

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09M-056EG

IN THE MATTER OF POSSIBLE REVISIONS TO THE COMMISSION'S ELECTRIC, GAS, AND PROCEDURAL RULES TO CONSIDER THE UTILITY-RELATED COMPONENT OF COLORADO'S BID FOR ECONOMIC STIMULUS FUNDS AND THE APPROPRIATE POLICIES FOR COST RECOVERY OF ANY INVESTMENT REQUIRED BY UTILITIES.

**ORDER SOLICITING COMMENTS ON
POSSIBLE RULE CHANGES**

Mailed Date: February 4, 2009
Adopted Date: February 4, 2009

I. BY THE COMMISSION

A. Statement

1. On January 28, 2009, the U.S. House of Representatives passed the American Recovery and Reinvestment Act of 2009 (H.R. 1). This bill contains many provisions to stimulate the United States economy in response to the extraordinary economic conditions currently facing the nation. The bill proposes to spend funds with the dual purpose of stimulating the national economy and the economies of states. Importantly, H.R. 1 includes provisions that could supplement efforts to meet Colorado's goals for a New Energy Economy and Governor Ritter's Climate Action Plan.

2. On February 2, 2009, the U.S. Senate began a debate on S.1., the Senate analogue to the House bill. Like the House bill, the Senate bill seems likely to include provisions directed at stimulating state economies with major investments in energy, among other investments.

3. Many of the provisions of these bills are quite time-sensitive, requiring quick action by participating utilities, by participating state and local governments, and by Colorado

businesses and consumers seeking to avail themselves of the opportunities offered by the legislation. While the details of national legislation are not yet settled, we find it prudent that the Commission act to more fully understand the impacts of such legislation on Colorado utilities and their customers and to assess how such legislation may serve to advance Colorado energy policies and goals. In short, we want to be equipped to respond quickly to opportunities afforded Colorado, its consumers, and its utilities under federal stimulus legislation.

4. The Commission opens this docket upon its own motion to solicit comments from stakeholders concerning possible revisions to our rules to address incentives and impediments facing electric and gas utilities in anticipation of passage of national legislation that may offer significant new resources for utilities and Colorado energy consumers. Any revisions would affect the rules in 4 Code of Colorado Regulations 723-1, 723-3, and 723-4, et. seq.,

5. Pursuant to § 40-3-101(1), C.R.S., all charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Pursuant to § 40-3-101(2), C.R.S., every public utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall in all respects be adequate, efficient, just, and reasonable.

6. We also note that the Commission, pursuant to § 40-2-115, C.R.S., is authorized to confer or hold joint hearings with the authorities of any state or any agency of the United States in connection with any matter arising in proceedings under Title 40, under the laws of any state, or under the laws of the United States; to avail itself of the cooperation, services, records, and facilities of authorities of this state, any other state, or any agency of the United States as

may be practicable in the enforcement or administration of the provisions of Title 40; and to enter into cooperative agreements with the various states and with any agency of the United States to enforce the economic and safety laws and rules of this state and of the United States.

7. Pursuant to § 40-2-108, C.R.S., the Commission is charged with promulgating such rules as are necessary for the proper administration and enforcement of Title 40. Related thereto, the Commission's scope and nature of its authority to regulate Colorado gas and electric utilities varies. See e.g., Colo Const. Art. XXV, §§ 40-1-03, 40-1-103.5, 40-9.5-101, et seq., C.R.S.

8. We note that there may be insufficient time to complete a formal rulemaking prior to deadlines that may be imposed by the national legislation. Therefore, we are soliciting comments now from parties on possible rule changes. Pursuant to § 40-2-108(2), C.R.S., any temporary or emergency rule adopted by the Commission shall be effective until a permanent rule that replaces the temporary or emergency rule is effective, but not for more than 210 days after the date of adoption.

9. We specifically solicit comments from parties on the issues listed in Attachment A.

B. Comments from Stakeholders

10. We request that stakeholders file written comments with the Commission on or before Tuesday, February 17, 2009, at noon. Additionally, we reserve Friday, February 20, 2009, at 10 a.m. for Commission deliberation and decision on these issues. To the extent possible, we ask parties filing comments to file a disk with an electronic copy of all comments, in a text-searchable format, so that we can expeditiously post the comments on our website.

II. ORDER

A. The Commission Orders That:

1. A docket is hereby opened for the purposes stated in this Order.
2. The Commission invites stakeholders to submit written comments on the questions identified in Attachment A consistent with the previous discussion.
3. Initial written comments must be filed on or before noon on February 17, 2009.

All such filed comments should reference Docket No. 09M-056EG.

4. Upon receipt of comments, the Commission's Administrative Staff will expeditiously post the comments to the Commission's website from where they may be downloaded. Stakeholders are required only to file an original and ten copies with the Commission; service of comments on other stakeholders is not required.

5. Commission deliberation on these comments will be held:

DATE: February 20, 2009
TIME: 10:00 a.m.
DATE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 4, 2009.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners

IN THE MATTER OF POSSIBLE REVISIONS TO THE COMMISSION'S ELECTRIC, GAS, AND PROCEDURAL RULES TO CONSIDER THE UTILITY-RELATED COMPONENT OF COLORADO'S BID FOR ECONOMIC STIMULUS FUNDS AND THE APPROPRIATE POLICIES FOR COST RECOVERY OF ANY INVESTMENT REQUIRED BY UTILITIES

The economic stimulus package being considered by the Congress will likely make available, in a competitive grant process, very large financial resources for investment in energy infrastructure. Access to these resources will require rapid response by Colorado utilities. The Commission desires that Colorado's investor-owned electric and gas utilities maximize the scale and scope of the funding they seek in a Colorado proposal.

Some of the federal funds may require utility matching investment, which could be very substantial. The utilities might reasonably ask for guidance in advance from the Commission about the rate making treatment of such investments.

1. Should the Commission participate in a comprehensive, statewide response from the energy industry to the national legislation? How does such a process effectively involve all utilities throughout Colorado (including municipal utilities, investor-owned utilities and co-operative electric associations.) as well as other stakeholders impacted by the legislation (*i.e.*, independent power producers, trade organizations, energy development companies with an interest in Colorado) as part of such an initiative?
2. If a comprehensive, statewide response is appropriate, how can you or your organization be of assistance in preparing such a response?
3. In light of these extraordinary circumstances, is it appropriate for the Commission to consider special incentives to encourage the utilities to aggressively seek funding from the stimulus package?
4. Assuming the Commission authorizes special incentives, what types of incentives would be most effective in encouraging Colorado utilities and their consumers to meet the energy goals of the legislation?
5. What types of projects should be considered as eligible for the special incentives? Should the projects include a mix of investments that provide both short-term and long-term benefits to Colorado ratepayers? What criteria should the Commission consider as it establishes the definition of eligible projects?

6. The economic stimulus package may contain provisions that are advantageous to utilities, such as making funds available for projects already started or under consideration by the utilities. How should this be factored into the discussion of what incentives are appropriate?
7. What safeguards should the Commission require to ensure that funds received by utilities from stimulus legislation are prudently spent; are used to meet goals consistent with national and state energy policies; and are used consistent with their intended purposes?
8. Are there legal impediments to the Commission pre-approving cost recovery for investments or expenses related to federal grant programs, subject to a prudence review after the fact?
9. What are the policy reasons for and against such pre-approval of cost recovery?