

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF EL PASO ELECTRIC )  
COMPANY'S APPLICATION FOR A )  
CERTIFICATE OF CONVENIENCE AND ) Case No. 18-00099-UT  
NECESSITY FOR A TWO-MW SOLAR )  
POWER GENERATION FACILITY AND )  
APPROVAL OF A VOLUNTARY )  
COMMUNITY SOLAR PROGRAM )**

**ORDER GRANTING VERIFIED MOTION BY NEW ENERGY ECONOMY FOR  
RECONSIDERATION OF OCTOBER 24, 2018 ORDER AND DISMISSING EL PASO  
ELECTRIC COMPANY'S APPLICATION WITHOUT PREJUDICE**

**THIS MATTER** comes before the New Mexico Public Regulation Commission (the "Commission") upon the Verified Motion for Reconsideration of October 25 *[sic]*, 2018 Order<sup>1</sup>, Dismissal of EPE's Application and Supporting Brief (the "Motion for Reconsideration"), filed by New Energy Economy ("NEE"):

Whereupon, being duly informed,

**THE COMMISSION FINDS AND CONCLUDES:**

1. On October 24, 2018, the Commission issued its Order Requiring EPE to Issue Request for Proposals and Evaluate Proposals Prior to Hearing (the "October 24 Order"). In the October 24 Order, the Commission denied the Verified Motion and Legal Argument for Commission to Dismiss EPE's Expensive Community Solar Proposal and to Order EPE to Select a Community Solar Resource that Is the Most Cost Effective Among Feasible Alternatives and Affordable for Low Income New Mexicans (the "Motion to Dismiss"), by NEE. Instead, the Commission left the previously scheduled November 27, 2018 hearing date in place while ordering EPE "to issue a new, open-bid Request for Proposals ("RFP") regarding the community

---

<sup>1</sup> Though the written order of the Commission was not served and filed until October 25, 2018, the order was issued on and effective as of October 24, 2018, the day of the open meeting at which the Commission voted to adopt the order.

solar project.” [October 24 Order, ¶ 9.] The Commission ordered EPE to complete the RFP and evaluate any proposals received, prior to the November 27, 2018 hearing in this matter, and stated that the parties may address such proposals orally at the hearing. [*Id.*]

2. On October 29, 2018, NEE filed the Motion for Reconsideration. In the Motion for Reconsideration, NEE again requests that EPE’s Application for a Certificate of Public Convenience and Necessity for a Two-MW Solar Power Generation Facility and Approval of a Voluntary Community Solar Program (the “Application”) be dismissed without prejudice. NEE asks that the Application be dismissed “so that EPE can start anew and the RFP process and this case can proceed in compliance with the law.” NEE argues that the October 24 Order is (i) contrary to the notice requirements of the Public Utility Act and the Commission’s Rules of Procedure, (ii) in violation of the Constitutional rights of NEE and other parties in this proceeding to Procedural Due Process, and (iii) arbitrary, capricious and contrary to law.

3. In the Motion for Reconsideration, NEE describes the procedural history of this case and also describes the discussion of the Commission at the October 24, 2018 open meeting. NEE then notes that the October 24 Order does not state the form or manner in which EPE is required to provide its new RFP, information about any proposals EPE receives in response to the RFP, or information about EPE’s evaluation of such proposals, to the parties and the Commission. NEE argues that the October 24 Order fails to specify any deadline for EPE to provide that information to the parties prior to the hearing and fails to provide any opportunity for NEE or other parties to conduct and evaluate any discovery regarding that information. Moreover, NEE argues that the October 24 Order fails to provide an opportunity for NEE and other parties to prepare cross-examination of any of EPE’s witnesses regarding such information prior to the hearing. NEE notes that, prior to the issuance of the October 24 Order, all discovery

conducted by NEE and other parties in this case was necessarily limited to EPE's Application as it was filed on April 24, 2018.

4. NEE further argues that the October 24 Order violates the notice requirements of the Commission. NEE cites the Public Utility Act, at NMSA 1978, § 62-9-1.C, which allows protests to public utility applications for a Certificate of Convenience and Necessity ("CCN") to be filed "within sixty days of the date that notice is given, pursuant to commission orders, that the application has been filed." NEE argues that the protests of EPE's Application by NEE and other parties previously filed in this case and the opportunity for any other interested parties to protest EPE's Application were necessarily based upon and limited to EPE's Application as filed on April 24, 2018, and EPE's public notice of the Application. NEE also argues that, under the Commission's Rules of Procedure, the Commission should not consider any amendment to EPE's Application unless (i) EPE moves the Commission for leave to amend the Application; (ii) the Commission provides all parties with the opportunity to respond to such a motion; (iii) the Commission issues an order granting such leave to amend the Application; and (iv) all parties are provided with a reasonable opportunity to conduct discovery regarding such amendments and to address such amendments in testimony.

5. NEE further argues that the October 24 Order violates the Procedural Due Process rights of NEE and other parties. NEE contends that it and the other parties will not be able to evaluate whatever proposal is chosen by EPE before the November 27, 2018 hearing. Further, NEE contends that it and the other parties will not be able to conduct any discovery on EPE's proposal before the hearing. NEE argues that it and the other parties will not be able to meaningfully participate in the hearing on November 27, 2018. NEE further argues that the October 24 Order is arbitrary, capricious and contrary to law.

6. In the Motion for Reconsideration NEE states that it sought the positions of the parties with regard to the motion and that they stated their positions as follows: PNE USA, Inc. supports the request for dismissal of EPE's Application "without prejudice," as previously requested by EPE, for the additional reasons stated in the motion. NEE states that no other party provided their position before the filing of the motion.

7. On October 30, 2018, EPE filed its Response in Opposition to the Motion for Reconsideration ("EPE's Response"). In EPE's Response, EPE first notes that, on October 29, 2018, EPE filed its Notice of Compliance with the October 24 Order, Motion for Modification to Case Schedule, and Response in Opposition to Intervenors' Expedited Joint Motion ("EPE's Notice"). In EPE's Response, EPE describes how, in EPE's Notice, EPE informed the Commission that EPE had issued a new RFP on October 26, 2018. In EPE's Response, EPE states that it has made the new RFP accessible to the parties and that, in an attachment to EPE's Notice, EPE has provided the parties with substitute pages of EPE's Application, tariff, and direct testimonies, identifying areas where EPE expects to make revisions based on the results of the new RFP. In EPE's Response, EPE also contends that EPE's Notice proposes a comprehensive schedule for completion of discovery, filing of testimonies on issues not related to the new RFP, the filing by EPE of rebuttal testimony on issues not related to the new RFP, the filing of supplemental information about the new RFP, and oral presentations at hearing regarding the selected bid.

8. EPE further argues that the Motion for Reconsideration is premised on the argument that the parties have been prejudiced by the Commission's decision to require a new RFP, but that this argument must be viewed in the context of the schedule proposed in EPE's Notice. EPE contends that the parties have had ample time to evaluate and prepare testimony

related to aspects of this case not implicated by the new RFP, which comprise the majority of EPE's Application.

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

10. The Commission finds that the Motion for Reconsideration should be granted and that the Application should be dismissed without prejudice. The Commission finds that the above arguments raised by NEE in the Motion for Reconsideration are well taken and that NEE has shown that the October 24 Order is "unlawful, unjust, or unreasonable," in accordance with Commission Rule 1.2.2.37.F(1)(b) NMAC. Though the proposals made by EPE in EPE's Notice were a diligent attempt on the part of EPE to address the concerns raised by NEE and other intervenors regarding this proceeding, those proposals were not sufficient to correct the deficiencies noted by NEE and other intervenors in this proceeding.

**IT IS THEREFORE ORDERED:**

- A. NEE's Motion for Reconsideration is GRANTED.
- B. EPE's Application is DISMISSED WITHOUT PREJUDICE.
- C. A copy of this Order shall be served upon all parties listed on the attached certificate of service via email, if the email addresses are known, and if not known, by regular mail.
- D. This order is effective immediately.
- E. This docket is now closed, with the exception of any dissent that may be filed by Chairman Jones with regard to this Order.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 31st day of  
October, 2018.

NEW MEXICO PUBLIC REGULATION COMMISSION

VOTED NO

---

SANDY JONES, CHAIR

TELEPHONICALLY APPROVED

---

CYNTHIA HALL, VICE CHAIR

VOTED NO

---

PATRICK H. LYONS, COMMISSIONER

*Lynda Lovejoy*

---

LYNDA LOVEJOY, COMMISSIONER

*Valerie Espinoza*

---

VALERIE ESPINOZA, COMMISSIONER

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF EL PASO ELECTRIC )  
COMPANY'S APPLICATION FOR A )  
CERTIFICATE OF CONVENIENCE AND )  
NECESSITY FOR A TWO-MW SOLAR ) Case No. 18-00099-UT  
POWER GENERATION FACILITY AND )  
APPROVAL OF A VOLUNTARY )  
COMMUNITY SOLAR PROGRAM )**

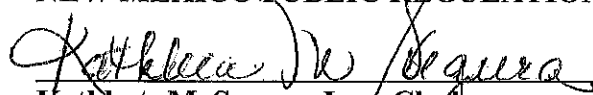
**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing **Order Granting Verified Motion by New Energy Economy for Reconsideration of October 24, 2018 Order and Dismissing El Paso Electric Company's Application Without Prejudice** issued by the New Mexico Public Regulation Commission on October 31, 2018, was sent by email on October 31, 2018, to the parties indicated below:

Nancy Burns	<a href="mailto:Nancy.burns@epelectric.com">Nancy.burns@epelectric.com</a> ;	<b>Mariel Nanasi</b>	<a href="mailto:Mariel@seedsbeneaththesnow.com">Mariel@seedsbeneaththesnow.com</a> ;
Patricia Griego	<a href="mailto:Patricia.griego@epelectric.com">Patricia.griego@epelectric.com</a> ;	<b>Gail Evans</b>	<a href="mailto:gail@newenergyeconomy.org">gail@newenergyeconomy.org</a> ;
Judith Parsons	<a href="mailto:Judith.parsons@epelectric.com">Judith.parsons@epelectric.com</a> ;	Joan Drake	<a href="mailto:jdrake@modrall.com">jdrake@modrall.com</a> ;
Carol Clifford	<a href="mailto:carol@thejonesfirm.com">carol@thejonesfirm.com</a> ;	Kyle J. Smith	<a href="mailto:kyle.j.smith124.civ@mail.mil">kyle.j.smith124.civ@mail.mil</a> ;
Anastasia Stevens	<a href="mailto:astevens.law@gmail.com">astevens.law@gmail.com</a> ;	<b>Steven Michel</b>	<a href="mailto:smichel@westernresources.org">smichel@westernresources.org</a> ;
Jennifer Vega-Brown	<a href="mailto:jvega-brown@las-cruces.org">jvega-brown@las-cruces.org</a> ;	<b>Douglas Howe</b>	<a href="mailto:dhowe@highrocknm.com">dhowe@highrocknm.com</a> ;
Marcia B. Driggers	<a href="mailto:marcyd@las-cruces.org">marcyd@las-cruces.org</a> ;	<b>Glenda Murphy</b>	<a href="mailto:gmurphy@westernresources.org">gmurphy@westernresources.org</a> ;
Jorge A. Garcia	<a href="mailto:JAG@las-cruces.org">JAG@las-cruces.org</a> ;	Charles Noble	<a href="mailto:noble.ccae@gmail.com">noble.ccae@gmail.com</a> ;
Lisa LaRocque	<a href="mailto:llarocque@las-cruces.org">llarocque@las-cruces.org</a> ;	<b>Joseph Yar</b>	<a href="mailto:jyar@nmag.gov">jyar@nmag.gov</a> ;
Jose F. Provencio	<a href="mailto:joprovencio@las-cruces.org">joprovencio@las-cruces.org</a> ;	<b>Elaine Heltman</b>	<a href="mailto:Eheltman@nmag.gov">Eheltman@nmag.gov</a> ;
David Van Winkle	<a href="mailto:Davidvanwinkle2@gmail.com">Davidvanwinkle2@gmail.com</a> ;	<b>Andrea Crane</b>	<a href="mailto:ctcolumbia@aol.com">ctcolumbia@aol.com</a> ;
Nann M. Winter	<a href="mailto:nwinter@stelznerlaw.com">nwinter@stelznerlaw.com</a> ;	<b>Doug Gegax</b>	<a href="mailto:dgegax@nmsu.edu">dgegax@nmsu.edu</a> ;
Jane Yee	<a href="mailto:Jyee@cabq.gov">Jyee@cabq.gov</a> ;	Jason Marks	<a href="mailto:lawoffice@jasonmarks.com">lawoffice@jasonmarks.com</a> ;
Dahl Harris	<a href="mailto:Dahlharris@hotmail.com">Dahlharris@hotmail.com</a> ;	Mayor Trujillo	<a href="mailto:mayortrujillo@cityofanthonym.org">mayortrujillo@cityofanthonym.org</a> ;
Merrie Lee Soules	<a href="mailto:mlsoules@hotmail.com">mlsoules@hotmail.com</a> ;	Tom Figart	<a href="mailto:tomf@donaanacounty.org">tomf@donaanacounty.org</a> ;
<b>Bruce C. Throne</b>	<a href="mailto:bthroneatty@newmexico.com">bthroneatty@newmexico.com</a> ;	Bradford Borman	<a href="mailto:Bradford.borman@state.nm.us">Bradford.borman@state.nm.us</a> ;
<b>Ron Flax Davidson</b>	<a href="mailto:ron.flax-davidson@pnewind.com">ron.flax-davidson@pnewind.com</a> ;	Milo Chavez	<a href="mailto:Milo.chavez@state.nm.us">Milo.chavez@state.nm.us</a> ;
Mayor Alan Webber	<a href="mailto:mayor@ci.santa-fe.nm.us">mayor@ci.santa-fe.nm.us</a> ;	Jack Sidler	<a href="mailto:Jack.sidler@state.nm.us">Jack.sidler@state.nm.us</a> ;
Geno Zamora	<a href="mailto:gizamora@ci.santa-fe.nm.us">gizamora@ci.santa-fe.nm.us</a> ;	Russell Fisk	<a href="mailto:Russell.fisk@state.nm.us">Russell.fisk@state.nm.us</a> ;
Marcos D. Martinez	<a href="mailto:mdmartinez@ci.santa-fe.nm.us">mdmartinez@ci.santa-fe.nm.us</a> ;	John Reynolds	<a href="mailto:John.Reynolds@state.nm.us">John.Reynolds@state.nm.us</a> ;
Anna Hensen	<a href="mailto:ahansen@santafecountynm.gov">ahansen@santafecountynm.gov</a> ;	Charles Gunter	<a href="mailto:Charles.Gunter@state.nm.us">Charles.Gunter@state.nm.us</a> ;
Bruce Frederick	<a href="mailto:rbfrederick@santafecountynm.gov">rbfrederick@santafecountynm.gov</a> ;		
Katherine Miller	<a href="mailto:kmiller@santafecountynm.gov">kmiller@santafecountynm.gov</a> ;		
Taiyoko Sadewic	<a href="mailto:taiyoko@positiveenergysolar.com">taiyoko@positiveenergysolar.com</a> ;		

**DATED** this 31<sup>st</sup> day of October, 2018

**NEW MEXICO PUBLIC REGULATION COMMISSION**

  
\_\_\_\_\_  
**Kathleen M. Segura, Law Clerk**