Decision No. C07-0622

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 07R-166E

IN THE MATTER OF THE PROPOSED RULES IMPLEMENTING RENEWABLE ENERGY STANDARDS 4 CCR 723-3.

ORDER ADOPTING RULES

Mailed Date: July 23, 2007
Adopted Date: July 12, 2007

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission to consider comments received regarding revisions and clarifications to the existing Renewable Energy Standard (RES) Rules contained in 4 *Code of Colorado Regulations* (CCR) 723-3-3650, *et seq.*, as a result of the signing of House Bill 07-1281 (HB 1281) by Governor Bill Ritter. We hereby adopt rules consistent with the legislative intent of HB 1281. The statutory authority for the rules proposed here is found at §§ 24-4-101, C.R.S. *et seq.,* 40-1-101, *et seq.,* 40-2-108, 40-3-102, 40-3-103, 40-4-101, and 40-4-108.

B. Background

2. Amendment 37 was approved by Colorado voters in the 2004 election cycle and became effective on December 1, 2004. Subsequently, the Colorado Legislature passed Senate Bill 05-143, which clarified and modified the RES statutes which are codified at § 40-2-124,

C.R.S. In a prior rulemaking docket[1], the Commission adopted RES Rules through a series of decisions.[2]

3. HB 1281 further modified the RES statutes.[3] Among other things, HB 1281 increases the compliance percentages of the renewable energy standard for investor owned Qualifying Retail Utilities (QRUs) to a requirement of 20 percent of the QRU's electric energy portfolio generated by specific technologies by the year 2020. It also requires both municipally owned QRUs with greater than 40,000 customers, and all cooperative electric associations to meet a compliance percentage of 10 percent by the year 2020. The bill also includes "recycled energy" as an eligible energy resource, provides incentives for the development of certain types of energy resources within Colorado, provides additional incentives to investor owned QRUs to develop and own eligible energy resources, and clarifies certain provisions surrounding the maximum retail rate impacts to achieve the new renewable energy standards.

C. Procedural History

4. At our May 9, 2007, Commissioners' Weekly Meeting, we issued a Notice of a Proposed Rulemaking (NOPR) regarding possible changes to our RES Rules.[4] We specifically limited the NOPR to address only the necessary changes resulting from HB 1281. Decision No. C07-0386 established hearing dates of July 2 and 3, 2007 as well as an initial comment filing date of June 11, 2007 and a reply comment filing date of June 21, 2007.

5. The following individuals, groups or entities filed initial comments: Aquila, Inc., Colorado Independent Energy Association (CIEA), the Colorado Office of Consumer Counsel

[1] *See,* Docket No. 05R-112E.
[2] *See,* Decision Nos. C05-1461, C06-0091, C06-0218, C06-0305, and C06-0468.
[3] The bill became law on March 27, 2007.
[4] *See,* Decision No. C07-0386.

(OCC), Colorado Lighting, Colorado Rural Electric Association (CREA), Colorado Working Landscape (CWL), Interwest Energy Alliance (Interwest), Public Service Company of Colorado (Public Service), Rocky Mountain Farmers Union (RMFU), Tri-State Generation and Transmission Association, Inc. (Tri-State), and Western Resource Advocates (WRA).

6. The following individuals, groups or entities filed reply comments: CF&I Steel LP (CF&I), CWL, Climax Molybdenum Company (Climax), OCC, the Governor's Energy Office (GEO), Mr. Fred Hefley, Interwest, Mr. Brent Orr, Public Service and RMFU.

7. At the designated dates and times, the Commission *en banc* called this matter for hearing and received oral comments. During the hearing, WRA represented that it would late-file a list of rules for cooperative electric associations which it believed were either incorrectly cross-referenced or missing. Tri-State represented that it would late-file Board Policies Numbers 115 and 118. WRA filed its list on July 9, 2007, and Tri-State filed the Board Policies on July 12, 2007.

D. Discussion

8. In Decision No. C07-0386, we limited this rulemaking to address only the necessary changes from HB 1281. We concluded, based on our experience in the original rulemaking docket, it would be highly unlikely that we could issue rules within the legislative imposed deadline of October 1, 2007, unless we limited comment to the issues raised by the passage of HB 1281. Those offering comment generally stayed within those parameters. We note that while some parties offered suggestions for stylistic or grammatical changes, we will not address every one of these suggestions whether accepted or rejected because they do not affect the substantive nature of the rules.

1. Rule 3000 – Scope and Applicability

9. CREA and Tri-State contend that the proposed revisions to Rule 3000(b)(XII) expand the portions of the RES Rules that are applicable to cooperative electric associations. According to the parties, this expansion conflicts with §40-2-124 (1), C.R.S. They assert that, by including cooperative electric associations in the proposed revised rules in this docket, the Commission has reaffirmed its position that cooperatives are subject to the Commission's rulemaking authority despite the clear language of §40-2-124 (1), C.R.S. CREA and Tri-State do not believe that this position is supported by either the statutory language or the legislative history of Amendment 37 or HB 1281.

10. Although CREA and Tri-State acknowledge there is no question that HB 1281 requires all cooperative electric associations to comply with the eligible energy standards set forth in the law, they argue that the only element of HB 1281 that addresses any regulatory oversight by the Commission is §40-2-124(5.5). This statutory provision requires cooperative electric associations to file annual compliance reports with the Commission.

a. Findings

11. In creating our current Electric Rules, we included a cross-reference index for the applicability of the Electric Rules to the various types of utilities we regulate. Rule 3000 is the cross-reference index. Rule 3000(b) provides a list of all the Electric Rules applicable to cooperative electric associations which have elected to exempt themselves from the Public Utilities Law pursuant to §40-9.5-103. As part of the proposed changes attached to the NOPR, we carefully identified specific RES Rules which appeared applicable to cooperative electric associations based on our reading of HB 1281. Those cross-referenced RES Rules are shown in Rule 3000(b).

12. We do not agree with CREA and Tri-State's reasoning that the only rule applicable to cooperative electric associations is the annual compliance report rule because, they argue, only section 5.5 of HB 1281 specifically mentions Commission oversight. We find that, in order to provide a complete context of how the many underlying principles should be interpreted and applied in developing annual compliance reports, certain other RES Rules should also apply to cooperative electric associations. Specifically, Rule 3651 – Overview and Purpose applies since this rule describes the purpose of these rules, provides a history of the development of the RES Rules and includes the legislative declaration included with Amendment 37. Rule 3652 – Definitions also applies since this rule provides the definitions of the terms used throughout the RES Rules.

13. We find that the following rules within Rule 3654 - Renewable Energy Standard apply to cooperative electric associations: Rules 3654(b), (e) through (j) and (m) since they determine how compliance with the RES is measured in terms of percentages, compliance multipliers, eligibility for compliance, the substitutability of RECs for eligible energy, and a prohibition against "double counting." Within Rule 3659 – Renewable Energy Credits the following rules apply: Rules 3659(a)(I) through (a)(V) and (b) through (k) since those rules address how RECs are acquired, counted, and when they expire. For Rule 3660 - Cost Recovery and Incentives, only Rule 3660(i) applies because this establishes a requirement on cooperative electric associations to provide a 60-day notice to its wholesale provider should it wish to pay the full costs of eligible energy in order to acquire the associated RECs from eligible energy.

14. As for Rule 3661 – Retail Rate Impact, the following rules apply to cooperative electric associations: Rules 3661(b), (c), (g), and (j) since they establish a one percent retail rate impact, provide a listing of eligible type of costs for recovery under the retail rate cap, impose a

requirement that the rate impact be calculated net of new alternative resources, and allow the acquisition of RECs in excess of the minimum levels if the retail rate impact cap is not exceeded. As for the reporting requirements, the following portions of Rule 3662 – Annual Compliance Report apply: Rules 3662(a)(I) through (a)(X), (a)(XII), (b), (d) and (e) since they provide the details regarding the annual compliance reports components as well as the filing and electronic posting requirements.

15. We do not agree with CREA and Tri-State that the proposed revisions illegally expand Commission jurisdiction over cooperative electric associations in direct conflict with § 40-2-124(1), C.R.S. Rather, we find that the new statutory provisions contained in § 40-2-124(1)(c)(V), C.R.S., when read in conjunction and in context with the remainder of the statute, provide this Commission with rulemaking authority that balances the limitations of § 40-2-124(1), while meeting the expectations of § 40-2-124(1)(c)(V).

16. When interpreting statutory meaning, we are guided by statute and a significant line of case law regarding how statutes are to be read. A statute is to be construed as a whole in order to give consistent, harmonious and sensible effect to all its parts. *Kramer v. Colo. Dept of Rev.*, 964 P.2d 629 (Colo.App. 1998) (citations omitted). A statute must be construed to further the legislative intent evidenced by the entire statutory scheme. *Bynum v. Kautzky*, 784 P.2d 735 (Colo. 1989) (citations omitted). A statute must be read and considered as a whole, in order to determine the intent of the General Assembly in passing it. *Kittinger v. City of Colo. Springs*, 872 P.2d 1265 (Colo.App. 1993). The meaning of any one section of a statute must be gathered from a consideration of the entire legislative scheme. *State Highway Comm'n. v. Haase*, 537 P.2d 300 (Colo. 1975).

17. We find nothing vague or ambiguous in the new statutory language provided by HB 1281. Nor do we find any conflict of the new language with the old. We interpret the new statutory scheme to mean that while § 40-2-124(1), enacted by the legislature as part of Amendment 37 in 2005, does not in itself expand Commission rulemaking authority over cooperatives, § 40-2-124(1)(c)(V), enacted in 2007 as part of HB 07-1281, introduces several substantive amendments to the statute, which includes adding cooperative electric associations to those utilities required to meet certain electric resource standards. Additionally, the language of subsection (1)(c)(V) clearly indicates that "[n]ot withstanding any other provision of law … the electric resource standards shall require each cooperative electric associations [sic] … that are qualifying retail utilities to generate or caused to be generated, electricity from eligible energy resources …"

18. Since this Commission has rulemaking authority over those electric resource standards specifically referred to in subsection (1)(c)(V), it is logical to assume that the legislature intended electric cooperatives to be subject to that Commission rulemaking authority as well. When the General Assembly substantively amends a statute, it is presumed that a change in the law was intended. *Organ v. Jorgensen*, 888 P.2d 336 (Colo. App. 1994). We find it to be an absurd interpretation of the statute to presume that cooperative electric associations are specifically precluded from Commission rules intended to harmonize the renewable energy standards and provide consistency across the industry. We note that the amended rules now applicable to cooperative electric associations include a general policy statement, definitions, REC calculation methodologies, QRU cost recovery and incentives, retail rate impact calculation methodologies, statutory requirements directly applicable to cooperative electric associations, and compliance reporting requirements. The rule changes we promulgate here are minimal in

nature. Cooperative electric associations continue to be excluded from significant portions of the RES rules. Cooperative electric associations are, in no sense, rate regulated by these rules. Therefore, we find that HB 1281 provides us additional, limited rulemaking authority over cooperative electric associations to the extent the Commission rules have been amended here.

2. Rule 3650 – Applicability

19. While CREA and Tri-State point out that Rule 3650(a) correctly limits the applicability of the RES Rules to investor owned QRUs that are subject to the Commission's regulatory authority, they argue that this apparent limitation is inconsistent with the provisions of Rule 3650(b) and subsequent rules, which by their terms, apply to cooperative electric association QRUs.

20. CREA and Tri-State note that although Rule 3650(b) states that Rules 3661(c) through (d) apply to cooperative electric associations, it appears to them that the reference should be changed to Rules 3661(b) through (c).

21. The OCC suggests that the word "jurisdictional" is unnecessary with respect to investor owned utility QRUs in Rule 3650(a).

b. Findings

22. Our discussion and analysis above in paragraphs 15 through 18 apply to this analysis as well. We reiterate that we find that we indeed possess limited authority to include cooperative electric associations in the amended Commission rules here. We further note that it is not our intent to assert any more rulemaking authority over cooperative electric associations than is necessary to ensure consistency and efficiency in the requirements under the renewable energy standard. Therefore, we have limited our rulemaking to those requirements for

cooperative electric associations found under § 40-2-124(1)(c)(V), g(IV) and subsection(i)(5.5), C.R.S.

23. We decline to adopt OCC's suggestion to exclude "jurisdictional" as unnecessary. We note that we include the word jurisdictional in Commission Least Cost Planning (LCP) Rule 3600 - Applicability when referring to electric utilities.

3. Rule 3652 – Definitions

24. Public Service suggests that we remove the phrase "… placed into service after the effective date of these rules," in the definition of a community-based project, Rule 3652(c) because there is no basis in law for this requirement. RMFU and CWL suggest that the phrase "… or by a local …" be inserted before the word "nonprofit" in the definition of a community-based project.

25. OCC suggests we change the definition of a QRU in Rule 3652(k) to more clearly address the small municipal systems that serve fewer than 40,001 customers. OCC also suggests that the definition of recycled energy in Rule 3652(l) be restated into two sentences.

26. CIEA recommends the Commission clarify a point regarding the percentage exemptions in Rule 3660(e) by adding the words "… including any affiliates, parents or subsidiaries of a QRU" at the end of the definition of QRU in Rule 3652(k). Public Service opines that the Commission regulates QRUs and we do not regulate in any way the non-utility affiliates of a QRU. Public Service believes that Rule 3660(e)(IV) accomplishes what CIEA sought to make clear, which is that the percentage exemptions for QRU rate-based eligible energy resources must take into account an ownership share held by a utility affiliate.

27. Many commentors noted that there were other proposed rules which need the term "eligible renewable energy" amended to "eligible energy" based on the inclusion of recycled energy as an eligible energy technology in HB 1281.

c. Findings

28. We agree with Public Service that there is no basis in HB 1281 to limit a community-based project to new facilities placed into service after a specified date. Therefore we strike from the definition of a community-based project the phrase "placed into service after the effective date of these rules." In response to other changes to the definition of community-based project proposed by RMFU and CWL, we clarify the list of owners of a community-based project as set forth in Rule 3652(c).

29. We decline to change the definition of QRU in Rule 3652(k) and the definition of recycled energy in Rule 3652(l) as proposed by OCC. We find our definitions of both terms to be readily understandable.

30. We reject CIEA's suggested clarifications to the definition of QRU with respect to the QRU's affiliates, subsidiaries, and parents. However, we do address CIEA's concerns within our findings on Rule 3660(e) regarding QRU-owned facilities.

31. Finally, we have carefully examined the rules to ensure that the term "eligible renewable energy" no longer appears in our rules. We modify that term to "eligible energy," pursuant to the terminology used in HB 1281. Likewise, we have replaced the term "eligible renewable energy resources" with the term "eligible energy resources."

4. Rule 3653 – Municipal Utilities

32. WRA contends that Rules 3653(a) and (b) are redundant and should be combined. OCC suggests that we replace "shall be" with "are" in Rule 3653(b)(I) when referring to the type

of eligible energy resources allowed under the RES. OCC further suggests that we rewrite Rule 3653(b)(II) as suggested in its comments, and that we replace "must have" with "has" in Rule 3653(b)(III) when referring to an optional pricing program offered to customers.

d. Findings

33. We agree with WRA that Rules 3653(a) and (b) are redundant. As a result, we delete Rule 3563(a), and the remainder of the rule is re-numbered. We reject OCC's suggested textual changes because we find the rules are clear as written.

5. Rule 3654 – Renewable Energy Standard

34. Public Service suggests we insert the phase "of the" when referring to the compliance years within Rules 3654(a)(III) to (a)(V) so that the rules read better. CREA and Tri-State note that subparts of Rule 3654(b) use the term "retail electric energy sales" and they believe the term should be "retail electricity sales," since the terminology used in the statute should be used in the rules. OCC provides grammatical corrections to Rules 3654(a), (b) and (c).

e. Findings

35. We adopt the proposed language changes to Rules 3654(a) and (b) to enhance readability. While we recognize that a QRU may elect to establish compliance with the renewable energy standard under Rule 3654 in relation to electric energy sales, we agree with CREA that the phrase "retail electricity sales" should replace "retail electric energy sales" for consistency with HB 1281.

6. Rule 3655 – Resource Acquisition

36. RMFU and CWL propose segmented bidding for community-based projects with a set-aside for projects that are 30 Megawatts (MW) and smaller. They suggest a 30 MW threshold consistent with the competitive solicitation exemption from bidding for certain types of

projects in the Commission's LCP Rules.[5] RMFU and CWL also propose to change the word "may" to "shall" in Rule 3655(b) regarding separate solicitations or separate categories within combined solicitations. RMFU and CWL propose the addition of the phrase "in other laws establishing the State's goals" within Rule 3655(b).

37. Public Service disagrees with the RMFU and CWL set-aside for community-based projects. It believes the 1.5 multiplier should give community-based projects a substantial bidding advantage. It also disagrees with RMFU and CWL regarding the change from "may" to "shall" in Rule 3655(b) because, according to Public Service, this has no basis in law and no public policy support.

38. CF&I and Climax disagree with RMFU and CWL's addition of "in other laws establishing the State's goals" in Rule 3655(b). They believe it is counter to the Commission stated purpose of this limited rulemaking and would unnecessarily complicate the rulemaking. They also disagree with RMFU and CWL's segmented bidding concept and their proposed Rules 3655(b) and (b)(V). CF&I and Climax contend that a QRU should decide the extent they wish to segment any bids and it should not be mandatory.

f. Findings

39. We decline to adopt RMFU and CWL's suggestion that the resource acquisition process be segmented for community-based projects with a set-aside for projects 30 MW and smaller. We agree with Public Service's position that the 1.5 multiplier for community based projects provides a distinct bidding advantage since those projects would effectively be able to offer 20 percent more eligible energy with their bid (a 1.5 multiplier verses a 1.25 multiplier), as compared to a non-community based project, all other things being equal.

[5] *See*, Rules 3611(b) and (c).

40. We also agree with Public Service that the RES Rules should not mandate the creation of a specific category for separate solicitations or separate categories within combined solicitations for community-based projects. As discussed above, we find that the new 1.5 multiplier included in HB 1281 should greatly assist those projects in the competitive solicitation process. Moreover, when we created the original RES Rules, we intentionally crafted rules that allowed the management of each QRU the opportunity to exercise its management discretion as it saw fit. Adopting RMFU and CWL's suggestion would significantly reduce some of that management discretion. We find that our approach has worked well and we decline to change it now.

41. We agree with CF&I and Climax that RMFU and CWL's proposed addition of the phrase "in other laws establishing the State's goals" within Rule 3655(b) is counter to the Commission stated purpose of this limited rulemaking. We also find that such a broad declaration could have unintended and possible contradictory interpretations as it relates to the RES rules. It will be more appropriate to explore such issues when we undertake a more thorough review of the RES rules, most likely late next year.

7. Rule 3659 – Renewable Energy Credits

42. Interwest contends that the acquisition of non-solar eligible resources beyond minimum requirements must not jeopardize the acquisition of solar resources to comply with the solar standards.

g. Findings

43. We find that Interwest's concerns are more appropriately considered during our review of a QRU's compliance plan under Rule 3657. Therefore we decline to adopt a rule to

address the potential impact of the acquisition of non-solar eligible resources beyond minimum levels on the acquisition of solar resources.

8. Rule 3660 – Cost Recovery and Incentives

44. CREA and Tri-State contend that there is no logical reason for any part of Rule 3660 to apply to cooperative electric associations, since this rule has to do with rate-regulated utilities and issues related to return on investment and recovery of prudent expenditures. According to CREA and Tri-State, these concepts are not applicable to cooperative electric associations.

h. Rule 3660(e)

45. Aquila suggests that we change the word "reasonability" to "reasonableness" in the second sentence of Rule 3660(e). CIEA believes that three aspects of Rule 3660(e) require clarification. First, in order for the Commission to determine whether a new utility-proposed resource "can be constructed at reasonable cost compared to the cost of similar eligible energy resources available in the market," [6] CIEA contends that competitive bids from non-utility developers must be solicited and evaluated by an independent entity. Second, CIEA advocates that, for a utility to be allowed to develop and own a resource in the twenty-five percent increment, the level of benefits associated with the utility-proposed project should be significantly greater than the level of benefits to be provided by competing bidders. Third, it asserts that for a utility to exceed the fifty percent new resource ownership ceiling, it must not only bid into, but also win, when compared fairly and independently to bids received in the competitive solicitation.

[6] *See,* § 40-2-124(1)(f)(I).

46. Public Service responds to CIEA by pointing out that, during the bill drafting stage of HB 1281, there was an apparent agreement with CIEA and other lobbying parties on how the language in § 40-2-124(1)(f)(I) should read. According to Public Service, CIEA now wishes to place additional restrictions, through this rulemaking, that conflict with the statute, and which violate, in Public Service's opinion, the spirit of the compromise reached during the drafting of the bill.

47. Public Service asserts that the purpose of subparagraph (f)(I) was to exempt from competitive bidding, certain stated percentages of new eligible renewable resources that would be developed as ratebase utility investments. It believes that CIEA's proposed changes completely negate this exemption, are contrary to the statute and should be rejected. Public Service states that while a QRU could use a competitive solicitation to meet this standard, it is not the only way in which the standard could be met. It suggests that a QRU could present evidence of representative prices from recently developed renewable resources or rely upon industry trade reports. Public Service questions whether it would receive "real bids" if the bidders knew that the QRU intended to rely on the utility ratebase exemption allowed by the statute. Public Service acknowledges that it agrees with CIEA's proposed changes to Rule 3660(e)(III) that a QRU must win the competitive bid solicitation in order to develop the proposed project.

48. OCC disagrees with CIEA's proposal that there needs to be an explicit rule for any competitive bidding to be conducted "fairly and independently." OCC also disagrees with CIEA's suggestion that a winning utility project is to have more non-price benefits than a competitively bid project. OCC contends that a simple demonstration of such benefits is all that is necessary since there is no such statutory requirement. OCC takes the position that

Rule 3660(e)(III) should require the utility to be the winning bidder. It maintains that a meaningful comparison between the cost of a generation asset owned by a QRU, and the cost of competitive bids for purchased power contracts must be made over the life of the asset and not just over the term of a purchase power contract.

49. Interwest provides comment on three aspects of Rule 3660(e). First it believes that Rule 3660(e) appears to conflict with Rule 3655(a) and (b) with respect to competitive bidding. Next, it argues that Rule 3660(e)(III) should require the utility to be the winning bidder. Lastly, Interwest advocates that the Commission should compare utility projects in Rule 3660(e) to projects actually bid to a utility and available in Colorado market.

50. WRA asserts that the second and third sentences in Rule 3660(e) can be deleted since they are stated in Rules 3660(e)(I) and (e)(II).

(1) Findings

51. We agree with WRA that the second and third sentences in Rule 3660(e) can be deleted since they are stated in Rules 3660(e)(I) and (e)(II). We concur with the OCC that there is no statutory requirement that a winning utility project is to have more non-price benefits than a competitively bid project as it relates to Rule 3660(e)(II). As a result, we reject CIEA's suggestion that a utility proposed project must have significantly more non-price benefits as compared to a competing bid.

52. We also agree with the commentors that Rule 3660(e)(III) should be clear that a utility proposed project must be selected as the winning bid if the utility wishes to develop and own as utility ratebase property, more than the percentages set forth in Rules 3660(e)(I) and (e)(II). We find that Public Service's proposed language changes, as well as a portion of CIEA's

proposed language changes to Rule 3660(e)(III) should be adopted since together, they improve the readability of the rule.

53. As discussed above, CIEA argued that the Commission should clarify a point regarding the percentage exemptions in Rule 3660(e) by adding the words "including any affiliates, parents or subsidiaries of a QRU" at the end of the definition of QRU in Rule 3652(k). We find that this concern is better addressed within the context of Rule 3660(e)(IV) as addressed by Public Service. However, we do not agree with Public Service that the original NOPR rule adequately addresses this possibility or the ratebase treatment of a jointly owned QRU proposed project. Therefore, we adopt new language in Rule 3660(e)(IV) which clarifies how QRU-related entities' participation in a QRU proposed project and the ratebase treatment of the QRU's percentage ownership are addressed under Rule 3660(e).

54. We do not agree with CIEA's argument that a QRU must conduct a competitive solicitation in connection with Rules 3660(e)(I) or (e)(II) as the sole means of determining "the costs of similar eligible energy resources available in the market." We concur with Public Service that requiring a competitive solicitation would negate the intention of this statutory bidding exemption provision. However, we find merit in CIEA's suggestion that an independent person be utilized to ensure that the statutory requirements for exemption from competitive bidding has been met. Thus we adopt a new Rule 3660(e)(V), which incorporates a requirement that the QRU must first identify to the Commission the person or entity it wishes to hire as an independent evaluator. Included within this rule are similar qualifications and restrictions on the independent evaluator which we have previously imposed in our current Rule 3655(l).

i. Rule 3660(f)

55. OCC suggests adding that the phrase "cost of debt" to Rule 3660(f) in order to provide more clarity regarding the cost recovery associated with the request for certificate of public convenience and necessity (CPCN) for a utility proposed project under Rule 3660(e). Public Service responds that it does not object to adding the phrase "cost of debt," but disagrees with OCC's proposed placement within the rule. Moreover, it contends that the cost of debt should reflect the actual cost of debt at the time of filing a CPCN application under Rule 3660(e)not as of a utility's last rate case.

(2) Findings

56. We find that the inclusion of the phrase "cost of debt" as advocated by the OCC is an improvement to this rule. We agree with Public Service's proposed placement within this rule and it is adopted.

j. Rule 3660(g)

57. CIEA argues it is imperative that the Commission's rules ensure that the utility's shareholders, not ratepayers, bear the risk of misstatements regarding the cost and performance of the utility's proposed resource. To this end, it proposes new Rule 3660(g), which reads:

> When a QRU proposes to develop or own a new eligible energy resource, the QRU and its shareholders shall bear the risk of any post-operation excess cost, nonperformance or underperformance of such resource when compared to pre-construction cost and performance characteristics estimated by the QRU when proposing such resource, and such risk of excess cost, nonperformance or underperformance shall not be passed on to the QRU's ratepayers.

58. Public Service disagrees with CIEA's new proposed Rule 3660(g). Public Service asserts that utilities are not limited to "pre-construction and performance characteristics estimated by the QRU when proposing such resources" as suggested by CIEA. Public Service contends that to the extent the costs of utility ratebase resources are higher than estimated at the

time a CPCN is granted, the utility is entitled to recover those costs in full, so long as the utility has acted prudently. Finally, Public Service claims that CIEA's suggestion would create more restrictions on utility ratebase renewable resources than independent power producers accept for themselves.

(3) Findings

59. We agree with the arguments set forth by Public Service that CIEA's new proposed Rule 3660(g) should not be adopted. There are different ratepayer protection mechanisms for assets placed into a utility's ratebase as compared to purchase power contracts with Independent Power Producers (IPP). Public Service is correct that for a utility-owned asset, the utility is subject to (by Staff of the Commission and other intervening parties) a review and potential challenge of costs in a cost recovery proceeding. The challenging party has the opportunity to dispute as excess, any post-operation costs, underperformance, and even nonperformance of a utility-owned asset. Once challenged, the utility must show that its actions were just and reasonable and the associated costs were prudently incurred. If a utility is unsuccessful, the shareholders may ultimately bear the disallowed costs. By contrast with purchase power contracts, the utility acts as the reviewer of first impression for any post-operation excess costs, underperformance, and even nonperformance, through the enforcement of the purchase power contract provisions. Should any dispute arise, it is the IPP shareholders who may ultimately bear the disputed cost amount, not the utility ratepayers.

k. Rule 3660(j)

60. CREA and Tri-State assert that, by paraphrasing the statutory language within Rule 3660(j), the rule omits critical language. They argue that it is optional for wholesale customers to choose to pay the full costs associated with renewable energy in order to receive the

RECs. CREA and Tri-State ask that this provision in the rules be deleted. Public Service responds to CREA and Tri-State that this omission can be corrected by using statutory language instead of paraphrasing.

(4) Findings

61. We find that verbatim incorporation of the statutory language corrects the paraphrasing concern expressed by CREA and Tri-State. However, by adopting the statutory language and placing it entirely in Rule 3660(i), we find that Rule 3660(j) is no longer required.

9. Rule 3661 – Retail Rate Impact

62. CREA and Tri-State believe that matters relating to rates is clearly the province of the board governing cooperative electric associations. As a result, they argue that Rule 3661(j) should be removed.

63. Interwest asserts that cooperative electric associations should determine their retail rate impact by comparing the costs of eligible resources against non-eligible resources, such that the difference between the two cases should not exceed one percent. Interwest also advocates that the avoided costs should be considered, which include upstream avoided costs of the generation and transmission provider. Interwest further argues that if resources count for compliance, then they should also count for net benefits.

64. WRA believes that cooperative electric associations could use the same method for determining the retail rate impact as the investor owned QRUs.

65. Finally, many commentors noted needed corrections to the proposed rules regarding the higher two percent retail rate impact level and the higher compliance percentages of 20 and 10 percent within this series of rules.

l. Findings

66. We will not issue a rule on the method to be used by cooperative electric association for determining the retail rate impact. We agree with CREA and Tri-State that each Board of Directors of the cooperative electric associations should have the discretion to develop its own method to ensure compliance within the statutory maximum retail rate impact of one percent of the total electric bill annually for each customer. However, as part of the Annual Compliance Report requirements, we require each QRU to describe in detail the method it uses to develop its retail rate impact percentage.

67. Finally, we incorporate the corrections to the various percentages within this rule noted by the commentors.

10. Rule 3662 – Annual Compliance Report

68. Public Service and WRA suggest that we change "2007" to "2008" in Rule 3662(a) for the start of the Annual Compliance Reports. CREA and Tri-State contend that Rule 3662(a) should distinguish between those QRUs subject to the RES in 2007 and those QRUs subject to the RES commencing in 2008. It also suggests that Rule 3662(a) should be changed to read "no later than June 1" rather than merely "June 1."

69. Public Service notes that the cross reference in Rule 3662(a)(XI) should be to Rule 3661(h). Interwest asserts that QRUs should reveal their assumed fossil fuel price projections in their Annual Compliance Reports.

70. As we discussed above, HB 1281 requires each cooperative electric association QRU to submit an annual compliance report to the Commission. HB 1281 further specifies that the annual report is to include "the same information set forth in the rules of the Commission for

jurisdictional utilities." Our existing RES Rules set out the required contents of a QRU's compliance reports in Rule 3662(a).

71. WRA supported a rule that would require each cooperative electric association QRU to develop, describe, and make available to its member owners its method for determining its retail rate impact.

m. Findings

72. We modify Rule 3662 (a) by adding a provision requiring all QRUs to include in their annual compliance reports, the method used to develop its retail rate impact calculation. We find that this requirement will sufficiently address WRA's concerns as described above.

73. We accept the recommendations of Public Service, WRA, CREA, and Tri-State by modifying Rule 3662(a) to remove any reference to specific compliance years. We also modify the rule to accommodate the filing of annual compliance reports on or before June 1. We further change the cross references in Rule 3662(a) (XI) per Public Service's suggestions, finding that both Rules 3661(h) and (i) apply.

74. We reject Interwest's suggestion that we compel QRUs to disclose their assumed fossil fuel price projections in their annual compliance reports, as this suggestion is unrelated to HB 1281.

11. Rule 3665 – Interconnection

75. RMFU, CWL, and Interwest assert that the Commission should address House Bill 07-1169 (HB 1169) within this rulemaking docket. CREA and Tri-State acknowledges that HB 1169 addresses interconnection issues, but believes an ongoing workshop process being conducted in New Mexico will be helpful for this Commission's consideration. CF&I and Climax disagree with the recommendation to add new rules related to HB 1169, because this

would go beyond the scope of this docket and those who may be interested in this area have not been given adequate notice of rulemaking regarding that piece of legislation.

n. Findings

76. We agree with CF&I and Climax that addressing provisions of HB 1169 goes beyond the scope of this rulemaking. We intend to address HB 1169 in a future rulemaking docket.

II. ORDER

A. The Commission Orders That:

1. The Commission adopts the Proposed Rules Implementing Renewable Energy Standards 4 CCR 723-3, pursuant to HB 07-1281, attached to this Order as Attachment A.

2. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

3. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or to the committee on legal services, if the General Assembly is not in session, for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

4. The 20-day time-period provided by § 40-6-114(1), C.R.S. to file an application for rehearing, reargument or reconsideration shall begin on the first day after the effective date of this Order.

5. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING July 12, 2007.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RON BINZ

POLLY PAGE

CARL MILLER

Commissioners

COMMISSIONER CARL MILLER
CONCURRING, IN PART,
DISSENTING, IN PART

III. COMMISSIONER CARL MILLER CONCURRING, IN PART, AND DISSENTING, IN PART:

1. During the deliberations, I dissented on proposed Rules 3651, 3654(i), 3661(c), and 3662(a)(XII). The reason for my dissent is my belief that those rules are contrary to current statute and beyond the legislative intent of HB 07-1281. Tri State Electric and the Colorado Rural Electric Associations are exempt from PUC jurisdiction unless explicitly and intentionally expressed in statute. I see nothing in HB 07-1281 that changes that legislative directive. The new statute requires the filing of an annual compliance report and precludes the PUC from acting on that report. If there were a doubt or uncertainty, I would choose to err on the side of the unregulated entities.

2. It is my opinion that HB-07-1281 simply mandates the REAs to a 10% renewable energy portfolio with a 1% customer rate cap. The respective Boards of Directors are charged with accomplishing that legislative mandate without the guidance and direction of the Colorado Public Utilities Commission.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CARL MILLER

_____

Commissioner

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-3

PART 3
RULES REGULATING ELECTRIC UTILITIES

BASIS, PURPOSE, AND STATUTORY AUTHORITY [omitted unaffected rule section]

[Rules 3000(a), 3000(b)(I) to b(XI), and (b)(XIII), 3000(c) and 3001 through 3649 are omitted, unaffected rule sections]

3000. Scope and Applicability.

* * *

[signifies omission of unaffected rule sections]

(b) The following rules in this Part 3 shall apply to cooperative electric associations which have elected to exempt themselves from the Public Utilities Law pursuant to § 40-9.5-103, C.R.S.:

* * *

[signifies omission of unaffected rule sections]

(XII) Rules 3650(b), 3651, 3652, 3654(b), (e) through (j) and (m); 3659(a)(I) through (a)(V), (b) through (k), 3660(i), 3661(b), (c), (g), and (j), 3662(a)(I) through (a)(X), (a)(XII), (b), (d) and (e). ~~through 3655 provided the cooperative electric association has more than 40,000 customers and has not either voted to exempt themselves from rules 3650 through 3655 through the process in rule 3652 or has adopted a substantially similar program as outlined in rule 3653~~.

* * *

[signifies omission of unaffected rule sections]

(d) The following rules in this Part 3 shall apply to municipally owned utilities, which are qualifying retail utilities:

(I) Rules 3650(c), 3651, 3652, 3653, 3654(b), (c), (e) through (j) and (m); 3659(a)(I) through (a)(V), (b) through (k).

(e) The following rules in this Part 3 shall apply to municipally owned utilities which are not qualifying retail utilities:

(I) Rules 3650(d).

* * *

[signifies omission of unaffected rule sections]

RENEWABLE ENERGY STANDARD

3650. Applicability.

(a) Rules 3650 to 3665 shall apply to all investor owned jurisdictional electric utilities in the state of Colorado ~~which are QRUs serve over 40,000 customers, that have not voted to exempt themselves, and~~ that are subject to the Commission's regulatory authority.

(b) Rules 3651, 3652, 3654(b), (e) through (j), and (m), 3659(a)(I) through (a)(V), (b) through (k), 3660(i), 3661(b), (c), (g),and (j), 3662(a)(I) through (a)(X), (a)(XII), (b), (d) and (e) shall apply to cooperative electric associations in the state of Colorado. ~~The board of directors of each QRU subject to these rules may, at its option, submit the question of its exemption from these rules to its consumers on a one meter equals one vote basis. Approval by a majority of those voting in the election shall be required for such exemption, providing that a minimum of 25 percent of eligible consumers participate in the election.~~

~~(I) Within 45 days of the conclusion of any vote for exemption, the QRU shall provide written notification of the outcome of the vote to the Director of the Commission.~~

(c) Rules 3651, 3652, 3653, 3654(b), (c), (e) through (j) and (m), 3659(a)(I) through (a)(V), (b) through (k) shall apply to municipally owned electric utilities in the state of Colorado, which are QRUs.

(d~~c~~) The board of directors of each municipally owned electric utility ~~or rural electric cooperative~~ not subject to these rules may, at its option, submit the question of whether to be subject to these rules to its consumers on a one meter equals one vote basis. Approval by a majority of those voting in the election shall be required for such inclusion, providing that a minimum of 25 percent of eligible consumers participates in the election.

(I) Within 45 days of the conclusion of any vote to be subject to these rules, the municipally owned electric utility ~~or rural electric cooperative~~ shall provide written notification of the outcome of the vote to the Director of the Commission.

~~(d) For municipal utilities and cooperative electric associations that become qualifying retail utilities after December 31, 2006, the percentage requirements identified in rule 3654(a) shall begin in the first calendar year following qualification as follows:~~

~~(I) Years one through four: Three percent of retail electricity sales;~~

~~(II) Years five through eight: Six percent of retail electricity sales; and~~

~~(III) Years nine and thereafter: Ten percent of retail electricity sales.~~

(e) Nothing in these rules is intended to expand the Commission's regulatory oversight and powers over municipally owned electric utilities or cooperative ~~rural~~ electric associations~~cooperatives~~.

3651. Overview and Purpose.

The purpose of these rules is to establish a process to implement the renewable energy standard for qualifying retail utilities in Colorado, pursuant to § 40-2-124, C.R.S.

Section 40-2-124, C.R.S., was enacted by the voters of the State of Colorado as 2004 Ballot Amendment 37 and was amended by the 2005 Colorado General Assembly by Senate Bill 05-143. Section 40-2-124 was further amended by the 2007 Colorado General Assembly by House Bill 07-1281.

Energy is critically important to Colorado's welfare and development, and its use has a profound impact on the economy and environment. Growth of the state's population and economic base will continue to create a need for new energy resources, and Colorado's renewable energy resources are currently underutilized.

Therefore, in order to save consumers and businesses money, attract new businesses and jobs, promote development of rural economies, minimize water use for electricity generation, diversify Colorado's energy resources, reduce the impact of volatile fuel prices, and improve the natural environment of the state, it is in the best interests of the citizens of Colorado to develop and utilize renewable energy resources to the maximum practicable extent.

It is the policy of this State to encourage local ownership of renewable energy generation facilities to improve the financial stability of rural communities.

3652. Definitions.

The following definitions apply only to rules 3650 – 3665. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Annual compliance report" means the report a QRU is required to file annually with the Commission pursuant to rule 3662 to demonstrate compliance with the Renewable Energy Standard.

(b) "Biomass" means nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush; animal wastes and products of animal wastes; or methane produced at landfills or as a by-product of the treatment of wastewater residuals.

(c) "Community-based project" means a project located in Colorado and: (a) that is owned by individual residents of a community, a local nonprofit organization, a cooperative, a local government entity, or a tribal council; (b) whose generating capacity does not exceed thirty megawatts; and (c) for which there is a resolution of support adopted by the local governing body of each local jurisdiction in which the project is to be located.

(dc) "Compliance plan" means the annual plan a QRU is required to file with the Commission pursuant to rule 3657.

(ed) "Compliance year" means a calendar year for which the renewable energy standard is applicable.

(fe) "Eligible ~~renewable~~ energy" means ~~either~~ renewable energy, recycled energy or RECs. ~~or both~~

(gf) "Eligible ~~renewable~~ energy resources" are recycled energy or facilities that generate electricity by means of the following energy sources: solar radiation, wind, geothermal, biomass, hydropower, and fuel cells using hydrogen derived from eligible ~~renewable~~ energy resources. Fossil and nuclear fuels and their derivatives are not eligible energy resources. Hydropower resources in existence on January 1, 2005 must have a nameplate rating of thirty megawatts or less. Hydropower resources not in existence on January 1, 2005 must have a nameplate rating of ten megawatts or less.

(hg) "Off-grid on-site solar system" means an on-site solar system located on the premises of an end-use electric consumer located within the service territory of a QRU or an electric utility that is eligible to become a QRU pursuant to § 40-2-124(5)(b), C.R.S., that is not connected to, and operates completely independently from, the distribution system or transmission system facilities of any electric utility.

(ih) "On-site solar system" means a solar renewable energy system located on the premises of an end-use electric consumer located within the service territory of a QRU or an electric utility that is eligible to become a QRU pursuant to § 40-2-124(5)(b), C.R.S. For the purposes of this definition, the non-residential end-use electric customer, prior to the installation of the solar renewable energy system, shall not have its primary business being the generation of electricity for retail or wholesale sale from the same facility. In addition, at the time of the installation of the solar renewable energy system, the non-residential end-use electric customer must use its existing facility for a legitimate commercial, industrial, governmental, or educational purpose other than the generation of electricity. An On-site solar system is limited to a maximum size of two MW.

(ji) "Person" means Commission staff or any individual, firm, partnership, corporation, company, association, cooperative association, joint stock association, joint venture, governmental entity, or other legal entity.

(kj) "Qualifying retail utility" or "QRU" means any provider of retail electric service in the state of Colorado other than municipally owned electric utilities that serve~~s over~~ 40,000 customers or fewer.

(l) "Recycled energy" means energy produced by a generation unit with a nameplate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel. Recycled energy does not include energy produced by any system that uses energy, lost or otherwise, from a process whose primary purpose is the generation of electricity, including, without limitation, any process involving engine-driven generation or pumped hydroelectricity generation.

(mk) "Renewable energy" means energy generated from eligible ~~renewable~~ energy resources.

(nl) "Renewable energy credit" or "REC" means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of electric energy generated from an eligible ~~renewable~~ energy resource. One REC results from one megawatt-hour of electric energy generated from an eligible ~~renewable~~ energy resource. For the purposes of these rules, RECs include, but are not limited to, S-RECs and SO-RECs.

(om) "Renewable energy credit contract" means a contract for the sale of renewable energy credits without the associated energy.

(pn) "Renewable energy standard" means the electric resource standard for eligible renewable energy resources specified in § 40-2-124, C.R.S.

(qo) "Renewable energy supply contract" means a contract for the sale of renewable energy and the RECs associated with such renewable energy. If the contract is silent as to renewable energy credits, the renewable energy credits will be deemed to be combined with the energy transferred under the contract.

(rp) "Solar electric generation technologies" means any technology that uses solar radiation energy to generate electricity.

(sq) "Solar on-site renewable energy credit" or "SO-REC" means a REC created by an on-site solar system.

(tr) "Solar renewable energy credit" or "S-REC" means a REC created by a solar renewable energy system. For the purposes of these rules, S-RECs include, but are not limited to, SO-RECs.

(us) "Solar renewable energy system" means a system that uses a solar electric generation technology to generate electricity.

(vt) "Standard rebate offer" or "SRO" means a standardized incentive program offered by a QRU to its retail electric service customers for on-site solar systems that do not exceed 100 kW per installation.

(wu) "Watt" means a unit of measure of alternating current electric power at a point in time, as capacity or demand. For the purposes of measurement of output from solar renewable energy systems used in the solar program, the watts referenced herein mean those determined by a nationally accepted testing organization.

3653. Municipal ~~and Cooperative~~ Utilities.

~~(a) Each If a municipally owned electric utility QRU shall or a rural electric cooperative implements a renewable energy standard substantially similar to the provisions of § 40-2-124, C.R.S., then the municipally-owned electric utility or rural electric cooperative will have no obligations under this article.~~

(ab) Each ~~The~~ municipally owned QRU~~utility or rural electric cooperative~~ implementing a renewable energy standard substantially similar to the provisions of § 40-2-124, C.R.S., shall submit a statement to the Commission that demonstrates its renewable energy standard program, at a minimum, meets the following criteria:

(I) The eligible ~~renewable~~ energy resources shall~~must~~ be limited to those identified in subsection § 40-2-124(1)(a);

(II) The percentage requirements shall~~must~~ be equal to or greater in the same years than those identified in subsection § 40-2-124(1)(c)(V~~I~~) and counted in the manner allowed by ~~R~~rule 3654~~(c)~~; and

(III) The utility must have an optional pricing program in effect that allows retail customers the option to support through utility rates emerging renewable energy technologies.

(b~~c~~) The statement to be submitted by a municipally owned QRU~~utility or rural electric cooperative~~ is for information purposes only and is not subject to approval by the Commission. Upon filing of the certification statement, the municipally owned QRU shall have no further obligations under these rules.

(c~~d~~) Nothing in this section prohibits a municipally owned electric utility ~~or a rural electric cooperative~~ from buying and selling RECs.

3654. Renewable Energy Standard.

(a) Each investor owned QRU shall generate or cause to be generated (through purchase or by providing rebates or other form of incentive) eligible ~~renewable~~ energy in the following minimum amounts:

(I) Three percent of its retail electricity ~~energy~~ sales in Colorado for ~~each of~~ the compliance year~~s~~ 2007 ~~through 2010~~;

(II) Five~~Six~~ percent of its retail electricity ~~energy~~ sales in Colorado for each of the compliance years 2008~~11~~ through 2010~~14~~;

(III) Ten percent of its retail electricity ~~energy~~ sales in Colorado for each of the compliance years 2011 through 2014; ~~beginning in 2015 and continuing thereafter.~~

(IV) Fifteen percent of its retail electricity ~~energy~~ sales in Colorado for each of the compliance years 2015 through 2019; and

(V) Twenty percent of its retail electricity ~~energy~~ sales in Colorado for each of the compliance years beginning in 2020 and continuing thereafter.

(b) Each cooperative electric association QRU and municipally owned QRU shall generate or cause to be generated eligible energy in the following minimum amounts:

(I) One percent of its retail electricity ~~energy~~ sales in Colorado for each of the compliance years 2008 through 2010;

(II) Three percent of its retail electricity ~~energy~~ sales in Colorado for each of the compliance years 2011 through 2014;

(III) Six percent of its retail electricity ~~energy~~ sales in Colorado for each of the compliance years 2015 through 2019; and

(IV) Ten percent of its retail electricity ~~energy~~ sales in Colorado for each of the compliance years beginning in 2020 and continuing thereafter.

(c) For municipal utilities that become a municipally owned QRUs after December 31, 2006, the minimum percentage requirements of eligible energy shall begin in the first calendar year following qualification as follows:

(I) Years one through three: One percent of retail electricity sales;

(II) Years four through seven: Three percent of retail electricity sales;

(III) Years eight through twelve: Six percent of retail electricity sales; and

(IV) Years thirteen and thereafter: Ten percent of retail electricity sales.

(d~~b~~) Of the eligible renewable energy amounts specified in ~~R~~rule 3654(a), each investor owned QRU shall derive at least four percent ~~shall be derived~~ from solar electric generation technologies. At least one-half of this four percent shall be derived from on-site solar systems located at customers' facilities

(e) For purposes of compliance with the renewable energy standard specified in rules 3654(b) and (c), for cooperative electric association QRUs and municipal QRUs, each kilowatt-hour of eligible energy generated from solar electric generation technology shall be counted as 3.0 kilowatt-hours of eligible energy, provided that the solar electric generation technology commenced producing electricity prior to July 1, 2015. For solar electric generation technology that commenced producing electricity on or after July 1, 2015, each kilowatt-hour of eligible energy generated from solar electric generation technology shall be counted as 1.0 kilowatt-hours of eligible energy for compliance purposes.

(f~~e~~) For purposes of compliance with the renewable energy standard, each kilowatt-hour of eligible ~~renewable~~ energy generated in Colorado shall be counted as 1.25 kilowatt-hours of eligible ~~renewable~~ energy.

(g) For purposes of compliance with the renewable energy standard, each kilowatt-hour of eligible energy generated from a community-based project shall be counted as 1.5 kilowatt-hours of eligible energy.

(h) For purposes of compliance with the renewable energy standard, each kilowatt-hour of eligible energy may take advantage of only one of the compliance multipliers in rules 3654(e), (f) or (g).

(i~~d~~) For purposes of compliance with ~~this~~ the renewable energy standard ~~specified in rule 3654(a)~~, a QRU may generate, or cause to be generated, and count eligible ~~renewable~~ energy for compliance:

(I) For the compliance year immediately preceding the compliance year during which it was generated, provided that such eligible renewable energy is generated no later than July 1 of the calendar year immediately following the end of the compliance year for which it is being counted;

(II) For the compliance year during which it was generated; or

(III) For the five compliance years immediately following the compliance year during which it was generated.

(IV) Eligible ~~renewable~~ energy generated on or after January 1, 2004 may be counted for compliance with this renewable energy standard. ~~Renewable~~ Eligible energy or RECs generated on or before December 31, 2003 shall not be eligible for, and shall not be counted for, compliance with this renewable energy standard. The eligibility for compliance of all eligible ~~renewable~~ energy shall expire at the end of the fifth calendar year following the calendar year during which it was generated.

(j~~e~~) For purposes of compliance with this renewable energy standard, a QRU may substitute the equivalent RECs, S-RECs, or SO-RECs for eligible ~~renewable~~ energy.

(k~~f~~) For the first four compliance years~~, 2007 through 2010,~~ the QRU may borrow forward eligible ~~renewable~~ energy generated during the following two compliance years. Any borrowed eligible ~~renewable~~ energy generated during a compliance year must be made up by actual eligible ~~renewable~~ energy generated during that compliance year or borrowed from subsequent compliance years, provided that the ~~2010~~fourth compliance year is the last compliance year that borrowing forward may occur pursuant to this rule. For purposes of this rule, the term "borrow forward" means that a QRU may count eligible ~~renewable~~ energy that it has not yet generated or caused to be generated to satisfy its current year obligations toward compliance with the renewable energy standard and the term "made up" means that any counting of eligible ~~renewable~~ energy resources by a QRU in a compliance year that it had not actually generated nor caused to be generated shall be actually generated or caused to be generated in a subsequent year.

(l~~g~~) For the first four compliance years, 2007 through 2010, no administrative penalties shall be assessed against an investor owned QRU if the failure to meet the renewable energy standard results from events beyond the reasonable control of the QRU which could not have reasonably been mitigated by the QRU.

(m~~h~~) For purposes of compliance with this renewable energy standard, there shall be no "double counting" of renewable energy or RECs. Notwithstanding the foregoing, eligible renewable energy generated or acquired by a QRU and counted toward compliance with a federal renewable energy standard may also be counted by the QRU toward compliance with the renewable energy standard.

(n~~i~~) A QRU may apply to the Commission for a determination as to whether eligible ~~renewable~~ energy sold by the QRU under an optional renewable energy pricing program may be counted by the QRU toward compliance with the renewable energy standard. Such eligible ~~renewable~~ energy shall not be counted toward compliance with the renewable energy standard until the Commission grants approval of the utility's application following an evidentiary hearing.

(o~~j~~) For purposes of compliance with this renewable energy standard, if a generation system uses a combination of fossil fuel and eligible renewable energy resources to generate electricity, a QRU may count only as eligible renewable energy the proportion of the total electric output of the generation system that results from the use of eligible renewable energy resources. The QRU

shall include in its annual compliance plan the method of calculation used to determine the proportion of eligible renewable energy.

(p~~k~~) The QRU may generate, or cause to be generated, eligible renewable energy without regard to economic dispatch procedures.

3655. Resource Acquisition.

(a) It is the Commission's policy that utilities should meet the renewable energy standard in the most cost-effective manner. To this end, the investor owned QRU shall use competitive bidding for acquiring renewable ~~eligible~~ energy from eligible ~~renewable~~ energy resources using solar electric generation technologies with nameplate rating greater than 100 kW.

(b) Competitive solicitations shall be conducted by each investor owned QRU to achieve the statutory policies contained in the legislative declaration of intent. Whenever a QRU acquires renewable ~~eligible~~ energy and/or RECs by competitive acquisition, to the extent possible, the solicitations and evaluations of proposals should be coordinated to avoid redundancy and to minimize the cost of acquiring such renewable energy and/or RECs. A QRU may conduct, in its discretion, separate solicitations or combined solicitations, for any of the following:

(I) Renewable ~~Eligible~~ energy from on-site solar systems;

(II) Renewable ~~Eligible~~ energy from solar energy systems that are not on-site solar systems;

(III) Renewable ~~Eligible~~ energy from non-solar resources such as wind, geothermal, biomass, hydropower, fuel cells;

(IV) Renewable energy credits (RECs);

(V) Solar renewable energy credits (S-RECs); and

(VI) Solar on-site renewable energy credits (SO-RECs).

(c) The investor owned QRU may apply to the Commission, at any time, for review and approval of renewable ~~eligible~~ energy supply contracts and renewable energy credit contracts. The Commission will review and rule on these contracts within sixty days of their filing. The Commission may set the contract for expedited hearing, if appropriate, under the Commission's Rules of Practice and Procedure. If the QRU enters into a~~n eligible~~ renewable energy supply contract or a renewable energy credit contract in a form substantially similar to the form of contract approved by the Commission as part of the investor owned QRU's compliance plan, that contract shall be deemed approved by the Commission under this rule.

(d) Renewable ~~Eligible~~ energy supply contracts entered into after ~~the effective date of these rules~~July 2, 2006:

(I) Shall be for the acquisition of both renewable energy and the associated RECs;

(II) May reflect a fixed price, or a price that varies by year;

(III) Shall have a minimum term of 20 years (or shorter at the sole discretion of the seller); and

(IV) Shall require the seller to relinquish all REC ownership associated with contracted renewable energy to the buyer.

(e) Renewable energy credit contracts entered into after ~~the effective date of these rules~~July 2, 2006:

(I) Shall be for the acquisition of RECs only;

(II) May reflect a fixed price, or a price that varies by time period; and

(III) Shall have a minimum term of 20 years if the REC is from an on-site solar system.

(f) Competitive solicitations for eligible ~~renewable~~ energy from on-site solar systems that provide SO-RECs shall be conducted at least two times per year by each investor owned QRU in 2006 and 2007 and thereafter as necessary to comply with the renewable energy standard.

(I) The treatment of any solar-generated electricity generated on-site in excess of the consumption of the host facility will be governed by the net metering provisions pursuant to rule 3664.

(g) Competitive solicitations for the acquisition of S-RECs may be conducted by each investor owned QRU as needed to comply with the renewable energy standard.

(h) Competitive solicitations for renewable ~~eligible~~ energy or RECs from eligible ~~renewable~~ energy r~~R~~esources other than on-site solar systems shall be conducted by each investor owned QRU in a timeframe that takes into account the projected needs of the QRU.

(i) Each competitive solicitation pursuant to these rules shall be targeted toward acquiring the amount of eligible ~~renewable~~ energy required for compliance with each component of the renewable energy standard, and taking into account:

(I) The retail rate impact, and

(II) The estimated number of SO-RECs procured under and expected to be procured under the standing standard rebate offer.

(j) Each investor owned QRU shall provide all parties to the bid process timely notice of bidding procedure.

(k) Each investor owned QRU shall disclose, at the Commission's request, all information that will be used in the acquisition process, including but not limited to, interconnection and transmission studies, and methods for modeling or otherwise analyzing bids. Confidential information may be protected in accordance with rules 1100 through 1102 of the Commission's Rules of Practice and Procedure.

(l) If the investor owned QRU intends to accept proposals for ~~renewable~~ eligible energy resources from the QRU or from an affiliate of the QRU, it shall include a written separation policy and name

an independent auditor whom the utility proposes to hire to review and report to the Commission on the fairness of the competitive acquisition process. The independent auditor shall have at least five years' experience conducting and/or reviewing the conduct of competitive electric utility resource acquisition, including computerized portfolio costing analysis. The independent auditor shall be unaffiliated with the utility; and shall not, directly or indirectly, have benefited from employment or contracts with the utility in the preceding five years, except as an independent auditor under these rules. The independent auditor shall not participate in, or advise the utility with respect to, any decisions in the bid-solicitation or bid-evaluation process. The independent auditor shall conduct an audit of the utility's bid solicitation and evaluation process to determine whether it was conducted fairly. For purposes of such audit, the utility shall provide the independent auditor immediate and continuing access to all documents and data reviewed, used or produced by the utility in its bid solicitation and evaluation process. The utility shall make all its personnel, agents and contractors involved in the bid solicitation and evaluation available for interview by the auditor. The utility shall conduct any additional modeling requested by the independent auditor to test the assumptions and results of the bid evaluation analyses. Within 60 days of the utility's selection of final resources, the independent auditor shall file a report with the Commission containing the auditor's views on whether the utility conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported. After the filing of the independent auditor's report, the utility, other bidders in the resource acquisition process and other interested parties shall be given the opportunity to review and comment on the independent auditor's report.

(m) Responses to competitive solicitations shall be evaluated and ranked by the investor owned QRU.

(I) In addition to the cost of the renewable ~~eligible~~ energy and RECs, the QRU may take into consideration the characteristics of the underlying ~~Eligible~~ eligible ~~Renewable~~ e~~E~~nergy ~~Resource~~ resource that may impact the ability of the bidder to fulfill the terms of the bid including, but not limited to project in-service date, resource reliability, viability, economic development benefits, energy security benefits, amount of water used, fuel cost savings, environmental impacts including tradable emissions allowances savings, load reduction during higher cost hours, transmission capacity and scheduling, and any other factor the QRU determines is relevant to the QRU's needs.

(II) Bids with prices that vary by year will be evaluated by discounting the yearly prices at the utility discount rate.

(III) A QRU is not required to accept any bid and may reject any and all bids offered. However, each solicitation shall culminate in a report detailing the outcome of the solicitation and identifying which bids were selected, which were rejected, and why.

(IV) For purposes of comparing bids for RECs only with bids for electricity and RECs, the QRU shall assign a value for the electricity and subtract this value from the electricity and RECs bid, and evaluate bids on the basis of RECs only. The QRU shall include, as part of its Compliance Plan, a description of its methodology and price(s) it intends to use for this evaluation.

(n) Within 15 days, the investor owned QRU shall notify respondents as to whether their bid has met the bid submission criteria.

(o) Upon ranking of eligible bids, each investor owned QRU shall within 15 days indicate to all respondents with which proposals it intends to pursue a contract

(p) If there is a dispute between a bidder and the investor owned QRU, either party may refer the dispute to the Commission for resolution.

3656. Environmental Impacts.

(a) ~~Renewable electric generation facilities~~ Eligible energy resources must meet all applicable federal, state, and local environmental permitting requirements

(b) For eligible ~~renewable~~ energy resources larger than two MW with any wind turbine structures extending over 50 feet in height, the ~~investor owned~~ QRU shall require project developers to include in the bid package written documentation that consultation occurred with appropriate governmental agencies (for example, the Colorado Division of Wildlife or the U.S. Fish and Wildlife Service) responsible for reviewing potential project development impacts to state and federally listed wildlife species, as well as species and habitats of concern.

(c) For eligible ~~renewable~~ energy resources larger than two MW with any wind turbine structures extending over 50 feet in height, the ~~investor owned~~ QRU renewable energy supply contract shall require project developers to certify, as a condition precedent to achieving commercial operation, that the developer has performed and made publicly available site specific avian and other wildlife surveys conducted on the facility's site prior to construction. The developer shall further certify that the developer used the results of these surveys in the design, placement, and management of the facilities to ensure that the environmental impacts of facility development are minimized to state and federally listed species and species of special concern, sites shown to be local bird migration pathways, critical habitat and areas where birds or other wildlife are highly concentrated and are considered at risk.

3657. QRU Compliance Plan.

(a) Every year on or before July 1, ~~beginning in 2007,~~ each investor owned QRU shall file with the Commission, by application, its proposed plan detailing how the QRU intends to comply with these rules during the next compliance year. ~~Each QRU shall file with the Commission, by application, its proposed plan for the 2007 compliance year within 60 days after the effective date of these rules.~~ Each annual QRU plan shall include rules, regulations and tariffs, if applicable, and the following:

(I) The QRU's:

(A) Determination of the retail rate impact pursuant to rule 3661;

(B) Estimate of its retail electricity sales;

(C) Estimate of the eligible ~~renewable~~ energy that the QRU already has acquired and the QRU's estimate of the additional eligible ~~renewable~~ energy that will be needed to meet the renewable energy standards;

(D) Estimate of the funds that the QRU will have available to generate, or cause to be generated, additional eligible ~~renewable~~ energy under the retail rate impact rule;

(E) Plan to acquire additional eligible ~~renewable~~ energy given the constraints of the retail rate impact rule, including the allocation of the funds available under the retail rate impact rule to acquire ~~renewable~~ eligible energy or RECs from each of the following: on-site solar systems; solar renewable energy systems that are not on-site solar systems; and non-solar ~~renewable~~ eligible energy;

(F) Standard rebate offer and the QRU's estimate of the eligible ~~renewable~~ energy that will be acquired under the standard rebate offer;

(G) Plan to track how ~~it~~ the QRU is responding to customers participating in the standard rebate offer program. The QRU shall track from the start of the application process to when the photovoltaic system commences generation.

(H) Plan to acquire the additional eligible ~~renewable~~ energy, including the QRU's use of competitive acquisitions to obtain the additional solar eligible renewable energy it needs to meet the renewable energy standard;

(I) The proposed request for proposal including any standard contracts to be included with the acquisition for all eligible ~~renewable~~ energy that the QRU plans to acquire by competitive acquisition; and

(J) Proposed ownership investment, if any, in eligible ~~renewable~~ energy resources and estimate of whether its investment will provide net economic benefits to the QRU's customers, entitling the QRU to extra profit on its investment, pursuant to rule 3660.

(II) The competitive acquisition process for ~~renewable~~ eligible energy resources, pursuant to rule 3655;

(III) The establishment of the initial level and adjustments to the standard rebate offer for solar electric generation resources, pursuant to rule 3658;

(IV) The treatment, tracking, counting and trading of RECs, pursuant to rule 3659;

(V) The establishment of a cost recovery mechanism, pursuant to rule 3660;

(VI) The net metering for renewable energy resources, pursuant to rule 3664; and

(VII) The interconnection of renewable energy resources, pursuant to rule 3665.

(b) The Commission shall either approve the investor owned QRU's compliance plan or order modifications to the compliance plan. Investor owned QRU actions consistent with an approved compliance plan will be presumed prudent.

(c) The investor owned QRU may apply to the Commission at any time for approval of amendments to an approved compliance plan.

3658. Standard Rebate Offer.

(a) Each investor owned QRU shall make available to its retail electricity customers a standard rebate offer of $2.00 per watt for on-site solar systems, up to a maximum of 100 kW per system, that become operational on or after December 1, 2004. At the QRU's option, the standard rebate offer may be paid based upon the direct current (DC) watts produced by the on-site solar systems. Any SO-RECs acquired by the QRU pursuant to such SRO program, regardless of whether the associated renewable energy is specifically metered or contractually specified without specific metering, may be counted by the QRU for purposes of compliance with the renewable energy standard.

(b) On or before June 1, 2006, each QRU shall make a one-time offer to purchase, under a renewable energy credit contract, the SO-RECs associated with on-site solar systems, up to a maximum of ten kW per system existing prior to December 1, 2004, and off-grid on-site solar systems, up to a maximum of ten kW per system. The purchase price offered by the QRU for such SO-RECs shall be no less than the QRU's then current standard offer payment rate for SO-RECs, exclusive of the standard rebate payment, associated with the QRU's standard rebate offer and established pursuant to rule 3658. Subsequent offers shall be made at the discretion of the QRU. SO-RECs purchased by a QRU pursuant to this rule may be counted for purposes of compliance with the renewable energy standard.

(c) The standard rebate offer of the investor owned QRUs shall be set forth at least annually and shall meet the following requirements:

(I) The QRU need not offer a rebate for an on-site solar system smaller than 500 watts.

(II) The rebate must be made available to all retail utility customers of the QRU on a non-discriminatory, first-come, first-served basis, based upon the date of contract execution.

(III) Applicants who are accepted for SRO rebates shall have one year from the date of contract execution to demonstrate substantial completion of their proposed on-site solar system. Substantial completion means the purchase and installation on the customer's premises of all major system components of the on-site solar system. Customers who do not achieve substantial completion within one year will not receive a rebate, unless the substantial completion date is extended. When substantial completion of an on-site solar system has been achieved by an applicant pursuant to this rule the SO-RECs may be counted for purposes of compliance with the renewable energy standard. Within 30 days of substantial completion, the SRO rebate, pursuant to rule 3658(a), and SO-REC payment, pursuant to rule 3658(c)(VIII), shall be paid to the applicant.

(IV) With the exception of batteries, all on-site solar systems eligible for SRO rebates shall be covered by a minimum five-year warranty. Contracts will require customers to maintain the on-site solar system so that it remains operational for the term of the contract.

(V) On-site solar systems must consist of equipment that is commercially available and factory new when installed on the original customer's premises to be eligible for the SRO rebate. Rebuilt, used, or refurbished equipment is not eligible to receive the rebate.

(VI) Customers may contract to expand their on-site solar systems and obtain a rebate for the expanded capacity.

(VII) In order to receive the SRO rebate payment, the customer must enter into an agreement with the QRU, with a minimum term of 20 years, that transfers the SO-RECs generated by the on-site solar system during the term of the agreement from the customer to the QRU.

(VIII) For on-site solar systems, up to and including ten kW, that become operational on or after December 1, 2004, the QRU shall offer to make a one-time payment, in addition to the standard rebate payment, for the SO-RECs contracted to be transferred from the customer to the QRU. Any customer that receives the rebate payment and one-time SO-REC payment under this program shall not be entitled to any other compensation for the SO-RECs contracted to be transferred to the QRU. To facilitate installation of these small systems, all procedures, forms, and requirements shall be clear, simple, and straightforward to minimize the time and effort of homeowners and small businesses.

(IX) For on-site solar systems greater than ten kW that become operational on or after December 1, 2004, the QRU, in addition to the standard rebate payment, shall offer to pay for the SO-RECs contracted to be transferred from the customer to the QRU. Such SO-RECs and the associated payments shall be determined by the specifically metered renewable energy output from the on-site solar system.

(X) The customer or its representative shall provide a calculation of the annual expected kilowatt-hour production from the customer's on-site solar system. The customer or its representative shall provide the following documentation to back up the customer's calculation:

(A) Tilt of the system in degrees (horizontal = 0 degrees);

(B) Orientation of the system in degrees (south = 180 degrees);

(C) A representation that the orientation of the system is free of trees, buildings and or other obstructions that might shade the system measured from the center point of the solar array through a horizontal angle plus or minus 60 degrees and a through vertical angle between 15 degrees and 90 degrees above the horizontal plane.

(D) A calculation of the annual expected kWh of electricity produced by the system. For PV systems, the calculation of annual expected kWh of electricity will be based on the public domain solar calculator PVWatts Version 1 (or equivalent upgrade).

(i) The weather station that is either nearest to or most similar in weather to the installation site;

(ii) The system output rating which equals the module rating times the inverter efficiency times the number of modules;

(iii) Array type: fixed tilt, single axis tracking, or 2 axis tracking; For variable tilt systems, the PVWatts calculations can be run multiple times corresponding to the number of times per year that the system tilt is expected to be changed using those months corresponding to the specific tilt angle used;

(iv) Array tilt (degrees); and

(v) Array azimuth (degrees).

(E) In the event PVWatts is no longer available, an equivalent tool shall be established.

(F) For on-site solar systems up to and including ten kW, the REC payment may be adjusted, either up or down, based on the calculation of expected kWh of electric output derived from rule 3658(X)(D) as compared with an optimally oriented fixed, i.e. non-tracking, system at the customer's location, but only if the calculated system output differs from the optimally oriented system output by more than ten percent.

(XI) The level of SO-REC payments for systems of ten kW and smaller offered in connection with a QRU's SRO program may be adjusted from time to time as needed to achieve compliance with the renewable energy standard.

(XII) The on-site solar system installed must remain in place on the customer's premises for the duration of its useful life. The customer's equipment must have electrical connections in accordance with industry practice for permanently installed equipment, and it must be secured to a permanent surface (e.g., foundation, roof, etc.). Any indication of portability, including, but not limited to, wheels, carrying handles, dolly, trailer or platform, will render the system ineligible for participation and payments under the SRO program.

3659. Renewable Energy Credits.

(a) Renewable energy credits will be used to comply with the renewable energy standard. Eligible RECs acquired by contracts or through a system of tradable renewable energy credits, exchanges, or brokers may also be used by QRUs to comply with this standard. In calculating compliance, the total RECs acquired from eligible ~~renewable~~ energy resources during a compliance year may include:

(I) RECs generated by eligible ~~renewable~~ energy resources owned by the QRU or by a QRU affiliate;

(II) RECs acquired by the QRU pursuant to renewable ~~eligible~~ energy supply contracts;

(III) RECs acquired by the QRU pursuant to renewable energy credit contracts;

(IV) RECs acquired by the QRU pursuant to a ~~standing~~ standard offer program;

(V) RECs acquired through a system of tradable renewable energy credits, from exchanges or from brokers

(VI) RECs carried forward from previous compliance years, pursuant to rule 3654(~~id~~);

(VII) RECs borrowed forward from future compliance years, pursuant to rule 3654(~~fk~~).

(b) RECs representing electricity generated at eligible ~~renewable~~ energy resources ~~located in the state of Colorado~~ shall be counted ~~as 1.25 RECs~~ for ~~the~~ compliance purpose~~s of compliance~~ consistent with the compliance multipliers in rule 3654(e), (f), and (g).

(c) The Commission shall not restrict the QRU's ownership of RECs if the QRU complies with the renewable energy standard established in rule 3654 and does not exceed the retail rate impact established in rule 3661.

(d) Subject to the maximum retail rate impact in rule 3661, the QRU shall have the discretion to determine, in a nondiscriminatory manner, the price it will pay for RECs from on-site customer facilities that are no larger than one hundred kilowatts.

(~~ec~~) All contracts between QRUs and the owners of eligible ~~renewable~~ energy resources entered into after the effective day of these rules shall clearly specify the entity who shall own the RECs associated with the energy generated by the facility.

(~~fd~~) A renewable energy credit shall expire at the end of the fifth calendar year following the calendar year during which it was generated.

(~~ge~~) Renewable energy credits that are generated on or after January 1, 2004 may be counted for compliance with this renewable energy standard.

(~~hf~~) RECs shall be used for a single purpose only, and shall expire or be retired upon use for that purpose. All RECs utilized by the QRU to comply with the renewable energy standard:

(I) May not be sold or otherwise exchanged with any other party, or in any other state or jurisdiction;

(II) May not be included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction;

(III) May be counted simultaneously toward compliance with a federal renewable portfolio standard and with the renewable energy standard.

(~~ig~~) RECs that are generated with fuel cell energy using hydrogen derived from an eligible ~~renewable~~ energy resource are eligible for compliance purposes only to the extent that the energy used to generate the hydrogen did not create renewable energy credits.

(j~~h~~) If a renewable energy system uses an eligible ~~renewable~~ energy resource in combination with a nonrenewable energy source to generate electricity, only the RECs associated with the proportion of the total electric output of the renewable energy system that results from the use of eligible ~~renewable~~ energy resources shall be eligible to count toward compliance with the renewable energy standard.

(k~~i~~) If an on-site solar systems of ten kW or below has received a one-time REC payment from a QRU under rule 3658, the QRU shall be entitled to count the anticipated SO-RECs purchased by the one-time REC payment for compliance with the renewable energy standard even if the on-site solar systems is removed or becomes inoperable.

(l~~j~~) An investor owned QRU:

(I) Shall develop an auditable process to account for RECs using a central database. In the absence of a central third-party database, the QRU shall maintain its own REC internal database and shall make an extract of the REC information available on the utility's website.

(II) Shall designate within its database any REC sold to a wholesaler if the REC has been assigned to that wholesaler.

(III) Shall apply for the inclusion of any losses or gains from the purchase or sale of RECs through an appropriate adjustment clause mechanism.

(IV) Shall hire an independent auditor to verify the accuracy of the QRU internal database which tracks REC. The independent verification shall occur after two years then every three years thereafter.

(m~~k~~) The investor owned QRU shall record REC information from eligible ~~renewable~~ energy resources in a central database. The database shall include, but not be limited to, a list of all eligible ~~renewable~~ energy resources the QRU intends to use for compliance with the renewable energy standard, including their type, location, owner, operator, start of operation, actual REC generation, ownership, transfer and retirement. A summary database shall be provided to the Commission Staff and be publicly viewable via the Commission's ~~worldwide~~ website. Owners of eligible ~~renewable~~ energy resources with nameplate ratings of 100kW or below and larger eligible ~~renewable~~ energy resources, at their option, shall have their name and address encoded for privacy. Systems that are encoded for privacy shall have a unique identifying number assigned, and will continue to have the zip code reported.

(n~~l~~) In conjunction with the QRU ~~C~~compliance plans specified in rule 3657, a QRU may make a request that the Commission allow the use of a central third-party database to account for RECs. If a QRU proposes to use a central third-party database for the accounting of RECs, the QRU must show that the central third-party database can be readily audited by the Commission Staff to verify that the renewable energy standard is met and that the alternative system is cost effective.

3660. Cost Recovery and Incentives.

(a) The investor owned QRU shall be entitled to timely cost recovery through retail rate mechanisms for all funds prudently expended to comply with these rules, including the costs the QRU incurs to administer the standard rebate offer and the acquisitions of eligible ~~renewable~~ energy resources. The QRU shall be entitled to recover its investment and expenses associated with these rules through appropriate adjustment clauses that allow recovery of expenditures without the full resetting of electric rates.

(b) In advance of the approval of the first compliance plan, an investor owned QRU may propose, by application, to implement a forward-looking cost recovery mechanism to provide funding for implementing the renewable energy standard. In its application, the QRU must demonstrate that the funding mechanism proposed will not exceed the retail rate impact test. If approved, the forward-looking funding mechanism may be implemented prior to the first compliance year. Each QRU with a forward-looking cost recovery mechanism shall separately identify the forward-looking cost recovery mechanism on its customers' bills.

(I) Interest shall accrue on the unexpended balance of funds collected from a forward-looking rider. The interest rate shall be at the Commission's customer deposit interest rate at the time of the rider. A QRU may request interest on any funds it expends in excess of those collected through the forward-looking rider. The request for interest on excess expenditures shall include the reason(s) for the excess expenditures. The request for interest shall be included as part of the annual compliance report, pursuant to rule 3662.

(c) If the investor owned QRU incurs costs in acquiring eligible ~~renewable~~ energy to meet the renewable energy standard that exceed the maximum retail rate impact, the QRU shall be entitled to carry forward these costs to a future year for cost recovery. These carried forward amounts shall not increase the amounts that a QRU may charge customers under the retail rate impact rule.

(d) The investor owned QRU shall be entitled to earn an extra profit on the QRU's ownership investment in a specific eligible ~~renewable~~ energy resource if that eligible ~~renewable~~ energy resource provides net economic benefits to customers. For these investments, the QRU shall be entitled to a return equal to the QRU's most recent authorized rate of return on rate base plus a bonus limited to 50 percent of the of the net economic benefit as long as the QRU is in compliance with these rules implementing the renewable energy standard. If the QRU's investment in a specific eligible renewable energy resource does not provide a net economic benefit to customers, the QRU shall be entitled to a return equal to the QRU's most recent authorized rate of return on rate base.

(I) For the purposes of this rule 3660, net economic benefit shall mean that the specific eligible ~~renewable~~ energy resource in which the QRU has made an ownership investment results in an average retail rate impact less than the rate impact that would have resulted from the acquisition of the alternative eligible ~~renewable~~ energy resource meeting the same component of the renewable energy standard that would have been selected absent the QRU's investment. The QRU shall set forth its calculation of the proposed net economic benefit either at the time of a compliance plan filing, an annual compliance report filing, a QRU rate filing or by application. The Commission shall determine the

level of the net economic benefit and the level of the bonus after review of the utility's filing. The Commission may set the matter for hearing if appropriate under the Commission's Rules of Practice and Procedure.

(II) To the extent that a QRU uses computer modeling in its analysis of net economic benefit, the QRU shall use the same methodologies and assumptions it used in its most recently approved least-cost planning case, except as otherwise approved by the Commission. Confidential information may be protected in accordance with rules 1100 through 1102 of the Commission's Rules of Practice and Procedure.

(III) Any net economic benefit for which the QRU qualifies to receive a bonus shall be included in the calculation of the retail rate impact rule pursuant to rule 3661.

(e) An investor-owned QRU may propose to develop and own, in whole or in part, a new eligible energy resource by filing an application with the Commission. ~~The Commission shall determine whether the new eligible energy resource can be constructed at a reasonable cost compared to the cost of similar eligible energy resources available in the market. In addition to determining the reasonability of costs, the Commission shall determine if the proposed new eligible energy resource would provide significant economic development, employment, energy security, or other benefits to the state of Colorado.~~ The Commission may set the matter for hearing, if appropriate, under the Commission's Rules of Practice and Procedure. For the purpose of this rule 3660(e):

(I) A QRU shall be allowed to develop and own as utility rate-based property, without being required to comply with the competitive bidding requirements in rule 3655, up to twenty-five percent of the total new eligible energy resources that the QRU acquires from entering into power purchase agreements and from developing and owning resources after March 27, 2007 if the Commission determines that the QRU-owned new eligible energy resource can be constructed at a reasonable cost compared to the cost of similar eligible energy resources available in the market.

(II) A QRU shall be allowed to develop and own as utility rate-based property, without being required to comply with the competitive bidding requirements in rule 3655, up to fifty percent of the total new eligible energy resources that the QRU acquires from entering into power purchase agreements and from developing and owning resources after March 27, 2007 if the Commission determines that the QRU-owned new eligible energy resource can be constructed at a reasonable cost compared to the cost of similar eligible energy resources available in the market and that the proposed new eligible energy resource would provide significant economic development, employment, energy security, or other benefits to the state of Colorado.

(III) The QRU shall be allowed to develop and own as utility rate-based property more than the percentages of total new eligible energy resources set forth in rules 3660(e)(I) and (e)(II), ~~up to one-hundred percent of the total new eligible energy resources~~ if the QRU bids to own the new eligible energy resources in a competitive solicitation and is selected as a winning bidder in that competitive solicitation.

(IV) The QRU may develop and own new eligible energy resources either solely or jointly with other owners. If the QRU owns the new eligible energy resource jointly, the entire jointly owned resource shall count toward the percentage limitations set forth in rule 3660(e).

For purposes of this rule, participation by any parent, affiliate or subsidiary of a QRU in a QRU's owned new eligible energy resource shall count towards the percentage limitations. The QRU's rate base portion of any new eligible energy resource is limited to only the QRU's ownership percentage in the new eligible energy resource.

(V) If the QRU intends to develop and own new eligible energy resources as provided for under rule 3660(e)(I) or (e)(II), it shall propose for Commission approval, in advance of filing its application under this rule, the name of the independent evaluator whom the utility intends to hire to conduct an assessment of whether the proposed new eligible energy resources can be constructed at a reasonable cost compared to the cost of similar eligible energy resources available in the market. The independent evaluator will develop a report to the Commission on its assessment of whether the proposed new eligible energy resources can be constructed at a reasonable cost compared to the cost of similar eligible energy resources available in the market. The independent evaluator shall have at least five years' experience conducting and/or reviewing the conduct of competitive electric utility resource acquisition, including computerized portfolio costing analysis. The independent evaluator shall be unaffiliated with the utility; and shall not, directly or indirectly, have benefited from employment or contracts with the utility in the preceding five years, except as an independent evaluator under these rules. The independent evaluator shall not participate in, or advise the utility with respect to, any decisions relating to the proposed new eligible energy resource. The utility shall conduct any additional modeling requested by the independent evaluator to test the assumptions and results of the cost analyses. The independent evaluator's report shall be filed with the utility's application for approval of the proposed new eligible energy resource. The evaluator's report shall contain the evaluator's views on whether the proposed new eligible energy project can be constructed at a reasonable cost compared to the cost of similar eligible energy resources available in the market.

(VI) Nothing in rule 3660(e) shall prevent the Commission from waiving, repealing, or revising any Commission rule in a manner otherwise consistent with applicable law.

(f) When an investor owned QRU applies for a certificate of public convenience and necessity, the Commission shall consider rate recovery mechanisms that provide for earlier and timely recovery of costs prudently and reasonably incurred by the QRU in developing, constructing, and operating the eligible energy resource, including: (a) rate adjustment clauses until the costs of the eligible energy resource can be included in the utility's base rates; and (b) a current return on the utility's capital expenditures during construction at the utility's weighted average cost of capital, including its cost of debt and its most recently authorized rate of return on equity, during the construction, startup, and operation phases of the eligible energy resource.

(g~~e~~) The utility is entitled to recover through rates, its prudently incurred expenditures. While not the exclusive method for establishing prudence, if the Commission approves a~~n eligible~~ renewable energy supply contract or a renewable energy credit contract, the expenditures of the investor owned QRU under the contract shall be deemed to be prudent expenditures.

(h~~f~~) If the investor owned QRU recovers fuel and purchased energy expense through an incentive adjustment clause, the QRU shall not receive a benefit from the incentive adjustment clause for the energy generated from QRU-owned eligible renewable energy resources, but the QRU shall

be entitled to recover all the fuel and purchased energy costs associated with the eligible ~~renewable~~ energy resource.

(i~~g~~) Each wholesale energy provider shall offer to its wholesale customers that are cooperative electric associations the opportunity to purchase their load ratio share of the wholesale energy provider's electricity from eligible energy resources. If a wholesale customer agrees to pay the full costs associated with the acquisition of eligible energy resources and associated renewable energy credits by its wholesale provider by providing notice of its intent to pay the full costs within sixty days after the wholesale provider extends the offer, the wholesale customer shall be entitled to receive the appropriate credit toward the renewable energy standard as well as any associated renewable energy credits. To the extent that the full costs are not recovered from wholesale customers, a qualifying retail utility shall be entitled to recover those costs from retail customers. ~~If a wholesale customer agrees to pay the full costs associated with the acquisition of renewable eligible energy resources and associated RECs by its wholesale provider by providing notice of its intent to pay the full costs within sixty days after the wholesale provider extends the offer, the wholesale customer shall be entitled to receive the appropriate credit toward the renewable energy standard as well as any associated RECs. To the extent that the full costs are not recovered from wholesale customers, a QRU shall be entitled to recover those costs from retail customers.~~

~~(j) Each wholesale energy provider shall offer to its wholesale customers that are cooperative electric associations the opportunity to purchase their load ratio share of the wholesale energy provider's electricity from eligible energy resources. The wholesale customer shall provide notice of its intent to pay the full costs within sixty days after the wholesale provider extends the offer,~~

3661. Retail Rate Impact.

(a) The net rate impact of actions taken by an investor owned QRU to comply with the renewable energy standard shall not exceed two~~one~~ percent of the total electric bill annually for each customer of that QRU.

(b) The net rate impact of actions taken by a cooperative electric association QRU to comply with the renewable energy standard shall not exceed one percent of the total electric bill annually for each customer of that QRU.

(c~~b~~) The net rate impact shall include the prudently incurred direct and indirect costs of all actions by a QRU to meet the renewable energy standard, including, but not limited to, program administration, rebates and performance-based incentives, payments under renewable energy supply contracts, payments under renewable energy credit contracts, payments made for RECs purchased through brokers or exchanges, computer modeling and analysis time, and QRU investment in and return on investment for eligible ~~renewable~~ energy resources.

(d~~c~~) The administrative costs of a QRU to implement these rules is capped at ten percent per year of the total annual collection. A QRU may include in its compliance plan a waiver request of this rule during the initial ramp-up stage of the QRU's program.

(e~~d~~) For purposes of calculating the retail rate impact, the investor owned QRU shall use the same methodologies and assumptions it used in its most recently approved least-cost planning case,

unless otherwise approved by the Commission. Confidential information may be protected in accordance with rules 1100 through1102 of the Commission's Rules of Practice and Procedure.

(fe) In its compliance plan filed under rule 3657, the investor owned QRU shall estimate the retail rate impact of its plan to comply with the renewable energy standard over the upcoming compliance year and shall submit a report detailing the development of the retail rate impact estimate. The compliance plan shall identify the funds that need to be made available to the QRU to comply with the renewable energy standard and the retail rate impact rule. By approving the ~~QRU's~~ compliance plan of an investor owned QRU, the Commission will be approving the investor owned QRU's budget for acquiring eligible ~~renewable~~ energy over the compliance year. Once approved by the Commission, the investor owned QRU shall implement its compliance plan. Actions taken by an investor owned QRU in compliance with the filed and approved compliance plan shall be deemed prudent.

(g) The retail rate impact shall be determined net of new alternative sources of electricity supply from non-eligible energy resources that are reasonably available at the time of the determination.

(hf) The basic method for investor owned QRUs for performing the estimate of the retail rate impact limit is as follows:

(I) The QRU shall determine all commercially available resources to the QRU, either through ownership or by contract, at the time of the beginning of the compliance year and for a minimum of the ten years thereafter (the "RES planning period"). The projected costs of these available resources shall be reflected in both of the scenarios analyzed by the QRU's computer planning models under this paragraph. The QRU shall determine the QRU's capacity and energy requirements over the RES planning period. The QRU shall develop two scenarios to estimate the resource composition of the QRU's future electric system and the cost of that system over the RES Planning Period. The first scenario, a renewable energy standard plan or "RES plan" should reflect the QRU's plans and actions to acquire new eligible ~~renewable~~ energy necessary to meet the renewable energy standard reflecting a gradual ramp-up to the ~~ten~~twenty percent level. The second scenario, a "No RES plan" should reflect the QRU's resource plan that meets the QRU's capacity and energy requirements over the RES planning period by replacing the new eligible ~~renewable~~ energy resources in the RES plan with new nonrenewable resources reasonably available. For purposes of this rule, new eligible renewable energy means eligible ~~renewable~~ energy from resources which are not commercially operational at the time these two modeling scenarios are performed.

(II) The QRU shall use the comparison of the two model runs of the RES planning period along with any additional analysis needed to calculate the estimated annual net retail rate impact for the first compliance year of the RES planning period. The maximum retail rate impact shall not exceed ~~one~~two percent of the total retail bill annually for each customer. To the extent the RES plan exceeds this maximum retail rate impact, the QRU shall modify the RES plan to limit the acquisition of eligible ~~renewable~~ energy so that the QRU compliance plan does not exceed the maximum retail rate impact for the first compliance year of the RES planning period. In calculating the annual net retail rate impact in each compliance plan for the first compliance year of the RES planning period, the QRU shall take into account the on-going annual costs of all eligible ~~renewable~~ energy that the QRU has contracted to acquire under the standard rebate offer under rule 3658 and all

~~E~~eligible ~~renewable~~ energy from resources that were constructed by the QRU or contracted for by the QRU after the effective date of these rules.

(~~i~~g) Any investor owned QRU with annual retail sales of less than five million megawatt-hours can use an alternate method to determine the estimate of the retail rate impact. The alternative method can be used for those RES planning period years when the only remaining portion of the renewable energy standard with which the QRU needs to comply is the eligible ~~renewable~~ energy that must be acquired from solar electric generating technologies.

(I) The retail rate impact will be determined by using the estimated costs of the proposed solar electric generating technologies less the estimated annual average costs of energy of existing resources that would be replaced with energy generated by the proposed solar electric generating technologies. The QRU shall also incorporate into this retail rate impact analysis other cost savings created by the deployment of the solar electric generating technologies and any other cost savings from the deployment of other non-solar ~~renewable~~ eligible energy resources used to meet the standard. These cost savings include, but are not limited to, the avoided or deferred costs of generation, transmission and distribution facilities.

(II) The QRU will then convert this net cost figure into a percent of total electric bill annually for each customer. In no event shall the percent of total electric bill annually exceed one percent for each customer. To the extent that the net cost figure results in the QRU exceeding the ~~one~~ two percent for each customer threshold, the QRU shall modify its acquisition of solar electric generating technologies in order to not exceed the maximum retail rate impact.

(j) If the retail rate impact does not exceed the maximum percent level, a QRU may acquire more than the minimum amount of eligible energy resources and RECs required under the renewable energy standard.

3662. Annual Compliance Report.

(a) Each ~~Beginning in 2007, the~~ investor owned and cooperative electric association QRU shall file an annual compliance report no later than ~~on~~ June 1 to report on the status of the QRU's compliance with the renewable energy standard for the most recently completed compliance year. The annual compliance report shall provide the following information for the most recently completed compliance year:

(I) The total megawatt-hours sold by the QRU to its retail customers in Colorado and the associated eligible ~~renewable~~ energy required for compliance with each component of the renewable energy standard;

(II) The total amount and source of eligible ~~renewable~~ energy acquired by the QRU during the compliance year for each component of the renewable energy standard. The QRU shall separately identify amounts of eligible ~~renewable~~ energy by each type of resource;

(III) The total amount of eligible ~~renewable~~ energy borrowed forward, pursuant to rule 3654(f), in previous compliance years that was made up during the compliance year to achieve compliance with each component of the renewable energy standard;

(IV) The total amount of eligible ~~renewable~~ energy borrowed forward, pursuant to rule 3654(f), from future compliance years to achieve compliance with each component of the renewable energy standard in the compliance year;

(V) The total amount and source of eligible ~~renewable~~ energy the QRU is carrying back from the year following the compliance year under rule 3654(d)(I) to achieve compliance with each component of the renewable energy standard in the compliance year;

(VI) The total amount of eligible ~~renewable~~ energy the QRU has carried forward from prior calendar years under rule 3654(d)(III) to apply in the compliance year for each component of the renewable energy standard.

(VII) The total amount of eligible ~~renewable~~ energy the QRU has acquired in the compliance year that the QRU proposes to carry forward under rule 3654(d)(III) to future years for each component of the renewable energy standard;

(VIII) The total amount of eligible ~~renewable~~ energy the QRU has counted toward compliance with each component of the renewable energy standard in the compliance year. The QRU shall separately identify amounts of eligible renewable energy by each type of resource;

(IX) The total amount of renewable energy or RECs acquired by the QRU during the compliance year pursuant to the standard rebate offer program;

(X) Whether the QRU has invested in any eligible ~~renewable~~ energy resource and whether that resource is under construction or in operation; and

(XI) The funds expended and the retail rate impact of the eligible ~~renewable~~ energy acquired. The retail rate impact cap shall be recalculated based on the actual compliance year values if the QRU developed the retail rate impact cap pursuant to rule 3661(h~~f~~) and (i). To the extent the recalculation of the retail rate impact cap demonstrates that additional funds are available based on actual compliance year values, the QRU shall use those additional funds to acquire RECs, to the extent necessary, to achieve the compliance levels set forth in rules 3654(a) and (d~~b~~) or until the additional funds have been spent if the QRU intends to claim that the retail rate impact cap prevented it from achieving compliance with the standard.

(XII) A description of the method used to develop the retail rate impact calculation.

(b) In the annual compliance report, the QRU must explain whether it achieved compliance with each component of the renewable energy standard during the most recently completed compliance year, or explain why the QRU had difficulty meeting the renewable energy standard.

(c) If, in its annual compliance report, the QRU did not comply with its renewable energy standard for each of the RES components as a direct result of absolute limitations within a requirements contract from a wholesale electric supplier, then the QRU must explain whether it acquired a sufficient amount of either eligible RECs or documented and verified energy savings through energy efficiency and/or conservation programs, or both to rectify the noncompliance so as to excuse the investor owned QRU from any administrative fine or other administrative action.

(d) On the same date that the QRU files its annual compliance report, the QRU shall post an electronic copy of its annual compliance report excluding confidential material on its website to facilitate public access and review.

(e) On the same date that the QRU files its annual compliance report, it shall provide the Commission with an electronic copy of its annual compliance report excluding confidential material. The Commission may place the non-confidential portion of each QRU's annual compliance report on the Commission's website in order to facilitate public review.

3663. Compliance Report Review.

(a) Compliance reporting for investor owned QRUs.

(I) In the annual compliance report, the QRU must explain whether it complied with its renewable energy standard for the solar, on-site solar and non-solar components during the most recently completed compliance year.

(II) Upon receipt of the QRU annual compliance report, the Commission will provide notice to interested persons. Interested persons will have 30 days within which to provide comment to the Commission on the content of the annual compliance report. The QRU shall have the opportunity to reply to all comments on or before 45 days following the filing of the annual compliance report.

(III) The Staff of the Commission shall review the annual compliance report and any comments received and within 60 days of the filing of the annual compliance report make a recommendation to the Commission as to whether the QRU has met the renewable energy standard and no action should be taken by the Commission, whether any changes are needed to the compliance report, or whether a hearing is necessary.

(IV) Upon review of the QRU's annual compliance report, the Staff recommendation and all comments filed, the Commission will issue an order stating whether the QRU complied with the components of its renewable energy standard during the most recently completed compliance year and state whether a hearing is necessary.

(V) If the Commission determines that the total number of RECs which the QRU generated or acquired from renewable energy systems during the most recently completed compliance year exceeded the total number of RECs which the QRU needed to comply with each component of its renewable energy standard for the recently completed compliance year:

(A) The Commission will state in its order the number of excess solar, on-site solar and/or non-solar RECs which the QRU has available to carry forward from that compliance year or use for any other legal purpose.

(B) The QRU may use those excess solar, on-site solar and/or non-solar RECs to comply with its renewable energy standard for the five compliance years immediately following that compliance year.

(b) Compliance report hearing for investor owned QRUs.

(I) If the Commission determines that the QRU did not comply with the solar, on-site solar or non-solar components of its renewable energy standard during the most recently completed compliance year, the Commission will determine whether the QRU failed to meet the renewable energy standard because of the retail rate impact limit. The Commission will:

(A) State in its order the number of RECs by which the QRU failed to comply with each of the solar, on-site solar and non-solar components of its renewable energy standard; and

(B) State whether the Commission is satisfied that the failure to meet the renewable energy standard was due to the retail rate impact limit. If the Commission is not satisfied on this issue, the Commission will issue a notice of possible noncompliance and schedule an evidentiary hearing on the matter.

(II) At the evidentiary hearing, if the QRU asserts that the renewable energy standard was not met due to the retail rate impact, it will have the burden of proof that it failed to comply with the solar, on-site solar and non-solar components of its renewable energy standard during the most recently completed compliance year because of the retail rate impact.

(III) At the evidentiary hearing, any party that advocates that the QRU failed to comply with the components of the QRU's renewable energy standard during the most recently completed compliance year is the proponent of a Commission order finding non-compliance, and that party shall have the burden of proof that the QRU failed to comply with the solar, on-site solar and non-solar components of its renewable energy standard during the most recently completed compliance year. The QRU may assert that the renewable energy standard was not met due to events beyond the reasonable control of the QRU that could not have been reasonably mitigated.

(c) Compliance penalties for investor owned QRUs.

(I) After notice and hearing, if the Commission determines that the QRU did not fully comply with any of the solar, on-site solar and non-solar components of its renewable energy standard during the most recently completed compliance year, the Commission shall determine what, if any, administrative penalties should be assessed against the QRU for its failure to meet the renewable energy standard. In assessing penalties, the Commission may take one or more of the following actions:

(A) Determine for each component for which there was noncompliance the cost that would have been incurred by the QRU to fully comply with such component standard through the acquisition of RECs and assess all or part of this amount as part of an administrative penalty.

(B) No administrative penalties shall be assessed against a QRU if the amount of the shortfall is attributable to the retail rate impact limit.

(C) Assess no administrative penalties against a QRU if the failure to meet the renewable energy standard results from events beyond the reasonable control of the QRU that could not have been reasonably mitigated including, but not limited to, failures to perform by counterparties to renewable energy supply contracts and renewable energy credit contracts, events that delay the construction or commercial operation of QRU-owned eligible renewable energy resources, and lack of customer interest in the standard rebate offer.

(II) The cost of such administrative penalties shall not be recovered from retail customers through the QRU's rates.

3664. Net Metering.

(a) All investor owned QRUs shall allow the customer's retail electricity consumption to be offset by the electricity generated from eligible ~~renewable~~ energy resources on the customer's side of the meter that are interconnected with the QRU, provided that the generating capacity of the customer's facility meets the following two criteria:

(I) The rated capacity of the generator does not exceed 2000 kW; and

(II) The rated capacity of the generator does not exceed the customer's service entrance capacity**.**

(b) If a customer with an eligible ~~renewable~~ energy resource generates renewable energy pursuant to subsection (a) of rule 3664 in excess of the customer's consumption, the excess kilowatt-hours shall be carried forward from month to month and credited at a ratio of 1:1 against the customer's retail kilowatt-hour consumption in subsequent months. Within 60 days of the end of each calendar year, or within 60 days of when the customer terminates its retail service, the QRU shall compensate the customer for any accrued excess kilowatt-hour credits, at the QRU's average hourly incremental cost of electricity supply over the most recent calendar year.

(c) The QRU shall file tariffs that comply with these rules within 30 days of the effective date of these rules.

(d) A customer's facility that generates renewable energy from an eligible ~~renewable~~ energy resource shall be equipped with metering equipment that can measure the flow of electric energy in both directions. The QRU shall utilize a single bi-directional electric revenue meter.

(e) If the customer's existing electric revenue meter does not meet the requirements of these rules, the QRU shall install and maintain a new revenue meter for the customer, at the company's expense. Any subsequent revenue meter change necessitated by the customer shall be paid for by the customer.

(f) The QRU shall not require more than one meter per customer to comply with this rule 3664. Nothing in this rule 3664 shall preclude the QRU from placing a second meter to measure the output of a solar renewable energy system for the counting of RECs subject to the following conditions:

(I) For customer facilities over ten kW, a second meter shall be required to measure the solar renewable energy system output for the counting of RECs.

(II) For systems ten kW and smaller, an additional meter may be installed under either of the following circumstances:

(A) The QRU may install an additional production meter on the solar renewable energy system output at its own expense if the customer consents; or

(B) The customer may request that the QRU install a production meter on the solar renewable energy system output in addition to the revenue meter at the customer's expense.

(g) A QRU shall provide net metering service at non-discriminatory rates to customers with eligible ~~renewable~~ energy resources. A customer shall not be required to change the rate under which the customer received retail service in order for the customer to install an eligible ~~renewable~~ energy resource. Nothing in this rule shall prohibit a QRU from requesting changes in rates at any time.

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[Rules 3665 – 3999 omitted, unaffected rule sections]