

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

2013 MAR 15 11 2 21

IN THE MATTER OF THE APPLICATION OF )  
PUBLIC SERVICE COMPANY OF NEW MEXICO )  
FOR APPROVAL OF ELECTRIC ENERGY )  
EFFICIENCY PROGRAMS AND PROGRAM )  
COST TARIFF RIDER PURSUANT TO THE )  
NEW MEXICO PUBLIC UTILITY AND )  
EFFICIENT USE OF ENERGY ACTS, )

Case No. 12-00317-UT

PUBLIC SERVICE COMPANY OF NEW )  
MEXICO, )

Applicant. )

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**STAFF'S RESPONSE BRIEF**

**Filed March 15, 2013**

by:

**Nancy B. Burns, Staff Counsel**

## TABLE OF CONTENTS

	<u>Page</u>
<b>A. 2012 Plan Implementation</b>	<b>1</b>
1. Staff’s recommendation regarding gas / electricity cost sharing agreement	<b>1</b>
2. Staff’s Recommendation to Update the Baseline for Residential Lighting Program and Residential Righting Measures	<b>3</b>
3. PNM’s Missing Bulb Argument	<b>4</b>
4. Staff’s Recommendations Regarding Low-Income Programs	<b>5</b>
5. Open Ended Program Approval Request	<b>6</b>
6. Staff’s Additional Reporting Recommendations	<b>7</b>
<b>B. Staff’s Incentive Proposals</b>	<b>7</b>
<b>C. Avoided Cost Calculations</b>	<b>8</b>
<b>D. Conclusion</b>	<b>11</b>

Utility Division Staff (“Staff”) of the New Mexico Public Regulation Commission (“Commission”) files this response brief pursuant to the Hearing Examiner’s directive at the close of the public hearing in this matter to file a post hearing brief, containing a summary of positions, on March 8, 2013.

**A. 2012 Plan Implementation**

**1. Staff’s recommendation regarding gas / electricity cost sharing agreement**

PNM’s Initial Post-Hearing Brief (“brief”), pp. 2-7, addresses Staff’s recommendation regarding PNM’s program proposals that significantly rely on gas savings to meet the TRC test. The proposed programs and measure relying on natural gas savings include all but one of PNM’s newly proposed programs and measures and one continuing program; namely: Whole House, Student Efficiency Kits, Home Energy Reports (“HERs”), Low Income Home Efficiency, and Building Tune-up, and Easy Savings Kits (the “affected programs”). It is uncontested the affected programs are dependent on significant gas benefits to meet the TRC test. Staff Exhibit JJR-3, attached to Staff Ex. 2 (Reynolds Direct). For the affected programs, Staff recommends Program Year 1 approval with Program Year 2 approval contingent on PNM reporting to the Commission on a cost sharing agreement with NMGC. See for example, Staff Ex. 2 (Reynolds Direct) pp. 6-8 (summary of Staff’s program recommendations).

Referencing this recommendation, PNM’s brief erroneously states that “[u]nder this recommendation, absent agreement with NMGC, these programs would be terminated even if they would still pass the TRC test when gas savings and costs are excluded.” PNM Brief, pp. 2-3. (Emphasis added.) This characterization of Staff’s recommendation is incorrect; misstates the import of Staff’s recommendation; and ignores the fact that, absent a cost sharing agreement with NMGC, PNM is able to redesign an affected program to remove gas savings and costs and

to seek Commission approval of a modified affected program and program budget if required. See for example Tr. pp. 771-3 (discussing Commission process for review and approval for modification of approved EUEA programs and program budget. Accordingly, it is misleading to imply that under Staff's recommendation, redesigned affected programs would be "terminated even if they would still pass the TRC test when gas savings and costs are excluded." PNM Brief, pp. 2-3. Rather, a redesigned affected program to remove gas savings and costs could still meet the TRC test, and PNM would be free to request Commission approval of such a modified program.

NMGC's Amicus Brief also addresses Staff's recommendation regarding an gas/electricity cost sharing agreement between PNM and NMGC, in order for the affected programs to continue into Program Year 2. In doing so, NMGC cites to Bean rebuttal testimony, and argues "[m]omentum lost by terminating cost-effective dual – savings programs may be difficult to recapture and certainly frustrates the intent of the EUEA." Amicus Brief, p. 4. In addition to ignoring the fact that PNM is free to redesign the affected programs to remove gas savings and costs if a cost sharing agreement cannot be reached within the timeframe of Staff's recommendation, this argument ignores the fact Staff has taken no position in this case that would delay the implementation of PNM's proposed energy efficiency programs. Indeed, Staff has testified that the appropriate policy in this case is for the Commission to approve a modified 2012 Plan, not delay plan implementation despite the numerous issues raised by Staff. Staff Ex. 1 (Lamberson Direct), p. 9, ll. 9-18. The Amicus Brief additionally argues that gas savings are appropriate ignoring the EUEA specific reference to "associated supply-side resources", in the definition of TRC test. Section 62-17-4.J; and Staff's Brief, pp. 49-53. It is common

knowledge, for example, that burner tip natural gas usage reduction at the end-user level is not a supply-side resource for an electric utility.

For these reasons, in addition to the reasons contained in Staff's Brief, Staff's recommendation regarding a gas/electricity cost sharing agreement between PNM and NMGC should be approved.

**2. Staff's Recommendation to Update the Baseline for Residential Lighting Program and Residential Righting Measures**

PNM's Brief addresses Staff's recommendation to update PNM's baseline to EISA standards for projecting energy savings for the 2012 Plan for the Residential Lighting Program and other residential lighting measures. PNM Brief, pp. 8-11. PNM's arguments misstate Staff's recommendation and the role of both Staff and the independent statewide program evaluator under the EUEA and are therefore without merit.

For example, PNM mischaracterizes this issue as "Staff's RLP Savings Assumptions are Not Supported." *Id.* p. 8. Staff, however, is not recommending the application of Staff derived savings assumptions for residential lighting measures; rather, Staff has recommended that the largely obsolete traditional incandescent bulb standard, used by ADM, be replaced or updated with EISA lighting standards. It is uncontested that the phase-in of the EISA standards will be completed by January 1, 2014 or within six months of PNM's requested Plan implementation date. It is also uncontested that PNM applies an average seven year life to a CFL for purposes of calculating benefits under the TRC. Therefore, PNM's current and obsolete baseline will result in approximately 6 years of overstated benefits for residential lighting measures and should be updated to avoid this overstatement of lighting benefits.

Second, PNM's argument that acceptance of Staff's recommendation would somehow undermine the role of the EUEA's independent statewide program evaluator is hyperbole and misstates the role of both Staff and the independent statewide program evaluator under the EUEA. PNM Brief, pp. 10-11 ("...the requirement that cost effectiveness be determined by the independent evaluator will be undermined and there will be little point in paying for independent evaluation by trained outside professionals.") The statewide independent program evaluator is hired primarily to measure and verify unit savings. Section 62-17-8. If PNM's argument is taken to its logical conclusion, Staff would have no role in reviewing program proposals and would be prohibited from fulfilling its statutory obligation to represent the public interest in contested proceedings before the Commission. Section 8-8-12.C. PNM itself does not espouse to this position taken. For example, in a different section of PNM's brief, PNM cites to Staff's analysis to support a PNM claim that a proposed program is "likely to be cost effective." PNM Brief, 15.

Contrary to PNM's efforts to retain a largely obsolete baseline lighting standard for calculating projected residential lighting program savings, Staff's recommendation to update the baseline to reflect EISA standards is in the public interest and should be adopted by the Commission. It will ensure projected lighting savings are not overstated by approximately 6 years and will ensure that the statewide program evaluator's evaluation of projected savings from the 2012 Plan and evaluated savings from the 2012 Plan are made from the same baseline lighting standard.

### **3. PNM's Missing Bulb Argument**

PNM's argument that Staff failed to demonstrate unaccounted for rebated CFLs, made at p. 14 of PNM's Brief, is unsupported by evidence and should be rejected. PNM fails to state that

Staff's analysis was based precisely on PNM's estimate of the socket saturation rate provided in discovery. Staff Ex. 3 (Additional Exhibits), JJR-A3, PNM's Response to Staff 2-3(b). PNM's suggestion that Staff misused a statistic provided by the statewide independent evaluator was not accompanied by any correction or re-statement by PNM of its own analysis and estimate of the socket saturation rate which formed the basis of Staff's analysis. PNM's further analysis provided at hearing does not conclusively support its contention that there are no missing bulbs. Tr. pp. 441-443. Rather, PNM simply derived an updated socket saturation rate based not on a survey of the type of bulbs installed in light sockets but on the number of rebated by PNM in 2011 and 2012. Id. If it is PNM's contention that it can determine CFL socket saturation simply based on the number of CFLs it is rebating, there will never be any missing bulbs. Until an updated independent survey establishes a CFL socket saturation rate, the existence of missing bulbs remains an open question and it is disingenuous for PNM to suggest otherwise.

#### **4. Staff's Recommendations Regarding Low-Income Programs**

PNM's Brief advocates for the rejection of Staff's recommendation to terminate the Low Income Refrigerator and CFL Replacement Program and move that part of that program's budget, exclusive of refrigerator and CFL costs, about \$50,000, to PNM's Low Income Home Efficiency Program. PNM's Brief, pp. 16-17. PNM's argument against this recommendation expresses the concern that sufficient numbers of low income customers will not be targeted by PNM if the Commission accepts Staff's recommendation to terminate its small low income programs with little projected participation. PNM Brief, p. 16. See for example, the program Staff recommends to terminate has only 177 projected participants, whereas the Low Income Home Efficiency Program has 1,250 projected participants. Id. Staff's recommendation, however, addresses this same concern by recommending that the budget of the terminated low income program be moved

to the Low Income Home Efficiency Program to target the exact same participants through the MFA implemented program, while consolidating the low income programs.

#### **5. Open Ended Program Approval Request**

Staff has opposed PNM's request for open ended program approval made in this case and PNM addresses this Staff recommendation at pp. 19-21 of its brief. At page 20, citing to Mr. Reynolds' cross examination testimony on this issue, PNM asserts Staff's "purpose" in making this proposal is "to avoid open-ended plan approval and give the Commission the opportunity to affirmatively extend the two-year period". PNM's Brief, p. 20. The record, however, reflects additional factors that should be considered by the Commission in reaching a conclusion on this issue; namely, (1) PNM also has requested open ended approval of an associated plan year incentive in the amount of \$2.88 million; (2) as part of its open ended plan approval, PNM has proposed numerous new programs and one significant new measure that relies on gas savings to meet the TRC test while refusing to concede to Staff's recommendation that plan implementation into Program Year 2 be contingent on reaching a gas/electric savings cost sharing agreement with NMGC; (3) PNM refuses to update the almost obsolete traditional incandescent bulb baseline for projected program savings with EISA lighting standards which will be fully implemented within 6 months of the 2012 Plan implementation, resulting in almost 6 years of overstated projected lighting savings; and (4) the Commission currently has no enforceable rule mandating when PNM's next plan application is required to be filed.

For these reasons, Staff recommendation to limit approval of PNM 2012 Plan to 2 years is reasonable and consistent with the public interest and it should be adopted by the Commission.



## **6. Staff's Additional Reporting Recommendations**

While PNM provided no testimony opposing Staff's additional reporting requirement, it argues against Staff's recommendation in its brief. PNM Brief, pp. 45-46. PNM's argument that Staff's recommendations should be rejected because PNM designs programs by types of customers, rather than customer classes is without merit and should be disregarded. PNM Brief, p. 45. At hearing, Staff agreed with PNM that the information it sought should be provided by types of customer, not by customer class.

### **B. Staff's Incentive Proposals**

The briefs filed by the Attorney General and the New Mexico Industrial Energy Consumers argue for rejection of PNM's incentive proposal on the ground, among others, that it requests disincentive, or lost fixed cost, recovery in contravention of the Amended Stipulation Ordered in PNM's last rate case No. 10-00089-UT, with the AG additionally arguing, among other arguments, the PNM's proposal is in contravention of the Commission's conclusions in Case No. 11-00047-UT that lost fixed costs are disincentives under the EUEA. AG Brief, pp. 8-10 and NMIEC Brief, pp. 9-10. In Case No. 10-00086-UT, the Commission approved a modified stipulation in which PNM "agrees not to request Commission approval of any mechanism to address disincentives to utility energy efficiency program pursuant to the Efficient Use of Energy Act until, at the earliest, in its next general rate case permitted by the terms of this Amended Stipulation. Case No. 10-00086-UT, Amended Stipulation, ¶ 25, attached to Statement of Signatories, filed 8/1/11, pursuant to paragraph D of the Commission's Final Order Partially Approving Certification of Stipulation dated July 28, 2011 and issued August 8, 2011. These arguments raised by the AG and NMIEC further support Staff's incentive proposal for

purposes of this case as the most well founded, and least disputed, incentive proposal before the Commission in this proceeding.

Additionally, contrary to arguments made by the AG at pp. 14-15 of his brief, Staff's proposed incentive is explained and supported by record evidence. Staff's Exhibit 6 (Carrara Direct), pp. 22-24; Staff Ex. BEC 7; and Staff Exhibit 5 (Brack Direct), p. 8-11. Mr. Brack testified that the 10%/90% proposed sharing mechanism results in annual rate that is consistent with PNM's current incentive amount, recognizes that EUEA programs are ratepayer funded, do not include capital expenditure at this time and therefore present little if no risk to the utility, and is consistent with the 10%/90% sharing mechanism for off system sales revenues between shareholders and ratepayers currently in place for El Paso Electric Company and Southwestern Public Service Company. Staff Ex. 5 (Brack Direct), p. 11 and Tr. p. 867, l. 18 to p. 868, l. 3. Indeed, the Attorney General's witness also testified that an incentive between current amount approved by the Commission falls within the required zone of reasonableness. Tr. p. 601, ll. 10-20. Staff's incentive proposal is supported by record evidence and should be adopted as the most well founded proposal before the Commission in this proceeding.

### **C. Avoided Cost Calculations**

The initial briefs set forth the disputed issues regarding PNM's avoided cost calculations for both incentive and TRC test calculation purposes. Rather than reargue presented points in this response brief in detail, Staff points out that that record shows that Staff has recommended workshops to establish a coherent framework for avoided cost analysis in future cases and that recommendation is widely supported.

Staff, however, would like to emphasize that PNM does address at pages 32-33 the primary dispute Staff has with PNM's Strategist avoided cost model; namely, PNM includes its

previously approved load management (“LM”) programs within its base case scenario; whereas, Staff argues and continues to maintain that PNM erred in including future annual LM programs - - which have not been scrutinized for TRC compliance and for which no evidence exists -- in its base case scenario for purposes of creating the base case scenario for purposes of comparison with the 2012 Plan case scenario to derive PNM’s total NPV benefit of \$60.7 million (ultimately \$56.1 million, as revised in PNM’s Rebuttal Testimony). Staff nevertheless, while rejecting PNM’s model for incentive purposes (primarily because of: the inherent and significant uncertainty involved in any long-term projection; the misalignment of costs and benefits; and out-of-period assignment of benefits) accepted PNM’s model for TRC test calculation purposes only, as corrected for math errors, most of which were ultimately adopted by PNM. The remaining disputes are outlined in Staff’s brief and are accurately identified and addressed in PNM’s brief; namely: (1) Staff’s allocation method of the NPV benefit versus PNM’s average method, and; (2) PNM’s failure to even use its calculated avoided capacity value for LM program, much less Staff’s recommendation, and instead used a stale, unscrutinized value used in prior proceedings.

Further, Staff would like to emphasize in this response brief that PNM’s model shows no new capacity required, with or without EE until 2017, as a result of the proposed 2012 Plan. No evidence exists in written testimony to support any conclusion regarding deferral of any capacity prior to 2017. Hence the basis of Staff’s, the AG’s and NMIEC’s arguments that PNM’s avoided cost calculations do no form a valid foundation for an incentive proposal; but rather are speculative. In short, PNM presented no evidence regarding whether capacity prior to 2013 was delayed or not. In fact, the only evidence discussing whether any capacity MAY have been deferred was provided by Mr. Ortiz on cross examination when Mr. Ortiz testified that due to

prior LM and EE approvals, 30 MW of generation was delayed in the 2010-2012 timeframe. Tr., p. 59-60 (“... I don’t know if we would have installed it in 2010 or 2011. Certainly it would have been on-line by 2012 ...” Clearly, this purported deferral, if indeed it happened, resulted from previous year programs, not from the programs being considered in this case. There is no evidence to show that additional deferral is occurring prior to 2017. If this evidence had been presented, in short, and had PNM used Staff’s recommendation that the base case scenario not include future LM proposals, perhaps the presumption that PNM seems to rely upon that LM benefits continue to accrue could have been evaluated and analyzed by Staff and interveners.

Enernoc’s use of Mr. Ortiz’s cross examination testimony on this point in its brief to support the proposition that future annual LM programs should not be critically examined in EUEA proceedings, despite the fact that the utility seeks continued approval of these programs, and with it, continued and immediate rider recovery of the approximate annual \$7 million ratepayer price tag, is misleading at best. Enernoc inappropriately argues and implies, with no substantiation, that the proposed 2012 Plan is saving ratepayers revenues in the amount of \$12M per year for as long as they exist.

The Commission’s role is not passive and the Commission has an ongoing affirmative duty to protect the public interest. Indeed, the Company itself and Staff also have a responsibility to prevent “unnecessary duplication and economic waste”. Sec 62-3-1.A, NMSA 1978. The Commission’s power to fix rates is an attribute of sovereignty, delegated by the legislature and is plenary, except as restricted by those principals or constitutional law that would have limited its exercise if it had been entrusted to the Legislature. Mountain States Tel. & Tel. Co. v. N.M. State Corp. Comm’n, 90 N.M. 325, 334, 563 P.2d 588, 597 (1977). Moreover, the Commission has an ongoing, affirmative duty to establish rules and regulations, issue orders,

examine records, conduct investigations, grant continuances and do all other things necessary to insure that the public has fair rates and that the utility is fairly treated. Its role is not a passive one. Id. p. at 332. Likewise, Staff is obligated to represent the public interest in contested proceedings before the Commission. Section 8-8-12.C.

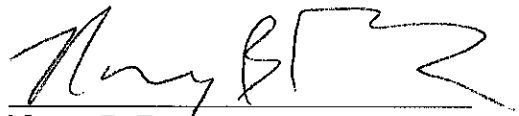
Staff, as alleged by Enernoc, has not conflated its role with that of the utility. Enernoc's recommendation that the Commission not revisit LM program proposals, unless brought forward by the utility, should be rejected.

**D. Conclusion**

Wherefore, Staff respectfully requests the Commission adopt Staff's recommendations contained herein.

Respectfully Submitted,

**NM PUBLIC REGULATION COMMISSION  
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ENERGY ACTS, )  
)  
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MEXICO, )  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing *Staff's Response Brief*, filed March 15, 2013, was sent by electronic mail to the individuals listed below:

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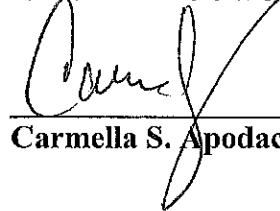
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**DATED** this **15th** day of March, 2013.

**NEW MEXICO PUBLIC REGULATION COMMISSION**



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