

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 08I-113EG

**IN THE MATTER OF THE INVESTIGATION OF REGULATORY AND RATE
INCENTIVES FOR GAS AND ELECTRIC UTILITIES**

**COLORADO INDEPENDENT ENERGY ASSOCIATION'S
PRELIMINARY COMMENTS**

The intervention group collectively referred to as the Colorado Independent Energy Association (“CIEA”), a non-profit corporation and trade association of independent power producers (“IPPs”), by and through its undersigned counsel, respectfully submits the following preliminary comments as solicited by the Public Utilities Commission of the State of Colorado’s (Commission”) in Decision No. C08-0903 (“Order Requesting Comments and Setting Procedural Schedule” or “Order”) adopted by the Commission on August 13, 2008. CIEA states as follows:

1. On April 29, 2008, the Commission issued Decision No. C08-0448 through which the Commission opened this investigatory docket concerning regulatory structures and incentives that influence electric and gas utility actions under existing regulatory structures in Colorado and concerning alternative incentives and alternate regulatory and rate structures that may alter or influence utility actions. (See, Commission Decision No. C08-0448 at ¶II, A. 1, p. 4)

2. In Decision No. C08-0903, the Commission invited interested persons to submit by September 22, 2008 comments on the “Revised Scoping Questions” set forth in Appendix A to the Order. In Appendix A, the Revised Scoping Questions include:

- viii. Can the regulatory incentive structure be altered to change the stakes for a utility making a build-or-buy decision?

3. CIEA appreciates the opportunity to submit comments on this very important question above. However, the September 22 comment deadline is especially problematic with respect to this particular question because, as of that date, the Commission will have only barely issued its order in Docket No. 07A-447E, the Phase I resource plan application of Public Service Company of Colorado (“PSCo”). With over 20 parties to that docket, it is likely that one or more applications for rehearing, reargument or reconsideration (“RRR”) will be filed after the initial order is issued, meaning that the final outcome of the Phase I PSCo proceeding will be unknown for a few more weeks. Since PSCo’s application is the first resource plan proceeding in which the Commission will have applied its revised Energy Resource Planning rules, the final outcome of that docket (after RRR is resolved) will have a direct bearing on defining both the magnitude and the precise contours of the utility self-build incentives problem that exists under the present regulatory system in Colorado.

4. The Commission’s Order in the present docket notes that, given the investigatory nature of this proceeding, the Commission “can be somewhat flexible” in its procedures, and states that “we will allow parties to supplement their first round comments after” the September 22 deadline. (See, Commission Decision No. C08-0903 at ¶I, C. 14-15, pp. 5-6). Under the circumstances, CIEA wishes to take advantage of that flexibility and reserves here the right to analyze fully the final outcome of the PSCo Phase I resource plan docket before submitting more detailed comments on the build vs. buy issue.

5. At the present time, however, even without the Commission’s ruling in Docket No. 07A-447E, it is possible to observe, of course, that the current regulatory system creates an incentive for PSCo and other rate-regulated electric utilities to self-build new generation so as to earn a rate of return on such rate-based investments. When utilities buy power from generation resources owned by others, there is no opportunity presently to earn a return on such expenses.

However, the Commission can greatly minimize the effect of that incentive by use of a robust competitive bidding process with a truly objective Independent Evaluator and by not granting set-asides or other capacity reservations or bidding waivers in favor of the incumbent utility. This potential to significantly reduce the impact and importance of the utility self-build incentive exists under the current regulatory system (through rigorous Commission enforcement of its competitive procurement rules and processes) and is a key reason why CIEA believes it is critical to analyze the final outcome of Docket No. 07A-447E before recommending specific changes to the existing regulatory structure. Once CIEA has had the opportunity to conduct such an analysis of the Commission's final Order, it expects to be in a far better position to address such topics as wholesale electric market deregulation; disaggregating utility generation, transmission and distribution functions; performance-based ratemaking that divorces utility earnings from generation ownership; and other regulatory concepts that reduce or eliminate utility generation ownership incentives.

6. Once Phase I of the PSCo resource plan docket is complete, CIEA looks forward to active participation in this proceeding. That participation may include the submission of supplemental written comments, participation in workshops, sponsorship of oral presentations, or conducting ex parte discussions with the Commission. CIEA very much appreciates the Commission's attention to the critical issues it has brought forward in the present docket.

DATED: September 22, 2008.

Respectfully submitted,
HOLLAND & HART LLP

By: 

Robert M. Pomeroy, Jr. #7640
Thorvald A. Nelson, #24715
Robyn A. Kashiwa, #39051

**ATTORNEYS FOR COLORADO
INDEPENDENT ENERGY ASSOCIATION**

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September, 2008, an original and three (3) copies and a CD of the foregoing **COLORADO INDEPENDENT ENERGY ASSOCIATION'S PRELIMINARY COMMENTS** were served via electronic mail and hand delivery on:

Doug Dean, Director
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202
Doug.Dean@dora.state.co.us

and copies were sent via electronic mail or U.S. mail (where no email address is listed) to the following::

Leslie Glustrom
4492 Burr Place
Boulder, CO 80303
lglustrom@gmail.com

Judith M. Matlock
Sam G. Niebrugge
Davis Graham & Stubbs, LLP
1550 17th Street, Suite 500
Denver, CO 80202
Judith.matlock@dgsllaw.com
Sam.niebrugge@dgsllaw.com

Ronal W. Larson
21758 Mountsfield Drive
Golden, CO 80401
rongretlarson@comcast.net

Robert M. Pomeroy, Jr.
Holland & Hart LLP
8390 East Crescent Parkway
Suite 400
Greenwood Village, CO 80111
rpomeroy@hollandhart.com

Tom Konrad, Ph.D.
1556 Williams Street, No. 203
Denver, CO 80218
tom@tomkonrad.com
tomkonrad@gmail.com

Thorvald A. Nelson
Holland & Hart LLP
8390 East Crescent Parkway
Suite 400
Greenwood Village, CO 80111
tnelson@hollandhart.com

Steven H. Denman
Abel Band, Chartered
240 South Pineapple Avenue
Sarasota, FL 34236
sdenman@abelband.com

Robyn A. Kashiwa
Holland & Hart LLP
8390 East Crescent Parkway
Suite 400
Greenwood Village, CO 80111
rakashiwa@hollandhart.com

Karen P. Wilkes
Vice President, Regulatory & Public Affairs
1301 Pennsylvania Street, Suite 800
Denver, CO 80203
Karen.wilkes@atmosenergy.com

Christopher M. Irby, Esq.
Assistant Attorney General
Office of the Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203
Chris.irby@state.co.us

Nicholas G. Muller
CIEA Executive Director
475 17th Street, Suite 940
Denver, CO 80202
ngmuller@aol.com

Stephen W. Southwick, Esq.
First Assistant Attorney General
Office of the Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203
Stephen.southwick@state.co.us

Dr. Robert A. (Andy) Bardwell
4801 W. Yale Avenue
Denver, CO 80219
andy@bardwellconsulting.com

Dale Hutchins
Dale.hutchins@state.co.us

Nancy LaPlaca
4801 W. Yale Avenue
Denver, CO 80219
nancylaplaca@yahoo.com

Chere Mitchell
Chere.mitchell@state.co.us


Craig Cox
Executive Director
P.O. Box 272
Conifer, CO 80433
cox@interwest.org

Paula M. Connelly
Managing Attorney
Xcel Energy Services, Inc.
1225 17th Street, Suite 900
Denver, CO 80202-5533
Paula.connelly@xcelenergy.com

Ron Lehr, Esq.
4950 Sanford Circle West
Englewood, CO 80110-5127
rllehr@msn.com

James Greenwood, Director
Office of Consumer Counsel
1560 Broadway, Suite 200
Denver, CO 80202
James.greenwood@dora.state.co.us

Skip Arnold, Director
225 East 16th Avenue
Suite 200
Denver, CO 80203
sarnold@energyoutreach.org

s/ Patti Penn 

3926001_1.DOC