

116. To the extent not otherwise granted, the Exceptions of the AG and NNSA should be denied.

B. PNM's Decoupling Proposal.

117. PNM proposes to decouple its sales volumes from the revenues it receives under a Consumption Normalization Adjustment ("CNA") under its proposed Rate Rider 16. The AG, UNM, NNSA and NMIEC opposed the CNA. Staff testified in favor of decoupling in general, and believed it possible that Staff and the other parties could fix flaws in Rate Rider 16 "if given adequate time and resources." RD at p. 119. The RD recommends finding that the shortcomings of Rate Rider 16 are not amenable to any fix, that decoupling is not in the public interest, and is inconsistent with the Public Utility Act. RD at pp. 122 and 125.

118. PNM and NRDC/SWEEP filed exceptions addressing the RD's treatment of this issue. PNM "seeks clarification" in its Exceptions that the RD should not be interpreted to mean that its proposal with regard to decoupling is not rejected by the Commission "with prejudice," *i.e.*, such that PNM may not bring the same proposal back to the Commission for consideration in a different proceeding. NRDC/SWEEP, on the other hand, takes issue with the substantive findings of the RD, as well as with the fact that the RD recommends rejection of the decoupling proposal with prejudice.

119. Addressing the issue of rejection with prejudice, the Commission finds that rejection with prejudice is appropriate in this case. The proposal put forth by PNM and supported by NRDC/SWEEP and Staff is overly broad and overreaching. If implemented, it would, in effect, make PNM whole for past conservation efforts of consumers that have absolutely nothing to do with the enactment of the Efficient Use of

Energy Act on which PNM relies for recovery for lost volumes. Moreover, PNM's proposal fails to take any account of customer growth that has occurred during the time that consumption per customer may have declined. Therefore, the Commission finds that the decoupling proposal advanced by PNM in this case is fatally flawed, and that the Commission will not consider it again in any case.

120. That is not to say, however, that the Commission will not consider a well-designed decoupling proposal that meets the criteria of the Efficient Use of Energy Act. The Commission welcomes appropriate measures to eliminate disincentives to investment by utilities in energy efficiency programs as contemplated by the Act. However, they must be narrowly focused to address those disincentives, and not be aimed at making the utility whole for all load losses.

121. NRDC/SWEEP's contentions in its Exceptions that the RD must address each item of evidence in the record separately are unfounded. The Public Utility Act simply requires that the Commission make ultimate findings, and that they be supported by evidence in the record. *See Attorney General v. NMPSC*, 101 N.M. 549 (1984). To the extent that a conclusion is contrary to a contention of a party, and to evidence in the record, there is an implicit finding that those arguments and evidence have been rejected. *See AG v. NMPUC*, 101 N.M. at 553-54 (1984).

122. To the extent not otherwise granted, the Exceptions of PNM and NRDC/SWEEP should be denied.

C. Minimum System Rate Design