

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-674E

IN THE MATTER OF PROPOSED AMENDMENTS TO THE RULES OF THE COLORADO PUBLIC UTILITIES COMMISSION PURSUANT TO (1) THE DEVELOPMENT OF SOLAR GARDENS AS REQUIRED BY HB 10-1342, (2) COMMUNITY-BASED PROJECTS THAT QUALIFY FOR SPECIAL TREATMENT UNDER HB 10-1418, AND (3) USE OF ELIGIBLE ENERGY RESOURCES TO OFFSET ELECTRICAL ENERGY CONSUMPTION OF THE DIVISION OF PARKS AND OUTDOOR RECREATION AS PER HB 10-1349.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: September 30, 2010

Adopted Date: September 29, 2010

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) hereby issues a Notice of Proposed Rulemaking (NOPR) regarding the Renewable Energy Standard (RES) Rules¹ and modifications thereto as required by (1) House Bill (HB) 10-1342 (Community Solar Gardens (CSGs)); (2) HB 10-1349 (establishing the “Re-Energize Colorado” program in the Division of Parks and Outdoor Recreation in the Department of Natural Resources); and (3) HB 10-1418, which pertains to community-based projects that connect to transmission or distribution facilities owned by cooperative electric associations or municipal utilities.

2. The Commission recently amended the RES Rules to bring them into compliance with the new statutory provisions enacted by HB 10-1001. *See* Decision No. C10-0592, issued

¹ 4 *Code of Colorado Regulations* (CCR) 723-3-3650, *et seq.*

on August 5, 2010 in Docket No. 10R-243E. The General Assembly also enacted the three bills mentioned above during the 2010 legislative session. These bills (HB 10-1342, HB 10-1349, and HB 10-1418) require further amendments to the RES rules. The Commission declined to issue a supplemental NOPR in Docket No. 10R-243E and stated it will develop the rules necessitated by the passage of HB 10-1342 and other new statutes in a separate rulemaking docket. *See* Decision No. C10-0676, mailed July 8, 2010. This NOPR will initiate the rulemaking anticipated in that decision.

3. House Bills 1342, 1349, and 1418 pertain to three separate aspects of the RES. HB 10-1342, codified at § 40-2-127, C.R.S., authorizes the creation of community solar gardens and requires the Commission to commence a rulemaking to implement that statute by October 1, 2010. HB 10-1349, codified at § 24-33-115, C.R.S., establishes Re-Energize Colorado program, the goal of which is to utilize eligible energy resources to offset electrical energy consumption of the Division of Parks and Outdoor Recreation, Department of Natural Resources. It further states that the projects envisioned under the Re-Energize Colorado program would meet the definition of “Section 123 Resources” of § 40-2-123(1)(c), C.R.S. HB 10-1418, codified at § 40-2-124, C.R.S., modifies the definition of community based projects and authorizes a special treatment through a Renewable Energy Credit (REC) multiplier for projects that connect to transmission or distribution facilities owned by a cooperative electric association or municipal utility. Neither HB 10-1349 nor HB 10-1418 stipulate a date by which rulemaking to implement their provisions must commence.

4. We note that several of the provisions contained in these three bills relate to topics that are new to the Commission. For example, HB 10-1342 requires the Commission to adopt the rules, as necessary, that address minimal financial requirements, the transfer of shares, ownership

structures, sharing of information for retail billing cycles, meter aggregation, as well as system interconnections. For its part, HB 10-1418 will require project owners or developers to report power purchase agreement and the commencement of commercial operations to the Commission. Because the rules necessary to implement HBs 1342, 1349, and 1418 will pertain to topic areas that are new to the Commission, the Commission is taking additional time to develop proposed rules. Following the publication of the proposed rules, the Commission will establish a public comment period and hearing as described below. It is anticipated that, with respect to each of the statutory changes, new rules or modifications to existing rules may be proposed in several areas as described in the following paragraphs.

5. With respect to HB 10-1342, new proposed rules will address the following issues and/or accomplish the following objectives:

- a) Add the definition of a CSG to the RES rules and include CSGs in the definition of retail distributed generation;
- b) Establish eligibility to become a subscriber in a CSG as well as rules governing how CSG subscriptions will be treated vis-a-vis the Commission Rules pertaining to net metering;
- c) Establish minimum capitalization requirements for CSGs and the shares in a CSG that a subscriber may own; and
- d) Require QRUs (Qualifying Retail Utilities) to include proposals for acquiring eligible energy from CSGs in their electric resource plans.

6. With respect to HB 10-1349, new proposed rules will address the following issues and/or accomplish the following objectives:

- a) Enable QRUs to waive existing limits on net metering;
- b) Enable QRUs to waive existing limits on generating capacity or customer service entrance capacity if the customer pays for any necessary upgrades;

- c) Provide the QRUs with the right of first refusal to purchase, and the right not to purchase, electricity from customer-sited renewable energy generating equipment that is sized to supply more than 120 percent of the average annual consumption by the customer; and
- d) Add Re-Energize Colorado projects to the Commission Rules that define Section 123 resources.

7. With respect to HB 10-1418, new proposed rules will address the following issues and/or accomplish the following objectives:

- a) Modify the definition of a community based project to include the projects owned by an organization that is controlled by individual residents of a community;
- b) Provide a REC multiplier of 2 for community based projects that connect to the transmission or distribution facilities owned by a cooperative electric association or municipal utility;
- c) Stipulate that, for utilities other than QRUs, the REC multiplier may apply only to the first 100 MW of nameplate capacity statewide;
- d) Establish a procedure by which project owners or developers would report to the Commission that they have executed a power purchase agreement and/or have achieved commercial operation, and for the Commission to notify them whether they are within the first 100MW of capacity eligible for the multiplier;
- e) Provide for managing and incentivizing community-based projects, as needed.

8. The Commission will refer this matter to an Administrative Law Judge (ALJ) to develop proposed rules and then to conduct a hearing on the proposed rules and related issues at the below-stated time and place. The Commission invites comments from interested persons on the scope of the rules necessary to implement HBs 1342, 1349, and 1418 and/or draft proposed rules on or before October 22, 2010. The Commission will also take administrative notice of the

comments filed in Docket No. 10R-243E that pertain to the implementation of HB 1342.²

9. Following the development of proposed rules, interested persons will also be able to submit written comments on these rules, including data, views, or arguments, and to present these orally at hearing unless the ALJ deems oral presentations unnecessary. The Commission prefers that interested persons submitting comments do so utilizing the Commission's electronic filing system. The Commission will post electronically submitted comments to its website and will consider all submissions, whether oral or written.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the October edition of *The Colorado Register*.

2. The Commission invites comments from interested persons on the scope of the rules necessary to implement House Bills (HBs) 1342, 1349, and 1418 and/or draft proposed rules on or before October 22, 2010.

3. The hearing on the proposed rules and related matters shall be held before an Administrative Law Judge (ALJ) as follows:

DATE: January 13, 2011

TIME: 9:00 a.m.

² These comments are: (1) comments filed by the Colorado Office of Consumer Counsel (OCC) on May 25, 2010; (2) comments filed by Mesa State College on May 25, 2010; (3) comments filed by the City of Boulder on May 25, 2010; (4) comments filed by the Solar Alliance on May 25, 2010; comments filed by Black Hills/Colorado Electric Utility Company, LP, on June 1, 2010; (5) comments filed by Interstate Renewable Energy Council (IREC) on June 1, 2010; (6) comments filed by the Colorado Solar Energy Industries Association (CoSEIA) on June 1, 2010; (7) comments filed by Public Service Company of Colorado (Public Service) on June 1, 2010; (8) comments filed by New Energy Development on June 17, 2010; (9) comments filed by PrairieStar Development Project on June 17, 2010; (10) reply comments filed by the Solar Alliance on June 25, 2010; (11) reply comments filed by Public Service on June 25, 2010; (12) reply comments filed by IREC on June 25, 2010; and (13) reply comments filed by the OCC on June 25, 2010.

PLACE: Commission Hearing Room
Suite 250
1560 Broadway
Denver, Colorado

4. The ALJ may set additional hearings, if necessary.

5. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary.

Interested persons may file written comments in this matter before hearing.

6. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 29, 2010.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners