(Decision No. C82-1438)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE RULES OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO REGULATING RATES AND SERVICE OF COGENERATORS AND SMALL POWER PRODUCERS.	CASE NO. 5970 ORDER OF THE COMMISSION ON REHEARING, REARGUMENT OR RECONSIDERATION OF COMMISSION DECISION NO. C82-1175

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September 14, 1982

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STATEMENT AND FINDINGS

BY THE COMMISSION:

The Commission issued Decision No. C80-1846 in Case No. 5970 on September 23, 1980 (hereinafter Decision No. C80-1846), which initiated Colorado rulemaking proceedings with respect to cogeneration and small power production. Proposed small power production and cogeneration rules were attached to Decision No. C80-1846 and marked as "Appendix A." Numerous parties were granted leave to intervene in Case No. 5970. Hearings were held on November 24, 1980 in regard to the rules proposed by Decision No. C80-1846.

On May 6, 1981, Hearings Examiner Michael R. Homyak issued Recommended Decision No. R81-801, which basically established rules; set forth a methodology for determining avoided costs; and established avoided cost purchase rates for each Colorado jurisdictional utility.

Numerous exceptions, or their equivalent, were filed to Recommended Decision No. R81-801. The Commission issued Decision No. C82-73 on January 12, 1982, and thereby entered its own decision in the matter without regard to Recommended Decision No. R81-801. Decision No. C82-73 basically:

(1) Granted and denied exceptions in part;

(2) Modified the recommended small power production and cogeneration rules, and as modified, adopted such;

(3) Rejected the recommendation of specific methodology for determining avoided costs, and adopted a general methodology for avoided costs;

(4) Rejected the recommended adoption of utility specific avoided cost rates for Colorado jurisdictional utilities;

(5) Required Colorado jurisdictional utilities to establish standardized avoided cost rates for small power production and cogeneration whose size, in terms of capacity, is 100 kw or less; and

(6) Required qualifying facilities over 100 kw and utilities to negotiate contracts for the sale and purchase of electric energy and capacity. (Such sale rates to be based on utility avoided costs.)

Decision No. C82-73, inter alia, adopted modified rules and required each Colorado jurisdictional utility to file tariffs setting forth standard avoided costs for qualifying facilities of 100 kw or less, together with the methodology utilized to determine the same. Decision No. C82-73 was ordered to become effective on February 1, 1982, at which time any party was allowed to file a petition requesting rehearing, reconsideration or reargument thereof.

The Commission issued Decision No. C82-138 on January 26, 1982, wherein an extension of time to and including March 1, 1982 was granted to all parties to file applications for rehearing, reconsideration or reargument of Commission Decision No. C82-73. Therein, the Commission also ordered that Decision No. C82-73 be stayed pending further order of the Commission.

The Commission issued Decision No. C82-436 on March 23, 1982. Therein the Commission ordered the stay of Decision No. C82-73, as ordered by Decision No. C82-138, be continued pending further order of the Commission. The grounds for the continuance of the stay of Decision No. C82-73 were stated by the Commission in Decision No. C82-436 as the pending litigation in the United States Court of Appeals in American Electric Power Service, et al. vs. Federal Energy Regulatory Commission, No. 80-1789, wherein the payment of avoided cost and interconnection rules of the FERC had been vacated.

In Decision No. C82-1175, the Commission stated that recent events persuaded the Commission to vacate its prior stay of Decision No. C82-73 and that it should proceed to enter an order on the pending petitions for rehearing, reargument or reconsideration of Decision No. C82-73. The Commission issued Decision No. C82-1175 on July 27, 1982, and thereby basically modified the small power production and cogeneration rules, and granted the pending petitions for rehearing, reargument or reconsideration of Commission Decision No. C82-73 in part and denied such in part.

Ordering paragraph 10 of Commission Decision No. C82-1175 provided that said decision and order would become effective twenty-one (21) days from the day and date of issuance thereof, which was July 27, 1982, and that any party to the proceeding could file pleadings requesting rehearing, reconsideration or reargument of Decision No. C82-1175 prior to such effective date. On August 10, 1982, the Commission issued Decision No. C82-1245 which granted reconsideration of Commission Decision No. C82-1175. Therein, the Commission noted that the period of time for filing petitions for rehearing, reargument or reconsideration of Commission Decision No. C82-1175 was not extended by Commission Decision No. C82-1245. On August 11, 1982, the Commission issued Decision No. C82-1264, which extended the time period for filing of petitions seeking rehearing, reargument or reconsideration of Commission Decision No. C82-1175 to on or before August 31, 1982. On August 11, 1982, Mountain View Electric Association filed a motion requesting an extension of time to file application for rehearing, reargument or reconsideration to Decision No. C82-1175 to September 16, 1982. The Commission issued Decision No. C82-1276 on August 17, 1982, and therein denied the motion of Mountain View Electric Association, Inc., for extension of time.

Petitions for rehearing, reargument or reconsideration of Commission Decision No. C82-1175 were filed by the City of Aspen and Board of County Commissioners of the County of Pitkin on August 5, 1982; Colorado-Ute Electric Association, Inc., on August 12, 1982; The Colorado Members of Tri-State Generation and Transmission Association, Inc., on August 30, 1982; and the Colorado Association of Municipal Utilities on August 31, 1982.

After review of the aforementioned applications for rehearing, reconsideration or reargument of Commission Decision No. C82-1175, the Commission will enter findings of fact and conclusions thereon, and an order modifying the proposed small power production and cogeneration rules, attached to Commission Decision No. C82-1175, and marked as Exhibit A. Thereby, the Commission will grant the above-mentioned petitions for rehearing, reargument or reconsideration in part and deny such in part.

FINDINGS OF FACT AND CONCLUSIONS THEREON

BY THE COMMISSION:

1. The City of Aspen and Board of County Commissioners of the County of Pitkin (Aspen) filed application for rehearing, reargument or reconsideration to Decision No. C82-1175 on August 5, 1982. By this application, Aspen contends: The Commission may have deleted from Rule 2.2031 ownership test, a provision which it intended to include in Decision No. C82-73 issued on January 12, 1982. In Decision No. C82-73, the Commission indicated its approval of the contention of Aspen with regard to the "ownership test" for defining a small power production facility. The Commission stated in Decision No. C82-73, at pages 13 and 14:

> "Section 201 of PURPA may include municipalities within the term 'electric utility' by defining the latter as 'a person or state agency which sells electric energy; . . .'. Moreover, a municipality which owns its own utility system may be presumed to be a person primarily engaged in generation or sale of electric power although in fact this may not be the case. Where a municipality generates and sells, or purchases wholesale electric power and then resells electricity on a limited basis as merely one of many services to its citizens, it might be argued that the municipality is an 'electric utility', however, it does not follow that a municipality as above-described is primarily engaged in the sale of electricity. Thus, we agree with Aspen that it is appropriate to narrow the scope of the ownership test so as to include in that provision only those utilities primarily engaged in the generation or sale of electricity. Accordingly, we shall deviate from the FERC rule by changing the first sentence in the ownership test to read:" (Emphasis added.)

The Commission then, in Decision No. C82-73, recited that it would add language to Rule 2.2030 as follows:

> "One or more electric utilities, any one of which is primarily engaged in the generation or sale of electric power, . . ."

2. The Commission states and finds that the contention of Aspen that the above quoted language was inadvertently deleted from Rule 2.2031, Exhibit A to Decision No. C82-1175 is correct. For the reasons expressed in Decision No. C82-73, the Commission will modify Rule 2.2031 and include the above quoted language therein, so as to narrow the scope of the ownership test so as to include in that provision only those utilities primarily engaged in the generation or sale of electricity.

3. Colorado-Ute Electric Association, Inc. filed application for rehearing, reargument or reconsideration of Decision No. C82-1175 on August 12, 1982. By this application for rehearing, Colorado-Ute con-

tends: The Commission should order the proposed Colorado rules be vacated, or, alternatively, stayed pending final U.S. Supreme Court resolution of the American Electric Power Service Corp. v. Federal Energy Regulatory Commission case, Docket No. 80-1789. The Commission finds that this issue has been fully considered by the Commission in Decision No. C82-1175. For the reasons expressed in Decision No. C82-1175, the Commission will again deny the above contention of Colorado-Ute upon rehearing, reargument or reconsideration of Commission Decision No. C82-1175.

4. The Colorado Members of Tri-State Generation and Transmission Association (Tri-State) filed application for rehearing, reargument or reconsideration of Commission Decision No. C82-1175 on August 30, 1982. The Colorado Members of Tri-State therein contend:

> "A. The prior decisions of the Examiner and the Commission in Case No. 5970 are unlawful and unconstitutional in the following respects:
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> 1) State of Mississippi, et al. v. Federal Energy Regulatory Commission, et al., Civil Action No. J79-0212(C), declared a portion of PURPA unconstitutional. Although the United States Supreme Court has reversed such decision, a petition for rehearing is pending before the Supreme Court. Consequently, the referenced decision of the United States Supreme Court is not yet final.
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> 2) Section 10 of Article 1 and Section 1 of Article 14, of the United States Constitution; and Section 3, Article II; Section 11, Article II; Section 14, Article II; Section 15, Article II; Section 25, Article II; and Section 25, Article V of the Constitution of the State of Colorado are applicable herein and render prior Commission decisions in regard to PURPA unconstitutional and void.
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> 3) CRS 1973, 40-3-102; CRS 1973, 40-3-105(2); CRS 1973, 40-3-106(1); and Mountain States Legal Foundation vs. PUC, et al. 197 Colo. 56, 590 P.2d 495 (1979); Denver Welfare Rights Organization v. PUC, et al., 190 Colo. 329, 547 P.2d 239 (1976); and Colorado Municipal League vs. PUC, et al., 197 Colo. 106, 591 P.2d 577 are applicable herein and render all of the Commission's proceedings pursuant to PURPA unlawful.
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> 4) The Decision of the Circuit Court of Appeals for the District of Columbia in American Electric Power Service Corporation, et al. v. Federal Energy Regulatory Commission, No. 80-1789 renders those portions of the Commission's rules purporting to establish payment of full avoided cost and interconnection of small power production and

cogeneration with utilities void. Although a stay of this decision has been entered, should the FERC rules be ultimately modified, the Commission's proceedings may have to be modified or stayed pending establishment of final FERC rules. The Commission should stay any further proceedings herein until this litigation is finally resolved.

B. Rule 3.3042 of the rules promulgated with Commission Decision No. C82-1175 as Attachment A, refers to Rules 3.3031 and 3.302. Such references are incorrect and should be modified.

C. The Colorado Members of Tri-State are contractually obligated to purchase all of their power and energy from their wholesale generation and transmission cooperative. The attempt by the Commission herein to require such members to purchase power from qualifying facility conflicts with the above obligation. The previous determination of this Commission rejecting this contention is incorrect. Also, proposed Rule 3.400, et seq., constitutes an unlawful attempt by the Commission to regulate the rates of Tri-State, over which it has no jurisdiction. The attempt by the Commission to force purchase rates on Tri-State through its Colorado members is unlawful.

D. Rule 4.403 of the rules promulgated with Commission Decision No. C82-1175 requires utilities to specify the local and government codes with which utilities <u>believe</u> the qualifying facility should comply. Such is an improper burden and may apply civil liability to utilities. The Commission should add a provision to Rule 4.403 generally as follows:

'This specification by the utility shall not establish civil liability on the utility for any purpose hereunder.'

E. Rule 4.14022, in the second sentence provides that 'the device which isolates the utility's generation shall be lockable only by the qualifying facility in the open position.'

Tri-State members have no generation, thus the word supply should be added to the above rule for such non-generating members.

F. Rule 4.1501, promulgated with Commission Decision No. C82-1175, states:

1) 'The electric utility shall supply, install, and maintain meters at cost, to measure the total generation of each qualifying facility independent from load, <u>for purposes of billing</u>' (emphasis added).

2) The above rule is unclear and should be reconsidered by the Commission to delete or modify the underscored words 'for purposes of billing'.

G. The ordering portion of Commission Decision No. C82-1175 is not clear as to when the rules will become effective, and should be clarified by the Commission.

H. Certain minor typographical corrections should be made in the following rules: 2.301, 2.302, and 2.303 in duplicating definitions contained in Rules 1.222, 1.223 and 1.224. Rule 2.506, the reference to 500 kv should be changed to 500 kw. Rules 2.5081 and 2.5082, the word alternation should be changed to alteration. Rule 3.701, the last two clauses should be changed to read: "but instead generated itself or purchased at wholesale an equivalent amount of energy or capacity." Rule 3.801, the last two words should be changed from characteristic to characteristics. Rule 3.802, the references to 3.8041, 3.8042, 3.8043, and 3.8044 should be changed to 3.8021, 3.8022, 3.8023 and 3.8024. Rule 3.803, in the third line, the word effected should be changed to affected. Rule 4.602, in the seventh line, the word effected should be changed to affected. Rule 4.1301, in the fourth and fifth lines, the word communicated should be changed to commutated.

5. The Commission finds and concludes that the following contentions of Tri-State should be granted: Rule 3.3042 attached to Decision No. C82-1175 contained incorrect references to Rule 3.3031 and 3.302. Rule 3.3042 to Decision No. C82-1175, which is now Rule 3.3032 should be modified to correctly refer to new Rule 3.3031 and new Rule 3.302. Rule 4.14022 will be modified so as to consider those utilities who do not provide their own generation. Rule 4.1501 will be modified to coincide with Colorado Rules 3.401 and 3.402, and FERC Rules 292.303(a) and (b). FERC Rules 292.303(a) and (b) state:

> "(a) Obligation to purchase from qualifying facilities. Each electric utility shall purchase, in accordance with §292.304, any energy and capacity which is made available from a qualifying facility:
>
> (1) directly to the electric utility; or
>
> (2) indirectly to the electric utility in accordance with paragraph (d) of this section.
>
> (b) Obligation to sell to qualifying facilities. Each electric utility shall sell to any qualifying facility, in accordance with §292.305, any energy and capacity requested by the qualifying facility." (Emphasis added.)

Colorado Rules 3.401 and 3.402 were modeled on above FERC Rules 292.303(a) and (b), and state:

> "3.401 Purchases from qualifying facilities. Each electric utility shall purchase, in accordance with Rules 3.500, 3.600 and 3.700, any energy and capacity which is made available directly or indirectly in accordance with Rule 3.404, from a qualifying facility to such utility.

> 3.402 Sales to qualifying facilities. Each electric utility shall sell to any qualifying facility, in accordance with Rule 3.800, any energy and capacity requested by the qualifying facility." (Emphasis added.)

From the above and foregoing, it is clear that FERC Rules 292.303(a) and (b) mandate that small power producers and cogenerators may sell all energy and capacity generated by them to the utility and may purchase from the utility whatever energy and capacity they require to meet their own load; or they may meet their own load with their own power and may sell any excess to the utility this determination is at the discretion of the small power producers or cogenerators. Therefore, no small power producer or cogenerator is limited by either the Colorado or FERC rules to selling only its excess energy and capacity to utilities, and net billing is therefore authorized by the Colorado and FERC rules. To the above extent, the request of Tri-State to modify Rule 4.1501 will be granted by the order to follow. The Commission will also clarify, by the order to follow, that the tariffs to be filed by Colorado utilities shall be filed within thirty days after publication of final Colorado small power production and cogeneration rules by the Colorado Secretary of State. However, notification of the publication date by the Commission to parties of record will not be provided. By publishing the Colorado small power production and cogeneration rules with the Secretary of State, the Commission has lawfully provided notice of the publication of the rules to all parties.

6. In respect to the miscellaneous contentions raised by Tri-State, the minor corrections suggested are well taken and will be made to the applicable rules. Accordingly, the definitions contained in Rules 1.222, 1.223 and 1.224 will be deleted as duplicative of the definition contained in Rules 2.301, 2.302 and 2.303. The other typographical and minor corrections suggested by Tri-State and as enumerated above will be made to the within rules.

7. The Commission further states and finds that the other contentions of Tri-State upon rehearing, reconsideration or reargument of Commission Decision No. C82-1175, and the requested modifications and stay of such rules, are not well taken and should be denied.

8. The Colorado Association of Municipal Utilities filed application for rehearing, reargument, or reconsideration of Commission Decision No. C82-1175 on August 31, 1982. CAMU contends that Decision No. C82-1175 requires the payment of full avoided long run marginal costs, but the FERC rules and PURPA only mention the payment of avoided cost. CAMU states that all references to long run marginal costs should be deleted from the Commission rules. This contention will be rejected and the Commission will continue to require the payment of full avoided costs by utilities to small power producers and cogenerators, pending ultimate determination of the American Electric Power case. As authority for the Commission to define avoided costs, section-by-section analysis of FERC rules, Federal Register, Vol. 45, No. 38, Monday, February 25, 1980, at page 22, in analyzing section 292.304(c) Factors Affecting Rates for Purchases, states:

> "In addition to that citation, the Commission notes that the conference report states that:
>
> > 'In interpreting the term "incremental costs of alternative energy", the conferees expect that the Commission and the states may look beyond the costs of alternative sources which are instantaniously available to the utility."

Further, at page 23 of the section-by-section analysis of FERC rule 292.304(c), it is stated:

> "The Commission also continues to believe, as stated in the proposed rule, that this rule-making represents an effort to evolve concepts in a newly developing area within certain statutory constraints. The Commission recognizes that the translation of the principal of avoided capacity costs from theory into practice is an extremely difficult exercise, and it is one which, by definition, is based on estimation and forecasting of future occurrences. Accordingly, the Commission supports the recommendation made in the staff discussion paper that it should leave to the states and non-regulated utilities 'flexibility for experimentation and accommodation of special circumstances' with regard to implementation of rates for purchases. Therefore, to the extent that a method of calculating the value of capacity from qualifying facilities reasonably accounts for the utility's avoided costs, and does not fail to provide the required encouragement of cogeneration and small power production, it will be considered as satisfactorily implementing the Commission's rules." (Emphasis added.)

In previous rulemaking proceedings herein, the Commission has recognized its obligation pursuant to PURPA to encourage and foster small power production and cogeneration. Accordingly, the Commission will adhere to its prior method of determining avoided costs and will reject the above contention of CAMU. CAMU further contends that the proposed rules should be modified so as to clearly relieve utilities of any civil liability for requirements imposed under the rules. The Commission states and finds that it would be improvident for the Commission to attempt to resolve all questions of civil liability between the parties hereto by complete civil liability waiver as requested by CAMU. Accordingly, this contention of CAMU will also be rejected.

9. After review of Rule 3.300, the Commission is of the view that this rule should be modified in order to simplify the filing requirements contained therein. Simply stated, the modified rule will now require all utilities with total sales of 500 million kwh or more, during the applicable time period, to file the required data on November 1, 1982 and May 31, 1983 and every two years thereafter. All utilities with less than 500 million kwh of sales during the stated time period shall provide the data on request. To accomplish this modification, the rules accompanying Decision No. C82-1175 have been modified as follows: The first clause of Rule 3.301 "Except as provided in Rule 3.302," has been deleted. Rule 3.302 Data to be filed and maintained by other utilities, has been entirely deleted, and appropriate modifications and/or renumbering has been made to Rules 3.303 (now Rule 3.302), 3.3031 (now Rule 3.3021), 3.3032 (now Rule 3.3022), 3.3033 (now Rule 3.3023), 3.3034 (now Rule 3.3024) and 3.3035 (now Rule 3.3025). Further renumbering and/or modifications to accomplish the above have been made to Rules 3.304 (now 3.303), 3.3041 (now 3.3031), 3.3042 (now 3.3032), 3.3043 (now 3.3033) and 3.3044 (now 3.3034).

An appropriate Order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The petitions for rehearing, reargument or reconsideration of Commission Decision No. C82-1175, filed by the City of Aspen and Board of County Commissioners of the County of Pitkin; Colorado-Ute Electric

Association, Inc.; the Colorado Members of Tri-State Generation and Transmission Association, Inc.; and Colorado Association of Municipal Utilities are granted to the extent as consistent with the above and foregoing findings of fact and conclusions thereon, and ordering paragraphs herein, and otherwise are denied.

2. Attachment 1, attached to this decision and order, Colorado Public Utilities Commission Rules Implementing Sections 201 and 210 of PURPA, Small Power Production and Cogeneration Facilities, be, and hereby is, incorporated by reference herein as if set forth verbatim.

3. Attachment 1, Colorado Public Utilities Commission Rules Implementing Sections 201 and 210 of PURPA, Small Power Production and Cogeneration Facilities, be, and hereby is, adopted as the final Colorado Small Power Production and Cogeneration Rules.

4. Each Colorado jurisdictional utility, as set forth in this ordering paragraph, shall file tariffs which shall set forth standard avoided cost rates for the purchase of energy and capacity from qualifying facilities of 100 kw or less, together with the avoided cost methodology utilized by said utility to determine said rates. Each Colorado jurisdictional utility, as set forth in this ordering paragraph, shall establish standard avoided cost rates for qualifying facilities of more than 100 kw by good faith negotiations with qualifying facilities, said negotiations to result in contracts therefor between said parties. The tariffs required by this ordering paragraph shall be filed within thirty (30) days of the publication of the rules set forth in Attachment 1, in the Rules Register of the Secretary of State of the State of Colorado, and shall set forth an effective date which shall be no earlier than thirty (30) days, nor later than sixty (60) days from the date of such filing. Said tariffs shall be subject to the applicable provisions of CRS 1973, 40-6-111, as amended.

5. The Colorado jurisdictional utilities are:

A. Municipal Utilities

1. Colorado Springs, City of
2. Estes Park, Town of
3. Fort Morgan, City of
4. Fountain, Town of
5. Glenwood Springs, City of
6. Granada, Town of
7. Gunnison, City of
8. Holly, Town of
9. La Junta, City of
10. Lamar, City of
11. Las Animas Light and Power
12. Longmont, City of
13. Loveland, City of

B. Rural Electric Associations

1. Carbon Power and Light
2. Highline Electric Association
3. K. C. Electric Association, Inc.
4. Morgan County Rural Electric Association
5. Mountain Parks Electric, Inc.
6. Mountain View Electric Association, Inc.
7. Poudre Valley Rural Electric Association, Inc.
8. Rural Electric Company
9. Union Rural Electric Association, Inc.
10. Y-W Electric Association, Inc.
11. Colorado-Ute Electric Association, Inc.
12. Delta-Montrose Electric Association
13. Empire Electric Association, Inc.
14. Grand Valley Rural Power Lines, Inc.
15. Gunnison County Electric Association, Inc.
16. Holy Cross Electric Association, Inc.
17. Intermountain Rural Electric Association
18. La Plata Electric Association, Inc.
19. Moon Lake Electric Association, Inc.
20. San Isabel Electric Association, Inc.
21. San Luis Valley Rural Electric Cooperative, Inc.
22. San Miguel Power Association, Inc.
23. Sangre De Cristo Electric Association, Inc.
24. Southeast Colorado Power Association
25. Springer Electric Cooperative, Inc.
26. Tri-County Electric Cooperative, Inc.
27. Wheatland Electric Cooperative, Inc.
28. White River Electric Association, Inc.
29. Yampa Valley Electric Association, Inc.

C. Investor-Owned Utilities

1. Central Telephone and Utilities Corporation (Southern Colorado Power Company)
2. Home Light and Power Company

3. Public Service Company of Colorado

5. With respect to the contracts established between Colorado jurisdictional utilities and small power producers and cogenerators as ordered by paragraph 4, above, each Colorado jurisdictional utility shall also set forth in each contract the avoided cost methodology utilized by said utility to determine the long run avoided cost purchase rates set forth therein. Each Colorado jurisdictional utility shall file each contract with the Commission no later than thirty (30) days prior to the proposed effective date thereof. Each contract may be suspended and hearing set thereon.

6. Attachment 1, Public Utilities Commission Rules Implementing Sections 201 and 210, PURPA, Small Power Production and Cogeneration Facilities, shall be submitted by the Executive Secretary of the Public Utilities Commission to the Legislative Drafting Office of the Colorado General Assembly in the form and manner prescribed by the Committee on Legal Services, for review and opinion of the staff of the Committee on Legal Services, to determine whether the Colorado Final Small Power Production and Cogeneration Rules (Attachment 1) are within the rulemaking authority of the Public Utilities Commission and for later review by the Committee on Legal Services for its opinion as to whether said rules, adopted herein, conforms with Section 24-4-103(8)(a), CRS 1973.

7. An opinion of the Attorney General of the State of Colorado will be sought regarding the constitutionality and legality of the proposed rules as set forth in Attachment 1 herein.

8. The Executive Secretary of the Commission shall file with the office of the Secretary of State of the State of Colorado, for publication in the Colorado Register, a copy of the aforementioned rules and, when obtained, a copy of the opinion of the Attorney General of the State of Colorado, regarding the constitutionality and legality of the same.

9. Attachment 1, Public Utilities Commission Rules Implementing Section 201 and 210, PURPA, Small Power Production and Cogeneration Facilities, as adopted pursuant to ordering paragraph 1, above, shall become effective on the twentieth (20th) day after publication of the same in the Rules Register of the Secretary of State of the State of Colorado.

10. This decision and order shall become effective twenty-one (21) days from the day and date hereof, and each party herein, at its option, may file appropriate pleadings requesting rehearing, reargument or reconsideration of this decision prior to such effective date. The twenty (20) day time period provided for pursuant to 40-6-114(1) within which to file an application for rehearing, reargument, or reconsideration shall commence to run on the first day following the mailing or serving by the Commission of the decision herein.

DONE IN OPEN MEETING the 14th day of September, 1982.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Edythe S. Miller

Daniel E. Muse

Commissioners

0215M

Attachment 1
Decision No. C82-1438

COLORADO
PUBLIC UTILITIES COMMISSION RULES
IMPLEMENTING SECTIONS 201 AND 210, PURPA,
SMALL POWER PRODUCTION AND COGENERATION FACILITIES

1.000 Definitions.

1.100 General Statement.

The following definitions are generally the same as those adopted by the Federal Energy Regulatory Commission (hereinafter "FERC") in its regulations, 18 CFR Part 292. et. seq., ("FERC Rules") pursuant to Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (hereinafter "PURPA"). Such definitions relate to qualifying small power production and cogeneration facilities as established by PURPA and the FERC Rules. The definitions contained in these rules shall have the same meaning as they have under FERC Rules and PURPA unless further defined herein.

1.200 General Definitions.

1.201 "Biomass" means any organic material not derived from fossil fuels.

1.202 "Waste" means by-product materials other than biomass.

1.203 "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

1.204 "Sale" means the sale of electric energy or capacity or both by an electric utility to a qualifying facility.

1.205 "System emergency" means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

1.206 "Rate" means any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.

1.207 "Avoided costs" means the incremental or marginal costs to an electric utility of electric energy or capacity or both which, but for the purchase of such energy and/or capacity from qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.

1.208 "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly caused by the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, including the costs of installing equipment elsewhere on the utility's system necessitated by the interconnection, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.

1.209 "Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.

1.210 "Backup-power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.

1.211 "Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

1.212 "Maintenance power" means electric energy or capacity supplied by an electric utility to a qualifying facility during scheduled outages of the qualifying facility.

1.213 "Supplementary firing" means an energy input to the cogeneration facility used only in the thermal process of a topping-cycle cogeneration facility, or only in the electric generating process of a bottoming-cycle cogeneration facility.

1.214 "Useful power output" of a cogeneration facility means the electric or mechanical energy made available for use, exclusive of any such energy used in the power production process.

1.215 "Useful thermal energy output" of a topping-cycle cogeneration facility means the thermal energy made available for use in any industrial or commercial process, or used in any heating or cooling application.

1.216 "Total energy output" of a topping-cycle cogeneration facility is the sum of the useful power output and useful thermal energy output.

1.217 "Total energy input" means the total energy of all forms supplied from external sources other than supplementary firing to the facility.

1.218 "Natural gas" means either natural gas unmixed, or any mixture of natural gas and artificial gas.

1.219 "Oil" means crude oil, residual fuel oil, natural gas liquids, or any refined petroleum products; and

1.220 Energy input in the case of energy in the form of natural gas or oil is to be measured by the lower heating value of the natural gas or oil.

1.221 "Utility geothermal small power production facility" means a small power production facility which uses geothermal energy as the primary energy resource and of which more than 50% is owned either:

(1) By an electric utility, electric utility holding company, or any combination thereof; or

(2) By any company 50% or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote by an electric utility, electric utility holding company, or any combination thereof.

1.222 "Small power production facility" means equipment used to produce electrical energy and meets the requirements and criteria contained in these rules for small power production facilities.

2.000 Qualifying Facility.

2.100 General Definition.

"Qualifying facility" is any small power production facility or cogeneration facility which is a qualifying facility under Subpart B of 18 CFR 292. Sections 201, 203, 204, 205, and 206 FERC Rules, and Section 201 of PURA.

2.200 A Qualifying Small Power Production Facility Is:

2.201 Maximum Size Criteria.

2.2011 A facility where the power production capacity of the facility for which qualification is sought, together with the capacity of any other facilities which use the same energy resource, are owned by the same person, and are located at the same site, may not exceed 80 megawatts.

2.2012 For purposes of this rule, facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile of the facility for which qualification is sought and, for hydroelectric facilities, that they use water from the same impoundment for power generation.

2.2013 For purposes of making the determination in paragraph 2.2012, the distance between facilities shall be measured from the electrical generating equipment of a facility.

2.2014 If any qualifying facility obtains a waiver of paragraphs 2.2012 and 2.2013 from the FERC, a copy of such written waiver shall be filed with this Commission within 20 days of receipt of such by the qualifying facility.

2.202 Fuel Use Criteria.

2.2021 A facility whose primary energy source is biomass, waste, renewable resources, geothermal resources, or any combination thereof, and more than 75% or more of the total energy input is from these sources. The use of oil, natural gas, and coal by a facility may not in the aggregate, exceed 25% of its total energy input during any calendar year.

2.2022 Any primary energy source which, on the basis of its energy content, is 50% or more biomass shall be considered biomass.

2.203 Ownership Criteria.

A small power production facility may not be owned by a person primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration or small power production facilities).

2.2031 Ownership Test.

For purposes of this Rule, a small power production facility shall be considered to be owned by a person primarily engaged in the generation or sale of electric power, if more than 50% of the equity interest in the facility is held by one or more electric utilities, any one of which is primarily engaged in the generation or sale of electric power, or by a public utility holding company, or companies, or any combination thereof. If a wholly or partially owned subsidiary of an electric utility or public utility holding company has an ownership interest in a facility, the subsidiary's ownership interest shall be considered as ownership by an electric utility or public utility holding company.

2.204 Exceptions.

For purposes of this Rule, a company shall not be considered to be an "electric utility" company if it:

2.2041 Is a subsidiary of an electric utility holding company which is exempt by rule or order adopted or issued pursuant to Section 3(a)(3) or 3(a)(5) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79c(a)(3), 79c(a)(5); or

2.2042 Is declared not to be an electric utility company by rule or order of The Securities and Exchange Commission pursuant to Section 2(a)(3)(A) of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79 b (a)(3)(A).

2.300 A Cogeneration Facility Is:

2.301 General Definition.

"Cogeneration facility" means equipment which is used to produce electric energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy.

2.302 Topping-Cycle Cogeneration Facility.

"Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful power output, and the reject heat from power production is then used to provide useful thermal energy.

2.303 Bottoming-Cycle Cogeneration Facility.

"Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy process, and the reject heat emerging from the process is then used for power production.

2.400 A Qualifying Cogeneration Facility Is.

2.401 Operating and Efficiency Standards For Topping and Bottoming-Cycle Facilities.

2.4011 Any cogeneration facility must, in order to qualify, meet the operating and efficiency standards.

2.4012 Operating Standards. For any topping-cycle cogeneration facility, the useful thermal energy output of the facility must, during any calendar year, be no less than 5% of the total energy output.

2.4013 Efficiency Standard. For any topping-cycle cogeneration facility for which any of the energy imput is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power putput of the facility plus 1/2 the useful thermal energy output, during any calendar year period, must, subject to the remaining requirements of this paragraph, be no less than 42.5% of the total energy input of natural gas and oil to the facility; or if the useful thermal energy output is less than 15% of the total energy output of the facility, be no less than 45% of the total energy input of natural gas and oil to the facility. For any topping-cycle cogeneration facility not subject to the above provisions of this paragraph, there is no efficiency standard.

2.4014 Efficiency Standards For Bottoming-Cycle Facilities. For any bottoming-cycle cogeneration facility for which any of the energy input as supplementary firing is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility must, during any calendar year period, be no less than 45% of the energy input of the natural gas and oil for supplementary firing. For any bottoming-cycle co-generation facility not covered by the above provisions, there is no efficiency standard.

2.4015 Waiver. The Commission may waive any of the requirements of Rules 2.4012, 2.4013 or 2.4014 upon a showing that the facility will produce sufficient energy savings.

2.402 Ownership Criteria.

A cogeneration facility may not be owned by a person primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration or small power production facilities).

2.403 Ownership Test.

For purposes of this Rule, a cogeneration facility shall be considered to be owned by a person primarily engaged in the generation or sale of electric power, if more than 50% of the equity interest in the facility is held by an electric utility or utilities, or by the public utility holding company, or companies, or any combination thereof. If a wholly or partially owned subsidiary of an electric utility or public utility holding company has an ownership interest of a facility, the subsidiary's ownership interest shall be considered as ownership by an electric utility or public utility holding company.

2.404 Exceptions.

For purposes of this Rule a company shall not be considered to be an "electric utility" company if it:

2.4041 Is a subsidiary of an electric utility holding company which is exempt by rule or order adopted or issued pursuant to section 3(a)(3) or 3(a)(5) of The Public Utility Holding Company Act of 1935, 15 U.S.C. 79c(a)(3), 79c(a)(5); or

2.4042 Is declared not to be an electric utility company by rule or order of the Securities and Exchange Commission pursuant to Section 2(a)(3)(A) of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79b(a)(3)(A).

2.500 Procedures For Obtaining Qualifying Status.

2.501 Qualification.

A small power production or cogeneration facility which meets the requirements and criteria for qualification set forth in Rules 2.100, 2.200, 2.300 and 2.400, and Section 292.203 FERC is a qualifying facility.

2.502 Information To Be Filed.

The owner or operator of any facility qualifying under these rules shall file the following information with the Commission:

2.5021 The name and address of all owners and operators, and location of the facility;

2.5022 A brief description of the facility, including a statement indicating whether the facility is a small power production or cogeneration facility. If a cogeneration facility, whether it is a topping-cycle or bottoming-cycle facility;

2.5023 The primary energy source used or proposed to be used by the facility, and the energy source mix of the facility;

2.5024 The power production capacity of the facility; and

2.5025 The percentage of ownership of the facility by any electric utility or by any public utility holding company or by any person, corporation or entity owned by either.

2.503 Additional Information Required From Small Power Production Facilities.

In addition to the information required in paragraph 2.502, et. seq., small power production facilities shall file the following information with the Commission.

2.5031 The location of the facility in relation to any other small power production facilities located within one mile of the facility, owned by the facility which use the same energy source; and

2.5032 Information identifying any planned usage of natural gas, oil, or coal.

2.504 Additional Information Required From Cogeneration Facilities.

In addition to the information required in paragraph 2.502, et seq., cogeneration facilities shall file the following additional information with the Commission:

2.5041 A description of the cogeneration system, including whether the facility is a topping or bottoming cycle and sufficient information to determine that any applicable operating and efficiency rules and criteria set forth in Rules 2.400 and in Section 292.205, FERC regulations, will be met; and

2.5042 The date installation of the facility began or will begin.

2.505 Optional Application For FERC Certification.

2.5051 Should any small power production or cogeneration facility file an application for FERC certification that the facility is a qualifying facility, such facility shall file a copy of any FERC order granting or denying the application with this Commission 30 days after receipt thereof by the facility.

2.5052 If no FERC order certifying that the facility is a qualifying facility, is issued to such facility within 90 days of the filing of the complete application, this Commission shall be notified thereof by the facility within 120 days of the filing of the complete application.

2.506 Notice Requirements For Facilities of 500 KW Or More.

An electric utility is not required to purchase electric energy from a facility with a designed capacity of 500 KW or more until 90 days after the facility notifies the utility that it is a qualifying facility, or 90 days after the facility has applied to the Federal Energy Regulatory Commission for certification that the facility is a qualifying facility pursuant to Section 292.207(b), FERC rules. The utility and qualifying facilities may alter this date by mutual agreement.

2.507 Revocation of Qualifying Status.

In the event that any qualifying facility, has such status revoked by the FERC, in accordance with Section 292.207(d) FERC Rules, such facility shall notify this Commission within 30 days of receipt of such notification from the FERC.

2.508 Substantial Alteration or Modification of Qualifying Facility.

2.5081 Any small power production or cogeneration facility which applies to the FERC, pursuant to Section 292.207(d) (2) FERC Rules, for a determination that any proposed alteration or modification will not result in a revocation of qualifying status, shall file the FERC determination of the application with this Commission 30 days after receipt thereof.

2.5082 Any alteration or modification of a small power production or cogeneration facility may result in revocation of qualifying status, as the consequence of formal complaint or show cause proceedings before this Commission where it is established that the facility, from the alteration or modification, is not operating in compliance with these rules or other applicable laws, rules or regulations.

3.000 Arrangements Between Electric Utilities and Qualifying Cogeneration and Small Power Production Facilities.

3.100 General Statement.

This rule applies to the regulation of sales and purchases of energy and capacity between qualifying facilities and electric utilities.

3.200 Negotiated Rates or Terms.

Nothing in this rule shall limit the right of any electric utility and any qualifying facility to agree to a rate, or terms or conditions for any purchase of energy and capacity which differ from the rates, terms or conditions which would otherwise be required by these rules; or affects the validity of any contract or legally enforceable obligation entered into between a qualifying facility and an electric utility for any purchase of energy and capacity.

3.300 Availability of Electric Utility System Cost Data.

3.301 Data to Be Filed and Maintained by Certain Utilities.

Each electric utility with total sales of electric energy for purposes other than resale of 500 million kilowatt-hours or more during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year, shall maintain for public inspection and shall file the data stated in Rule 3.302 with the Public Utilities Commission from which avoided costs may be derived, not later than November 1, 1982, May 31, 1983, and not less often than every two years thereafter.

3.302 Data To Be Made Available.

Each electric utility to which Rule 3.301 applies shall make available data from which avoided costs may be derived, not later than November 1, 1982, and May 31, 1983, and not less often than every two years thereafter. Each utility described in Rule 3.301 shall file with this Commission, and shall maintain for public inspection on the applicable date(s), the following data:

3.3021 The estimated avoided costs which are, have been, and will be avoided on the electric utility's system, solely with respect to the energy component, for the following various levels of purchases from qualifying facilities. The levels of purchases shall be stated in blocks of not more than 100 megawatts for systems with peak demand of 1,000 megawatts or more, and in blocks equivalent

to not more than 10% of the system peak demand for systems of less than 1,000 megawatts. The avoided costs for the energy component shall be stated on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next five years;

3.3022 The capacity addition plan of each utility by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding ten years; and

3.3023 The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt or cents per kilowatt-hour, and the associated energy costs of each unit, expressed in cents per kilowatt-hour; and

3.3024 The interest rate, fixed cost, variable cost, life of plant, appropriate tax rate and estimated capacity factor.

3.3025 Where appropriate, the costs mentioned in this rule shall be expressed in terms of individual generating units and of individual planned firm purchases.

3.303 Special Rules For Small Electric Utilities.

3.3031 Each electric utility having total sales of electric energy for purposes other than resale less than 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year, shall, upon request of a qualifying facility or of the Commission provide or file data which is comparable to that required by Rule 3.302, et seq., to enable qualifying facilities or the Commission to estimate the electric utility's avoided costs for the periods described in Rule 3.302, et seq. Potential qualifying facilities shall not be entitled to obtain site specific cost data, but shall be entitled to obtain system cost data which is generally applicable to all potential qualifying facilities.

3.3032 Notwithstanding Rule 3.3031, each electric utility which is legally obligated to obtain all its requirements for electric energy and capacity from another electric utility, may provide the data of its supplying utility and the rates at which it currently purchases such energy and capacity to enable qualifying facilities to estimate the utility's avoided energy and capacity costs for the periods described in Rule 3.302.

3.3033 If any electric utility fails to provide the above information on request of a qualifying facility, the qualifying facility may apply to this Commission for an order requiring that the information be provided.

3.3034 The data submitted by an utility under this rule 3.000 shall be subject to review by the Commission. In any such review, the electric utility shall have the burden of coming forward with justification for its data.

3.400 Electric Utility Obligations Under These Rules.

3.401 Purchases From Qualifying Facilities.

Each electric utility shall purchase, in accordance with Rules 3.500, 3.600 and 3.700, any energy and capacity which is made available directly or indirectly in accordance with Rule 3.404, from a qualifying facility to such utility.

3.402 Sales To Qualifying Facilities.

Each electric utility shall sell to any qualifying facility, in accordance with Rule 3.800, any energy and capacity requested by the qualifying facility.

3.403 Obligation To Interconnect.

3.4031 Subject to Rules 3.4032, 3.900, et seq. and 4.000 et seq., any electric utility shall interconnect with any qualifying facility as may be necessary to accomplish purchases or sales under these rules. The obligation to pay for interconnection costs shall be determined in accordance with Rule 3.900.

3.4032 No electric utility shall be required to interconnect with any qualifying facility if, solely by reason of purchases or sales over the interconnection, the electric utility would become subject to regulation as a public utility under Part 2 of the Federal Power Act.

3.404 Transmission To Other Electric Utilities.

If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from the qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this rule as if the qualifying facility were supplying energy or capacity directly to such electric utility. The rate for purchase by the electric utility to which such energy and capacity is transmitted shall be adjusted up or down to reflect line losses or gains pursuant to Rule 3.604, and shall reflect whether the energy and capacity displaces other energy and capacity. Charges, if any, for transmission shall be subject to agreement between the transmitting utility and qualifying facility.

3.405 Parallel Operation.

3.4051 Each electric utility shall offer to operate in parallel with a qualifying facility, provided that the qualifying facility complies with the standards for operating reliability contained in Rule 4.000.

3.4052 No qualifying facility shall resell any energy or capacity provided by the utility to the qualifying facility back to the utility. The utility may inspect the qualifying facility in accordance with Rule 4.16011 to determine if any such energy or capacity resales are, or have, occurred.

3.500 Rates For Purchases.

3.501 Rates For Purchases From Qualifying Facilities Shall:

3.5011 Be just and reasonable to the consumers of the electric utility, the public utility and in the public interest; and

3.5012 Shall not discriminate against qualifying cogeneration and small power production facilities.

3.502 Pay Avoided Costs.

3.5021 Electric Utilities shall pay their avoided costs of energy and capacity for purchases of such from qualifying facilities. The rates established by this rule shall be based on the long run marginal costs of each utility and shall be derived by considering the factors set forth in Rule 3.600.

3.5022 Nothing in this rule requires any electric utility to pay more than the avoided costs of energy and capacity, or energy or capacity for purchases from qualifying facilities.

3.503 Factors to be considered.

A rate for purchases satisfies the requirements of paragraph 3.5011 and 3.5012 of this rule if the rates equal the avoided cost of the utility determined after consideration of the factors set forth in Rules 3.5021 and 3.600.

3.504 Rates Over Contract Term.

Where rates for purchases are based on estimates of avoided costs over the specific term of a contract or other legally enforceable obligation, the rates do not violate this rule if they differ from avoided cost at the time of delivery.

3.505 Standard Rates.

Each electric utility shall file tariffs setting forth standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less. Each electric utility may, but is not required, establish standard rates for purchases from qualifying facilities with a design capacity of more than 100 kilowatts, by filing tariffs therefore.

3.506 Standard Rates May Vary.

The standard rates for purchases under this rule shall be consistent with Rules 3.5011, 3.5012, and 3.600, and may differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.

3.507 Avoided Costs For Contracts.

3.5071 Each qualifying facility shall have the option to provide whatever energy and/or capacity it determines is available for purchases. In this circumstance, the rates for purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery of energy and/or capacity.

3.5072 Each qualifying facility shall also have the option to provide energy and/or capacity pursuant to a legally enforceable obligation for the delivery thereof over a specified term. In this circumstance, the rates for purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:

3.50721 The avoided costs calculated at the time of delivery; or

3.50722 The avoided costs calculated at the time the obligation is incurred.

3.508 Adjustment of Energy Costs.

Energy costs shall be adjusted as they vary. The utilities shall compute and file energy costs with the Commission annually. The first report shall be filed May 31, 1983, subsequent reports shall be filed each May 31 thereafter.

3.600 Factors Affecting Rates For Purchases.

Utilities shall determine long run avoided costs, by taking the following factors, to the extent possible, into account:

3.601 Data.

The data provided pursuant to Rule 3.300, including any review of such data by the Commission; and

3.602 Availability of Capacity and Energy.

The availability of capacity and energy from a qualifying facility during the system daily and seasonal peak period including:

3.6021 The ability of the utility to dispatch the qualifying facility;

3.6022 The expected or demonstrated reliability of the qualifying facility;

3.6023 The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice, contract requirements and sanctions for non-compliance;

3.6024 The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;

3.6025 The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including the ability of the qualifying facility to separate load from its generation;

3.6026 The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system;

3.6027 The smaller capacity increments and shorter lead times available with additions of capacity from qualifying facilities; and

3.603 Relationship of Energy and Capacity to Avoided Costs.

The relationship of the availability of energy or capacity from the qualifying facility as derived in paragraph 3.602 of this rule, to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and

3.604 Line Losses.

The cost or savings resulting from line losses or gains from those that would have existed in the absence of purchases from a qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity.

3.700 Periods During Which Purchases Not Required.

3.701 Excessive Costs.

Any electric utility which gives notice pursuant to paragraph 3.702 of this rule will not be required to purchase electric energy or capacity during any period which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, but instead generated itself or purchased at wholesale an equivalent amount of energy or capacity.

3.702 Notice.

Any electric utility seeking to invoke paragraph 3.701 of this rule must notify each affected interconnected qualifying facility in sufficient time for the qualifying facility to cease the delivery of energy or capacity to the electric utility. Such notification shall be by telephone and written notification. Telephone notification shall be in advance of the proposed stoppage of purchases. Written notification may be after the cessation of purchases and shall specify the operational circumstances which caused the situation discribed in paragraph 3.701 of this rule.

3.703 Failure to Give Notice.

Any electric utility which fails to comply with the provisions of paragraph 3.702 of this rule will be required to pay the same rate for the purchase of energy or capacity as would be required had the period described in paragraph 3.701 of this rule not occurred.

3.704 Verification.

A claim by an electric utility that a period as described in paragraph 3.701 of this rule has occurred or will occur is subject to verification by this Commission in a manner as this Commission deems appropriate, either before or after the occurrence.

3.800 Rates for Sales.

3.801 Reasonable Sales Rates

Rates for sales of power to qualifying facilities by electric utilities shall be just and reasonable and in the public interest, and shall not discriminate against qualifying facilities in comparison to rates for sales to other non generating customers served by the electric utility with similar load and cost-related characteristics.

3.8011 Rates for sales which are based on accurate data and consistent systemwide costing principles, or which are no more than rates to non-generating retail customers of the utility, shall not be considered to discriminate against any qualifying facility to the extent that such rates apply to the utility's other customers with similar load or other cost-related characteristics.

3.8012 Rates for sales may reflect any utility system difference caused by the unique needs of qualifying facilities.

3.802 Power to be Provided.

Subject to Rule 3.805, et. seq., on request of a qualifying facility, each electric utility shall provide:

3.8021 supplementary power;

3.8022 back-up power;

3.8023 maintenance power; and

3.8024 interruptible power.

3.803 Waiver.

The Commission may waive any requirement of rule 3.8011 if, after notice to the consumers in the affected area by the electric utility, and after opportunity for public comment, the electric utility demonstrates and the Commission finds that compliance with such requirement will:

3.8031 Impair the electric utility's ability to render adequate service to its customers; or

3.8032 place an undue burden on the electric utility.

3.804 Different Rate.

If a utility can demonstrate to the Commission that a qualifying facility should receive a different rate from that estabished by these rules, such may be authorized by the Commission. The burden of establishing such different rate shall be on the utility and will only be approved if supported by accurate data to include: consistent systemwide costing principles and other appropriate load and cost data.

3.805 Rates for Sales of Back-up and Maintenance Power.

3.8051 The rate for sales of back-up power or maintenance power shall:

3.80511 Recognize the utility's cost of power at the time provided to the qualifying facility.

3.80512 Back-up power shall only be provided to qualifying facilities if available.

3.80513 Maintenance power shall be available at the times established by schedule filed in accordance with Rule 4.1601. The utility and qualifying facility shall coordinate the availability of maintenance power with the proposed maintenance schedule of the qualifying facility.

3.80514 The rate for sales of back-up power or maintenance power shall not be based upon the assumption (unless supported by factual data) that forced outages or other reductions in electrical output by all qualifying facilities on an electric utility's system will occur simultaneously or during the system peak, or both.

3.80515 The rate for sales of maintenance power shall take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with the scheduled outages of the utility's facilities.

3.80516 Maintenance power provided at nonscheduled times may recognize the utility's cost of power at the time provided, and may only be provided at nonscheduled time by the utility if available.

3.900 Interconnection Costs.

3.901 Payment of Interconnection Costs.

Each qualifying facility shall be obligated to pay the cost of interconnecting with any electric utility for purchases and sales of capacity and energy. Each electric utility shall establish:

3.9011 To the extent that interconnection costs can be determined prior to interconnection, the cost of interconnection for purchases and/or sales of energy and capacity; and

3.9012 To the extent that interconnection costs cannot be determined in advance of interconnection, the utility shall establish such on a case-by-case basis.

3.902 Fair Interconnection Costs.

The interconnection costs provided for in this rule shall be fair, reasonable, and nondiscriminatory to each qualifying facility.

3.903 Time of Payments.

Each utility shall arrange a reasonable, fair and nondiscriminatory payment plan for interconnection costs. This plan shall minimumly allow each qualifying facility to pay the costs of interconnection as they are incurred, with the final payment due at the time the qualifying facility commences interconnected operations.

3.904 Agreed Payment Plan.

The utility and qualifying facility may agree to an installment payment arrangement for interconnection costs which differs from that provided in Rule 3.903.

3.905 Other Interconnection Costs.

For purposes of these rules, interconnection costs which each qualifying facility shall be obligated to pay, includes the costs set forth in Rule 4.000.

3.1000 System Emergencies

3.1001 Emergency Energy or Capacity

A qualifying facility shall be required to provide energy or capacity to an electric utility during a system emergency, as defined in Rule 1.205, only to the extent:

3.10011 provided by agreement between the qualifying facility and electric utility; or

3.10012 ordered under Section 202(c) of the Federal Power Act.

3.1002 Emergency Disconnection.

During any system emergency, as defined by Rule 1.205, an electric utility may discontinue:

3.10021 purchases from a qualifying facility if such purchases would contribute to the emergency; and

3.10022 sales to a qualifying facility, if such purchases would contribute to the emergency and provided that the discontinuance is on a nondiscriminatory basis.

3.1003 Notification

3.10031 Any electric utility discontinuing purchases or sales to a qualifying facility shall make reasonable efforts to notify the qualifying facility by telephone prior to discontinuance. Written notification shall also be provided to the qualifying facility no later than three business days subsequent to the termination of the emergency causing the discontinuance.

3.10032 The written notice shall describe the emergency and duration thereof, and the reasons for the discontinuance. If the utility was unable to give telephone notice to the qualifying facility prior to the discontinuance, the utility shall notify the qualifying facility by telephone no later than two hours subsequent to the termination of the emergency.

3.10033 No qualifying facility shall be entitled to telephone notification under this rule unless it provides its current telephone number to the utility.

3.10034 Any qualifying facility discontinuing sales or purchases to a utility shall make reasonable efforts to notify the utility by telephone prior to discontinuance. Written notification shall also be provided to the utility no later than three business days subsequent to the termination of the emergency causing the discontinuance.

3.10035 The written notice provided by the qualifying facility to the utility shall describe the emergency and duration thereof and the reasons for the discontinuance. If the qualifying facility was unable to give prior telephone notice to the utility of discontinuance, the qualifying facility shall notify the utility by telephone no later than two hours subsequent to the termination of the emergency.

3.10036 No utility shall be entitled to telephone notification under this rule unless its provides its currently telephone number to the qualifying facility.

3.1004 Other Discontinuances.

Prior to any other temporary discontinuance of purchases or sales, the utility or qualifying facility shall notify the other party in the manner as set forth in paragraph 3.1003 of this rule. However, such notification shall not be required if the discontinuance has been previously agreed upon by the parties or is less than fifteen minutes in length. When discontinuances are fifteen minutes or less, the utility or qualifying facility shall provide the information required by paragraph 3.1003 of this rule to the other party only upon written request.

4.000 Standards For Operating Reliability.

4.100 General Statement.

The following standards are established to ensure system safety of interconnected operations. However, utilities should require, consistent with safety, the

minimum compliance with these standards by qualifying facilities with 25 KW capacity or less. This is suggested to facilitate interconnection of such qualifying facilities with a minimum of cost and administration burden. A conference between utilities and facilities is also required by this rule. The purpose of the conference, aside from imparting information to the qualifying facility, is to encourage cooperation between the parties. An open and helpful relationship between facilities and utilities will engender the climate necessary for successful Colorado small power production and cogeneration.

4.200 Filing of Design Information.

Any person seeking to establish interconnected operations as a qualifying facility shall first file detailed design information of the proposed facility with the utility to which it proposes to interconnect, at least 150 days prior to interconnection, subject to Rule 4.204. The proposed qualifying facility shall also file a copy of all available manufacturers' literature for the equipment involved, including specifications, operating instructions, and recommendations for installation, with the utility at the time of filing detailed design information.

4.201 Sufficient Information.

The design information submitted shall be sufficient to enable the utility to assess the impact of proposed interconnection on the utility's system, and on the system's expansion and operations plans.

4.202 Notification.

The utility shall notify the proposed qualifying facility within twenty-five days, or such longer period as agreed by the utility and qualifying facility, of the receipt of the information, and whether such is adequate or whether additional information is required. If additional information is required, it shall be specified in writing to the proposed qualifying facility and it shall promptly submit the additional information.

4.203 Conference.

4.2031 At the earliest time possible after filing of the information required by this rule, the utility and proposed qualifying facility shall confer. The utility shall then inform the proposed qualifying facility of, in its opinion, those governmental agencies and departments having requirements for interconnection of the qualifying facility including, by way of example, electrical and construction codes, sizing criteria, set back distances, physical clearances; protective devices, inspections, and grounding practices. The utility shall further inform the proposed qualifying facility of what codes, in its opinion, are generally applicable to the proposed qualifying facility.

4.2032 At the time of conference the utility shall also inform the proposed qualifying facility, in its opinion, of the safety and interconnection requirements of these rules, such as, by way of example, harmonic content of output voltage levels, recommended use of induction generators, line-communtated inverters, reliable disconnection equipment, and all other safety equipment and procedures required for interconnection.

4.204 Early Interconnection Date.

At any time after submission of the information required by Rule 4.200, the utility and qualifying facility may mutually agree to an interconnection date sooner than 150 days from the date of submission of the design information.

4.300 Compliance With Standards.

4.301 No Interconnection Until Compliance.

No proposed qualifying facility shall be interconnected with a utility until it has established to the satisfaction of the utility that it complies with, and has met the applicable standards set forth in this rule.

4.302 Disagreement.

In the event of disagreement between a proposed qualifying facility or qualifying facility and the utility regarding the necessity of the utility-required safety equipment and standards, or any other requirement of these rules, either party may file a pleading, in compliance with applicable Colorado law and the Rules of Practice and Procedure before the Commission, for resolution of the disagreement with the Commission.

4.303 Commission Establishment of Standards.

In the event of a filing under Rule 4.302, the Commission, after hearing, shall establish the standards which shall be met by the qualifying facility or utility prior to interconnection, or shall enter an order resolving any other dispute regarding these rules.

4.400 Code Certification.

4.401 Obtaining Certification.

Each prospective or qualifying facility, shall obtain appropriate certification and present it to the utility establishing that it has been constructed in compliance with, and meets all construction and electrical codes, and all other applicable codes governing the quality of materials, construction, and installation of the qualifying facility.

4.402 Certificates At Facility Costs.

The prospective or qualifying facility shall obtain the above required certificates at its own cost.

4.403 Utility Specification of Codes.

The specific local and governmental codes which the utility believes the qualifying facility should comply with, shall be specified in writing by the utility within twenty-five days of the final receipt of the design information set forth in Rule 4.200.

4.500 Limits of Magnitude of Facilities.

4.501 Upper Limits.

For purposes of considering utility system safety, reliability, and capacity, each utility shall establish the

practical upper limits of the magnitude of individual qualifying facility installations suitable for its system. Each utility shall also estimate the potential effects of aggregate interconnection of qualifying facilities.

4.502 Development and Filing of Criteria.

The practical upper limits and aggregate effects of interconnection established by the utilities pursuant to Rule 4.501 shall be initially developed and filed with the Commission within six months of the effective date of these rules. The utilities may use and submit general data to determine the upper limits and aggregate effects of qualifying facilities, if they do not have reasonably available specific data of potential qualifying facilities. Should specific potential qualifying facility data be available, the utilities shall use such specific data for the establishment of the above criteria.

4.503 Request for Moratorium.

Should any utility determine that proposed interconnections are or may create safety, capacity, or reliability problems, commensurate with the criteria filed in compliance with Rules 4.501 and 4.502, such utility may apply to the Commission for a moratorium on further interconnection. The burden of establishing such problems shall be on the utility. Notice of such proceeding shall be given by the utility to all affected qualifying facilities interconnected on the utility's system, and any other known potential qualifying facilities seeking interconnection with the utility, who would likely be affected.

4.600 Inspection and Access.

4.601 Onsite Inspection.

Each utility may perform an onsite inspection of the proposed location of the qualifying facility prior to construction thereof, to satisfy itself that minimum setback distances and physical clearances have been established which will assure the safety of the utility and qualifying facility equipment. The cost of said inspection shall be included as a qualifying facility interconnection cost.

4.602 Utility Access.

In the event of the failure of utility or qualifying facility equipment causing an interaction between such equipment, utility personnel shall have the reasonable right of access to the qualifying facility's premises to repair, maintain, or retrieve any utility equipment affected thereby .

4.700 Coordination of Circuit Protection Equipment.

4.701 Examination of Circuit Protection Equipment.

Prior to interconnection of any qualifying facility, and at the earliest time possible subsequent to qualifying facility filing of design information, the utility shall examine the suitability of installed utility circuit protection equipment to accommodate the individual qualifying facility.

4.702 Evaluation of Interconnections.

The utility shall examine and evaluate the individual effects of the proposed interconnection of the qualifying facility, along with the aggregate effects of all of the installed qualifying facilities, on installed utility circuit protection equipment. Pre-engineering costs incurred prior to interconnection shall be a qualifying facility interconnection cost. Pre-engineering costs shall not include routine and normal evaluation of the proposed interconnection.

4.703 Interactions of Facilities and Circuit Protection.

Each utility shall make specific evaluations of the interactions between qualifying facility operations and installed regulation and circuit protection equipment, as part of normal planning for accomodation of the qualifying facilities. The cost for these reviews shall be an interconnection cost payable by the proposed qualifying facility seeking interconnection.

4.704 Replacement or Recoordination of Utility Equipment.

Should the design of any proposed qualifying facility cause replacement of, or significant recoordination of the circuit protection equipment of the utility, or reasonably be expected to cause extraordinary operation of utility installed protection

equipment, the qualifying facility shall be precluded from interconnection until the design of the qualifying facility has been modified to eliminate such problems, or until specific modified designs for the interconnection are established which provide for replacement or significant recoordination of utility circuit protection equipment. Replacement and recoordination costs shall be a qualifying facility interconnection cost.

4.705 Facility Detail.

Each qualifying facility shall submit a description of the qualifying facility of sufficient electrical and mechanical detail to determine the safety and adequacy of utility installed service drops and supply equipment to accommodate interconnection. Such data shall be filed by the qualifying facility at the time of filing of the initial data with the utility by the qualifying facility.

4.800 Potential Effects of Normal Operations of Utility System Equipment on Qualifying Facility Equipment.

4.801 Utility Liability.

The utility shall not be liable for the effects of necessary utility system equipment, such as reclosures and sectionalizers, on the equipment and systems of interconnected qualifying facilities.

4.802 Facility Protection Equipment.

Each utility shall advise each potential qualifying facility twenty-five (25) days after submission of proposed qualifying facility design information, of the necessity to install appropriate protection equipment to accommodate typical known operations of the utility system protection equipment.

4.803 Written Advisement.

The advisement required by Rule 4.802 shall be in writing and shall specify: the particular types of protection equipment necessary, the typical known operations of the utility which require protection equipment, and the usual effects upon qualifying facilities of the failure to install such protection equipment.

4.900 Utility Responsibility to Provide Quality Service.

4.901 Quality of Service After Interconnection.

Each utility shall provide the same quality of service after interconnection as to voltage and all other appropriate elements, as it provided to each qualifying facility prior to interconnection.

4.902 Measurement of Service.

Each utility, at the request of a qualifying facility, may measure the quality of service available on the premises of the proposed qualifying facility prior to interconnection. Such measurements may be utilized to establish the effects of the interconnection on the quality of service provided to the qualifying facility.

4.903 Establishment of Quality of Service.

The measurements described in Rule 4.902 may be used to establish the quality of service which the utility shall maintain and provide to the qualifying facility subsequent to interconnection.

4.904 Cost of Measurements.

The cost of performing the measurements described in Rule 4.902 shall be included as part of the interconnection costs of the qualifying facility. If the qualifying facility desires a quality of service above that provided before interconnection, the cost of such shall be an interconnection cost of the qualifying facility.

4.1000 Grounding of Qualifying Facility Equipment.

4.1001 No Interconnection Until Compliance.

No qualifying facility shall commence interconnected operations until the qualifying facility obtains certificates establishing compliance with all appropriate codes and the utility approves the grounding thereof.

4.1002 Grounding Practices.

All qualifying facilities shall ground all equipment in accordance with the utility and code requirements. Each utility shall establish required grounding practices commensurate with those found by the utility to be necessary in a given area considering soil conditions, the nature of other loads in the area, and experience. Such grounding practices shall follow all appropriate national,

state and local codes as augmented by the state of the distribution system which has evolved in the utility service area.

4.1003 Degraded Safety.

If the grounding of any installed qualifying facility can be shown to be a source of degraded safety, and improvements or modifications of the interconnection between the qualifying facility and utility are necessary to correct such problems, such shall be the responsibility and cost of the qualifying facility.

4.1004 Advisement of Grounding Requirements.

The utility shall advise the qualifying facility of its grounding requirements and the appropriate code requirements within twenty-five (25) days of the submission of design data by the proposed qualifying facility to the utility.

4.1005 Modifications.

In the event that improper grounding of any qualifying facility contributes to electromagnetic interference with telephone lines, radio and television reception, or the operation of any other electrical devices, it shall be the responsibility of the qualifying facility to incorporate the necessary modifications to such installation to correct such difficulty. Such modifications shall be at the cost of the qualifying facility.

4.1100 Standards for Harmonics and Frequency.

4.1101 Utility to Establish Standards.

4.11011 Each utility shall establish standards of harmonic content of the power and energy output of qualifying facilities. These standards shall be no more stringent than those imposed by the utilities on their bulk power suppliers.

4.11012 No qualifying facility shall commence interconnected operation until it establishes, to the satisfaction of the utility, that it will produce power at a fundamental frequency of 60 HZ, and that such power will not exceed the standards established by Rule 4.11011 for harmonic content.

4.1102 Onsite Interference.

The utility shall not be responsible for on-site interference caused by qualifying facility harmonics such as heating, or failure of motors, television, telephone or radio interference and other manifestations of degraded quality of service, caused by the failure of the qualifying facility to produce power and energy at 60 HZ.

4.1200 Interconnected Voltage Levels.

4.1201 Interconnection at Secondary Levels.

Any qualifying facility shall interconnect with the utility only at presently established secondary voltage levels, unless the complete cost of any modified interconnection at any other voltage level is paid for by the qualifying facility as a cost of interconnection.

4.1202 Facility Modifications.

Any qualifying facility modification for interconnection which requires the installation of differing or additional protective devices, or other significant modifications on the utility's system to accommodate qualifying facility generation, shall be paid for by the qualifying facility as a cost of interconnection.

4.1300 Type of Generators and Inverting Equipment.

4.1301 Utility Standards.

The utility shall establish standards which shall encourage appropriate qualifying facilities to use induction generators and line-commutated inverters rather than synchronous generators and self-commutated equipment, to minimize the possibility of reverse power flow during line outages. Such standards shall not exclude the use of synchronous generators which can be shown to minimize reverse power flow, to the same extent as induction generators.

4.1302 Power Factor Standards.

4.13021 Each utility shall adopt standards, or shall use its existing standards, for power factor available at the point of interconnection to the utility system. Such standards shall recognize that the qualifying facility shall not produce excessive reactive power during off-peak conditions nor consume excessive reactive power during on-peak conditions.

4.13022 Deleterious effects on the utility system caused by qualifying facility abnormal power factor shall be corrected by the utility on its own system at the expense of the qualifying facility. Deleterious effects on the qualifying facility's system caused by qualifying facility abnormal power factor shall be corrected by the qualifying facility on its own system, at the qualifying facility's expense.

4.1400 System Protection Equipment.

4.1401 Disconnection Equipment - Qualifying Facility.

Prior to interconnection, each qualifying facility shall install equipment which will reliably and automatically disconnect the generating equipment of the qualifying facility from the utility lines in the event of a line outage or failure of the generating equipment of the qualifying facility. At the time of utility inspection of the qualifying facility prior to interconnection, the qualifying facility shall demonstrate proper operation of this equipment to the satisfaction of the utility.

4.1402 Isolating Devices.

4.14021 The device(s) described in Rule 4.1401 or a separate device, shall also have the ability to isolate the energy generated (or supplied) and delivered by the utility and qualifying facility. Such device(s) shall be accessible to the utility and qualifying facility. The utility and qualifying facility shall have the right to operate such device(s) whenever necessary in the judgment of the utility or qualifying facility to maintain safe operating conditions, and whenever the operations of the qualifying facility or utility adversely affects the utility or qualifying facility system. No specific number of devices are required by this rule.

4.14022 The device(s) which isolates the qualifying facility's generation shall be lockable only by the utility in the open position. The device which isolates the utility's generation or supply shall be lockable only by the qualifying facility in open position. Such device(s) shall be installed so that visual verification of the

locking of the device(s) in the open position shall be accomplished by the utility and qualifying facility. The utility or qualifying facility shall notify the other party of proposed, or impending disconnection prior to such disconnection in accordance with the requirements of Rule 3.1003.

4.1403 Fused Protection.

Qualifying facilities shall install fused protection of all switched interconnections between major components of the equipment of the qualifying facility.

4.1404 Relaying Equipment.

Each qualifying facility shall install required protective relaying equipment to confine the effects of faults, lightning strikes or other abnormalities within the equipment of the qualifying facility, and to protect the equipment of both the qualifying facility and the utility.

4.1405 Extraordinary Operation of Equipment.

Each utility shall establish standards for qualifying facility equipment. These standards shall limit qualifying facility equipment so that it will not cause extraordinary operation of system protective equipment. Within twenty-five (25) days of the submission of the design information by the qualifying facility to the utility, the utility shall specify such standards in writing to the qualifying facility.

4.1406 Phasing.

Each utility shall inform each proposed qualifying facility within twenty-five (25) days of qualifying facility filing of design data, of the present existing phasing immediately available to the qualifying facility. The utility shall encourage the qualifying facility to use the present phasing for proposed interconnection. The utility shall inform the qualifying facility that any phase imbalances may affect the safety of the proposed service, or affect neighboring customer's loads. In the event that phased loadings of interconnection cause phase inbalances, the cost of equipment to correct such shall be a qualifying facility interconnection cost.

4.1407 Notice of Compliance.

At the time that the qualifying facility determines that it has complied with all utility and rule requirements for interconnection, the qualifying facility shall give notice thereof to the utility. Within twenty-five (25) days of receipt of such notice, the utility and qualifying facility shall arrange a time for on-site inspection of the qualifying facility by the utility. At the time of inspection, the utility shall inspect the entire installation, including all systems and equipment of the qualifying facility for purposes of determining compliance by the qualifying facility with all utility and rule requirements.

4.14071 If the utility determines from the inspection that the qualifying facility complies with all utility and rule requirements, the utility shall certify in writing that the qualifying facility complies. This certification by the utility shall not establish civil liability of the utility for any improper qualifying facility operation or utility civil liability for any purpose hereunder.

4.14072 If the utility determines that the qualifying facility fails to comply with any rule or utility requirement, the utility shall specify in writing the precise requirements remaining which the qualifying facility must meet for interconnection. Upon compliance with the specifications, the qualifying facility may again give notice of compliance to the utility and the parties shall then proceed as provided by this rule.

4.14073 When the qualifying facility obtains compliance certification from the utility, the qualifying facility and utility shall schedule a date for the initial energizing and start-up test of the qualifying facility's generating equipment. The utility shall be present at this test.

4.14074 At the conclusion of the test, the utility shall either certify that the qualifying facility is certified to commence interconnected operations or that it does not meet all Rule and/or utility standards. This utility certification shall not by itself, establish civil liability of the utility or qualifying facility for any purpose hereunder.

4.14075 If the qualifying facility fails the initial test, the utility shall specify in writing the particular standards which the qualifying facility must meet before rescheduled start-up tests are performed. The qualifying facility shall comply with all specified requirements for rescheduled start-up tests. Upon compliance therewith, the parties shall reschedule start-up tests, and the procedure as set forth in these rules for initial tests shall be followed.

4.14076 If the qualifying facility makes any significant modifications or if future difficulties arise on the system of the qualifying facility, or utility, as the consequence of the interconnection, which requires different or additional protective devices, or other utility system modifications different or additional protective devices or modifications, the utility may require such different or additional protective devices or modifications as a condition of continued interconnected operations. The cost of such additional protective equipment or modifications shall be to the qualifying facility.

4.1500 Meters.

4.1501 Supply and Maintenance of Meters.

The electric utility shall supply, install, and maintain meters at cost, to measure the generation of each qualifying facility. Qualifying facilities may sell any or all of their generation to the utility, and may, simultaneously, purchase any or all power required from the utility, in the discretion of the qualifying facility.

4.1502 Location of Meters.

The qualifying facility shall supply, at no expense to the utility, a suitable location for the installation of meters.

4.1503 Cost of Meters and Maintenance.

The cost of meters and installation shall be payable by the qualifying facility as a cost of interconnection. The utility shall maintain the meters, and the cost of maintenance of meters shall be paid by the qualifying facility as incurred.

4.1600 Maintenance of Qualifying Facility.

4.1601 Facility to File Maintenance Schedule.

Immediately prior to interconnection the qualifying facility shall file a schedule of planned maintenance with the utility, specifying dates, times, means, and procedures planned. No qualifying facility shall commence interconnected operations until the utility approves the proposed qualifying facility maintenance schedule. The utility shall not unreasonably withhold approval of the qualifying facility's proposed maintenance schedule.

4.16011 The utility has the right to inspect the qualifying facility from time to time on demand, to ensure compliance by the qualifying facility with the approved maintenance schedule and proper operation of all protective equipment, including relays, circuit breakers at the interconnection, and tripping breakers on the protective relays. The utility may also inspect the qualifying facility on demand to determine if a qualifying facility is, or has been, reselling utility energy and/or capacity to the utility.

4.16012 If from inspection the utility finds that the qualifying facility has not complied with its maintenance schedule, has been reselling utility energy or capacity to the utility, or protective equipment is not properly operating, the utility may immediately disconnect the qualifying facility, or may give the qualifying facility a thirty (30) day notice of disconnection.

4.16013 All inspections, other than for safety or resale of utility energy or capacity, shall be witnessed by utility and qualifying facility personnel at mutually agreeable times. Utility inspections to determine whether the qualifying facility has been reselling utility energy or capacity to the utility, or for safety, may be accomplished without prior notice. At inspection to determine safety

or if the qualifying facility is reselling utility energy or capacity, the utility shall invite the qualifying facility to witness the inspection. The inspection may be conducted without the presence of the qualifying facility if it declines to participate.

4.16014 The qualifying facility shall maintain complete maintenance records, and the utility shall maintain complete inspection records. The qualifying facility and utility shall provide copies of such records to the other party.

4.16015 Each utility shall establish inspection procedures for qualifying facilities and provide a copy of such prior to interconnection of the qualifying facility. These inspection procedures may be standard and modifed as needed for each qualifying facility.

4.16016 Any disconnection notice shall specify the required maintenance to be performed, operational practices to be modified or terminated, or repairs to be made to protective equipment, prior to disconnection. The qualifying facility shall perform the specified maintenance, modify or stop the stated operational practices, or repair the specified protective equipment, prior to the date of proposed disconnection. Upon completion of all such maintenance, proof of modified or terminated operational practices, or protective equipment repairs, the qualifying facility shall notify the utility who shall reinspect the facility. If the utility finds compliance with the specified requirements, scheduled disconnection shall be cancelled. If the utility finds noncompliance with the specified requirements, the facility shall be disconnected as provided in the initial disconnection notice.

4.16017 The utility and the qualifying facility may agree to a reasonable continuance of disconnection, or reconnection if the qualifying facility has been disconnected pursuant to Rule 4.16012, or 4.16016, if the utility determines

that the qualifying facility is making bona fide efforts to perform the specified maintenance, modify or stop the specified operational practices, or repair the protective equipment. Where the qualifying facility has been given notice of disconnection, or has been disconnected for reselling energy and/or capacity to the utility, the agreement for reasonable continuance of disconnection or reconnection may be conditioned on the agreement of the qualifying facility to repay the utility for such resales.

4.1602 Facility to File Generation Schedule.

All qualifying facilities, other than those dependent on intermittent sources of energy such as solar or wind, shall file a proposed schedule of generation with the utility for use in coordinating normal maintenance of distribution facilities or for coordination with the bulk power supplier of the utility. This information may also be used by the utility and qualifying facility for the safety of maintenance personnel by coordinating regular operations. The proposed schedule of generation shall be filed by the qualifying facility with the utility prior to the commencement of interconnected operations.

4.1700 Indemnity, Hold Harmless, and Insurance.

4.1701 Utility Indemnity.

The utility shall indemnify the qualifying facility, its officers, agents and employees against all loss, damage, expense and liability to third persons for injury to or death of persons or injury to property, proximately caused by the construction, ownership, operation, maintenance, or failure of, the utility's works or facilities used in connection with interconnected operations. The utility, on request of the qualifying facility, shall defend any suit asserting a claim covered by this indemnity. The utility shall pay all costs that may be incurred by the qualifying facility in enforcing this indemnity.

4.1702 Qualifying Facility Indemnity.

The qualifying facility shall indemnify the utility, its officers, agents, and employees against all loss, damage, expense and liability to third persons for injury or death of persons or injury to property, proximately caused by construction, ownership, maintenance, or failure of the qualifying facility's works or facilities used in connection with interconnected operations. The qualifying facility, on the request of the utility, shall defend any suit asserting a claim covered by this indemnity. The qualifying facility shall pay all costs that the utility may incur in enforcing this indemnity.

4.1703 Hold Harmless.

The utility and qualifying facility shall hold each other harmless from liability for damages caused to the facilities of the other party by reason of improper or faulty operation, or non-operation of the facilities of the utility or qualifying facility.

4.1704 Insurance.

The qualifying facility shall obtain liability insurance in an amount the utility determines adequate to protect the public and the utility to which it is interconnected, for damages for which the qualifying facility is legally liable. The qualifying facility shall present to the utility a current and valid certificate of insurance wherein the utility is named as a beneficiary of the policy, as their interest appears, prior to interconnection. The utility may not require an excessive amount of insurance coverage nor shall any qualifying facility obtain and provide an inadequate amount of such coverage.

4.1705 Civil Liability.

No utility or qualifying facility shall be determined civily liable solely as the consequence of any duty, responsibility, or obligation required by these rules, or their failure to comply therewith, but rather such liability shall be determined by the appropriate judicial body having civil jurisdiction thereof.

5.000 Exemption of Qualifying Facilities From Certain Colorado Laws and Regulations, and Waivers.

5.100 Exemption

All qualifying cogeneration and small power production facilities are exempted from Colorado state laws and regulations respecting:

5.101 Rates

The rates of electric utilities; and

5.102 Other

The financial and organizational regulation of electric utilities.

5.200 Exceptions

No qualifying cogeneration or small power production facility shall be exempt from any Colorado state law, rule or regulation implementing these rules, nor from the provisions of these rules.

5.300 Contract Review by Commission

The exemptions provided for by this rule shall not divest this Commission of its authority to review contracts for purchases and sales of power and energy, as long as such review is consistent with Sections 201 and 210 of PURPA.

5.400 Utility Waivers From Rule 3.000.

Any electric utility, after mail notice to all existing and known potential qualifying facilities and after public notice in areas served by the utility, may apply for a waiver from the application of any of the requirements of Rule 3.000, other than Rule 3.300. The burden of establishing such waiver shall be on the utility.