

Decision No. C09-0557

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 08R-424E

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IN THE MATTER OF PROPOSED AMENDMENTS TO THE RULES OF THE COLORADO  
PUBLIC UTILITIES COMMISSION RELATING TO THE RENEWABLE ENERGY  
STANDARD.

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**ORDER REGARDING ADMINISTRATIVE NOTICE OF  
MATERIALS THAT APPLY TO THE “TIME FENCE” AND  
THE “LOCK DOWN” OF NET INCREMENTAL COSTS  
AND  
NOTICE OF SUPPLEMENTAL HEARING**

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Mailed Date: May 28, 2009  
Adopted Date: May 20, 2009

**I. BY THE COMMISSION**

**A. Statement, Findings and Conclusions**

1. Decision No. C08-1001 opened this docket for the consideration of potential revisions to the Renewable Energy Standard (RES) portion of the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (specifically, 4 CCR 723-3-3650 through 4 CCR 723-3-3665).

2. Administrative Law Judge (ALJ) Ken F. Kirkpatrick issued a Recommended Decision Adopting Rules on April 20, 2009 (Decision No. C09-0413). Section XI of Decision No. R09-0413 addresses the development of the retail rate impact. Paragraphs 145 through 159 specifically speak to proposed changes in the retail rate impact calculation concerning the “time fence” for new eligible energy resources and the “lock down” of ongoing annual net incremental costs of these resources.

3. The “time fence” represents the date after which an eligible energy resource is considered “new” for the purpose of developing the retail rate impact under Rule 3661. By Decision No. R09-0413, the ALJ defined the time fence as the date the Commission’s initial RES rules took effect, July 2, 2006.

4. The ALJ also adopted a modified Rule 3661(h) that provides investor owned utilities an option to seek Commission approval of “locked down” annual incremental costs of new eligible energy resources. This “lock down” would establish the exact level of net incremental costs that would count against the retail rate impact in future years.

5. By Decision No. C09-0464, the Commission stayed Decision No. R09-0413 on our own motion because of the press of business and to allow for a full review of the recommendations made by the ALJ and interested persons.

6. In Docket No. 08A-532E concerning its 2009 Renewable Energy Standard Compliance Plan, Public Service is seeking to “lock down” the annual ongoing incremental costs of its SunE Alamosa facility and of the on-site solar resources that the Company has acquired through December 31, 2008. Public Service and other parties in that proceeding have already provided in that docket substantial testimony and submitted Statements of Position (SOPs) concerning the proposed “lock down” of the annual net incremental costs of these resources.

7. Rule 1501(c) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1, allows for the Commission to take administrative notice of “documents in its files” so long as the documents at issue are specifically identified and are provided to all participants in the docket. Further, the participants in the docket must be given an opportunity to “controvert the fact to be so noticed.” The Commission, on our own motion, incorporates into the record of this proceeding the relevant sections of testimony, hearing transcripts, and SOPs concerning the

“time fence” and the “lock down” of net incremental costs from Docket No. 08A-532E. We take this action to help us complete our full review of Decision No. R09-0413 and of the rules recommended to be adopted. In addition, we will reopen the comment period in this rulemaking matter for the limited purpose of further developing the rulemaking record on the “time fence” and “lock down” issues.

8. Specifically, the Commission is taking administrative notice of:

- Excerpts of the Application, Exhibit 1 (Public Service’s 2009 RES Plan Volume 1), Exhibit 3 (Ahrens Direct Testimony), Exhibit 4 (Ahrens Rebuttal Testimony), Exhibit 13 (Walsh Direct Testimony), and Exhibit 15 (Shafer Answer Testimony);
- The entirety of Exhibit 26 (Brown Cross-Answer Testimony); Exhibit 37 (Camp diagram), Exhibit 38 (Response to Discovery Request No. OCC1-12); Exhibit 44 (“Staff Position on ‘Time Fence’ Issue”), Exhibit 48 (Illustration of gas price impact on RESA costs), and 49 (Ahrens diagram);
- Pages 1, 11 through 22, 36 through 40, 47 through 67, 89 through 99, 112 through 115, 127 through 129, 142 through 150 of the April 6, 2009 transcript, pages 1, 6 through 51, 74 through 92, 249 through 269 of the April 7, 2009 transcript, and pages 1, 17 through 21, 33 through 40, 126 through 172 of the April 8, 2009 transcript; and
- Excerpts of the SOPs filed by Public Service, Staff of the Commission, the Colorado Office of Consumer Counsel, and Interwest Energy Alliance, and the entirety of the SOP filed by Western Resource Advocates.

9. Attached as Exhibit A to the original copy of this decision are the above-described pages of the application, testimony, transcripts, and SOPs concerning the “time fence” and “lock down” issues of which we are taking administrative notice. Other mailed copies of this decision do not include Exhibit A due to the large amount of material that would need to be reproduced;

however, a full electronic copy of Exhibit A shall be made available for download from the Commission's website at [www.dora.state.co.us/puc/DocketsDecisions/decisions/2009/C09-0557A\\_09R-424E.pdf](http://www.dora.state.co.us/puc/DocketsDecisions/decisions/2009/C09-0557A_09R-424E.pdf).<sup>1</sup>

10. Interested persons are encouraged to review the material in Exhibit A for completeness. In the event that information in the record of Docket No. 08A-532E relevant to the "time fence" and "lock down" issues is missing from Exhibit A, interested persons are encouraged to submit such information with the Commission in this proceeding no later than June 15, 2009.

11. In light of the material of which the Commission has taken administrative notice, we find that an additional hearing before us *en banc* is warranted. Interested persons may submit written comments on the "time fence" and the "lock down" of net incremental costs, and present these orally at the additional hearing unless the Commission deems oral presentation unnecessary. The Commission encourages interested persons to submit written comments on the "time fence" and "lock down" issues no later than July 6, 2009. The hearing shall take place the morning of July 16, 2009.

12. The Commission recognizes that exceptions to Decision No. R09-0413 and responses to these exceptions have been filed by interested persons. The hearing to be held on July 16, 2009 is not intended to address such exceptions or any other comments pertaining to the RES rules other than those relating to the "time fence" and "lock down" issues.

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<sup>1</sup> Because of the large size of Exhibit A, it is also provided on the Commission website in parts: part 1 through 4 at:

[www.dora.state.co.us/puc/DocketsDecisions/decisions/2009/C09-0557A1\\_09R-424E.pdf](http://www.dora.state.co.us/puc/DocketsDecisions/decisions/2009/C09-0557A1_09R-424E.pdf);  
[www.dora.state.co.us/puc/DocketsDecisions/decisions/2009/C09-0557A2\\_09R-424E.pdf](http://www.dora.state.co.us/puc/DocketsDecisions/decisions/2009/C09-0557A2_09R-424E.pdf);  
[www.dora.state.co.us/puc/DocketsDecisions/decisions/2009/C09-0557A3\\_09R-424E.pdf](http://www.dora.state.co.us/puc/DocketsDecisions/decisions/2009/C09-0557A3_09R-424E.pdf); and  
[www.dora.state.co.us/puc/DocketsDecisions/decisions/2009/C09-0557A4\\_09R-424E.pdf](http://www.dora.state.co.us/puc/DocketsDecisions/decisions/2009/C09-0557A4_09R-424E.pdf).

**II. ORDER**

**A. The Commission Orders That:**

1. Administrative notice is taken of the documents described above and attached hereto as Exhibit A.

2. Rather than serving a voluminous Exhibit A on all interest persons, interested persons may obtain a complete copy of Exhibit A from the following internet address: [www.dora.state.co.us/puc/DocketsDecisions/decisions/2009/C09-0557A\\_09R-424E.pdf](http://www.dora.state.co.us/puc/DocketsDecisions/decisions/2009/C09-0557A_09R-424E.pdf).

3. Interested persons who find information from the record Docket No. 08A-532E that is relevant to the “time fence” and “lock down” issues but that is missing in Exhibit A of this decision are encouraged to submit such information with the Commission in this proceeding no later than June 15, 2009 in order to complete the material of which we have taken administrative notice.

4. A supplemental hearing to address the material related to the “time fence” and “lock down” issues from Docket No. 08A-532E shall be held before the full Commission as follows:

DATE: July 16, 2009  
TIME: 9:00 am  
PLACE: Commission Hearing Room  
Suite 250  
1560 Broadway  
Denver, Colorado

5. The Commission may set additional hearings, if necessary.

6. At the time set for the additional hearing in this matter, interested persons may submit written comments and may present these orally unless the Commission deems oral comments unnecessary. Interested persons may submit written comments before the additional hearing date established above. The Commission prefers that such pre-filed comments

addressing the “time fence” and “lock down” issues be submitted in both paper and, when possible, electronic format no later than July 6, 2009.

7. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
May 20, 2009.**

(SEAL)



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

RONALD J. BINZ

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JAMES K. TARPEY

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Commissioners

COMMISSIONER MATT BAKER  
ABSENT.