

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13R-0901E

IN THE MATTER OF THE PROPOSED AMENDMENTS PURSUANT TO SENATE BILL 13-252 TO THE RULES IMPLEMENTING THE RENEWABLE ENERGY STANDARD, 4 CODE OF COLORADO REGULATIONS 723-3.

**DECISION DENYING EXCEPTIONS
AND ADOPTING RULES**

Mailed Date: April 14, 2014
Adopted Date: April 2, 2014

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of exceptions to Decision No. R14-0092 (Recommended Decision) filed on February 12, 2014 by the Colorado Rural Electric Association (CREA) and Western Resource Advocates (WRA).

Consistent with the discussion below, we modify the rules in the Recommended Decision on our own motion and deny the exceptions. The adopted rules are set forth in Attachment A to this Decision.

B. Procedural Background

2. This proceeding commenced on August 21, 2013, when the Commission issued a Notice of Proposed Rulemaking (NOPR).¹ The purpose of this rulemaking is to revise and clarify the Renewable Energy Standard (RES) rules² and implement the recently-enacted Senate Bill (SB) 13-252, codified at § 40-2-124, C.R.S.

3. The Commission referred this proceeding to an Administrative Law Judge (ALJ). The ALJ held a hearing on October 21 and 22, 2013. He issued the Recommended Decision on January 23, 2014.

C. Determination of Greenhouse Gas Neutrality

4. Rule 3668(d) as adopted by the Recommended Decision specifies how the Commission will determine whether electricity generated by a coal mine methane or synthetic gas facility is greenhouse gas neutral electricity. The ALJ amended this rule from the version proposed in the NOPR to state that the Commission will determine greenhouse gas neutrality of these facilities on a case-by-case basis. As stated in the record, this amendment accounts for the wide variety of potential coal mine methane and pyrolysis projects, and the resulting need for the Commission to consider each particular project on a case-by-case basis.³

¹ Decision No. C13-1036.

² Rules 3650 *et seq.* of the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3.

³ Hearing Transcript, pp. 5, 6, 18, 19, 29 (discussion among the ALJ and representatives of Public Service, Tri-State, CREA, and WRA).

5. We adopt Rule 3668(d) as set forth Attachment A. We agree with the case-by-case approach for deciding greenhouse gas neutrality of coal mine methane or pyrolysis projects, for reasons stated by the ALJ and the stakeholders. This approach follows the directive stated in § 40-2-124(1)(a) for the Commission to determine through an evidentiary hearing the extent to which particular electric generation technologies comply with the greenhouse gas neutral standard.

6. Further, based upon our review of the statute promoting the generation of electricity using coal mine methane and synthetic gas produced by pyrolysis,⁴ and our review of comments provided by the stakeholders at hearing and in written comments, we find the Commission should effectuate the legislative intent underlying SB 13-252 by determining greenhouse gas neutrality in the context of specific project proposals. We encourage utilities to pursue the acquisition of cost-effective coal mine methane and pyrolysis projects and to present them to the Commission for consideration.

7. Finally, we find that listing the greenhouse gases in the rule is unnecessary and many of these gases are irrelevant to coal mine methane or pyrolysis projects.

D. CREA Exceptions

8. CREA argues the recommended Rules 3655(h)-(j) are inconsistent with SB 13-252 and may lead to confusion and argument. These rules establish the amounts of renewable distributed generation (DG) and retail renewable distributed generation (RDG) that cooperative utilities are required to generate or cause to be generated. CREA states the recommended rules contain the phrase “at least” when listing required the amounts of DG and RDG, though SB 13-252 does not. CREA believes this phrase is inconsistent with the

⁴ Section 40-2-124(1)(a), C.R.S.

statute and unnecessary. CREA acknowledges the phrase “at least” may be equivalent to simply stating the minimum required percentages of DG and RDG, but argues the rules should accurately track the statutory language. CREA urges the Commission to delete this phrase.

9. We deny the exceptions. As an initial matter, the phrase “at least” was included in the rules attached to the NOPR, yet CREA did not raise this argument while this proceeding was pending before the ALJ. Further, the phrase “at least” is equivalent to simply stating the required amounts of DG and RDG, as CREA admits. There is no inconsistency with the statute and no possibility for confusion.

E. WRA Exceptions

10. WRA argues the recommended rules do not provide clear guidance on how a utility can use non-renewable but eligible energy resources to comply with the eligible energy standards. WRA argues § 40-2-124(1)(d), C.R.S., contemplates that renewable energy credits (RECs) would be utilized to account for all types of eligible energy resources, not just renewable energy resources.

11. WRA states that, under the recommended rules, only renewable energy resources but not other types of eligible energy resources can generate RECs. WRA contends that, in the absence of a tradable credit, there is no mechanism by which a utility that uses non-renewable but eligible resources can show its compliance with the eligible energy standards. Thus, WRA advocates the creation of Eligible Energy RECs, or “E-RECs,” as the mechanism by which utilities can demonstrate compliance. An E-REC would be similar to a traditional REC in that 1 MWh of electricity generated would create 1 E-REC.

12. We deny the exceptions. Section 40-2-124(1)(d), C.R.S., does not require the Commission to establish a system of tradable credits for energy generated by non-renewable eligible energy resources. Consistent with Rule 3654, utilities demonstrate compliance with the

eligible energy standards by counting the MWs of any source of eligible energy they generated or caused to be generated. Consistent with § 40-2-124(1)(d), C.R.S., utilities also may count RECs to show their compliance. Whether “E-RECs” are essential for demonstrating compliance with the RES may be examined once the Commission and utilities gain experience with energy generated or caused to be generated by non-renewable eligible energy resources for the purpose of complying with the eligible energy standards. Finally, to avoid confusion, we modify Rule 3659(a) to clarify that Rule 3659 specifically addresses RECs used for RES compliance.

F. Typographical Changes

13. As part of our review of the rules adopted by the Recommended Decision, we correct several typographical errors. The rules set forth in Attachment A to this Decision correct these errors.

II. ORDER

A. The Commission Orders That:

1. Exceptions to Decision No. R14-0092 filed on February 12, 2014 by the Colorado Rural Electric Association are denied.

2. Exceptions to Decision No. R14-0092 filed on February 12, 2014 by Western Resource Advocates are denied.

3. The Commission adopts permanent rules attached to this Decision as Attachment A, consistent with the above discussion and are available through the Commission’s Electronic Filings (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=13R-0901E.

4. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding the

constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

5. The 20-day period stated in § 40-6-114(1), C.R.S., within which the parties may file applications for rehearing, reargument, or reconsideration begins on the first day following the mailed date of this Decision.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 2, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners