficient incentive to promote a desired level of DG. (page 51)

The proposed incentive of \$0.10/kWh carries a similar risk.

## **II. Mr. Westbrook's Proposed Changes to Tariff Numbers 33 and 34**

In my Direct Testimony, I made two suggested changes to EPE's tariffs for the Small System REC Program (No. 33; Evans Direct, Exhibit EDE-4) and Medium System REC Program (No. 34; Evans Direct, Exhibit EDE-7). These changes were designed to reassure a homeowner who is a potential owner of a renewable energy system that their investment would be a safe one, thus making them more likely to install the system. Indeed, EPE agrees that "these incentives are to encourage the installations of renewable facility [*sic*]" (Evans, Tr. p. 43, lines 23-24). My suggested changes (Westbrock Direct, p. 17-18) should be adopted, with the following modifications that were discussed in the hearing.

The last sentence of each should be changed to read "The term of the agreement shall expire 12 years after the signing of the original REC Program Contract" or the equivalent (modifying Westbrock Direct, p. 18 lines 1-2 and lines 15-16). EPE agreed that, in the case of system expansion, it could be acceptable to make this addition to the tariff (Evans, Tr. p. 52, lines 19-23).

Although EPE did not agree to modify the tariff in regard to transfer of ownership of the property on which the system was installed, such a change would also protect ratepayers from paying for REC payments on a single system for more than twelve years. EPE agreed that, under the current tariff, a new homeowner who purchased a house with a PV

system could sign a new REC contract and receive payments for 12 years, even if the previous system owner had already received several years of payments (Evans, Tr. p. 49, lines 3-4).

In my experience interacting with homeowners who are considering the installation of a renewable energy system, the simple assurances that would be provided by these additions to the tariffs would go a long way towards a decision to invest in renewable energy. It is crucial that these stipulations be made in writing, and not simply based on the verbal agreement of the parties.

### **III. Medium System Capacity Limit**

EPE should not include the restriction on their Medium System REC Program that systems “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). In addition to the problems with this capacity limit that I describe in my Direct Testimony (p. 15-16), both EPE (Evans, Tr. p. 40, lines 15-23) and PRC Staff (Lamberson, Tr. p. 127, lines 4-7) testified that with the proposed restriction, a customer could be limited to a PV system size that is not large enough to offset their annual energy use. This is an unacceptable restriction, as anyone should be allowed to install a renewable energy system that is large enough to cover their annual loads.

#### **IV. Summary and Conclusion**

I have proposed that several changes be made to EPE's 2009 Renewable Energy Procurement Plan:

1. The incentive for the Small System REC Purchase Program for PV Systems should remain at \$0.13/kWh.
2. EPE's Tariff Numbers 33 and 34 should be amended so that system owners may expand their systems and remain under the terms of the original REC Contract that was signed for each system.
3. EPE's Tariff Numbers 33 and 34 should be amended so that if a system owner sells the property on which the system is installed, the new property owner may continue under the terms of the original REC Contract that was signed for that system.
4. The Medium System REC Program should not include a capacity limit that prevents property owners from offsetting 100% of the energy that they use on that property with a renewable energy system.

The above changes all have the same motivation: to encourage more property owners to use their available capital to install renewable energy systems on their property. EPE testified that the purpose of these incentives is to encourage the installation of renewable energy facilities (Evans, Tr. p. 43, lines 23-24).

In the precedent for this case (Case 08-00219-UT), the Recommended Decision stated that

EPE's emphasis on minimizing costs of complying with the RPS to protect its ratepayers is understandable, but contrary to the REA and the Commission's Final Order in Case No. 07-00157-UT. That is not to say that the Commission should not consider cost in evaluating the proposals in this case, but cost should not be a driving factor, especially given that Mr. Evans testified that none of the proposals is likely to result in EPE's costs exceeding the RCT. (page 48)

This statement is as relevant to this case as it was to the case one year ago. Without showing any negative impact on ratepayers, EPE proposes to reduce the incentive for installing small PV systems after the program has been available for less than one year. This is contrary to the spirit of the Renewable Energy Act, which states that "a public utility should have incentives to go beyond the minimum requirements of the renewable portfolio standard" (62-16-2-A(5) NMSA). EPE can encourage the installation of renewable energy by making the above four changes to their plan, without any significant negative impacts on the Company or its ratepayers.

Respectfully Submitted,



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