

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF A COMMISSION)	
INQUIRY INTO THE PROCUREMENT)	Case No. 18-00030-UT
PRACTICES OF INVESTOR OWNED)	
ELECTRIC UTILITIES)	
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BENCH REQUEST ORDER

THIS MATTER comes before the Commission upon its own Motion to issue Bench Requests to all New Mexico Investor Owned Electric Utilities (“IOU”); whereupon, being duly informed,

THE COMMISSION FINDS AND CONCLUDES:

1. On February 14, 2018, the Commission by Order opened docket no. 18-00030-UT entitled *In the Matter of a Commission Inquiry into the Procurement Practices of Investor Owned Electric Utilities*, pursuant to the Commission jurisdiction under New Mexico Constitution, Article XI, § 2; the New Mexico Public Utility Act, NMSA 1978, Sections 62-3-1 et seq., (the “PUA”) and the Public Regulation Commission Act, NMSA 1978, § 8-8-1 through 8-8-21.

2. The purpose of this inquiry was to discuss and gather information concerning the procurement practices of IOUs operating in New Mexico for procuring supply side resources as well as the IOU’s criteria and practices regarding the issuance of Requests for Proposals (“RFP”).

3. Pursuant to the February 14, 2018 Order, the Commission conducted workshops inquiring into such practices, standards and related matters on March 14, 2018 and April 6, 2018.

In addition, the Commission has determined, in this docket, that an IOU’s procurement practices

and the specifications of the RFPs issued by an IOU will affect the costs the IOU incurs to provide regulated retail electric service and its rates for that service to customer and therefore is subject to the Commission's supervision and regulations authority pursuant to the PUA, §§ 62-3-1 (B) and 62-3-3 (H) 1. The Commission therefore has jurisdiction to inquire into, and ultimately promulgate rules, pertaining to the current and future procurement practices of IOUs for resources prior to the IOU filing an application with the Commission that requests ratemaking treatment for the costs of that particular resource.

4. As clearly stated in the Commission's Rule pertaining to Integrated Resource Plans for Electric Utilities, 17.7.3.9. G NMAC, IOUs are required to identify the most cost effective resource portfolio among feasible alternatives. Further, the Commission's stated purpose in opening this inquiry docket was the Final Order in Case No 17-00129-UT which noted that the Commission had not yet promulgated rules pertaining to procurements of resources by IOUs. The Final Order in Case No 17-00129-UT emphasized the importance of fairness in bidding and the need for setting standards for competitive procurements of the most cost effective resources among feasible alternatives.¹ The Final Order in Case No. 17-00129-UT, Paragraph 12, specifically stated:

The Commission does believe it should address some of the fundamental concerns raised by the HE's recommendation of fairness in bidding....[t]he Hearing Examiner's recommendation raises a host of policy issues that could affect to showings required of utilities whenever they apply for a CCN to build and own, not

¹ According to the Commission Rule pertaining to Integrated Resource Plans for Electric Utilities, 17.7.3.9. G NMAC: "**G. Determination of the most cost effective resource portfolio and alternative portfolios.(1)To identify the most cost-effective resource portfolio, utilities shall evaluate all feasible supply, energy storage, and demand-side resource options on a consistent and comparable basis, and take into consideration risk and uncertainty (including but not limited to financial, competitive, reliability, operational, fuel supply, price volatility and anticipated environmental regulation). The utility shall evaluate the cost of each resource through its projected life with a life-cycle or similar analysis. The utility shall also consider and describe ways to mitigate ratepayer risk.**" Emphasis added.

just renewable energy facilities, but conventional generating facilities as well. ...Nonetheless, the Commission further finds that it would be reasonable and in the public interest to initiate in a separate future proceeding a Notice of Inquiry into whether the Commission should adopt minimum deadlines for the submittal of responses to RFPs for various types and sizes of renewable energy resources that are included in a utility's proposed renewable energy portfolio. Such an inquiry would provide greater certainty to utilities and developers in the conduct of future RFPs.

5. Further, it has come to the attention of the Commission, that IOUs in New Mexico are presently issuing RFPs during the pendency of this proceeding. For example, recently, the Commission was informed that on April 2, 2019, PNM issued an RFP whose stated purpose was: "We are proud to issue this request for proposals ("RFP") to solicit bids from capable providers to construct up to 450 MW of battery energy storage resources ("Project" or "Projects") to be owned and operated by PNM." 1.2 RFP, Stated Purpose. Bidders were given until May 24, 2019 (53 days) to submit a Response. Further, the RFP set out the criteria for "Eligible Proposals" in 2.1 RFP, Types of Eligible Proposals, as follows: "The following types of Proposals are eligible for consideration under this RFP:

- Proposals for engineering, procurement, and construction ("EPC") contracts on a site controlled by PNM as described in the Technical Specification of this RFP; Reference 4.15 (Compliance with Law) for more details.
- Proposals for build-transfer ("BT") projects on the Respondent's site. The site, the Project, all other improvements, and all environmental and other attributes of the Project would be transferred to PNM upon completion; Reference 4.15 (Compliance with Law) for more details."

6. From this language, it is apparent that the PNM RFP excludes Power Purchase Agreement bidders from the definition of "Eligible Proposals". That is clear because it declares as "ineligible" any proposals submitted by independent power producer bidders proposing power purchase agreements whereby the battery energy storage project is owned and operated by an entity other than PNM/ PNM affiliate. The PNM RFP excludes PPAs between PNM and an

independent power source to purchase battery storage services because PNM/PNM affiliate would not own the facility or be transferred ownership of the facility.

7. Further, the Commission also takes administrative notice that SB 489, 2019 Legislative Session, effective June 14, 2019, requires IOUs demonstrate that procurements are competitive and that procurements have not excluded PPA bidders from being eligible bidders. Specifically, SB 489 amended sections of the Renewable Energy Act, Sections 62-16-1 etseq. NMSA 1978 (the “Amended REA”) and amended the CCN statute, Section 62-9-1 etseq. NMSA 1978 to expressly state this as follows: “Section 25. Section 62-9-1 NMSA 1978... is amended to read: ... **D. In an application for a certificate of public convenience and necessity for an energy storage system, the commission shall approve energy storage systems that: ...(7) are the most cost effective among feasible alternatives....**” (emphasis added)...Section 29. Section 62-16-4 NMSA 1978...is amended to read: “G. By July 1, 2020, and each July 1 thereafter, a public utility shall file a report to the commission on the public utility's procurement and generation of renewable energy since the last report and a procurement plan that includes:...(3) **information, including exhibits, as applicable, that demonstrates that the proposed procurement: (a) was the result of competitive procurement that included opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options;...**” (emphasis added).

8. Given the Commission's expressly stated concern regarding fairness in bidding, and SB 489's quoted language above, the Commission finds it is in the public interest, during the pendency of this inquiry docket and pendency of a potential rulemaking on procurement, that all IOUs respond to the informational questions so that the Commission will be fully informed on the criteria and competitiveness of all IOU's recent RFPs and future RFPs conducted by or

proposed to be conducted.

IT IS THEREFORE ORDERED:

A. No later than close of business on June 19, 2019, all electric IOUs in the State of New Mexico shall file written responses to the following questions pertaining to the IOU's procurement of resources, including but not limited to battery energy storage, with capacity greater than 30 MW:

(1) Within the 6 months preceding the date of this Order and the 12 months following the date of this Order, have you issued or intend to issue any RFPs for the procurement of resources, including but not limited to battery energy storage?

(2) If yes to question #1 please list the RFP's issued during the last 6 months, their date of issuance, and provide copies of the full RFP including exhibits and attachments. Also list RFP's intended to be issued during the upcoming 12 months, the resource requirement of each and the approximate intended issuance date.

(3) If yes to question #1, please state the criteria for "eligible proposals" for each RFP issued within the last six months and the required response time (number of days) for submitting bids from the initial issuance date of the RFP. Please provide the same information for each planned RFP for the upcoming 12 months if already determined.

(4) Additionally, for each existing or planned RFP listed in response to question #2, does the RFP require that ownership of the resource or the resource site be transferred to the utility upon completion? For each RFP where utility owned sites are offered or planned to be offered to bidders for resource location, is utility ownership of the resource required?

(5) If yes to question #4, please state, in detail, the reasons for the ownership requirements for each identified RFP.

(6) Additionally, if yes to question #4, are the RFP ownership requirements consistent with the utility's obligation to procure the most cost effective resource portfolio among feasible alternatives.

(7) If yes to question #6, then please state in detail your reasoning and justification.

(8) For each RFP identified in question #2, is the response time requirement consistent with the utility's obligation to procure the most cost effective resource portfolio among feasible alternatives?

(9) If yes to question #8, then please state in detail your reasoning and justification.

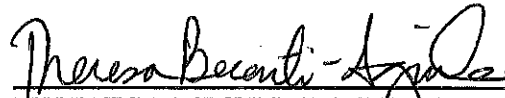
(10) If yes to questions #4 and/or #6, please state whether you intend to file an application with the Commission to have the resource procured by such RFP included into rate base in the future.

B. This Order is effective immediately.

C. A copy of this Order shall be served upon all persons listed on the attached Certificate of Service by e-mail, if e-mail addresses are known, or by regular mail otherwise.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 12th day
of June, 2019.

NEW MEXICO PUBLIC REGULATION COMMISSION



THERESA BECENTI-AGUILAR, CHAIR, DISTRICT 4



VALERIE ESPINOZA, VICE-CHAIR, DISTRICT 3



CYNTHIA HALL, COMMISSIONER, DISTRICT 1



JEFFERSON L. BYRD, COMMISSIONER, DISTRICT 2



STEPHEN FISCHMANN, COMMISSIONER, DISTRICT 5



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Bench Request Order** issued by the New Mexico Public Regulation Commission on June 12, 2019 was sent via email on June 12, 2019, to the parties listed below:

Stacey Goodwin	Stacey.goodwin@pnmresources.com ;	Charles F. Noble	Noble.ccae@gmail.com ;
Mark Fenton	Mark.Fenton@pnm.com ;	Ramona Blaber	Ramona.blaber@sierraclub.org ;
Carey Salaz	Carey.Salaz@pnm.com ;	Megan A. O'Reilly	arcresearchandanalysis@gmail.com ;
Ryan Jerman	Ryan.Jerman@pnmresources.com ;	Adam Bickford	abickford@swenergy.org ;
Richard Alvidrez	ralvidrez@mstlaw.com ;	Don Hancock	sticdon@earthlink.net ;
Robert Clark	rclark@mstlaw.com ;	Noah Long	nlong@nrdc.org ;
Raymond L. Gifford	rgifford@wbklaw.com ;	Ralph Cavanagh	rcavanah@nrdc.org ;
Joseph Yar	Jyar@nmag.gov ;	Jason Marks	lawoffice@jasonmarks.com ;
Alicia Armijo	Aarmijo@nmag.gov ;	Travis Ritchie	travis.ritchie@sierraclub.org ;
Andrea Crane	Ctcolumbia@aol.com ;	Jane Yee	Jyee@cabq.gov ;
Peter J. Gould	Pgouldlaw@gmail.com ;	Tony A. Gurule	TGurule@cabq.gov ;
Jeffrey H. Albright	JAlbright@lrrc.com ;	Danyel Mayer	dmayer@cabq.gov ;
Bobbie J. Collins	BCollins@lrrc.com ;	Justin Lesky	jlesky@leskylawoffice.com ;
Michael I. Garcia	MikGarcia@berneo.gov ;	Mariel Nanasi	Mariel@seedsbeneaththesnow.com ;
Amanda Edwards	AEdwards@lrrc.com ;	David Van Winkle	david@vw77.com ;
Nann M. Winter	nwinter@stelznerlaw.com ;	Bruce Throne	bthroneatty@newmexico.com ;
Peter Auh	Pauh@abcwua.org ;	Richard C. Mertz	Rcmertz7@outlook.com ;
Dahl Harris	Dahlharris@hotmail.com ;	James Dauphinais	jdauphinais@consultbai.com ;
Jim Dittmer	Jdittmer@utilitech.net ;	Thomas Domme	tdomme@tecoenergy.com ;
Joe Herz	Jahez@saavel.com ;	Rebecca Carter	racarter@tecoenergy.com ;
Steven S. Michel	Smichel@westernresources.org ;	Clyde F. Worthen	cfw@keleher-law.com ;
Glenda Murphy	Gmurphy@westernresources.org ;	Jack Sidler	Jack.Sidler@state.nm.us ;
Dave Effross	Dave.Effross@westernresources.org ;	Charles Gunter	Charles.Gunter@state.nm.us ;
Kurt Boehm	Kboehm@BKLLawfirm.com ;	Cyndey Beadles	Cyndey.Beadles@state.nm.us ;
Jody Kyler Cohn	Jkylercohn@BKLLawfirm.com ;	Sarah Becker	Sarah.Becker@state.nm.us ;
Bill Templeman	wtempleman@cmtisantafe.com ;	Milo Chavez	Milo.Chavez@state.nm.us ;
Kevin Higgins	Khiggins@energystrat.com ;	John Reynolds	John.Reynolds@state.nm.us ;
Steve W. Chriss	Stephen.Chriss@Wal-Mart.com ;	Vincent De Cesare	Vincent.decesare@state.nm.us ;
Lisa V. Perry	LPerry@oram-houghton.com ;	Heidi Pitts	Heidi.pitts@state.nm.us ;
Danyel Mayer	dmayer@cabq.gov ;	Elisha Leyba-Tercero	Elisha.leyba-Tercero@state.nm.us ;
Nikki Joseph	njoseph@cabq.gov ;	Anthony Sisneros	Anthony.Sisneros@state.nm.us ;
Eva Taylor	evataylor@cabq.gov ;	Michael C. Smith	Michaelc.smith@state.nm.us ;
Stephen Fogel	stephen.e.fogel@xcelenergy.com ;	Jane L. Yee	jyee@cabq.gov ;
Jeffrey L. Fornaciari	jfornaciari@hinklelawfirm.com ;	Danyel Mayer	dmayer@cabq.gov ;
Dana S. Hardy	dhardy@hinklelawfirm.com ;	Tony A. Gurule	TGurule@cabq.gov ;
Evan Evans	evan.d.evans@xcelenergy.com ;	Joan Drake	jdrake@modrall.com ;
Mario A. Contreras	Mario.a.contreras@xcelenergy.com ;	Zoe E. Lees	zel@modrall.com ;

William Grant
Linda Hudgins
Amy Shelhamer
Sonya Mares
Casey Settles
Brian J. Haverly
Thomas M. Domme
Rebecca A. Carter
Nicole V. Strauser
Anthony Trujillo
Phillip Oldham
Katherine Coleman
Katelyn Hart
Melissa Trevino
Jason Marks
Sara Gersen
Charles Carter Hall
Al Luna
Nick Thorpe
Rick Gilliam
Jill Tauber
William P. Templeman
Michael J. Moffett
Joseph Yar
Alicia Armijo
Andrea Crane
Doug Gegax
Megan A. O'Reilly
Charles F. Noble
Ramona Blaber
Don Hancock
Stephen Fischmann
Randy S. Bartell
Sharon T. Shaheen
Lorraine Talley
Yolanda Sandoval
Vicky Ortiz

William.a.grant@xcelenergy.com;
linda.l.hudgins@xcelenergy.com;
ashelhamer@courtneylawfirm.com;
smares@hinklelawfirm.com;
casey.settles@xcelenergy.com;
bjh@keleher-law.com;
tdomme@tecoenergy.com;
Rebecca.carter@nmgco.com;
nvstrauser@tecoenergy.com;
ajt@gknet.com;
phillip.oldham@tklaw.com;
katie.coleman@tklaw.com;
katelyn.hart@gknet.com;
Melissa.Trevino@oxy.com;
lawoffice@jasonmarks.com;
sgersen@earthjustice.org;
Chall@earthjustice.org;
Aluna@earthjustice.org;
Nthorpe@earthjustice.org;
Rick@votesolar.org;
jtauber@earthjustice.org;
wtempleman@cmtisantafe.com;
mmoffett@cmtisantafe.com;
Jyar@nmag.gov;
Aarmijo@nmag.gov;
ctcolumbia@aol.com;
dgegax@nmsu.edu;
oreilly.ccae@gmail.com;
noble.ccae@gmail.com;
Ramona.blaber@sierraclub.org;
Tricdon@earthlink.net;
Stephen.fischmann@gmail.com;
rbartell@montand.com;
sshaheen@montand.com;
halley@montand.com;
ysandoval@montand.com;
vortiz@montand.com;

Perry Robinson
Deana M. Bennett
Sally Wilhelm
Mike Gorman
Amanda Alderson
Chris Walters
Chris Dizon
Ruben Lopez
Julia Broggi
Thorvald A. Nelson
Michelle Brandt King
Nikolas Stoffel
Matthew H. Marchant
Greg Wright
Greg Tutak, P.E.
Austin Rueschhoff
Karon E. Corner
Ruth Sougstad
Daniel A. Najjar
Carla R. Najjar
Chuck Pinson
Antonio Sanchez Jr.
John Caldwell
Maj. Andrew J. Unsicker
Mr. Thomas Jernigan
Capt. Lanny Zieman
Capt. Natalie Cepak
Ms. Ebony Payton
TSgt Ryan Moore
Jeff Pollock
Bradford Borman
Judith Amer

Perry.Robinson@urenc.com;
dmb@modrail.com;
swilhelms@consultbai.com;
mgorman@consultbai.com;
aalderson@consultbai.com;
cwalters@consultbai.com;
chris.dizon@endlessenergy.solar;
ruben.lopez@endlessenergy.solar;
jbroggi@hollandhart.com;
tnelson@hollandhart.com;
mbking@hollandhart.com;
nsstoffel@hollandhart.com;
Matthew.marchant@hollyfrontier.com;
Greg@emgnow.com;
Greg.Tutak@hollyfrontier.com;
darueschhoff@hollandhart.com;
kecorner@hollandhart.com;
rsougstad@hollandhart.com;
dnajjar@virtuelaw.com;
csnajjar@virtuelaw.com;
cpinson@cvcoop.org;
sancheza@rccc.coop;
jcaldwell@leacounty.net;
Andrew.Unsicker@us.af.mil;
Thomas.Jernigan.3@us.af.mil;
Lanny.Zieman.1@us.af.mil;
Natalie.Cepak.2@us.af.mil;
Ebony.Payton.ctr@us.af.mil;
Ryan.Moore.5@us.af.mil;
jcp@jpollockinc.com;
Bradford.Borman@state.nm.us;
Judith.Amer@state.nm.us;

Nancy B. Burns
Patricia Griego
Tony Apodaca
Maritza Perez
Joan E. Drake
Anastasia S. Stevens
Jennifer Vega-Brown
Marcia B. Driggers
Stuart C. Ed
Jorge A. Garcia
Lisa LaRocque
Jose Provencio
Nann M. Winter
Tom Figart
Nelson Goodin
Merrie Lee Soules
Lewis O. Campbell

Nancy.burns@epelectric.com;
Patricia.griego@epelectric.com;
Tony.apodaca@epelectric.com;
Maritza.Perez@epelectric.com;
jdrake@modrail.com;
astevens.law@gmail.com ;
jvega-brown@las-cruces.org;
marcyd@las-cruces.org;
sed@las-cruces.org;
JAG@las-cruces.org;
llarocque@las-cruces.org;
jprovencio@las-cruces.org;
nwinter@stelznerlaw.com;
tomf@donaanacounty.org;
Nelsong@donaanacounty.org;
misoules@hotmail.com;
lcampbell@abqenergy.net;

William Babington
Kyle J. Smith
Joseph Yar
Alicia Armijo
Andrea Crane
Steve Michel
Jason Marks
Joshua L. Smith
Bruce Throne
Milo Chavez
Russell Fisk
Brian Haverly
Steve Casey
Ellen Anderson
Bill Ashburn
Paula Brown
Jay Kumar

rbabington@las-cruces.org;
Kyle.j.smith124.civ@mail.mil;
jyar@nmag.gov;
Aarmijo@nmag.gov;
ctcolumbia@aol.com;
smichel@westernresources.org;
lawoffice@jasonmarks.com;
Jsmith.watsonlawlc@gmail.com;
bthronetv@newmexico.com;
Milo.chavez@state.nm.us;
Russell.fisk@state.nm.us;
bjh@keleher-law.com;
slcaseay@tecoenergy.com;
ewanderton@tecoenergy.com;
washburn@tecoenergy.com;
pkbrown@tecoenergy.com;
jkumar@etcinc.biz;

DATED this 12th day of June, 2019.

NEW MEXICO PUBLIC REGULATION COMMISSION



Kathleen M. Segura, Law Clerk