Decision No. C06-0091

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 05R-112E

IN THE MATTER OF THE PROPOSED RULES IMPLEMENTING RENEWABLE ENERGY STANDARDS 4 CCR 723-3.

ORDER GRANTING, IN PART, AND DENYING, IN PART, REHEARING, REARGUMENT AND RECONSIDERATION

Mailed Date: February 3, 2006
Adopted Date: January 27, 2006

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of applications for Rehearing, Reargument and Reconsideration (RRR) filed to Decision No. C05-1461 by Aquila, Inc. (Aquila); City of Boulder (Boulder); Clean Power Markets, Inc. (Clean Power) Colorado Independent Energy Association (CIEA); Colorado Rural Electric Association (CREA); Public Service Company of Colorado (Public Service); a joint filing by Western Resource Advocates and Colorado Solar Energy Industries Association (WRA/CoSEIA). By Decision No. C05-1488, we granted an extension of time for the filing of RRR until January 13, 2006. Timely applications for RRR were filed by all commenters except for the City of Boulder.[1] However, we allow the City of Boulder's RRR to be considered because it addresses an important issue in this proceeding. On January 25, 2006, Public Service filed a Motion for Leave to File Response to the Applications for Rehearing, Reargument and Reconsideration and for Waiver of Response Time. On January 26, 2006, WRA filed a Response opposing Public Service's motion.

[1] The City of Boulder provided copies via electronic mail to a large number of individuals. However the Commission did not receive an actual paper filing until January 17, 2006.

We find good cause to grant Public Service's motion to file a response to the applications for RRR and deny the motion of WRA to file a response to the Public Service response.

2. Deliberations on the applications for RRR were held on January 26 and 27, 2006.

B. Contracts which are silent on REC ownership

3. In Decision No. C05-1461, we addressed ownership of RECs in PPAs entered into between Public Serviced and QFs prior to the passage of Amendment 37. Boulder and Public Service both set forth arguments contending that each owned the RECs generated as part of the PPAs entered into between the two entities. In addressing this issue, we asserted our determination that "we do not recognize the 'unbundling' of the RECs into the electricity and the environmental attributes from these facilities under the existing PPA contracts, which are silent on the ownership of RECs."[2] We interpreted the intent of the voters supporting Amendment 37 to mean that the amendment was to serve as a means to jump start utilities to begin to acquire new renewable energy resources, rather than to merely pay existing renewable energy providers additional money.

1. QF Arguments

4. Several parties requested RRR regarding this finding including WRA/CoSEIA, CIEA and Boulder. WRA/CoSEIA argue that ownership of RECs from PPAs, which are silent on the issue, is a matter of fairness. WRA/CoSEIA take the position that the Commission's finding is erroneous that allocating RECs to renewable energy providers would result in a windfall for existing producers of energy who were satisfied with contract terms entered into long ago without the promise of supplementary remuneration in the future.

[2] *See* Decision No. C05-12461 at ¶ 97, p. 32.

According to WRA/CoSEIA, it could just as easily be argued that our decision may result in a windfall for existing purchasers of electricity who were satisfied with contract terms entered into long ago without the promise of supplementary values in the future.

5. WRA/CoSEIA analogize the allocation of RECs via PPAs to the purchase of land for beneficial use without mineral rights. According to their argument, such an arrangement provides no rights to future values that may be created as a result of an increase in value of a mineral that happens to be located on the land. WRA/CoSEIA reason that, similar to mineral rights, the purchase of electricity without evidence of the compensation for the environmental attributes that the REC value is designed to represent provides no rights to future claims of those RECs. WRA/CoSEIA go on to argue that RECs are valuable to QFs, because the avoided cost pricing for renewable QFs in Colorado, compensates the QF owner for the electricity values from the project, but fails to compensate the QF owner for the broader societal environmental attributes or ratepayer risk mitigation benefits of the project.

6. WRA/CoSEIA point to the free market concept for the proposition that, should the competitive marketplace for RECs price the QF RECs as a cost-effective option for meeting the standard, it would be in a QRU's best interest to acquire them. However, if the QF owner can obtain higher value for the RECs elsewhere, then it is in its best interest to capture that value. WRA/CoSEIA note that under this free market concept regarding REC value, while ratepayers would absorb the cost of the renewable resource, the renewable energy market and in turn ratepayers would be better served in the long run by bestowing RECs on the QFs for PPAs entered into before the passage of Amendment 37.

7. Boulder argues that our decision on REC ownership amounts to a retroactive rule that interferes with existing contracts and affects a taking. Boulder's argument in essence is that

by taking RECs from Boulder and giving them to Public Service, the Commission is violating the constitutional prohibition against giving aid to corporations. According to Boulder, our decision takes something of value from Boulder and gives it to Public Service in violation of Article XI, Section 2 of the Colorado Constitution, which provides that "[n]either the state, nor any county, city … shall make any donation or grant to, or in aid of … any corporation or company …"

8. According to Boulder, the rules we adopted contain several references to the additional value associated with RECs and that RECs may be bought separately from the energy produced and counted towards statutory requirements. Boulder argues that it is therefore not logical to treat existing RECs as having no value, while RECs associated with new PPA contracts will have value.

9. Boulder also takes issue with our interpretation of the intent of the voters in passing Amendment 37 to jump start utilities into acquiring new renewable energy sources rather than paying existing renewable energy providers additional money. Boulder argues that the record does not support that finding. Rather, Boulder maintains the most logical interpretation of the voters' intent is that QRUs will have certain earmarked funds to spend on renewable resources and, given compliance with other statutory provisions, the QRUs should be able to spend that money in the most effective manner, which includes purchasing RECs associated with any given PPA contract. Boulder concludes that it is unacceptable to take the RECs from Boulder and give them to Public Service, which can in turn sell them on the open market and receive money in return, since this would be an inappropriate burden on the citizens of Boulder.

10. Boulder also argues that our decision violates both the Takings Clause and the Contract Clause by interfering with existing contracts and requiring renewable energy products

to relinquish a valuable asset without compensation. By Boulder's reasoning, requiring the entities involved in existing PPAs to give the renewable energy value of their facilities to the QRUs with no compensation is an unconstitutional act which is prohibited under the Fifth Amendment to the U.S. Constitution and Article II, Section 15 of the Colorado Constitution. Boulder further reasons it is entitled to RECs from PPAs entered into prior to Amendment 37 because it recognized the value in the RECs of its facilities long before Public Service or the Commission.

11. Rule 3659 also violates the constitutional prohibition against impairment of contracts, according to Boulder. While Boulder concedes that this is a difficult claim for it to sustain and that those constitutional clauses must be ready to allow for legislation that promotes the general good of the public, it nonetheless argues that Rule 3659 violates the contract clause by assuming that the REC value goes to the QRU without compensation to the owner of the facility.

12. CIEA also takes issue with the finding that RECs in a pre-Amendment 37 PPAs are owned by the utility purchasing electricity from a non-utility renewable power producing facility. CIEA argues that nothing in the adopted rules addresses the ownership of RECs in pre-Amendment 37 PPAs. This, according to CIEA, leaves the question of ownership in a state of ambiguity.

13. CIEA further asserts that our decision is in contravention to a Federal Energy Regulatory Commission (FERC) decision addressing the same issue.[3] There, FERC held that a PPA entered into pursuant to PURPA for the sale by a QF to a utility of renewable electricity that

[3] *See American Ref-Fuel Company, et al.*, 105 FERC ¶ 61,004 (2003), *rehearing denied*, 107 FERC ¶ 61,016 (2004).

was silent as to the ownership of RECs did not convey RECs to the purchasing utility absent an express provision in the PPA to the contrary. As part of that ruling, FERC indicated that a state could decide that, in such a sale, ownership of any attendant RECs would be transferred to the utility, but such authority would have to come from state law and not PURPA. CIEA argues that our Decision, while contrary to the FERC decision, fails to pin its conclusion on state contract law. According to CIEA, instead, our Decision claims that Amendment 37 itself affects the involuntary conveyance of RECs.

14. CIEA maintains that the statute enacting Amendment 37 contains no language supporting our conclusion that the voters who approved Amendment 37 intended not to pay renewable energy providers with pre-Amendment 37 PPAs for RECs. CIEA further argues that the statute does not distinguish between pre-Amendment 37 and post-Amendment 37 providers of renewable energy. Rather, CIEA argues that the statute makes clear that a utility's acquisition of the electric power output of any renewable power facility and its acquisition of the same facility's associated intangible RECs are separate and distinct ways of satisfying Amendment 37's renewable energy standard. As a result, CIEA concludes that Amendment 37 does not supply the "state law" basis that FERC held would be required for a state to hold that, absent express contract terms to the contrary, a PPA silent as to RECs could be read to convey them, from a renewable QF to a purchasing utility.

15. CIEA further takes issue with our finding that RECs and the renewable electricity of pre-Amendment 37 QFs cannot be unbundled. CIEA takes the position that for purposes of utility satisfaction of the renewable energy standard, Amendment 37 recognizes that RECs have distinct value as tradable intangible commodities, apart from the renewable energy produced by the QF. According to CIEA, Amendment 37 makes no distinction between the RECs of

renewable facilities that commenced the sale of renewable energy to utilities before, as opposed to after, the adoption of Amendment 37.

16. CIEA goes on to argue that, should we decline to overturn our previous ruling regarding ownership of pre-Amendment 37 RECs, the contract and property rights of QF owners with existing PPAs may be constitutionally infringed. CIEA maintains that such constitutional infringements may include impairment of the obligations of contracts and the deprivation of property without due process and without compensation.

17. Because of the import of the claims made by WRA/CoSEIA, Boulder and CIEA, we granted Public Service's motion to respond to RRR. In its response, Public Service takes the position that a response to the constitutional arguments necessarily requires as a predicate an analysis of existing state law on the issue of whether the RECs were conveyed to the QRUs in the PPAs that were executed before Amendment 37 was enacted.

2. Public Service Response

18. Concerning the FERC's decision regarding ownership of RECs in PPAs entered into pursuant to PURPA, Public Service points out that FERC only ruled that ownership of the RECs under PURPA QF contracts is a matter of state law. According to Public Service, the arguments put forth by WRA/CoSEIA, Boulder and CIEA are mistakenly grounded on the assumption that PURPA controls the issue rather than state law.

19. Public Service further notes that the only reference to RECs under Colorado law is found in Amendment 37. As such, the Commission's promulgation of rules implementing Amendment 37 (and specifically RECs) constitutes the creation of state law. Consistent with that argument, Public Service asserts that the Commission should decide this issue in light of the purposes of Amendment 37, which it interprets as using the limited funds available under

Amendment 37 to encourage the construction of new renewable resources and not to pay more to obtain RECs from existing renewable resources that already sell their output to the utility.

20. Public Service also comments on the analogy WRA/CoSEIA makes comparing REC ownership in pre-Amendment 37 PPAs with the conveyance of mineral rights in contracts for the sale of land. While WRA/CoSEIA argue that when a contract does not expressly convey mineral rights (or RECs) those severable property interests are reserved for the seller, Public Service argues that just the opposite is true. Public Service takes the position that under Colorado law there is no presumption that if a contract is silent, the seller has reserved to himself an asset or an attribute of the asset or a part of the commodity conveyed. Rather, Public Service argues that, when an asset or commodity is not specifically reserved to the seller, the full asset or commodity is deemed to have been transferred to the buyer.

21. Staying with the mineral rights analogy, Public Service cites *Bogart et al. v. Amanda Consolidated Gold Mining Co.*, 74 P. 882, 883 (Colo. 1903), where the Colorado Supreme Court found that until there has been a severance of estates, ownership of the surface carries with it ownership of the minerals beneath the surface. As such, Public Service concludes that under Colorado mineral law, in order to retain an interest in the minerals underlying the surface, the seller must expressly reserve them. Following this line of reasoning, Public Service concludes that in order to retain ownership of the non-energy attributes of the energy conveyed, the seller should have expressly reserved them, otherwise those attributes should not be considered to have been severed from the energy.

22. Public Service further contends that no constitutional violations exist regarding the decision. Initially, it argues that the constitutional arguments, since they are premised on the incorrect assumption that pre-Amendment 37 PPAs did not convey the RECs to the purchasing

utility, are therefore without merit. According to Public Service, those QFs in fact conveyed the RECs with the energy at the time the PPAs were executed.

23. Regarding the argument that our decision amounts to a donation to a private corporation in violation of Article XI, Section 2 of the Colorado Constitution, Public Service takes the position that the constitutional provision does not prohibit the Commission from concluding that the RECs were bundled with the energy that was sold to utilities under contracts that are silent on the REC issue. Since the RECs are merely an attribute of the energy purchased by QRUs, Public Service reasons that QRUs purchased the RECs when they purchased the energy through the PPAs. Public Service maintains that since the QRU already owns the RECs, the Commission is not ordering that public property be donated to a private corporation. *See City of Aurora v. Public Utils. Comm'n.*, 785 P.2d 1280, 1288 (Colo. 1990) (No donation exists when the municipality receives consideration in return for a payment or transfer).

24. Public Service asserts that, even if our decision was to constitute a donation, such a donation is permissible when (as in this case) it serves a public purpose. *See In re Interrogatory Propounded by Governor Roy Romer on House Bill 91S-1005*, 814 P.2d 875, 882 (Colo. 1991). Public Service cites *City and County of Denver v. Qwest Corp*., 18 P.3d 748, 759 (Colo. 2001) in which the Colorado Supreme Court held that a state law that allowed telecommunications providers to occupy and use public rights-of-way without paying a fee for that privilege served the valid public purposes of "efficient conduct of [the providers'] business" and "encourag[ing] competition and ensur[ing] that all consumers benefit from it." *Id*. At 759. Public Service finds the holding similar to our finding that it is likely that the voters intended utilities to acquire new renewable resources, not pay existing renewable energy providers additional money.

25. As to the issues of impairment of contract and takings, Public Service asserts that our decision does not violate those constitutional prohibitions because the original PPAs conveyed both the energy output and all of the attributes of that energy, unless those attributes were severed and reserved as it argued previously.

3. Analysis

26. We begin our analysis by noting that a determination of the constitutional issues raised by the parties above necessarily begins with a determination of the ownership of the pre-Amendment 37 RECs pursuant to state law. The state and federal constitutional questions raised here turn on a key question. Does the action of the Commission in determining that QRUs are entitled to RECs in pre-Amendment 37 PPAs interfere with a legitimate property interest? If the answer is yes, we must determine whether our actions were for the larger public good in order to justify an impairment of that legitimate property interest. On the other hand, if the answer is no, then constitutional prohibitions are not implicated and the analysis may end there.

27. Logically then, our discussion must begin with an analysis of contract law to determine whether the pre-Amendment 37 PPAs convey a legitimate property interest (the RECs) to the QFs. We note up front that there is no dispute that those PPAs are silent as to any treatment or conveyance of RECs arising as a result of the underlying transactions.

28. There appears to be no disagreement among the parties that the pre-Amendment 37 PPAs in question are silent as to reservation or transfer of any associated RECs. Therefore, we begin with a determination as to whether silence as to the REC issue constitutes an ambiguity which would require a trier of fact to introduce extrinsic evidence to determine the intent of the parties and the meaning of the PPAs. Generally, a contract that is clear and unambiguous on its

fact is not open to judicial construction. The initial question that must be ascertained is whether an ambiguity in a contract exists.

29. A trier of fact properly determines the intent of the parties regarding the meaning of contract language by analyzing the language of the contract itself. *Jennings v. Brotherhood Accident Co.*, 44 Colo. 68, 96 P. 982 (Colo. 1908). It is the court's duty "to interpret and enforce contracts as written, not to rewrite or restructure them." *Roberts v. Adams* 47 P.3d 690, 694 (Colo.App. 2002), *citing Fox v. I-10, Ltd*., 957 P.2d 1018 (Colo. 1998). It is a fundamental rule of contract law that a court should "strive to ascertain and give effect to the mutual intent of the parties." *Pepcol Manufacturing Co. v. Denver Union Corporation*, 687 P.2d 1310 (Colo. 1984); *see also*, 4 S. Williston, *A Treatise on the Law of Contracts* § 601 (W. Jaeger ed. 1961).

30. "It is only where the terms of an agreement are ambiguous or are used in some special or technical sense not apparent from the contractual document itself that the court may look beyond the four corners of the agreement in order to determine the meaning intended by the parties." *Pepcol Manufacturing Co.* at 1314, *citing Buckley Bros. Motors v. Gran Prix Imports*, 633 P.2d 1081, 1083; *Radiology Professional Corp. v. Trinidad Area Health Ass'n*, 195 Colo. 253, 256, 577 P.2d 748, 750 (1978). It is manifest that in the absence of ambiguity, a written contract cannot be modified by extrinsic evidence. *Id.* (citations omitted).

31. Triers of fact cannot make contracts for parties and then order them specifically performed. *Shull v. Sexton*, 154 Colo. 311, 316, 390 P.2d 313, 316 (Colo. 1964) (citations omitted). However, in determining whether a contract is ambiguous, a trier of fact may conditionally admit extrinsic evidence on the issue. *Pepcol Manufacturing Co. supra* at 1314; *citing*, 4 S. Williston, *A Treatise on the Law of Contracts* § 601 at 311 (W. Jaeger ed. 1961). If the trier of fact, after considering the extrinsic evidence, determines that there is no ambiguity,

then the extrinsic evidence must be stricken. It is the language of the contract itself that controls the determination of whether certain extrinsic evidence is relevant. *Lazy Dog Ranch v. Telluray Ranch Corporation*, 965 P.2d 1229, 1236 (Colo. 1998).

32. Given the methodology to be employed in determining the true intent of parties to an agreement, we note again that no party arguing the ownership of RECs in pre-Amendment 37 PPAs has put forth the proposition that those PPAs are in any way ambiguous. The QFs merely argue that silence on the issue notwithstanding, they nonetheless intended to retain ownership of the RECs. On the other hand, Public Service argues that absent a specific reservation in the PPAs, our decision to award those RECs to QRUs is correct.

33. We further note that Colorado contract law is clear that mere disagreement of the parties does not necessarily indicate the PPAs are ambiguous. *See East Ridge of Fort Collins, LLC v. Larimer and Weld Irr. Co.*, 109 P.3d 969 (Colo. 2005). A contract is ambiguous "if it is fairly susceptible to more than one interpretation." *Dorman v. Petrol Aspen, Inc.*, 914 Pl2d 909, 912 (Colo. 1996).

34. In determining whether an ambiguity exists, the language of the document "must be examined and construed in harmony with the plain and generally accepted meanings of the words used, and reference must be made to all the agreements provisions." *Lake Durango Water Co., Inc. v. Public Utils. Comm'n of Colorado*, 67 P.3d 12, 20 (Colo. 2003). Terms used in a contract are ambiguous when they are susceptible to more than one reasonable interpretation. Absent such ambiguity, the trier of fact is not to look beyond the four corners of the agreement to determine the meaning intended. "The mere fact that the parties may have different opinions regarding the interpretation of the contract does not itself create an ambiguity in the contract." *Roberts v. Adams*, 47 P.3d 690, 696 (Colo. 2002), *citing*, *Ad Two, Inc. v. City & County of*

Denver, 9 P.3d 373 (Colo. 2000). We again note that no party raised the issue that the pre-Amendment 37 PPAs are ambiguous in any way. Rather, the parties agree that those agreements are totally silent on REC ownership. It is clear that REC ownership was not considered by the parties, otherwise such an important property interest would have surely been bargained for under those PPAs. Given the limited evidence, testimony and argument provided by the parties on this issue, we can ascertain no ambiguity regarding the pre-Amendment 37 PPAs, much less any ambiguity regarding REC ownership in those agreements.

35. "When a contract is unambiguous, the court must, in the absence of a showing that the contract is voidable on grounds such as mistake, fraud, duress, undue influence, or the like, or unless the result would be an absurdity, give effect to the contract as written." *Lake Durango Water Co., Inc.* at 20, *citing* R. Lord, Williston on Contracts, Interpretation and Construction § 30:6 (4th ed. 1999); *Kaiser v. Market Square Discount Liquors*, 992 P.2d 636, 640 (Colo. App. 1999) (*citing USI Properties East, Inc. v. Simpson*, 938 P.2d 168 (Colo. 1997)) (when construing an unambiguous contract, the court may not rewrite its terms but must instead enforce it as written).

36. Colorado contract law regarding unambiguous contracts requires a trier of fact to interpret a contract in a manner that effectuates the manifest intent of the parties at the time the contract was signed. It is axiomatic that in determining the intention of the parties to an agreement the plain language of the agreement must be considered. "If the language is plain, clear and unambiguous, a contract must be enforced as written." *Randall & Blake, Inc. v. Metro Wastewater Reclamation District*, 77 P.3d 804, 806 (Colo. App. 2003). "Courts possess no authority to rewrite contracts and must enforce unambiguous contracts in accordance with their terms." *Id.; Shaw v. Sargent School Dist. No. RE-33-J ex rel. Board of Education*, 21 P.3d 446,

449 (Colo. App. 2001) (holding that if the language of the document is plain, its meaning clear, and no absurdity is involved, it must be enforced by the court as written). *See also In re Parsons*, 272 B.R. 735, 753 (D. Colo. 2001) (unless there is ambiguity in a contract's terms, under Colorado law a court should avoid strained interpretations, give effect to the terms according to their ordinary meaning, and enforce the contract as written).

37. Guided by the contract law principles followed in this state as articulated above, we turn to whether the pre-Amendment 37 PPAs explicitly provided for transfer of the RECs with the attendant energy to QRUs. Again, it is clear that no party argues that the agreements contain such language. Therefore, our attention must turn to whether the agreements are ambiguous regarding such reservations or transfers. Again, given the record before us, we find no ambiguity exists regarding these specific provisions or the intent of the parties. There is nothing to indicate that at the time the pre-Amendment 37 PPAs were entered into, either party to the agreement contemplated ownership of the RECs or even considered that any such valuable property existed as a result of the sale of energy under the terms of the agreement. As indicated above, absent an ambiguity, we are bound to consider the agreements as written and in accordance with their terms, and not apply our interpretation of the intent of the parties. As indicated by the U.S. Supreme Court, it is critical that courts enforce the clear terms of contracts. It is fundamental that parties must be able to rely on enforcement of the terms of their agreements so that they may confidently and appropriately allocate rights, responsibilities and risks. According to the Court, "the right of private contract is no small part of the liberty of citizens, and … the usual and most important function of courts of justice is … to maintain and enforce contracts." *Francam Building Corp. v. Fail*, 646 P.2d 345, 349 (Colo. 1982) (citing *Baltimore & Ohio Southwestern Ry v. Voyght*, 176 U.S. 498, 505 (1900). In the absence of any

showing of ambiguity regarding the pre-Amendment 37 PPAs, we decline to impose a strained reading on those PPAs to provide that it was the intent of QFs (or both parties for that matter) to retain ownership of RECs under the terms of those agreements.

38. Our decision not to construe the existing contracts as granting ownership of RECs to QFs is supported by additional case law regarding reservation of particular interests. In *Morrison v. Socolofsky*, 600 P.2d 121 (Colo. 1979), the court considered whether a deed reserving oil, gas and other minerals operated to reserve gravel where the entire surface of the property was underlain with gravel. The court found that because the reservation in the agreement only referred to "minerals," was inherently ambiguous as to whether it included the sand and gravel on the property, it had to determine what the word "mineral" meant in the "vernacular of the mining world, the commercial world and landowners at the time of the grant, and whether the particular substance was so regarded as a mineral." *Id* at 213. In this instance, the court found that extrinsic evidence was appropriate to determine the intent of the parties and applied the rule construing reservations against the grantor and in favor of the grantee. The court concluded that, to have reserved an interest in the gravel, the grantor was required to list it in the reservation clause. "The reservation must be sufficient in clarity and certainty to qualify as a bargained for reservation …" *See also*, *Evans Fuel Co. v. Leyda*, 77 Colo. 356, 236 P. 1023 (1925) (although the right to destroy the surface [of the property to obtain the gravel] may be reserved, the reservation of such a right must be made clear and expressed in terms so plain that there can be no doubt).

39. Further, in *Lazy Dog Ranch v. Telluray Ranch Corporation*, *supra*, the court held that the proper method for determining the intention of the parties to a deed conveying an easement is to examine whether the grantor of land also intended to grant title to other rights

such as water used upon the land. "Whether a deed to such land conveys such right depends upon the intentions of the grantor, to be determined from the terms of the deed, or when the latter is silent as to such right, from the circumstances surrounding the transaction." *Id* at 1235, *citing Notch Mountain Corp. v. Elliott*, 898 P.2d 550, 557 (Colo. 1995); *Percifield v. Rosa*, 122 Colo. 167, 177, 220 P.2d 546, 551 (Colo. 1950). "The rights of the parties to a deed were controlled by the interpretation of the deed 'in accordance with the facts and circumstances attending its execution, so as to learn the intentions of the parties.'" *Id*. (citation omitted).

40. Given the substantial and clear case law in the area of reservation of rights in conveyances and contracts; that nothing in the PPAs indicates that RECs were either to be conveyed or reserved; there is nothing extrinsic to indicate that it was ever the intent of QFs to retain ownership of any RECs from those agreements; and given the plain language of the agreements themselves, we find that REC ownership was not contemplated by either party when the subject contracts were executed. Indeed, our analysis need not go to whether a reservation of property interests was ambiguous, when no such reservation even existed in the first place. Further, since state contract law does not favor QF reservation of RECs in the pre-Amendment 37 PPAs when those agreements are completely silent as to that issue, it follows that no vested right to the RECs can now be claimed by QFs. As the purchasers of energy with which the RECs are intertwined, the QRUs have ownership of the RECs.

4. Constitutional Claims

41. Given our findings above, the constitutional claims made by the various parties can be addressed simply. The state and federal constitutional prohibitions against impairment of contract are designed to protect vested contract rights from legislative invasion. These prohibitions are not to be construed as absolute. *See Estate of DeWitt v. USAA*, 54 P.3d 849, 858

(Colo. 2002) (citations omitted). These clauses are to be read to permit legislative action that promotes "the common wealth, or … general good of the public, though contracts previously entered into between individuals may thereby be affected." *Id*. (citations omitted). A court is to uphold a challenged law if it is reasonable and appropriately serves a significant and legitimate public purpose when considered against the severity of the contractual impairment. *Id*. (citation omitted)

42. When assessing an alleged contract clause violation, the inquiry is to be "whether the change in state law has operated as a substantial impairment of a contractual relationship." *Id*. *citing Gen. Motors Corp. v. Romein*, 503 U.S. 181, 186, 112 S.Ct. 1105, 117 L.Ed.2d 328 (1992). The answer to that inquiry involves consideration of three factors. First, the court must determine whether there is a contractual relationship. To establish this, a party must demonstrate that the contract gave him a vested right. Second, it must be determined whether a change in the law impairs the contractual relationship. Third, a court must decide whether the impairment is substantial. *Id*. (citations omitted).

43. Analyzing the three-prong test, it is apparent the QFs fail to meet the requirements to show impairment. First, given our analysis of Colorado contract law, it is apparent that since the PPAs were silent as to REC ownership, the QFs cannot claim a vested right the RECs. Therefore, the QFs fail the first prong of the test. Even if the QFs could somehow prove a vested right in the RECs, they nonetheless fail the second prong – that a change in the law impairs the contractual relationship. While the new law awards RECs of pre-Amendment 37 PPAs to QRUs, that does not in any way impair the ability of QFs to obtain the full benefit of the bargain they negotiated for in those agreements. Therefore, we find that no contract impairment exists. We consequently deny the parties' RRR on this issue.

44. With regard to the argument that our decision results in an unconstitutional taking, we again look to state contract law to determine whether the QFs meet the requirements for such a showing. In analyzing the takings issue, the U.S. Supreme Court has recently issued a holding in *Lingle v. Chevron U.S.A., Inc.*, 125 S.Ct. 2074 (2005). In determining whether a taking has occurred, the Court determined that *Penn Central Transp. Co. v. New York city*, 438 U.S. 104 (1978) provides the correct analysis when the alleged taking cannot be categorized as a land-use exaction. In determining whether a taking has occurred under *Penn Central*, several factors have significance. Primary among those factors are "[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations." *Id.* In addition, the "character of the governmental action" – for instance whether it amounts to a physical invasion or instead merely affects property interest through "some public program adjusting the benefits and burdens of economic life to promote the common good" – may be relevant in discerning whether a taking has occurred. *Id* at 2082. The Court went on to find that the "*Penn Central* inquiry turns in large part, albeit not exclusively, upon the magnitude of a regulation's economic impact and the degree to which it interferes with a legitimate property interest." *Id.*

45. Once again, given our finding above that QFs have no vested property interest in the RECs regarding pre-Amendment 37 PPAs (that are silent on the issue) under Colorado contract law, we find that no taking could have occurred. It is evident that our decision has no economic impact or has interfered with any investment-backed expectation the QFs could have had regarding the RECs. Without reservation of REC ownership rights, the QFs can not now claim it was their intent to keep those RECs, when at the time the PPAs were entered into it was

not known that Amendment 37 would create value in the RECs. Consequently, we find that the QFs cannot sustain a takings clause argument and therefore deny RRR on this issue.

46. Finally, the QFs argue that our decision amounts to a donation to corporations in violation of constitutional prohibitions. We agree with Public Service's analysis on this point. Since the QRU own the RECs pursuant to Colorado law, no property is being donated to the QRU via our decision. We therefore deny the parties' RRR regarding this issue as well.

5. Rule 3650 – Special Definitions

47. Public Service proposes new definitions for Compliance Plan, Eligible Renewable Energy, Renewable Energy Credit Contract, and Renewable Energy Supply Contract. It also proposes to delete the definition for Co-fired System and make modifications to the definitions for Annual Report and Renewable Energy.

48. We note that Public Service has specifically included language in the definition of Renewable Energy Supply Contract to address the issue of REC ownership in contracts which are silent on ownership. Its proposed definition is as follows:

> "Renewable Energy Supply Contract" means a contract for the sale of Renewable Energy and the RECs associated with such Renewable Energy. If the contract is silent as to Renewable Energy Credits, the Renewable Energy Credits will be deemed to be combined with the energy transferred under the contract.

49. We agree with all of the suggested changes to the proposed definitions and therefore grant reconsideration for all of the definition changes, additions, and deletions suggested by Public Service.

6. Rule 3651 – Overview and Purpose

50. WRA/CoSEIA argues that the Commission should include the legislative intent of SB04-168 which encourages local ownership of renewable energy generation facilities and is

found at § 7-56-210 C.R.S. They assert that the 1.25 multiplier, which we stated in our previous order as the basis for denying Core37's request to include SB04-168 within this rule, doesn't address the ownership of facilities; rather, it addresses the location of facilities. WRA/CoSEIA also suggests that the type of ownership of renewable energy facilities should be considered in the ranking of the bids.

51. We agree with WRA/CoSEIA's stated reasoning. We therefore grant reconsideration and include the following language as part of the Overview and Purpose: "It is the policy of this State to encourage local ownership of renewable energy generation facilities to improve the financial stability of rural communities."

7. Rule 3653 – Municipal and Cooperative Utilities

52. CREA argues that the references to "self-certification" in Rule 3653 do not accurately reflect the amendments made to this section by SB04-143. It suggests that we either delete this rule or eliminate the references to self-certification.

53. We grant the reconsideration to eliminate the references to self-certification within this Rule so that it is consistent with SB04-143.

8. Rule 3654 – Renewable Energy Standard

54. Clean Power maintains that the large window for the application of RECs, the 5-year lifespan of RECs plus the 2-year borrow forward provision, could result in the delay of installation of new renewable projects including new on-site solar systems. It argues that the result of this delay will likely be less renewable kilowatt-hours produced in the earlier years of the program in the State and as a result, a reduction in the benefits from the Renewable Energy Standard (RES or Standard) overall.

55. We deny RRR here. The language here was part of the Consensus Rules filed by several of the active commenters to this proceeding. None of the arguments presented by Clean Power persuade us to change our previous ruling.

56. Rule 3654(j) incorrectly references the Annual Compliance Report as the document in which the method for calculating RECs is determined. We find it should have referenced the Annual Compliance Plan.

9. Rule 3655 – Resource Acquisition

57. Public Service recommended several modifications to this rule in its proposed redline rules attached to its RRR application. First, it seeks to raise the threshold for requiring competitive bids from 10kW to 100kW, claiming that it is inconsistent to require a Standard Rebate Offer, under Rule 3658 for systems under 100kW, while requiring bids for systems greater than 10kW in Rule 3655(a). We agree that there is an inconsistency between this rule and Rule 3658. We therefore grant the request for reconsideration regarding this point and change the threshold for competitive bidding for Solar Electric Generation Technologies to greater than 100 kW.

58. Within this same rule Public Service also proposed to include new language that would provide an exemption to the competitive acquisition process under the Amendment 37 rules, similar to the exemptions provided to resources acquired under the Least-Cost Planning (LCP) Rules. Public Service states that this change is necessary so that small non-solar Eligible Renewable Energy Resources would not be disadvantaged vis-à-vis small fossil-fueled resources. Public Service notes that, under the LCP competitive acquisition rules, a utility is free to negotiate contracts with non-utility generators and to construct new utility facilities of not more than 30 megawatts of capacity, without the time and expense of a competitive acquisition

process. In addition, short-term contracts (two years or less) are permitted outside the rigors of the competitive acquisition process. We deny RRR here. We find there are fundamental differences between the reasons for the acquisition of resources under the LCP process and the Amendment 37 process.

59. At a general level, resources acquired for LCP purposes are to ensure that a utility is able to meet the electrical demands of their customers, focusing particularly on peak demand. By contrast, resources acquired for Amendment 37 purposes are to ensure that the amount of generation, as expressed in megawatt-hour sales, is sufficient to meet the specified percentages in the statute. We are also concerned about possible abuse of this exemption by outside entities. For example, a city, as part of its franchise negotiations, could attempt to demand from a Qualifying Retail Utility (QRU) the purchase of a renewable facility or the purchase of the output from a renewable facility as part of a proposed franchise agreement. Under this hypothetical situation, the QRU could freely enter into the contract under the exemption provision and sign a contract with the city, which may not have a market-based price. Ultimately, the higher price contract costs could be passed-on to customers through the Amendment 37 cost recovery mechanism. We find such a scenario unacceptable, which would decrease the total amount of renewable energy procured under the cost cap. Therefore we deny RRR.

60. Public Service suggests changes to Rule 3655(b) because it believes the restriction for separate solicitations, as required under this rule, will add significant administrative costs and will slow down the acquisition of eligible renewable energy. It is also concerned that the rule only provides that RECs can be acquired through the competitive solicitation process. Public Service states that it may need to act quickly to obtain RECs to meet

annual RES shortfalls or to take advantage of low-priced RECs temporarily available in the marketplace. We agree with both of points and grant reconsideration by adopting Public Service's suggested language.

61. Public Service believes Rule 3655(c) should make contract submission for Commission approval permissive rather than mandatory. It also argues that based on its experience that virtually all sellers (or their lenders) need to negotiate changes to "standard" contracts to reflect the specifics of their facilities or loans. While we agree with the points raised by Public Service, we nonetheless decline to adopt its proposed language. We note that the language currently found in Rule 3660(e) addresses the use of standard contracts and Commission approval as it relates to cost recovery. We find that language should be included in this rule and therefore replace the previous version of this as follows:

> The QRU may apply to the Commission, at any time, for review and approval of Renewable Energy Supply Contracts and Renewable Energy Credit Contracts. The Commission will review and rule on these contracts within sixty days of their filing. The Commission may set the contract for expedited hearing, if appropriate, under the Commission's Rules of Practice and Procedure. If the QRU enters into a Renewable Energy Supply Contract or a Renewable Energy Credit Contract in a form substantially similar to the form of contract approved by the Commission as part of the QRU's Compliance Plan, that contract shall be deemed approved by the Commission under this rule.

62. For Rules 3655(d) and (e), Public Service proposes adding the phrase "entered into after the effective date of these rules." It maintains that this change is necessary to avoid any interpretation that would disqualify existing contracts from counting toward compliance with Amendment 37. We agree with its reasoning and grant reconsideration.

63. Public Service proposes changes to Rule 3655(e)(III) by including the phrase "if the REC is from an On-site Solar System." The basis for this change is that Amendment 37 only

requires 20 year REC contract terms for On-site Solar Systems. We agree and grant reconsideration on this issue.

64. Public Service also suggests changes to Rule 3655(f) because it believes the Rule is overly prescriptive. This rule requires solicitations for Solar On-site RECs (SO-RECs) to be conducted at least twice per year beginning in 2006. Public Service argues that the solicitations should be conducted at least two times in 2006 and 2007, and as necessary thereafter to comply with the Standard. We grant reconsideration, in part. The rule will now provide that the competitive solicitations be conducted at least two times per year in 2006 and 2007 and then as necessary thereafter to comply with the Standard. During the proceeding we heard comment that the solar on-site component of the Standard will be a challenging aspect for the QRUs to meet. Therefore, in order to maximize the ability of the QRUs to meet the solar on-site standard, more frequent solicitations are necessary. Lastly, if a QRU believes that it may be able to meet the requirements of the Standard for the on-site solar components without additional solicitations, it can always request a waiver of this rule.

65. Next, Public Service proposes to delete Rule 3655(g). It contends that a QRU could meet the all solar requirements under the Standard by acquiring only SO-RECs and no Solar RECs (S-RECs). It also argues that it is not necessary or appropriate to solicit S-RECs or renewable energy from central station solar facilities according to any pre-determined arbitrary time schedule as currently provided in the rule. While we agree with Public Service's statements, we deny the request to delete this rule. We find it is appropriate to address the possibility that a QRU may want to use a S-REC solicitation to meet the Standard. However, we agree with Public Service's concerns regarding the pre-determined schedule, and therefore delete from the rule the word "beginning" and the three year interval. As a result, Rule 3655(g) reads:

> Competitive solicitations for the acquisition of S-RECs may be conducted by each QRU as needed to comply with the Renewable Energy Standard. S-REC requirements not likely to be met may be solicited from SO-REC providers.

66. Public Service proposed language for Rule 3655(h). We grant reconsideration and adopt its language. Rule 3655(h) reads:

> Competitive solicitations for Renewable Energy or RECs from Eligible Renewable Energy Resources other than On-Site Solar Systems shall be conducted by each QRU in a timeframe that takes into account the projected needs of the QRU.

67. Public Service expresses concern with Rule 3655(i) because of its requirement that solicitations seek a fixed number of RECs. It also asserts that the two factors shown in (I) and (II) of the rule should be the Retail Rate Impact and the Standard Rebate Offer. We agree with Public Service on both of these points and grant reconsideration. Rule 3655(i) therefore reads:

> Each competitive solicitation pursuant to these rules shall be targeted toward acquiring the amount of Eligible Renewable Energy required for compliance with each component of the Renewable Energy Standard, and taking into account:
>
> (I) The Retail Rate Impact, and
>
> (II) The estimated number of SO-RECs procured under and expected to be procured under the standing Standard Rebate Offer

68. Next Public Service suggests changes to Rule 3655(k) which would have the QRU's provide information used in the acquisition process upon request by the Commission. Public Service also includes language to address the possibility that to the extent some of the information is confidential in nature, the Commission's rules regarding confidentiality in our Rules of Practice and Procedure would govern. We agree with both of these changes and grant reconsideration. Rule 3655(k) reads:

> Each QRU shall disclose, at the Commission's request, all information that will be used in the acquisition process, including but not limited to, interconnection and transmission studies, and methods for modeling or otherwise analyzing bids.

> Confidential information may be protected in accordance with Rules 1100 through 1102 of the Commission's Rules of Practice and Procedure.

69. Public Service makes numerous changes to Rule 3655(m). Its first change is to Rule 3655(m)(I). Its main concern with this rule is the requirement for a QRU to determine, prior to a solicitation, the appropriate weighting for non-price factors such as economic development benefits and energy security benefits. It contends that this rule would result in an annual litigated proceeding at which various interest groups will argue whether the Commission should assign a weight of 10 percent or 15 percent to economic development benefits or energy security benefits. Public Service also contends that, after the Commission established such weighs for each of the qualitative factors, it is unsure how to conduct the modeling analysis. Public Service argues it would be a complicated and relatively arbitrary process. As a solution, Public Service proposes that a QRU could take into consideration these factors as part of its due diligence on each bid, and assess them with respect to the bidders ability to actually construct the resource in the time frame and at the location the bidder has proposed. We agree with Public Service's concern and grant reconsideration by adopting its suggested language. However, our adoption of its language is related to our decision regarding Rule 3655(m)(III) discussed below. Rule 3655(m)(I) reads:

> In addition to the cost of the Renewable Energy and RECs, the QRU may take into consideration the characteristics of the underlying Eligible Renewable Energy Resource that may impact the ability of the bidder to fulfill the terms of the bid including, but not limited to: project in-service date, resource reliability, viability, economic development benefits, energy security benefits, amount of water used, fuel cost savings, environmental impacts including tradable emissions allowances savings, load reduction during higher cost hours, transmission capacity and scheduling, and any other factor the QRU determines is relevant to the QRU's needs.

70. Public Service next seeks reconsideration of Rule 3655(m)(III) because it is concerned that a QRU should have the ability to reject any and all bids which may be received in

a solicitation. It argues that the prices received in response to the solicitation may be too high and it would be unwise to force a purchase by a QRU. As a result of this concern, Public Service proposes to include the phrase "and may reject any and all bids offered in." It also proposes to delete the text addressing the requirement that a QRU reject all REC bids which are greater than 1.5 times the QRU's weighted average cots of RECs unless approved by the Commission. We agree with Public Service's suggested changes and grant reconsideration. However, as discussed above, because we now allow a QRU to evaluate the non-price factors in a qualitative manner as part of its due diligence process, we find that a QRU must provide a report to the Commission explaining, in detail, the outcome of the solicitation process to explain which bids were selected, which were rejected, and why. Based on our experience with LCP solicitation reporting, we anticipate that two versions of this report will be filed with the Commission—a public version and a confidential version. Rule 3655(m)(III) reads:

> A QRU is not required to accept any bid and may reject any and all bids offered. However, each solicitation shall culminate in a report detailing the outcome of the solicitation and identifying which bids were selected, which were rejected, and why.

71. Public Service proposes to delete Rule 3655(m)(IV). It does not agree that the REC provided with renewable energy should be assigned a value that is equal to the total price of the renewable energy less the QRU's avoided costs on file with the Commission. It notes that the avoided costs are based on Commission rulings over 15 years ago and these values have little, if any, relationship in a way to value RECs. We agree with Public Service's concern regarding the avoided cost figures on file with the Commission. However, we deny reconsideration. Instead, we change the rule to describe, more generically, the cost of electricity which should be used in this determination. Thus Rule 3655(m)(IV) reads:

> For purposes of comparing bids for RECs only with bids for electricity and RECs, the QRU shall assign a value for the electricity and subtract this value from the electricity and RECs bid, and evaluate bids on the basis of RECs only.

72. Next Public Service proposes to delete Rules 3655(m)(V) through (n)(II). It maintains that these rules are unnecessary because imposing deadlines on the competitive acquisition process is not wise since it's not a "one-size fits all" approach. We agree with the general concern, and grant reconsideration, in part, and deny, in part. Specifically we find that Rules 3655(m)(V) and 3655(n)(I) should be retained. We believe that it is important for the QRU to notify bidders within 15 days of submitting a bid whether all the necessary information was included.

73. We note that Rule 3655(m)(V) as adopted could be incorrectly interpreted by a bidder. Based on how the rule is currently written, a bidder might incorrectly conclude that, because its bid meets the solicitation requirements, it was a successful bidder. This rule is intended to provide bidders notification that they submitted all of the required information with their bid. As a result of this concern, we adopt improved language for this rule. The Commission changed the numbering within this portion of the rules for improved readability, as a result, Rule 3655(m)(V) is now Rule 3655(n).

74. We also find that Rule 3655(n)(I) which requires QRUs within 15 days after the ranking of eligible bids to notify all respondents that it intends to pursue a contract with, should be retained. We realize that it is possible for a bidder to drop out of the contracting process after the 15th day and this would necessitate the QRU to contact a bidder who presumed they were out of the running since the bidder didn't receive a letter within the original 15 days. However, our overall concern is to have a process where bidders feel the process is fair and that they receive timely information for all of the efforts they put in to submit a bid. While we deny RRR on this

issue, we allow commentors to provide more information on this issue in the next round of RRR, if desired.

75. Public Service questions whether the Commission would want to require that all bidder disputes come before the Commission as provided in Rule 3655(o). As an alternative, Public Service proposes to allow either the bidder or the QRU to refer disputes to the Commission. We find the Commission is the appropriate venue for disputes to be initially addressed. As a result, we grant reconsideration of Public Service's proposed rule modification which provides that either a bidder or QRU could bring a dispute before the Commission for resolution.

10. Rule 3656 – Environmental Standards

76. Public Service proposes to modify Rule 3656(c) to indicate that the burden is on the developer to perform and make publicly available the environmental surveys, as well as to certify that the developer will use the results of the environmental surveys in the design, placement, and management of its facility.

77. We agree with the proposed changes and grant reconsideration on both points. As a result, Rule 3656(c) now reads:

> For Eligible Renewable Energy Resources larger than 2 MW with any structures extending over 50 feet in height, the QRU Renewable Energy Supply Contract shall require project developers to certify, as a condition precedent to achieving commercial operation, that the developer has performed and made publicly available site specific avian and other wildlife surveys conducted on the facility's site prior to construction. The developer shall further certify that the developer used the results of these surveys in the design, placement, and management of the facilities to ensure that the environmental impacts of facility development are minimized to state and federally listed species and species of special concern, sites shown to be local bird migration pathways, critical habitat and areas where birds or other wildlife are highly concentrated and are considered at risk

11. Rule 3657 – QRU Compliance Plan

78. WRA/CoSEIA believe the Commission erred by rejecting the concept of using a third-party administrator based on cost and penalties. According to WRA/CoSEIA, the third-party administrator was intended to reduce certain administrative costs to a single incurrence instead of having those administrative costs incurred by each QRU. Within their pleading, they draw an analogy to "out-sourcing" certain functions and the attendant cost savings. They also suggest that the Commission should not reject the concept of a third-party administrator under the belief that because the QRUs are ultimately responsible for any penalties that they could somehow be accountable for the actions of the third-party administrator. They note the "beyond the QRU's reasonable control" concept in the Rules should provide a shield to QRU's from any possible compliance penalties for this type of situation. WRA/CoSEIA suggest that, to the extent the Commission is concerned with the scope of the third-party administrator's duties, it can scale them back.

79. WRA/CoSEIA also suggests that, if the Commission continues to find that the QRUs should administer all aspects of the statue, the QRUs should be required to track the quality of service provided to customers participating in the on-site solar program and seek confidential feedback from vendors of renewable energy that were both successful and unsuccessful in completing contracts with each QRU. They believe the Commission could, in this rulemaking, require QRUs to develop details on how the two suggested concepts could be incorporated into a utility's quality of service plan. Lastly, they recommend that the word "policies" be substituted for the word "rules" in 3657(a) in order to avoid an improper delegation of the Commission's rulemaking authority

80. Although cost savings could theoretically be realized from the concept of outsourcing and our rules provides the QRUs relief from administrative penalties for events beyond their control, these two arguments do not persuade us to change our previous ruling that a third-party administrator should not be used. We find our previous decision reflects the proper balance between oversight (whether it's by the Commission or a third-party administrator) and management discretion of the QRU. We note that the Commission has a newly hired employee whose duties and responsibilities are administer of these Rules. Thus we deny reconsideration on this issue.

81. Next, WRA/CoSEIA suggest that the Commission could consider scaling back the breadth of duties of a third-party administrator if we are concerned about the scope of the proposed duties. Consistent with our above ruling, we also deny reconsideration on this point. We find that even a scaled back version of the third-party administrator is inappropriate, especially in light of the newly hired Commission employee.

82. WRA/CoSEIA's suggestion that we order, as part of this rulemaking, a requirement that QRUs develop details on obtaining feedback from customers participating in the on-site solar program, and seek confidential feedback from vendors of renewable energy that were both successful and unsuccessful in completing contracts as part of utility's quality of service plan, is untimely. Although Core37 (of which WRA and CoSEIA were a part of) made mention of this in two sentences in its Post Hearing Comments,[4] we find that this issue has not been fully developed and responded to by interested commentors. Therefore, we deny reconsideration on this request.

[4] *See* bottom of page 15 and top of page 16 of its pleading.

83. Lastly, we find that WRA/CoSEIA is under a mistaken impression that, when we include the phrase "…rules, regulations, and tariffs…", as we did in Rule 3657(a), the Commission is delegating its rulemaking authority to a QRU. We are not. That terminology is long-standing regulatory language and does not result in a QRU implementing rules unilaterally. As a result, we deny reconsideration on this point.

84. Turning to Public Service's RRR, it deletes Rule 3657(a)(III) because it believes that a QRU cannot assess the environmental impacts at the time it submits its Compliance Plan. It also deletes Rule 3657(a)(VIII) because the statute only provides 20-year contracts for the On-site Solar RECs, not all RECs.

85. We agree with Public Service's reasoning and grant reconsideration on both issues. As discussed more fully in Rule 3659, we modify Rule 3657(a)(IV) to add the word "counting" to this rule. We find this change necessary to reflect the deletion of the definition for Co-fired Systems and our decision on two sections within Rule 3659.

12. Rule 3658 – Standard Rebate Offer

86. Public Service proposes two modifications to this rule. The first modification is to Rule 3658(a) to add clarification that the Standard Rebate Offer can be paid, at the QRU's option, on the basis of the Direct Current (DC) watts produced by an On-site Solar System in order to avoid customer confusion. We agree with this suggestion and grant reconsideration. Rule 3658(a) now reads:

> Each QRU shall make available to its retail electricity customers a Standard Rebate Offer of $2.00 per watt for On-site Solar Systems, up to a maximum of 100 kW per system, that become operational on or after December 1, 2004. At the QRU's option, the Standard Rebate Offer may be paid based upon the direct current (DC) watts produced by the On-site Solar Systems. Any SO-RECs acquired by the QRU pursuant to such SRO program, regardless of whether the associated Renewable Energy is specifically metered or contractually specified

> without specific metering, may be counted by the QRU for purposes of compliance with the Renewable Energy Standard.

87. Next, Public Service suggests moving the effective date for the one-time purchase of SO-RECs from March 31, 2006 to June 1, 2006 in Rule 3658(b). Public Service suggest this so that it can make this one-time offer after the Commission approves its Standard Rebate Offer and the Rules take effect. We find this request reasonable and grant reconsideration.

13. Rule 3659 – Renewable Energy Credits

88. Clean Power notes that this rule has no provision for third-party verification of RECs or SO-RECs. It urges the Commission to require a centralized third-party database/administrator for verification and tracking of compliance claims made by all QRUs. We agree with Clean Power's concern and grant reconsideration on this point by adding new (IV) to Rule 3659(j) which reads:

> Shall hire an independent auditor to verify the accuracy of the QRU internal database which tracks REC. The independent verification shall occur after two years then every three years thereafter.

89. WRA/CoSEIA and Public Service seek reconsideration of Rule 3659(i). WRA/CoSEIA believe the rule should be changed to remove the concept that the QRU will establish the method to determine the appropriate amount of RECs from combined fuel source systems (a portion from a renewable source and another portion from a fossil fuel source). They suggest that the word "establish" be changed to "develop and propose" and that the phrase "subject to PUC approval" be added to the end of the rule. Public Service deletes this rule and Rule 3659(h) because they believe they are redundant with Rule 3654(j). We disagree with Public Service regarding the redundancy of Rules 3659(h) and (i) with Rule 3654(j).

90. Rule 3654(j) addresses the situation where the QRU wishes to count the electricity towards the Standard, while Rules 3659(h) and (i) address the situation where the

QRU wishes to count only the REC portion of a combined fuel source towards the Standard. Rules 3659(h) and (i) intend to address the same issue, but with different language. Therefore in order to streamline this Rule, we delete Rule 3659(i) and remove the last sentence of Rule 3659(h). When these changes are taken together, along with the previous change which includes the word "counting" in Rule 3657(a)(IV), we determine that WRA/CoSEIA's concern is addressed regarding QRU's unilaterally establishing the method for determining RECs from combined systems without Commission approval, since the QRU Compliance Plan under Rule 3657 receives Commission review and approval. Thus we grant WRA/CoSEIA's reconsideration in this regard, in part. However we decline the suggested change in text within Rule 3659(i). We also grant Public Service's reconsideration, in part, by deleting Rule 3659(i) and the last sentence of Rule 3659(h). However we deny its reconsideration by retaining the remaining portion of Rule 3659(h). Thus Rule 3659(h) shall read:

> If a renewable energy system uses an Eligible Renewable Energy Resource in combination with a nonrenewable energy source to generate electricity, only the RECs associated with the proportion of the total electric output of the renewable energy system that results from the use of Eligible Renewable Energy Resources shall be eligible to count toward compliance with the renewable energy standard.

91. Within Public Service's proposed redline rules, it proposes a series of changes to the other portions of this rule. Its first suggested change is to both Rule 3659(a) and a new Rule 3659(a)(V), in order to make it explicit that RECs may be acquired through a system of tradable RECs from either exchanges or brokers. We agree with this concern and grant reconsideration. Rule 3659(a) now reads:

> Renewable Energy Credits will be used to comply with the renewable energy standard. Eligible RECs acquired by contracts or through a system of tradable renewable energy credits, exchanges, or brokers may also be used by QRUs to comply with this standard. In calculating compliance, the total RECs acquired from Eligible Renewable Energy Resources during a compliance year may include:

92. As a result of the above change, we also incorporate Public Service's proposed Rule 3659(a)(V), which reads: "RECs acquired through a system of tradable renewable energy credits, from exchanges or from brokers."

93. Public Service also suggests deleting Rule 3659(f)(III) because its meaning is unclear and it appears overly restrictive. It notes that, if the Commission intended this rule to cover the issue of whether RECs from programs such as WindSource can count towards compliance, that issue has already been addressed by Rule 3654(i). We agree with Public Service and grant reconsideration by deleting Rule 3659(f)(III).

94. Public Service asks the Commission to include a new rule that was originally proposed by Core37. This rule would clarify that, if the QRU has paid smaller On-site Solar Systems for their RECs upfront through a one-time payment, then the QRU is entitled to count the SO-RECs purchased by the one-time payment, even if the solar panels are subsequently removed or become inoperable. Public Service contends that unless the Commission's rules specifically provide this protection to QRUs, then the QRU will not be able to offer a one-time payment because policing the many homeowners who will receive rebate payments and enforcing contractual provisions requiring continual operation of the solar panels over a twenty year period will be extremely costly. Public Service notes that homeowners have a natural incentive to ensure that their panels are operational since they will help to reduce the customer's energy bills. We agree with Public Service's arguments surrounding the costly nature of enforcement and we do not believe that this would be good use of the limited funds provided under Amendment 37. We therefore grant reconsideration on this issue. Thus Rule 3659(i) reads:

> If an On-Site Solar Systems of 10 kW or below has received a one-time REC payment from a QRU under Rule 3658, the QRU shall be entitled to count the

> anticipated SO-RECs purchased by the one-time REC payment for compliance with the Renewable Energy Standard even if the On-Site Solar Systems is removed or becomes inoperable.

95. The next change sought by Public Service addresses Rule 3659(j)(III). It proposes to add the phrase "through an appropriate rate mechanism" because it believes that cost recovery should not be restricted to general rate cases. We agree with Public Service and grant reconsideration. We note however that we don't adopt Public Service's exact language. We also eliminate the phrase "in the utility's next applicable rate proceeding." Our reasoning for this elimination is discussed in the Cost Recovery Rule, Rule 3660. As a result of these changes Rule 3659(j)(III) reads: "A QRU shall apply for the inclusion of any losses or gains from the purchase or sale of RECs through an appropriate adjustment clause mechanism."

96. The last request of Public Service discussed in its RRR pleading is to change two aspects of Rule 3659(k). First, it removes the word "projected" from Rule 3659(k) since the database to track RECs will only track actual RECs. Public Service also proposes to provide for automatic privacy protection for owners of smaller facilities. We agree with both of these changes and grant reconsideration. We note that Public Service also proposed improved language within this rule and we adopt those suggestions as well. Thus Rule 3659(k) reads:

> The QRU shall record REC information from Eligible Renewable Energy Resources in a central database. The database shall include, but not be limited to, a list of all Eligible Renewable Energy Resources the QRU intends to use for compliance with the Renewable Energy Standard, including their type, location, owner, operator, start of operation, actual REC generation, ownership, transfer and retirement. A summary database shall be provided to the Commission Staff and be publicly viewable via the Commission's worldwide web. Owners of Eligible Renewable Energy Resources with nameplate ratings of 100kW or below and large Eligible Renewable Resources, at their option, shall have their name and address encoded for privacy. Systems that are encoded for privacy shall have a unique identifying number assigned, and will continue to have the zip code reported.

97. Finally, in the proposed redline rules attached to its RRR pleading, Public Service suggests numerous minor improvements in either the language or cross-referencing scheme within the other rules of Rule 3659. We generally agree with those changes and grant reconsideration.

14. Rule 3660 – Cost Recovery

98. WRA/CoSEIA note that the amount of money spent on implementing Amendment 37 and the Net Cost of Amendment 37 are two distinct figures. They state that the Net Cost figure would net out all of the other cost savings including fuel, capacity, transmission, distribution and other cost savings. WRA/CoSEIA believes the Net Cost is more meaningful. They are also concerned that it appears that the forward-looking rider mechanism is intended to operate as a balancing account for Amendment 37 implementation costs between rate cases. They encourage the Commission, should it wish to retain the current compromise proposal between Public Service and the Colorado Office of Consumer Counsel (OCC), to ensure that it properly characterizes the cost recovery mechanism to avoid misleading ratepayers. In WRA/CoSEIA's opinion, the rider is not designed to provide customers with accurate information on the incremental costs of Amendment 37 compliance or the potential applicability of the Retail Rate Impact cap.

99. We are concerned that the costs of Amendment 37 are clearly identified to the ratepayer. We adopted Rule 3660(b) which requires QRUs to separately identify the forward-looking cost recovery mechanism on its customers' bills. However, the current language in Rule 3660(a) which addresses the interaction between the adjustment clauses (riders) and the incorporation of costs into a QRU's base rates may have the unintended consequence of the ratepayer not receiving a full disclosure of the true cost of Amendment 37.

100. In the ratemaking process, when a cost which was once recovered in a rider is moved out of the adjustment clause into base rates, it loses its unique cost association. As it relates to these Rules, if costs which are attributable to Amendment 37 are initially recovered in a rider are then subsequently moved into base rates, those costs would no longer be identified as being attributable to Amendment 37 from a customer's bill perspective. [5] The practical effect of moving costs out of the rider into base rates is to "free-up" money that can be spent on more renewable energy projects on a going-forward basis. We agree with WRA/CoSEIA's concern that we should avoid misleading ratepayers regarding the cost of Amendment 37. As a result, we grant reconsideration of WRA/CoSEIA's point and strike the portion of Rule 3660(a) that moves costs into base rates. As a result, Rule 3660(a) reads:

> The QRU shall be entitled to timely cost recovery through retail rate mechanisms for all funds prudently expended to comply with these rules, including the costs the QRU incurs to administer the Standard Rebate Offer and the acquisitions of Eligible Renewable Energy Resources. The QRU shall be entitled to recover its investment and expenses associated with these rules through appropriate adjustment clauses that allow recovery of expenditures without the full resetting of electric rates.

101. Public Service proposes to modify Rule 3660(c) to eliminate the test regarding the reduction in year 2 spending if the QRU does not spend all of the money it collected in year 1. It believes this rule is too restrictive. Public Service contends that so long as the QRU does not charge a customer more than the amounts allowed by the Retail Rate Impact rule, the QRU should not be restricted in the timing of its expenditures. It also notes that under the SRO

[5] A simplified example will demonstrate our concern. Assume a QRU is able to collect $100 under the Retail Rate rule and that the QRU has built renewable facilities, as encouraged under the statute since a QRU is entitled to receive up to 50% of net economic benefit from its facilities as a bonus. Under the regulatory compact, the QRU is entitled to recover its carrying costs for these utility investments. Assume further that the associated carrying costs of those QRU-built facilities is $20. At the first general rate case following the construction of these QRU renewable facilities, the current Rules would allow the QRU to move the $20 cost out of the forward-looking rider collection mechanism and into base rates for collection. When that is done, the $20 is blended into all other base rate costs of the QRU and thus the customer no longer knows, from examining their bill, the true cost of Amendment 37.

program there may be lumpy additions. Public Service goes on to state that if the Commission is concerned that the collected amount is getting too large, it may order a modification of the QRU's Compliance Plan. We agree with Public Service's arguments and find that its language addresses our concerns. We therefore grant reconsideration on this issue. Rule 3660(c) now reads:

> If the QRU incurs costs in acquiring Eligible Renewable Energy to meet the Renewable Energy Standard that exceed the maximum retail rate impact, the QRU shall be entitled to carry forward these costs to a future year for cost recovery. These carried forward amounts shall not increase the amounts that a QRU may charge customers under the Retail Rate Impact rule

102. Public Service also proposes two changes to Rule 3660(d)(II). The first change would allow a QRU to depart from the modeling assumptions from its most recent LCP case upon Commission approval. The second change deletes text that provides modeling inputs, methodologies and assumptions to all parties. Instead, Public Service proposes language that would protect any confidential information provided in accordance with the Commission's Practice and Procedures. Public Service states that it requests the first modification based on its recent experience in its LCP case in which it agreed, for settlement purposes, to evaluate the All-Source RFP bids with an imputed carbon tax and an imputed REC value. Public Service does not believe that either of these imputations should necessarily apply in making the evaluations under Rule 3660(d)(II) or Rule 3661(e). According to Public Service, the second change is necessary to ensure protection for Highly Confidential Information that would otherwise be available to QRUs under the Commission's Rules of Practice and Procedure. We agree with both of Public Service requests and grant reconsideration. Rule 3660(d)(II) shall read:

> To the extent that a QRU uses computer modeling in its analysis of net economic benefit, the QRU shall use the same methodologies and assumptions it used in its most recently approved Least-Cost Planning case, except as otherwise approved by the Commission. Confidential information may be protected in accordance

with Rule 1100 through 1102 of the Commission's Rules of Practice and Procedures.

103. Although not discussed in its pleading, Public Service nonetheless proposes minor changes to Rule 3660(d)(III) in its attached redline rules. We agree with the improved language and grant reconsideration.

104. As discussed previously, a portion of the language in Rule 3660(e) has been moved to Rule 3655(c). We also move Rule 3661(h) from the Retail Rate Impact rule into the Cost Recovery section of the rules as Rule 3660(g).

15. Rule 3661 – Retail Rate Impact

105. The main issue raised in RRR to this set of rules regards Rule 3661(f), which establishes the currently commercially operational standard as the method to determine which resources are accounted for in both model runs (the RES Plan and the No RES Plan) for the determination of the Retail Rate Impact. WRA/CoSEIA and Public Service seek reconsideration of Rule 3661(f). WRA/CoSEIA argue that there should be consistency in the treatment of resources used for compliance purposes (counting towards the prescribed percentages under the RES) and those resources used for modeling purposes in determining the Retail Rate Impact. Otherwise, in their opinion, it would lead to a "double standard." They note that Mr. Binz study, which was heavily debated during the campaigning process, included the savings from the Lamar Wind facility. WRA/CoSEIA contend that if the Commission wishes to up hold its double standard treatment (counting Lamar Wind for compliance, but not including it in the rate impact calculation, for instance), then they recommend including the phrase "at the time of this order" to Rule 3661(f). Public Service requests that consideration be given to the resources it has selected under the 2005 All-Source RFP as the equivalent of "sunk" decisions even if the contracts are not final, since it is likely that all of these resources will not be operational by the time that it files its

first Compliance Plan. As proposed by Public Service, these "sunk" decisions would be included in both the RES Plan and the No RES Plan modeling runs. Public Service notes an inconsistency between Rule 3661(f) and Rule 3661(c) in that the two rules each define new resources differently. Public Service suggests that Rule 3661(f) be deleted to correct the problem.

106. We deny the reconsideration on this point by WRA/CoSEIA and Public Service. We are not persuaded by the arguments presented in RRR that we should change our previous ruling. Our previous decision, which established the currently commercial operational demarcation point, was based on the concept that when a renewable resource becomes commercially operational, the actual fuel savings created (when they displace higher priced natural gas generation) are passed onto ratepayers through a QRU's fuel adjustment clause. To do as WRA/CoSEIA suggests would be to effectively require ratepayers to return these fuel cost savings to the QRU in order for more money to be collected under Amendment 37. To do as Public Service suggests would negate any of the "modeled savings" of these resources from being captured by the Retail Rate Impact calculation. We also deny WRA/CoSEIA's requested modification of Rule 3661(f) to include the phrase "as of the date of this order" at the end of this rule. To adopt its recommendation would effectively "lock-in" which resources are considered currently commercial operational since it would be tied to the effective date of the order. We find this would lead to inconsistent treatment of "modeled savings" and actual fuel cost savings as a renewable facility moves from the RFP stage to the commercially operational stage over time. Thus Rule 3661(f)(I) reads:

> The QRU shall determine all commercially available resources to the QRU, either through ownership or by contract, at the time of the beginning of the Compliance Year and for a minimum of the ten years thereafter (the "RES Planning Period"). The projected costs of these available resources shall be reflected in both of the scenarios analyzed by the QRU's computer planning models under this paragraph. The QRU shall determine the QRU's capacity and energy requirements over the

> RES Planning Period. The QRU shall develop two scenarios to estimate the resource composition of the QRU's future electric system and the cost of that system over the RES Planning Period. The first scenario, a Renewable Energy Standard Plan or "RES Plan" should reflect the QRU's plans and actions to acquire Eligible Renewable Energy to meet the Renewable Energy Standard. The second scenario, a "No RES Plan" should reflect the QRU's resource plan that meets the QRU's capacity and energy requirements over the RES Planning Period by replacing new Eligible Renewable Energy Resources with new nonrenewable resources reasonably available. For purposes of this rule, new Eligible Renewable Energy Resources means resources which are not currently commercial operational at the time these two modeling scenarios are performed

107. Addressing the rest of the rules in this section in order, Public Service proposes to modify Rule 3661(b) to allow for REC purchases from brokers or exchanges consistent with its arguments made in connection with Rule 3659(a) and 3659(a)(IV). It also includes the concept of return on investment for QRU investments to this rule. We grant reconsideration regarding these requests consistent with our previous ruling. Rule 3661(b) reads:

> The net rate impact shall include the prudently incurred direct and indirect costs of all actions by a QRU to meet the Renewable Energy Standard, including, but not limited to, program administration, rebates and performance-based incentives, payments under Renewable Energy Supply Contracts, payments under Renewable Energy Credit Contracts, payments made for RECs purchased through brokers or exchanges, computer modeling and analysis time, and QRU investment in and return on investment for Eligible Renewable Energy Resources.

108. As to Rule 3661(c)(II) WRA/CoSEIA suggest that while the modeling runs cover a minimum of ten years, it is only the comparisons of the first year of the model runs that are used for the Retail Rate Impact calculation. They contend it would be inappropriate to eliminate a renewable resource because it may result in exceeding the one percent cap in future model years. They seek clarification that the modeling runs used for the rate impact determination only includes those resources necessary to comply with the standard in a particular compliance year. We agree with the first two points raised by WRA/CoSEIA, namely the comparison between the first year of the two model runs which are used in the Retail Rate Impact and that it would be

inappropriate to eliminate a renewable resource because it may result in exceeding the one percent cap in future model years. As a result, we grant reconsideration on these two points. We also moved rules within this section for improved readability. Thus Rule 3661(c)(II) is now Rule 3661(d)(II) and reads as follows:

> The QRU shall use the comparison of the two model runs for the first year of the RES Planning Period along with any additional analysis needed to calculate the estimated annual net retail rate impact. The maximum retail rate impact shall not exceed one percent of the total retail bill annually for each customer. To the extent the RES Plan exceeds this maximum retail rate impact, the QRU shall modify the RES Plan to limit the acquisition of Eligible Renewable Energy so that the QRU Compliance Plan does not exceed the maximum retail rate impact for the current Compliance Year.

109. We deny reconsideration of WRA/CoSEIA on their request seeking clarification that the modeling runs used for the rate determination only includes those resources necessary to comply with the Standard. Because the RES has a stair-step function from three percent to six percent to ten percent, it would be unreasonable to expect that a QRU could jump from the three percent level to the six percent level in a single year. As we noted in Rule 3660, there may be lumpy additions of resources based on customer response to the Standard Rebate Offer. Thus the modeling should reflect these lumpy additions and the gradual build up of renewable resources over time, as the QRUs move to the higher percentages under the Standard.

110. Next, Public Service proposes to modify Rule 3661(d) to eliminate the requirement that, in order to use the alternate method for Retail Rate Impact, it does not matter whether the QRU has already acquired sufficient resources for the next ten years. It argues that the alternate method should apply irrespective of whether the QRU has already acquired sufficient capacity and energy to meet its requirements for the ten-year RES Planning Period. WRA/CoSEIA are concerned that Rule 3661(d) is currently not limited to small QRUs. They contend that the rule, as written, would not preclude Public Service from using the alternate

method for calculating the Retail Rate Impact. They claim that since, in the near term, all Public Service will need for compliance with the RES are the solar resources, it could use this rule. WRA/CoSEIA suggest a size requirement be included in the rule that would establish a cap of less than ten million megawatt-hours of retail sales. We agree with Public Service's position and grant reconsideration on this point. We also agree with WRA/CoSEIA that the alternate method should only be available to small QRUs which may not have the expertise to run the sophisticated computer modeling necessary under this rule to determine the Retail Rate Impact from the comparison of the RES Plan and No RES Plan modeling runs. When we adopted this alternate method it was in response to concerns raised by Aquila. We did not intend the alternate method for larger and more computer-sophisticated QRUs. However, we will not adopt the ten million megawatt-hours threshold as suggest by WRA/CoSEIA. Based upon a review of the 2004 annual reports filed with the Commission, we will instead establish a threshold of five million megawatt-hours as the threshold. As noted previously, we have moved rules within this section for improved readability. Thus Rule 3661(d) is now Rule 3661(g) and reads as follows:

> Any QRU with annual retail sales of less than five million megawatt-hours can use an alternate method to determine the estimate of the retail rate impact. The alternative method can be used for those RES Planning Period years when the only remaining portion of the Renewable Energy Standard with which the QRU needs to comply is the Eligible Renewable Energy that must be acquired from Solar Electric Generating Technologies.

111. WRA/CoSEIA request clarification regarding the meaning of "estimated annual average costs of energy of existing resources that would be replaced with energy generated by the proposed Solar Electric Generating Technologies" in Rule 3661(d)(I). They believe it should include the avoided costs (generation, transmission, and distribution costs, for example), not just the costs of the electricity. They express concern that the term "existing resource" should also address the possibility of a new resource that would otherwise be acquired to meet the generation

needs of a QRU in Rule 3661(d). WRA/CoSEIA also contend that Rule 3661(d) suffers the same defect as Rule 3661(c) in that it would not capture the potential net savings of any non-solar renewable energy acquired to meet the standard. We agree with WRA/CoSEIA that cost analysis associated with Rule 3661(d)(I) should include other avoided or deferred costs for generation, transmission, and distribution facilities associated with deploying solar resources. We therefore grant WRA/CoSEIA's reconsideration to further clarify the meaning of "estimated annual average costs of energy of existing resources that would be replaced with energy generated by the proposed Solar Electric Generating Technologies." We again note that we have moved rules within this section for improved readability. Thus Rule 3661(d)(I) is now Rule 3661(g)(I) and reads:

> The retail rate impact will be determined by using the estimated costs of the proposed Solar Electric Generating Technologies less the estimated annual average costs of energy of existing resources that would be replaced with energy generated by the proposed Solar Electric Generating Technologies. The QRU shall also incorporate into this retail rate impact analysis other cost savings created by the deployment of the Solar Electric Generating Technologies. These cost savings include, but are not limited to, the avoided or deferred costs of generation, transmission and distribution facilities.

112. WRA/CoSEIA's next reconsideration contends that Rule 3661(d) suffers the same defect as Rule 3661(c) in that it would not capture the potential net savings of any non-solar renewable energy acquired to meet the Standard. We note that while the two rules address the same issue of determining the Retail Rate Impact, each rule does so differently. Rule 3661(d) is intended to be a simplified alternate method that smaller, less computer-sophisticated QRUs could use to determine the Retail Rate Impact. Rule 3661(c) is the "full-blown" model analysis which can capture the potential net savings of any non-solar renewable energy acquired to meet the standard. We find that to impose a requirement that the simplified alternate method somehow (without the use of sophisticated computer modeling) captures these types of potential

net savings defeats the purpose of having a simplified rule. We find our modification in Rule 3661(g)(I) adequately addresses WRA/CoSEIA's concern. Therefore we deny reconsideration on this point.

113. WRA/CoSEIA believe that under Rule 3661(e) questions of interpretation could arise as to the assumptions and methodologies a QRU used in its most recently approved LCP. They suggest that these issues could be addressed on a case-by-case basis during the compliance phases (plan submittals and review process). They also strenuously object to the general limitation in Rule 3661(e) that only Staff and OCC have access to unsuccessful bid information. At a minimum, WRA/CoSEIA believe this determination should be made on a case-by-case basis.

114. Public Service proposes to delete the text regarding providing modeling inputs, methodologies and assumptions to all parties in Rule 3661(e), and instead changes it to be consistent with the Commission's Practice and Procedures for confidential treatment. Public Service's language parallels its suggested language for Rule 3660(d)(II) discussed previously.

115. Consistent with our previous ruling we grant Public Service's proposed language for this rule and deny WRA/CoSEIA's reconsideration. We find that Public Service's modifications improve the rule since they provide for Commission approval if a QRU wants to use different assumptions and methodologies from its last approved LCP case. We also find that use of the Commission's Rules of Practice and Procedures for confidential information is appropriate. We also affirm, consistent with our previous decisions in other cases, that unsuccessful bid information should be treated as Highly Confidential and only available to Staff of the Commission and the OCC. We note that we moved rules within this section for improved readability. Thus Rule 3661(e) is now Rule 3661(d).

116. Public Service also proposes to delete Rule 3661(g). Public Service argues that there should not be a ten percent cap on administrative costs. It suggests that a cap could be determined later after the ramp-up period of the Amendment 37 programs. We deny this request for reconsideration. We find it is important to establish a cap on administrative costs and ten percent is reasonable. We note that the rule provides that a QRU can request a waiver of this rule during the ramp-up stage of implementing Amendment 37. We note that we moved rules within this section for improved readability. Thus Rule 3661(g) is now Rule 3661(c).

16. Rule 3662 – Annual Compliance Report

117. Public Service offers several clarifying changes to this Rule. For example, it deletes the sentence which reads: "The QRU shall separately identify amounts of megawatt-hours sold by each type of resource" found at 3662(a)(I) and (a)(IX). We disagree with this deletion. The effect of Public Service's suggestion would cause a QRU to aggregate all non-solar compliance reporting values into one figure for reporting purposes. If this were to occur, the Commission and members of the public could not discern how many megawatt-hours were obtained from each type of renewable resource—i.e., wind, biomass, hydroelectric, etc. That level of detail is appropriate and important. Moreover, we do not believe it to be burdensome on the QRUs to maintain these individual resource figures separately since they would have to be aggregated for reporting purposes anyway. Therefore we deny reconsideration on this point. Within Rule 3662(a)(IX) Public Service proposes to add the phrase "pursuant to the Standard Rebate Offer program." We agree with this clarification and grant reconsideration.

118. Public Service's next suggested clarification adds the concept of the most recently completed Compliance Year to Rules 3662(a) and (b). We agree with this suggestion and grant reconsideration on this point.

17. Rule 3663 – Compliance Report Review

119. WRA/CoSEIA request clarification that the opportunities for evidentiary hearings are not limited solely to situations in which the Commission issues a notice of possible noncompliance. They believe that it is important for the Commission to provide the opportunity for public comment and hearings in situations where the QRU asserts that its failure to meet the Standard was due to the Retail Rate Impact. It suggests that in the early years of the Standard, the Commission should err on the side of greater public involvement and scrutiny, not less.

120. We believe the current structure of the Rules provides members of the public the opportunity to comment on items such as the Retail Rate Impact through Rule 3663(a)(II). We note that Rule 3662(a)(XI) requires a QRU to include in its Annual Compliance Report a reporting on the funds expended and the Retail Rate Impact of the renewable resources acquired. Additionally, Rule 3663(a)(II) allows members of the public to provide comment to the Commission on the content of the Annual Compliance Report. We also note that in Rule 3663(a)(IV) the Commission is to consider comments not only from members of the public, but Commission Staff as well. Nonetheless, in order to better clarify the Rules, we grant WRA/CoSEIA's reconsideration and add the phrase "and state whether a hearing is necessary" to the end of Rule 3663(a)(IV).

121. Aquila sought reconsideration of Rule 3663(b) because it argues that this rule will deny the rights of Aquila and other QRUs to due process. Aquila believes that Rule 3663(b) improperly and unlawfully shifts the burden of proof to the QRU to prove its compliance with the several components of the Standard. Aquila asserts that the burden of going forward and proving the defense that compliance would have resulted in exceeding the retail rate cap properly rests on the QRU, but shifting the burden of proof and the initial burden of going forward to the

QRU to prove its compliance violates due process and the Colorado Administrative Practice Act (APA). Aquila notes that under § 24-4-105, C.R.S., the APA states that except as otherwise provided by statute, the proponent of an order shall have the burden of proof. Aquila contends that nothing in Public Utilities Law allocates the burden of proof in a Commission proceeding differently than the APA. Aquila believes that if any party to a compliance proceeding, under these Rules, alleges that a QRU failed to comply with the Renewable Energy Standard or any component thereof, that party is clearly the proponent of a final Commission order that would find that the QRU is not in compliance. Therefore, under the APA and the Public Utilities Law, the burden of proof properly should rest upon the Trail Staff of the Commission or the other party alleging that the QRU failed to comply. Aquila provided suggested language for Rule 3663(b)(II) to correct its infirmaries. We agree with Aquila that the Rules as written improperly shits the burden of proof and of going forward to the QRU, in violation of the APA.

122. Public Service seeks reconsideration of Rule 3663(b)(II), for different reasons. It notes that the Commission acknowledged in paragraph 155 of Decision No. C05-1461 that it may take no action against a QRU if the failure to meet the Standard was beyond a QRU's reasonable control. Public Service provided language in its proposed redline version of the rules to capture this concept. Within this same rule, Public Service deletes the last sentence which discusses the "off-setting benefits" language because it believes it is captured in Rule 3661.

123. We agree and grant reconsideration on the points raised by both Aquila and Public Service. However, rather than adopt the proposed language, Rule 3663(b)(II) shall read as follows:

> At the evidentiary hearing, any party that advocates that the QRU failed to comply with the components of the QRU's Renewable Energy Standard during the most recently completed Compliance Year is the proponent of a Commission order finding non-compliance, and that party shall have the burden of proof that

> the QRU failed to comply with the solar, on-site solar and non-solar components of its Renewable Energy Standard during the most recently completed Compliance Year. The QRU may assert that the Renewable Energy Standard was not met due to the retail rate impact limit or to events beyond the reasonable control of the QRU.

124. WRA/CoSEIA seek reconsideration for the Commission to recognize that the QRU maintains the burden of proof for purposes of Rule 3663(b)(I)(B). They state that the Commission correctly recognized that the QRU's burden to demonstrate compliance in Rule 3663(c) and that same standard should apply to Rule 3663(b)(I)(B). Given our ruling above, we deny reconsideration on this point. The burden of proof shall reside with the party who is the proponent of an order.

125. Public Service requests that the Commission reconsider and modify Rule 3663(c) with respect to compliance penalties. Public Service reiterates the point that, while the "beyond the reasonable control of the QRU" concept was discussed in the Order, it was omitted from the rule. Second, Public Service requests that the proposed rule language regarding bill credits be deleted. It notes that there was no discussion in the Order with respect to bill credits so it is not clear to Public Service why this language appeared in the Rules. Additionally, Public Service argues that there is no authorization in Amendment 37 for the Commission to impose uncompensated bill credits. Moreover, Public Service maintains that Rule 3663(c)(I)(A) requires the Commission to impose uncompensated bill credits on a QRU for failure to meet the Standard. It contends that this would result in bill credits being imposed even if the failure to meet the Standard was due to the Retail Rate Impact rule which is in direct violation of § 40-2-124(i), C.R.S. Public Service contends that it is well-settled under Colorado law that the Commission lacks the authority to assess fines or monetary penalties, absent specific legislative authority to order such remedies, and that the Commission lacks the power to fashion judicial remedies. It

believes that Rules 3663(c)(I) and Rule (c)(I)(C) extend beyond the specific authority granted to the Commission under § 40-2-124, C.R.S. According to Public Service, the statute limits the Commission's authority to adopt rules providing for enforcement mechanism to ensure compliance with the Standard and not for penalties for violations of other provisions of the Rules. Thus in Public Service's opinion, the Commission cannot impose penalties for violations of other provisions of the Rules, or provide for uncompensated bill credits to retail customers.

126. WRA/CoSEIA argues that it agrees that there could be events beyond the control of the QRU that result in a failure to achieve the Standard; however, they believe that the QRU nonetheless maintains its ongoing obligation to prudently administer its obligations under the regulations. As a result, it suggests that the phrase "that could not have been reasonability mitigated" should be added to the rule.

127. We agree with Public Service regarding our limited authority to impose penalties. As a result, we grant reconsideration on this point and strike the phrase "or if the Commission determines that the QRU did not comply with any other provisions of the rules" from Rule 3663(c)(I). As part of this grant of reconsideration, we also strike the phrase "The Commission may also take other administrative action including imposition of administrative penalties against the QRU" in Rule 3663(c)(I)(C). However, we deny reconsideration on Public Service's proposed additional language of "In assessing penalties, the Commission shall consider the reasons offered by the QRU for failure to comply with the Renewable Energy Standard" in Rule 3663(c)(I). We do so because we believe that this language is unnecessary since the Commission will consider all evidence which is presented at a compliance hearing.

128. Lastly, we clarify that the penalties under Rule 3663(c)(I) are some, but not the exclusive list, of possible outcomes from a compliance penalty hearing. Thus Rule 3663(c)(I) reads:

> After notice and hearing, if the Commission determines that the QRU did not fully comply with any of the solar, on-site solar and non-solar components of its Renewable Energy Standard during the most recently completed Compliance Year, the Commission shall determine what, if any, administrative penalties should be assessed against the QRU for its failure to meet the Renewable Energy Standard. In assessing penalties, the Commission may take one or more of the following actions:

129. Turning to Rule 3663(c)(I)(A), Public Service proposes to delete the entire rule because it imposes uncompensated bill credits if a QRU fails to comply with a component of the Standard. We deny this request, in part. We find that this rule is necessary in order to prevent the concept of economic breach. It would be poor public policy for a QRU to intentionally fail to meet the Standard because, from a monetary value standpoint, the cost of the penalties are less than the cost of compliance. As a result, we retain this rule, but strike the portion which addresses the bill credit concept.[6] Instead, we insert additional language to clarify that the dollar value of the non-compliance will be assessed as part of an administrative penalty. Thus, Rule 3663(c)(I)(A) reads:

> Determine for each component for which there was noncompliance the cost that would have been incurred by the QRU to fully comply with such component standard through the acquisition of RECs and assess this amount as part of an administrative penalty.

[6] The Commission notes that the concept of bill credits was originally included in proposed rules of the NOPR which were attached Decision No. C05-0314 as part of Option #2 to Rule 3663(d). See pages 35 and 36 of Attachment A to Decision No. C05-0314. In paragraph number 146 to Decision No. C05-1461, we state that we adopt the NOPR language for Rule 3663 as the starting point for this rule.

130. Consistent with our prior ruling, we grant Public Service's reconsideration on the issue of "beyond the reasonable control" concept and add Public Service's proposed language as part of Rule 3663(c)(I)(C). However, we also agree with WRA/CoSEIA's concern that a QRU maintains an ongoing obligation to prudently administer its obligations under these Rules. Consequently, we grant WRA/CoSEIA's reconsideration and include their suggested phrase. As a result, Rule 3663(c)(I)(C) now reads:

> Assess no administrative penalties against a QRU if the failure to meet the Renewable Energy Standard results from events beyond the reasonable control of the QRU that could not have been reasonably mitigated including, but not limited to, failures to perform by counterparties to Renewable Energy Supply Contracts and Renewable Energy Credit Contracts, events that delay the construction or commercial operation of QRU-owned Eligible Renewable Energy Resources, and lack of customer interest in the Standard Rebate Offer.

131. Consistent with our previous ruling to remove the concept of bill credits from the Rule 3663(c)(I)(A), we strike those words from Rule 3663(c)(II) and add the word "administrative" for clarity.

18. Rule 3665 – Interconnection

132. Public Service suggests several changes to address inconsistencies within the Rules. First, it proposes to delete references to Attachments 6, 7, and 8 within the Level 3 portion (pages 31 and 32 of the rules). Public Service makes clear that the Net Metering Rules take precedence over the Interconnection Rules in (iii). Public Service also makes changes to the Commissioning Test portion of the rule to reference an IEEE standard and to make clear that the QRU will be compensated by the developer for witnessing the Commission Testing process. Public Service also proposes to deletes text that would require the QRU to ensure that the facility meets local codes in rule 2.3. Public Service also suggests that a QRU shall be permitted

periodically to obtain proof of insurance from generating customers instead of a copy of insurance renewals sent to the QRU's authorized representative.

133. We agree with all of Public Service's proposed changes and grant its requests for reconsideration within this section of the Rules.

II. ORDER

A. The Commission Orders That:

1. The Motion for Leave to File Response to the Applications for Rehearing, Reargument and Reconsideration and for Waiver of Response Time filed on January 25, 2006, by Public Service Company of Colorado is granted.

2. The Motion of Western Resource Advocates for permission to file a response to the Motion of Public Service Company of Colorado for Leave to File Response to Applications for Rehearing, Reargument or Reconsideration and for Waiver of Response Time filed on January 26, 2006, is denied.

3. The applications for Rehearing, Reargument and Reconsideration filed by: Aquila, Inc.; City of Boulder; Clean Power Markets, Inc.; Colorado Independent Energy Association; Colorado Rural Electric Association; Public Service Company of Colorado; Colorado Solar Energy Industries Association and Western Resource Advocates are granted, in part, and denied, in part, consistent with the above discussion.

4. The Commission adopts the Proposed Rules Implementing Renewable Energy Standards 4 CCR 723-3 attached to this Order as Attachment A.

5. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

6. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or to the committee on legal services, if the General Assembly is not in session, for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

7. The 20-day time-period provided by § 40-6-114(1), C.R.S. to file an application for rehearing, reargument or reconsideration shall begin on the first day after the effective date of this Order.

8. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING January 27, 2006.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners

COMMISSIONER CARL MILLER
CONCURRING, IN PART,
DISSENTING, IN PART.

III. COMMISSIONER CARL MILLER CONCURRING, IN PART, AND DISSENTING, IN PART:

A. Overview – Rule 3651

1. Recognizing the Commission's and Staff's goal to reduce, streamline, and simplify regulations, I see no need to include the legislative declaration as an overview for Rule 3651. The legislative declaration has no force of law and is therefore meaningless in this rulemaking proceeding. Including the legislative declaration may in fact cause confusion and a misinterpretation, thereby providing opportunity for unwarranted challenges and disputes.

2. I believe Senate Bill 05-143 captures the spirit and intent of Amendment 37 as expressed by the Colorado voters. It should be noted that no attempt was made by individuals, parties, or organizations to include the legislative declaration language in statute (*i.e.*, SB-05-143).

3. For the reasons stated, I oppose the inclusion of the legislative declaration as an overview statement to Rule 3651.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CARL MILLER

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Commissioner

RENEWABLE ENERGY STANDARD

3650. Special Definitions

The following definitions apply only to rules 3650 – 3665.

(a) "Annual Compliance Report" means the report a QRU is required to file annually with the Commission pursuant to Rule 3662 to demonstrate compliance with the Renewable Energy Standard.

(b) "Biomass" means nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush; animal wastes and products of animal wastes; or methane produced at landfills or as a by-product of the treatment of wastewater residuals.

(c) "Compliance Plan" means the annual plan a QRU is required to file with the Commission pursuant to Rule 3657.

(d) "Compliance Year" means a calendar year for which the Renewable Energy Standard is applicable.

(e) "Eligible Renewable Energy" means either Renewable Energy or RECs or both

(f) "Eligible Renewable Energy Resources" are facilities that generate electricity by means of the following energy sources: solar radiation, wind, geothermal, biomass, hydropower, and fuel cells using hydrogen derived from Eligible Renewable Energy Resources. Fossil and nuclear fuels and their derivatives are not eligible energy sources. Hydropower resources in existence on January 1, 2005 must have a nameplate rating of thirty megawatts or less. Hydropower resources not in existence on January 1, 2005 must have a nameplate rating of ten megawatts or less.

(g) "Off-grid On-site Solar System" means an On-site Solar System located on the premises of an end-use electric consumer located within the service territory of a QRU or an electric utility that is eligible to become a QRU pursuant to §40-2-124(5)(b), C.R.S. that is not connected to, and operates completely independently from, the distribution system or transmission system facilities of any electric utility.

(h) "On-site Solar System" means a Solar Renewable Energy System located on the premises of an end-use electric consumer located within the service territory of a QRU or an electric utility that is eligible to become a QRU pursuant to §40-2-124(5)(b), C.R.S. For the purposes of this definition, the non-residential end-use electric customer, prior to the installation of the Solar Renewable Energy System, shall not have its primary business being the generation of electricity for retail or wholesale sale from the same facility. In addition, at the time of the installation of the Solar Renewable Energy System, the non-residential end-use electric customer must use its existing facility for a legitimate commercial, industrial, governmental, or educational purpose other than the generation of electricity. An On-site Solar System is limited to a maximum size of 2 MW.

(i) "Person" means Commission staff or any individual, firm, partnership, corporation, company, association, cooperative association, joint stock association, joint venture, governmental entity, or other legal entity.

(j) "Qualifying Retail Utility" or "QRU" means any provider of retail electric service in the state of Colorado that serves over 40,000 customers.

(k) "Renewable Energy" means energy generated from Eligible Renewable Energy Resources.

(l) "Renewable Energy Credit" or "REC" means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of electric energy generated from an Eligible Renewable Energy Resource. One REC results from one megawatt-hour of electric energy generated from an Eligible Renewable Energy Resource. For the purposes of these rules, RECs include, but are not limited to, S-RECs and SO-RECs.

(m) "Renewable Energy Credit Contract" means a contract for the sale of Renewable Energy Credits without the associated energy.

(n) "Renewable Energy Standard" means the electric resource standard for Eligible Renewable Energy Resources specified in §40-2-124, C.R.S.

(o) "Renewable Energy Supply Contract" means a contract for the sale of Renewable Energy and the RECs associated with such Renewable Energy. If the contract is silent as to Renewable Energy Credits, the Renewable Energy Credits will be deemed to be combined with the energy transferred under the contract.

(p) "Solar Electric Generation Technologies" means any technology that uses solar radiation energy to generate electricity.

(q) "Solar On-site Renewable Energy Credit" or "SO-REC" means a REC created by an On-site Solar System.

(r) "Solar Renewable Energy Credit" or "S-REC" means a REC created by a Solar Renewable Energy System. For the purposes of these rules, S-RECs include, but are not limited to, SO-RECs.

(s) "Solar Renewable Energy System" means a system that uses a Solar Electric Generation Technology to generate electricity.

(t) "Standard Rebate Offer" or "SRO" means a standardized incentive program offered by a QRU to its retail electric service customers for On-site Solar Systems that do not exceed 100 kW per installation.

(u) "Watt" means a unit of measure of alternating current electric power at a point in time, as capacity or demand. For the purposes of measurement of output from Solar Renewable Energy Systems used in the solar program, the watts referenced herein mean those determined by a nationally accepted testing organization.

3651. Overview and Purpose

The purpose of these rules is to establish a process to implement the renewable energy standard for qualifying retail utilities in Colorado, pursuant to the power to regulate public utilities delegated to the Commission by §24-4-101 C.R.S., *et seq.*, §40-2-108 C.R.S., §40-3-102 C.R.S., §40-3-103 C.R.S., §40-4-101 C.R.S., and §40-2-124 C.R.S.

Section 40-2-124 was enacted by the voters of the State of Colorado as 2004 Ballot Amendment 37 and was amended by the 2005 Colorado General Assembly by Senate Bill 05-143.

Energy is critically important to Colorado's welfare and development, and its use has a profound impact on the economy and environment. Growth of the state's population and economic base will continue to create a need for new energy resources, and Colorado's renewable energy resources are currently underutilized.

Therefore, in order to save consumers and businesses money, attract new businesses and jobs, promote development of rural economies, minimize water use for electricity generation, diversify Colorado's energy resources, reduce the impact of volatile fuel prices, and improve the natural environment of the state, it is in the best interests of the citizens of Colorado to develop and utilize renewable energy resources to the maximum practicable extent.

It is the policy of this State to encourage local ownership of renewable energy generation facilities to improve the financial stability of rural communities.

3652. Applicability

(a) Rules 3650 to 3665 shall apply to all jurisdictional electric utilities in the state of Colorado which serve over 40,000 customers, that have not voted to exempt themselves, and are subject to the Commission's regulatory authority.

(b) The board of directors of each QRU subject to these rules may, at its option, submit the question of its exemption from these rules to its consumers on a one meter equals one vote basis. Approval by a majority of those voting in the election shall be required for such exemption, providing that a minimum of 25% of eligible consumers participate in the election.

(I) Within 45 days of the conclusion of any vote for exemption, the QRU shall provide written notification of the outcome of the vote to the Director of the Commission.

(c) The board of directors of each municipally owned electric utility or rural electric cooperative not subject to these rules may, at its option, submit the question of whether to be subject to these rules to its consumers on a one meter equals one vote basis. Approval by a majority of those voting in the election shall be required for such inclusion, providing that a minimum of 25% of eligible consumers participates in the election.

(I) Within 45 days of the conclusion of any vote to be subject to these rules, the municipally owned electric utility or rural electric cooperative shall provide written notification of the outcome of the vote to the Director of the Commission.

(d) For municipal utilities and cooperative electric associations that become qualifying retail utilities after December 31, 2006, the percentage requirements identified in Rule 3654(a) shall begin in the first calendar year following qualification as follows:

(I) Years one through four: Three percent of retail electricity sales;

(II) Years five through eight: Six percent of retail electricity sales; and

(III) Year nine and thereafter: Ten percent of retail electricity sales.

(e) Nothing in these rules is intended to expand the Commission's regulatory oversight and powers over municipally owned electric utilities or rural electric cooperatives.

3653. Municipal and Cooperative Utilities

(a) If a municipally owned electric utility or a rural electric cooperative implements a renewable energy standard substantially similar to the provisions of §40-2-124 C.R.S., then the municipally-owned electric utility or rural electric cooperative will have no obligations under this article.

(b) The municipally owned utility or rural electric cooperative implementing a renewable energy standard substantially similar to the provisions of §40-2-124 C.R.S shall submit a statement to the Commission that demonstrates its renewable energy standard program, at a minimum, meets the following criteria:

(I) The eligible renewable energy resources must be limited to those identified in subsection §40-2-124(1)(a);

(II) The percentage requirements must be equal to or greater in the same years than those identified in subsection §40-2-124(1)(c)(I) and counted in the manner allowed by Rule 3654(c); and

(III) The utility must have an optional pricing program in effect that allows retail customers the option to support through utility rates emerging renewable energy technologies.

(c) The statement to be submitted by a municipally owned utility or rural electric cooperative is for information purposes only and is not subject to approval by the Commission.

(d) Nothing in this section prohibits a municipally owned electric utility or a rural electric cooperative from buying and selling RECs.

3654. Renewable Energy Standard

(a) Each QRU shall generate or cause to be generated (through purchase or by providing rebates or other form of incentive) Eligible Renewable Energy in the following minimum amounts:

(I) 3% of its retail electric energy sales in Colorado for each of the Compliance Years 2007 through 2010;

(II) 6% of its retail electric energy sales in Colorado for each of the Compliance Years 2011 through 2014;

(III) 10% of its retail electric energy sales in Colorado for each Compliance Year beginning in 2015 and continuing thereafter.

(b) Of the Eligible Renewable Energy amounts specified in Rule 3654(a), at least four percent shall be derived from Solar Electric Generation Technologies. At least one-half of this four percent shall be derived from On-site Solar Systems located at customers' facilities.

(c) For purposes of compliance with the Renewable Energy Standard, each kilowatt-hour of Eligible Renewable Energy generated in Colorado shall be counted as 1.25 kilowatt-hours of Eligible Renewable Energy.

(d) For purposes of compliance with this Renewable Energy Standard, a QRU may generate, or cause to be generated, and count Eligible Renewable Energy for compliance:

(I) For the Compliance Year immediately preceding the Compliance Year during which it was generated, provided that such Eligible Renewable Energy is generated no later than July 1 of the calendar year immediately following the end of the Compliance Year for which it is being counted;

(II) For the Compliance Year during which it was generated; or

(III) For the five Compliance Years immediately following the Compliance Year during which it was generated.

(IV) Eligible Renewable Energy generated on or after January 1, 2004 may be counted for compliance with this Renewable Energy Standard. Renewable Energy or RECs generated on or before December 31, 2003 shall not be eligible for, and shall not be counted for, compliance with this Renewable Energy Standard. The eligibility for

compliance of all Eligible Renewable Energy shall expire at the end of the fifth calendar year following the calendar year during which it was generated.

(e) For purposes of compliance with this Renewable Energy Standard, a QRU may substitute the equivalent RECs, S-RECs, or SO-RECs for Eligible Renewable Energy.

(f) For the first four Compliance Years, 2007 through 2010, the QRU may borrow forward Eligible Renewable Energy generated during the following two Compliance Years. Any borrowed Eligible Renewable Energy generated during a Compliance Year must be made up by actual Eligible Renewable Energy generated during that Compliance Year or borrowed from subsequent Compliance Years, provided that the 2010 Compliance Year is the last Compliance Year that borrowing forward may occur pursuant to this rule. For purposes of this rule, the term "borrow forward" means that a QRU may count Eligible Renewable Energy that it has not yet generated or caused to be generated to satisfy its current year obligations toward compliance with the Renewable Energy Standard and the term "made up" means that any counting of Eligible Renewable Resources by a QRU in a Compliance Year that it had not actually generated nor caused to be generated shall be actually generated or caused to be generated in a subsequent year.

(g) For the first four Compliance Years, 2007 through 2010, no administrative penalties shall be assessed against a QRU if the failure to meet the Renewable Energy Standard results from events beyond the reasonable control of the QRU which could not have reasonably been mitigated by the QRU.

(h) For purposes of compliance with this Renewable Energy Standard, there shall be no "double counting" of Renewable Energy or RECs. Notwithstanding the foregoing, Eligible Renewable Energy generated or acquired by a QRU and counted toward compliance with a federal renewable energy standard may also be counted by the QRU toward compliance with the Renewable Energy Standard.

(i) A QRU may apply to the Commission for a determination as to whether Eligible Renewable Energy sold by the QRU under an optional renewable energy pricing program may be counted by the QRU toward compliance with the Renewable Energy Standard. Such Eligible Renewable Energy shall not be counted toward compliance with the Renewable Energy Standard until the Commission grants approval of the utility's application following an evidentiary hearing.

(j) For purposes of compliance with this Renewable Energy Standard, if a generation system uses a combination of fossil fuel and Eligible Renewable Energy Resources to generate electricity, a QRU may count only as Eligible Renewable Energy the proportion of the total electric output of the generation system that results from the use of Eligible Renewable Energy Resources. The QRU shall include in its Annual Compliance Plan the method of calculation used to determine the proportion of Eligible Renewable Energy.

(k) The QRU may generate, or cause to be generated, Eligible Renewable Energy without regard to economic dispatch procedures.

3655. Resource Acquisition

(a) It is the Commission's policy that utilities should meet the Renewable Energy Standard in the most cost-effective manner. To this end the QRU shall use competitive bidding for acquiring Renewable Energy from Eligible Renewable Energy Resources using Solar Electric Generation Technologies with nameplate rating greater than 100 kW.(b) Competitive solicitations shall be conducted by each QRU to achieve the statutory policies contained in the legislative declaration of intent. Whenever a QRU acquires Renewable Energy and/or RECs by competitive

acquisition, to the extent possible, the solicitations and evaluations of proposals should be coordinated to avoid redundancy and to minimize the cost of acquiring such Renewable Energy and/or RECs. A QRU may conduct, in its discretion, separate solicitations or combined solicitations, for any of the following:

(I) Renewable Energy from On-site Solar Systems;

(II) Renewable Energy from Solar Energy Systems that are not On-site Solar Systems;

(III) Renewable Energy from non-solar resources such as wind, geothermal, biomass, hydropower, fuel cells;

(IV) Renewable Energy Credits (RECs);

(V) Solar Renewable Energy Credits (S-RECs); and

(VI) Solar On-site Renewable Energy Credits (SO-RECs).

(c) The QRU may apply to the Commission, at any time, for review and approval of Renewable Energy Supply Contracts and Renewable Energy Credit Contracts. The Commission will review and rule on these contracts within sixty days of their filing. The Commission may set the contract for expedited hearing, if appropriate, under the Commission's Rules of Practice and Procedure. If the QRU enters into a Renewable Energy Supply Contract or a Renewable Energy Credit Contract in a form substantially similar to the form of contract approved by the Commission as part of the QRU's Compliance Plan, that contract shall be deemed approved by the Commission under this rule.

(d) Renewable Energy Supply Contracts entered into after the effective date of these rules:

(I) Shall be for the acquisition of both Renewable Energy and the associated RECs;

(II) May reflect a fixed price, or a price that varies by year;

(III) Shall have a minimum term of 20 years (or shorter at the sole discretion of the seller); and

(IV) Shall require the seller to relinquish all REC ownership associated with contracted Renewable Energy to the buyer.

(e) Renewable Energy Credit Contracts entered into after the effective date of these rules:

(I) Shall be for the acquisition of RECs only;

(II) May reflect a fixed price, or a price that varies by time period; and

(III) Shall have a minimum term of 20 years if the REC is from an On-site Solar System.

(f) Competitive solicitations for Eligible Renewable Energy from On-Site Solar Systems that provide SO-RECs shall be conducted at least two times per year by each QRU in 2006 and 2007 and thereafter as necessary to comply with the Renewable Energy Standard.

(I) The treatment of any solar-generated electricity generated on-site in excess of the consumption of the host facility will be governed by the net metering provisions pursuant to Rule 3664.

(g) Competitive solicitations for the acquisition of S-RECs may be conducted by each QRU as needed to comply with the Renewable Energy Standard . S-REC requirements not likely to be met may be solicited from SO-REC providers.

(h) Competitive solicitations for Renewable Energy or RECs from Eligible Renewable Energy Resources other than On-Site Solar Systems shall be conducted by each QRU in a timeframe that takes into account the projected needs of the QRU. (i) Each competitive solicitation pursuant to these rules shall be targeted toward acquiring the amount of Eligible Renewable Energy required for compliance with each component of the Renewable Energy Standard, and taking into account:

(I) The Retail Rate Impact, and

(II) The estimated number of SO-RECs procured under and expected to be procured under the standing Standard Rebate Offer (j) Each QRU shall provide all parties to the bid process timely notice of bidding procedure.

(k) Each QRU shall disclose, at the Commission's request, all information that will be used in the acquisition process, including but not limited to, interconnection and transmission studies, and methods for modeling or otherwise analyzing bids. Confidential information may be protected in accordance with Rules 1100 through 1102 of the Commission's Rules of Practice and Procedure.

(l) If the QRU intends to accept proposals for renewable resources from the QRU or from an affiliate of the QRU, it shall include a written separation policy and name an independent auditor whom the utility proposes to hire to review and report to the Commission on the fairness of the competitive acquisition process. The independent auditor shall have at least five years' experience conducting and/or reviewing the conduct of competitive electric utility resource acquisition, including computerized portfolio costing analysis. The independent auditor shall be unaffiliated with the utility; and shall not, directly or indirectly, have benefited from employment or contracts with the utility in the preceding five years, except as an independent auditor under these rules. The independent auditor shall not participate in, or advise the utility with respect to, any decisions in the bid-solicitation or bid-evaluation process. The independent auditor shall conduct an audit of the utility's bid solicitation and evaluation process to determine whether it was conducted fairly. For purposes of such audit, the utility shall provide the independent auditor immediate and continuing access to all documents and data reviewed, used or produced by the utility in its bid solicitation and evaluation process. The utility shall make all its personnel, agents and contractors involved in the bid solicitation and evaluation available for interview by the auditor. The utility shall conduct any additional modeling requested by the independent auditor to test the assumptions and results of the bid evaluation analyses. Within 60 days of the utility's selection of final resources, the independent auditor shall file a report with the Commission containing the auditor's views on whether the utility conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported. After the filing of the independent auditor's report, the utility, other bidders in the resource acquisition process and other interested parties shall be given the opportunity to review and comment on the independent auditor's report.

(m) Responses to competitive solicitations shall be evaluated and ranked by the QRU.

(I) In addition to the cost of the Renewable Energy and RECs, the QRU may take into consideration the characteristics of the underlying Eligible Renewable Energy Resource

that may impact the ability of the bidder to fulfill the terms of the bid including, but not limited to project in-service date, resource reliability, viability, economic development benefits, energy security benefits, amount of water used, fuel cost savings, environmental impacts including tradable emissions allowances savings, load reduction during higher cost hours, transmission capacity and scheduling, and any other factor the QRU determines is relevant to the QRU's needs. (II) Bids with prices that vary by year will be evaluated by discounting the yearly prices at the utility discount rate.

(III) A QRU is not required to accept any bid and may reject any and all bids offered. However, each solicitation shall culminate in a report detailing the outcome of the solicitation and identifying which bids were selected, which were rejected, and why. (IV) For purposes of comparing bids for RECs only with bids for electricity and RECs, the QRU shall assign a value for the electricity and subtract this value from the electricity and RECs bid, and evaluate bids on the basis of RECs only.(n) Within 15 days, the QRU shall notify respondents as to whether their bid has met the bid submission criteria.

(o) Upon ranking of eligible bids, each QRU shall within 15 days indicate to all respondents with which proposals it intends to pursue a contract

(p) If there is a dispute between a bidder and the QRU, either party may refer the dispute to the Commission for resolution.

3656. Environmental Impacts

(a) Renewable electric generation facilities must meet all applicable federal, state, and local environmental permitting requirements.

(b) For Eligible Renewable Energy Resources larger than 2 MW with any structures extending over 50 feet in height, the QRU shall require project developers to include in the bid package written documentation that consultation occurred with appropriate governmental agencies (for example, the Colorado Division of Wildlife or the U.S. Fish and Wildlife Service) responsible for reviewing potential project development impacts to state and federally listed wildlife species, as well as species and habitats of concern.

(c) For Eligible Renewable Energy Resources larger than 2 MW with any structures extending over 50 feet in height, the QRU Renewable Energy Supply Contract shall require project developers to certify, as a condition precedent to achieving commercial operation, that the developer has performed and made publicly available site specific avian and other wildlife surveys conducted on the facility's site prior to construction. The developer shall further certify that the developer used the results of these surveys in the design, placement, and management of the facilities to ensure that the environmental impacts of facility development are minimized to state and federally listed species and species of special concern, sites shown to be local bird migration pathways, critical habitat and areas where birds or other wildlife are highly concentrated and are considered at risk.

3657. QRU Compliance Plan

(a) Every year on or before July 1, beginning in 2007, each QRU shall file with the Commission, by application, its proposed plan detailing how the QRU intends to comply with these rules during the next Compliance Year. Each QRU shall file with the Commission, by application, its proposed plan for the 2007 Compliance Year within 60 days after the effective date of these rules. Each annual QRU plan shall include rules, regulations and tariffs, if applicable, and the following:

(I) The QRU's:

(A) Determination of the retail rate impact pursuant to Rule 3661;

(B) Estimate of its retail electricity sales;

(C) Estimate of the Eligible Renewable Energy that the QRU already has acquired and the QRU's estimate of the additional Eligible Renewable Energy that will be needed to meet the Renewable Energy Standards;

(D) Estimate of the funds that the QRU will have available to generate, or cause to be generated, additional Eligible Renewable Energy under the Retail Rate Impact rule;

(E) Plan to acquire additional Eligible Renewable Energy given the constraints of the Retail Rate Impact rule, including the allocation of the funds available under the Retail Rate Impact rule to acquire Renewable Energy or RECs from each of the following: On-site Solar Systems; Solar Renewable Energy Systems that are not On-site Solar Systems; and non-solar Renewable Energy;

(F) Standard Rebate Offer and the QRU's estimate of the Eligible Renewable Energy that will be acquired under the Standard Rebate Offer;

(G) Plan to acquire the additional Eligible Renewable Energy, including the QRU's use of competitive acquisitions to obtain the additional solar Eligible Renewable Energy it needs to meet the Renewable Energy Standard;

(H) The proposed Request for Proposal including any standard contracts to be included with the acquisition for all Eligible Renewable Energy that the QRU plans to acquire by competitive acquisition; and

(I) Proposed ownership investment, if any, in Eligible Renewable Energy Resources and estimate of whether its investment will provide net economic benefits to the QRU's customers, entitling the QRU to extra profit on its investment, pursuant to Rule 3660.

(II) The competitive acquisition process for renewable energy resources, pursuant to Rule 3655;

(III) The establishment of the initial level and adjustments to the Standard Rebate Offer for solar electric generation resources, pursuant to Rule 3658;

(IV) The treatment, tracking, counting and trading of RECs, pursuant to Rule 3659;

(V) The establishment of a cost recovery mechanism, pursuant to Rule 3660;

(VI) The net metering for renewable energy resources, pursuant to Rule 3664;

(VII) The interconnection of renewable energy resources, pursuant to Rule 3665; and

(b) The Commission shall either approve the QRU's Compliance Plan or order modifications to the Compliance Plan. QRU actions consistent with an approved compliance plan will be presumed prudent.

(c) The QRU may apply to the Commission at any time for approval of amendments to an approved Compliance Plan.

3658. Standard Rebate Offer

(a) Each QRU shall make available to its retail electricity customers a Standard Rebate Offer of $2.00 per watt for On-site Solar Systems, up to a maximum of 100 kW per system, that become operational on or after December 1, 2004. At the QRU's option, the Standard Rebate Offer may be paid based upon the direct current (DC) watts produced by the On-site Solar Systems. Any SO-RECs acquired by the QRU pursuant to such SRO program, regardless of whether the associated Renewable Energy is specifically metered or contractually specified without specific metering, may be counted by the QRU for purposes of compliance with the Renewable Energy Standard.

(b) On or before June 1, 2006, each QRU shall make a one-time offer to purchase, under a Renewable Energy Credit Contract, the SO-RECs associated with On-site Solar Systems, up to a maximum of 10 kW per system existing prior to December 1, 2004, and Off-grid On-site Solar Systems, up to a maximum of 10 kW per system. The purchase price offered by the QRU for such SO-RECs shall be no less than the QRU's then current standard offer payment rate for SO-RECs, exclusive of the standard rebate payment, associated with the QRU's Standard Rebate Offer and established pursuant to Rule 3658. Subsequent offers shall be made at the discretion of the QRU. SO-RECs purchased by a QRU pursuant to this rule may be counted for purposes of compliance with the Renewable Energy Standard.

(c) The Standard Rebate Offer of the QRU shall be set forth at least annually and shall meet the following requirements:

(I) The QRU need not offer a rebate for an On-site Solar System smaller than 500 watts.

(II) The rebate must be made available to all retail utility customers of the QRU on a non-discriminatory, first-come, first-served basis, based upon the date of contract execution.

(III) Applicants who are accepted for SRO rebates shall have one year from the date of contract execution to demonstrate substantial completion of their proposed On-site Solar System. Substantial completion means the purchase and installation on the customer's premises of all major system components of the On-site Solar System. Customers who do not achieve substantial completion within one year will not receive a rebate, unless the substantial completion date is extended. When substantial completion of an On-site Solar System has been achieved by an applicant pursuant to this rule the SO-RECs may be counted for purposes of compliance with the Renewable Energy Standard. Within 30 days of substantial completion, the SRO rebate, pursuant to Rule 3658(a), and SO-REC payment, pursuant to Rule 3658(c)(VIII), shall be paid to the applicant.

(IV) With the exception of batteries, all On-site Solar Systems eligible for SRO rebates shall be covered by a minimum five-year warranty. Contracts will require customers to maintain the On-site Solar System so that it remains operational for the term of the contract.

(V) On-site Solar Systems must consist of equipment that is commercially available and factory new when installed on the original customer's premises to be eligible for the SRO rebate. Rebuilt, used, or refurbished equipment is not eligible to receive the rebate.

(VI) Customers may contract to expand their On-site Solar Systems and obtain a rebate for the expanded capacity.

(VII) In order to receive the SRO rebate payment, the customer must enter into an agreement with the QRU, with a minimum term of 20 years, that transfers the SO-RECs generated by the On-site Solar System during the term of the agreement from the customer to the QRU.

(VIII) For On-site Solar Systems, up to and including 10 kW, that become operational on or after December 1, 2004, the QRU shall offer to make a one-time payment, in addition to the standard rebate payment, for the SO-RECs contracted to be transferred from the customer to the QRU. Any customer that receives the rebate payment and one-time SO-REC payment under this program shall not be entitled to any other compensation for the SO-RECs contracted to be transferred to the QRU. To facilitate installation of these small systems, all procedures, forms, and requirements shall be clear, simple, and straightforward to minimize the time and effort of homeowners and small businesses.

(IX) For On-site Solar Systems greater than 10 kW that become operational on or after December 1, 2004, the QRU, in addition to the standard rebate payment, shall offer to pay for the SO-RECs contracted to be transferred from the customer to the QRU. Such SO-RECs and the associated payments shall be determined by the specifically metered Renewable Energy output from the On-site Solar System.

(X) The customer or its representative shall provide a calculation of the annual expected kilowatt-hour production from the customer's On-Site Solar System. The customer or its representative shall provide the following documentation to back up the customer's calculation:

(A) Tilt of the system in degrees (horizontal = 0 degrees);

(B) Orientation of the system in degrees (south = 180 degrees);

(C) A representation that the orientation of the system is free of trees, buildings and or other obstructions that might shade the system measured from the center point of the solar array through a horizontal angle plus or minus 60 degrees and a through vertical angle between 15 degrees and 90 degrees above the horizontal plane.

(D) A calculation of the annual expected kWh of electricity produced by the system. For PV systems, the calculation of annual expected kWh of electricity will be based on the public domain solar calculator PVWatts Version 1 (or equivalent upgrade).

(i) The weather station that is either nearest to or most similar in weather to the installation site;

(ii) The System Output rating which equals the module rating times the inverter efficiency times the number of modules;

(iii) Array Type: fixed tilt, single axis tracking, or 2 axis tracking; For variable tilt systems, the PVWatts calculations can be run multiple times corresponding to the number of times per year that the system tilt is expected to be changed using those months corresponding to the specific tilt angle used;

(iv) Array Tilt (degrees); and

(v) Array Azimuth (degrees).

(E) In the event PVWatts is no longer available, an equivalent tool shall be established.

(F) For On-Site Solar Systems up to and including 10 kW, the REC payment may be adjusted, either up or down, based on the calculation of expected kWh of electric output derived from Rule 3658(X)(D) as compared with an optimally oriented fixed, i.e. non-tracking, system at the customer's location, but only if the calculated system output differs from the optimally oriented system output by more than 10%.

(XI) The level of SO-REC payments for systems of 10 kW and smaller offered in connection with a QRU's SRO program may be adjusted from time to time as needed to achieve compliance with the Renewable Energy Standard.

(XII) The On-site Solar System installed must remain in place on the customer's premises for the duration of its useful life. The customer's equipment must have electrical connections in accordance with industry practice for permanently installed equipment, and it must be secured to a permanent surface (e.g. foundation, roof, etc.). Any indication of portability, including, but not limited to, wheels, carrying handles, dolly, trailer or platform, will render the system ineligible for participation and payments under the SRO program.

3659. Renewable Energy Credits

(a) Renewable Energy Credits will be used to comply with the renewable energy standard. Eligible RECs acquired by contracts or through a system of tradable renewable energy credits, exchanges, or brokers may also be used by QRUs to comply with this standard. In calculating compliance, the total RECs acquired from Eligible Renewable Energy Resources during a compliance year may include:

(I) RECs generated by Eligible Renewable Energy Resources owned by the QRU or by a QRU affiliate;

(II) RECs acquired by the QRU pursuant to Renewable Energy Supply Contracts;

(III) RECs acquired by the QRU pursuant to Renewable Energy Credit Contracts;

(IV) RECs acquired by the QRU pursuant to a standing offer program;

(V) RECs acquired through a system of tradable renewable energy credits, from exchanges or from brokers

(VI) RECs carried forward from previous compliance years, pursuant to Rule 3654(d);

(VII) RECs borrowed forward from future compliance years, pursuant to Rule 3654(f).(b) RECs representing electricity generated at Eligible Renewable Energy Resources located in the state of Colorado shall be counted as 1.25 RECsfor the purpose of compliance with Rule 3654.

(c) All contracts between QRUs and the owners of Eligible Renewable Energy Resources entered into after the effective day of these rules shall clearly specify the entity who shall own the RECs associated with the energy generated by the facility.

(d) A Renewable Energy Credit shall expire at the end of the fifth calendar year following the calendar year during which it was generated.(e) Renewable Energy Credits that are generated on or after January 1, 2004 may be counted for compliance with this Renewable Energy Standard.

(f) RECs shall be used for a single purpose only, and shall expire or be retired upon use for that purpose. All RECs utilized by the QRU to comply with the Renewable Energy Standard:

(I) May not be sold or otherwise exchanged with any other party, or in any other state or jurisdiction;

(II) May not be included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction;

(III) May be counted simultaneously toward compliance with a federal renewable portfolio standard and with the Renewable Energy Standard.

(g) RECs that are generated with fuel cell energy using hydrogen derived from an Eligible Renewable Energy Resource are eligible for compliance purposes only to the extent that the energy used to generate the hydrogen did not create Renewable Energy Credits.

(h) If a renewable energy system uses an Eligible Renewable Energy Resource in combination with a nonrenewable energy source to generate electricity, only the RECs associated with the proportion of the total electric output of the renewable energy system that results from the use of Eligible Renewable Energy Resources shall be eligible to count toward compliance with the renewable energy standard.

(i) If an On-Site Solar Systems of 10 kW or below has received a one-time REC payment from a QRU under Rule 3658, the QRU shall be entitled to count the anticipated SO-RECs purchased by the one-time REC payment for compliance with the Renewable Energy Standard even if the On-Site Solar Systems is removed or becomes inoperable.

(j) A QRU:

(I) Shall develop an auditable process to account for RECs using a central database. In the absence of a central third-party database, the QRU shall maintain its own REC internal database and shall make an extract of the REC information available on the utility's website.

(II) Shall designate within its database any REC sold to a wholesaler if the REC has been assigned to that wholesaler.

(III) Shall apply for the inclusion of any losses or gains from the purchase or sale of RECs through an appropriate adjustment clause mechanism.

(IV) Shall hire an independent auditor to verify the accuracy of the QRU internal database which tracks REC. The independent verification shall occur after two years then every three years thereafter.

(k) The QRU shall record REC information from Eligible Renewable Energy Resources in a central database. The database shall include, but not be limited to, a list of all Eligible Renewable Energy Resources the QRU intends to use for compliance with the Renewable Energy Standard, including their type, location, owner, operator, start of operation, actual REC generation, ownership, transfer and retirement. A summary database shall be provided to the Commission Staff and be publicly viewable via the Commission's worldwide web. Owners of Eligible Renewable Energy Resources with nameplate ratings of 100kW or below and larger Eligible Renewable Resources, at their option, shall have their name and address encoded for privacy. Systems that are encoded for privacy shall have a unique identifying number assigned, and will continue to have the zip code reported.

(l) In conjunction with the QRU Compliance plans specified in Rule 3657, a QRU may make a request that the Commission allow the use of a central third-party database to account for RECs. If a QRU proposes to use a central third-party database for the accounting of RECs, the QRU must show that the central third-party database can be readily audited by the Commission Staff to verify that the renewable energy standard is met and that the alternative system is cost effective.

3660. Cost Recovery

(a) The QRU shall be entitled to timely cost recovery through retail rate mechanisms for all funds prudently expended to comply with these rules, including the costs the QRU incurs to administer the Standard Rebate Offer and the acquisitions of Eligible Renewable Energy Resources. The QRU shall be entitled to recover its investment and expenses associated with these rules through appropriate adjustment clauses that allow recovery of expenditures without the full resetting of electric rates.

(b) In advance of the approval of the first Compliance Plan, a QRU may propose, by application, to implement a forward-looking cost recovery mechanism to provide funding for implementing the Renewable Energy Standard. In its application, the QRU must demonstrate that the funding mechanism proposed will not exceed the retail rate impact test. If approved, the forward-looking funding mechanism may be implemented prior to the first Compliance Year. Each QRU with a forward-looking cost recovery mechanism shall separately identify the forward-looking cost recovery mechanism on its customers' bills.

(I) Interest shall accrue on the unexpended balance of funds collected from a forward-looking rider. The interest rate shall be at the Commission's customer deposit interest rate at the time of the rider. A QRU may request interest on any funds it expends in excess of those collected through the forward-looking rider. The request for interest on excess expenditures shall include the reason(s) for the excess expenditures. The request for interest shall be included as part of the Annual Compliance Report, pursuant to Rule 3662.

(c) If the QRU incurs costs in acquiring Eligible Renewable Energy to meet the Renewable Energy Standard that exceed the maximum retail rate impact, the QRU shall be entitled to carry forward these costs to a future year for cost recovery. These carried forward amounts shall not increase the amounts that a QRU may charge customers under the Retail Rate Impact rule.

(d) The QRU shall be entitled to earn an extra profit on the QRU's ownership investment in a specific Eligible Renewable Energy Resource if that Eligible Renewable Energy Resource provides net economic benefits to customers. For these investments, the QRU shall be entitled to a return equal to the QRU's most recent authorized rate of return on rate base plus a bonus limited to 50% of the of the net economic benefit as long as the QRU is in compliance with these rules implementing the Renewable Energy Standard. If the QRU's investment in a specific Eligible Renewable Energy Resource does not provide a net economic benefit to customers, the QRU shall be entitled to a return equal to the QRU's most recent authorized rate of return on rate base.

(I) For the purposes of this Rule 3660, net economic benefit shall mean that the specific Eligible Renewable Energy Resource in which the QRU has made an ownership investment results in an average retail rate impact less than the rate impact that would have resulted from the acquisition of the alternative Eligible Renewable Energy Resource meeting the same component of the Renewable Energy Standard that would have been selected absent the QRU's investment. The QRU shall set forth its calculation of the proposed net economic benefit either at the time of a Compliance Plan filing, an Annual Compliance Report filing, a QRU rate filing or by application. The Commission shall determine the level of the net economic benefit and the level of the bonus after review of the utility's filing. The Commission may set the matter for hearing if appropriate under the Commission's Rules of Practice and Procedure.

(II) To the extent that a QRU uses computer modeling in its analysis of net economic benefit, the QRU shall use the same methodologies and assumptions it used in its most recently approved Least-Cost Planning case, except as otherwise approved by the Commission. Confidential information may be protected in accordance with Rule 1100 through 1102 of the Commission's Rules of Practice and Procedures.

(III) Any net economic benefit for which the QRU qualifies to receive a bonus shall be included in the calculation of the retail rate impact rule pursuant to Rule 3661.

(e) The utility is entitled to recover through rates, its prudently incurred expenditures. While not the exclusive method for establishing prudence, if the Commission approves a Renewable Energy Supply Contract or a Renewable Energy Credit Contract, the expenditures of the QRU under the contract shall be deemed to be prudent expenditures. .

(f) If the QRU recovers fuel and purchased energy expense through an incentive adjustment clause, the QRU shall not receive a benefit from the incentive adjustment clause for the energy generated from QRU-owned Eligible Renewable Energy Resources, but the QRU shall be entitled to recover all the fuel and purchased energy costs associated with the Eligible Renewable Energy Resource.

(g) If a wholesale customer agrees to pay the full costs associated with the acquisition of renewable resources and associated RECs by its wholesale provider, the wholesale customer shall be entitled to receive the appropriate credit toward the Renewable Energy Standard as well as any associated RECs. To the extent that the full costs are not recovered from wholesale customers, a QRU shall be entitled to recover those costs from retail customers.

3661. Retail Rate Impact

(a) The net rate impact of actions taken by a QRU to comply with the Renewable Energy Standard shall not exceed one percent of the total electric bill annually for each customer of that QRU.

(b) The net rate impact shall include the prudently incurred direct and indirect costs of all actions by a QRU to meet the Renewable Energy Standard, including, but not limited to, program administration, rebates and performance-based incentives, payments under Renewable Energy Supply Contracts, payments under Renewable Energy Credit Contracts, payments made for RECs purchased through brokers or exchanges, computer modeling and analysis time, and QRU investment in and return on investment for Eligible Renewable Energy Resources. (c) The administrative costs of a QRU to implement these rules is capped at ten percent per year of the total annual collection. A QRU may include in its Compliance Plan a waiver request of this rule during the initial ramp-up stage of the QRU's program.

(d) For purposes of calculating the retail rate impact, the QRU shall use the same methodologies and assumptions it used in its most recently approved Least-Cost Planning case, unless otherwise approved by the Commission. Confidential information may be protected in accordance with Rules 1100 through1102 of the Commission's Rules of Practice and Procedure.

(e) In its Compliance Plan filed under Rule 3657, the QRU shall estimate the retail rate impact of its plan to comply with the Renewable Energy Standard over the upcoming Compliance Year and shall submit a report detailing the development of the retail rate impact estimate. The Compliance Plan shall identify the funds that need to be made available to the QRU to comply with the Renewable Energy Standard and the Retail Rate Impact rule. By approving the QRU's Compliance Plan, the Commission will be approving the QRU's budget for acquiring Eligible Renewable Energy over the Compliance Year. Once approved by the Commission, the QRU shall implement its Compliance Plan. Actions taken by a QRU in compliance with the filed and approved Compliance Plan shall be deemed prudent.

(f) The basic method for performing the estimate of the retail rate impact limit is as follows:

(I) The QRU shall determine all commercially available resources to the QRU, either through ownership or by contract, at the time of the beginning of the Compliance Year and for a minimum of the ten years thereafter (the "RES Planning Period"). The projected costs of these available resources shall be reflected in both of the scenarios analyzed by the QRU's computer planning models under this paragraph. The QRU shall determine the QRU's capacity and energy requirements over the RES Planning Period. The QRU shall develop two scenarios to estimate the resource composition of the QRU's future electric system and the cost of that system over the RES Planning Period. The first scenario, a Renewable Energy Standard Plan or "RES Plan" should reflect the QRU's plans and actions to acquire Eligible Renewable Energy to meet the Renewable Energy Standard. The second scenario, a "No RES Plan" should reflect the QRU's resource plan that meets the QRU's capacity and energy requirements over the RES Planning Period by replacing new Eligible Renewable Energy Resources with new nonrenewable resources reasonably available. For purposes of this rule, new Eligible Renewable Energy Resources means resources which are not currently commercial operational at the time these two modeling scenarios are performed.

(II) The QRU shall use the comparison of the two model runs for the first year of the RES Planning Period along with any additional analysis needed to calculate the estimated annual net retail rate impact. The maximum retail rate impact shall not exceed one percent of the total retail bill annually for each customer. To the extent the RES Plan exceeds this maximum retail rate impact, the QRU shall modify the RES Plan to limit the acquisition of Eligible Renewable Energy so that the QRU Compliance Plan does not exceed the maximum retail rate impact for the current Compliance Year.

g) Any QRU with annual retail sales of less than five million megawatt-hours can use an alternate method to determine the estimate of the retail rate impact. The alternative method can be used for those RES Planning Period years when the only remaining portion of the Renewable Energy Standard with which the QRU needs to comply is the Eligible Renewable Energy that must be acquired from Solar Electric Generating Technologies.

(I) The retail rate impact will be determined by using the estimated costs of the proposed Solar Electric Generating Technologies less the estimated annual average costs of energy of existing resources that would be replaced with energy generated by the proposed Solar Electric Generating Technologies. The QRU shall also incorporate into this retail rate impact analysis other cost savings created by the deployment of the Solar

Electric Generating Technologies. These cost savings include, but are not limited to, the avoided or deferred costs of generation, transmission and distribution facilities.

(II) The QRU will then convert this net cost figure into a percent of total electric bill annually for each customer. In no event shall the percent of total electric bill annually exceed one percent for each customer. To the extent that the net cost figure results in the QRU exceeding the one percent for each customer threshold, the QRU shall modify its acquisition of Solar Electric Generating Technologies in order to not exceed the maximum retail rate impact.

3662. Annual Compliance Report

(a) Beginning in 2007, the QRU shall file an Annual Compliance Report on June 1 to report on the status of the QRU's compliance with the Renewable Energy Standard for the most recently completed Compliance Year. The Annual Compliance Report shall provide the following information for the most recently completed Compliance Year:

(I) The total megawatt-hours sold by the QRU to its retail customers in Colorado and the associated Eligible Renewable Energy required for compliance with each component of the Renewable Energy Standard. The QRU shall separately identify amounts of megawatt-hours sold by each type of resource;

(II) The total amount and source of Eligible Renewable Energy acquired by the QRU during the Compliance Year for each component of the Renewable Energy Standard. The QRU shall separately identify amounts of Eligible Renewable Energy by each type of resource;

(III) The total amount of Eligible Renewable Energy borrowed forward, pursuant to Rule 3654(f), in previous Compliance Years that was made up during the Compliance Year to achieve compliance with each component of the Renewable Energy Standard;

(IV) The total amount of Eligible Renewable Energy borrowed forward, pursuant to Rule 3654(f), from future Compliance Years to achieve compliance with each component of the Renewable Energy Standard in the Compliance Year;

(V) The total amount and source of Eligible Renewable Energy the QRU is carrying back from the year following the Compliance Year under Rule 3654(d)(I) to achieve compliance with each component of the Renewable Energy Standard in the Compliance Year;

(VI) The total amount of Eligible Renewable Energy the QRU has carried forward from prior calendar years under Rule 3654(d)(III) to apply in the Compliance Year for each component of the Renewable Energy Standard.

(VI) The total amount of Eligible Renewable Energy the QRU has acquired in the Compliance Year that the QRU proposes to carry forward under Rule 3654(d)(III) to future years for each component of the Renewable Energy Standard;

(VIII) The total amount of Eligible Renewable Energy the QRU has counted toward compliance with each component of the Renewable Energy Standard in the Compliance Year. The

QRU shall separately identify amounts of Eligible Renewable Energy by each type of resource;

(IX) The total amount of Renewable Energy or RECs acquired by the QRU during the Compliance Year pursuant to the Standard Rebate Offer Program. The QRU shall separately identify REC amounts by each type of resource;

(X) Whether the QRU has invested in any Eligible Renewable Energy Resource and whether that resource is under construction or in operation; and

(XI) The funds expended and the retail rate impact of the Eligible Renewable Energy acquired.

(b) In the Annual Compliance Report, the QRU must explain whether it achieved compliance with each component of the Renewable Energy Standard during the most recently completed Compliance Year, or explain why the QRU had difficulty meeting the Renewable Energy Standard.

(c) If, in its Annual Compliance Report, the QRU did not comply with its Renewable Energy Standard for each of the RES components as a direct result of absolute limitations within a requirements contract from a wholesale electric supplier, then the QRU must explain whether it acquired a sufficient amount of either eligible RECs or documented and verified energy savings through energy efficiency and/or conservation programs, or both to rectify the noncompliance so as to excuse the QRU from any administrative fine or other administrative action.

(d) On the same date that the QRU files its Annual Compliance Report, the QRU shall post an electronic copy of its Annual Compliance Report excluding confidential material on its website to facilitate public access and review.

(e) On the same date that the QRU files its Annual Compliance Report, it shall provide the Commission with an electronic copy of its Annual Compliance Report excluding confidential material. The Commission may place the non-confidential portion of each QRU's Annual Compliance Report on the Commission's website in order to facilitate public review.

3663. Compliance Report Review

(a) Compliance Reporting

(I) In the Annual Compliance Report, the QRU must explain whether it complied with its Renewable Energy Standard for the solar, on-site solar and non-solar components during the most recently completed Compliance Year.

(II) Upon receipt of the QRU Annual Compliance Report, the Commission will provide notice to interested persons. Interested persons will have 30 days within which to provide comment to the Commission on the content of the Annual Compliance Report. The QRU shall have the opportunity to reply to all comments on or before 45 days following the filing of the Annual Compliance Report.

(III) The Staff of the Commission shall review the Annual Compliance Report and any comments received and within 60 days of the filing of the Annual Compliance Report make a recommendation to the Commission as to whether the QRU has met the Renewable Energy Standard and no action should be taken by the Commission, whether any changes are needed to the compliance report, or whether a hearing is necessary.

(IV) Upon review of the QRU's Annual Compliance Report, the Staff recommendation and all comments filed, the Commission will issue an order stating whether the QRU complied with the components of its Renewable Energy Standard during the most recently completed Compliance Year and state whether a hearing is necessary.

(V) If the Commission determines that the total number of RECs which the QRU generated or acquired from renewable energy systems during the most recently completed Compliance Year exceeded the total number of RECs which the QRU needed to comply with each component of its Renewable Energy Standard for the recently completed Compliance Year:

(A) The Commission will state in its order the number of excess solar, on-site solar and/or non-solar RECs which the QRU has available to carry forward from that Compliance Year or use for any other legal purpose.

(B) The QRU may use those excess solar, on-site solar and/or non-solar RECs to comply with its Renewable Energy Standard for the five Compliance Years immediately following that Compliance Year.

(b) Compliance Report Hearing

(I) If the Commission determines that the QRU did not comply with the solar, on-site solar or non-solar components of its Renewable Energy Standard during the most recently completed Compliance Year, the Commission will determine whether the QRU failed to meet the Renewable Energy Standard because of the Retail Rate Impact limit. The Commission will:

(A) State in its order the number of RECs by which the QRU failed to comply with each of the solar, on-site solar and non-solar components of its Renewable Energy Standard; and

(B) State whether the Commission is satisfied that the failure to meet the Renewable Energy Standard was due to the Retail Rate Impact limit. If the Commission is not satisfied on this issue, the Commission will issue a notice of possible noncompliance and schedule an evidentiary hearing on the matter.

(II) At the evidentiary hearing, any party that advocates that the QRU failed to comply with the components of the QRU's Renewable Energy Standard during the most recently completed Compliance Year is the proponent of a Commission order finding non-compliance, and that party shall have the burden of proof that the QRU failed to comply with the solar, on-site solar and non-solar components of its Renewable Energy Standard during the most recently completed Compliance Year. The QRU may assert that the Renewable Energy Standard was not met due to the Retail Rate Impact limit or to events beyond the reasonable control of the QRU.

(c) Compliance Penalties

(I) After notice and hearing, if the Commission determines that the QRU did not fully comply with any of the solar, on-site solar and non-solar components of its Renewable Energy Standard during the most recently completed Compliance Year, the Commission shall determine what, if any, administrative penalties should be assessed against the QRU for its failure to meet the Renewable Energy Standard. In assessing penalties, the Commission may take one or more of the following actions:

(A) Determine for each component for which there was noncompliance the cost that would have been incurred by the QRU to fully comply with such component standard through the acquisition of RECs and assess this amount as part of an administrative penalty.

(B) No administrative penalties shall be assessed against a QRU if the amount of the shortfall is attributable to the Retail Rate Impact limit.

(C) Assess no administrative penalties against a QRU if the failure to meet the Renewable Energy Standard results from events beyond the reasonable control of the QRU that could not have been reasonably mitigated including, but not limited to, failures to perform by counterparties to Renewable Energy Supply Contracts and Renewable Energy Credit Contracts, events that delay the construction or commercial operation of QRU-owned Eligible Renewable Energy Resources, and lack of customer interest in the Standard Rebate Offer. (II) The cost of such administrative penalties shall not be recovered from retail customers through the QRU's rates.

3664. Net Metering

(a) All QRUs shall allow the customer's retail electricity consumption to be offset by the electricity generated from Eligible Renewable Energy Resources on the customer's side of the meter that are interconnected with the QRU, provided that the generating capacity of the customer's facility meets the following two criteria:

(I) The rated capacity of the generator does not exceed 2000 kW; and

(II) The rated capacity of the generator does not exceed the customer's service entrance capacity**.**

(b) If a customer with an Eligible Renewable Energy Resource generates Renewable Energy pursuant to subsection (a) of Rule 3664 in excess of the customer's consumption, the excess kilowatt-hours shall be carried forward from month to month and credited at a ratio of 1:1 against the customer's retail kilowatt-hour consumption in subsequent months. Within 60 days of the end of each calendar year, or within 60 days of when the customer terminates its retail service, the QRU shall compensate the customer for any accrued excess kilowatt-hour credits, at the QRU's average hourly incremental cost of electricity supply over the most recent calendar year.

(c) The QRU shall file tariffs that comply with these rules within 30 days of the effective date of these rules.

(d) A customer's facility that generates Renewable Energy from an Eligible Renewable Energy Resource shall be equipped with metering equipment that can measure the flow of electric energy in both directions. The QRU shall utilize a single bi-directional electric revenue meter.

(e) If the customer's existing electric revenue meter does not meet the requirements of these rules, the QRU shall install and maintain a new revenue meter for the customer, at the company's expense. Any subsequent revenue meter change necessitated by the customer shall be paid for by the customer.

(f) The QRU shall not require more than one meter per customer to comply with this Rule 3664. Nothing in this Rule 3664 shall preclude the QRU from placing a second meter to measure the output of a Solar Renewable Energy System for the counting of RECs subject to the following conditions:

(I) For customer facilities over 10 kW, a second meter shall be required to measure the Solar Renewable Energy System output for the counting of RECs.

(II) For systems 10 kW and smaller, an additional meter may be installed under either of the following circumstances:

(A) The QRU may install an additional production meter on the Solar Renewable Energy System output at its own expense if the customer consents; or

(B) The customer may request that the QRU install a production meter on the Solar Renewable Energy System output in addition to the revenue meter at the customer's expense.

(g) A QRU shall provide net metering service at non-discriminatory rates to customers with Eligible Renewable Energy Resources. A customer shall not be required to change the rate under which the customer received retail service in order for the customer to install an eligible renewable energy resource. Nothing in this rule shall prohibit a QRU from requesting changes in rates at any time.

3665. Interconnection

NOTE: The following rule is numbered using the FERC's numbering convention and not the Colorado Commission's numbering convention. This rule largely tracks FERC Order 2006.

Small Generator Interconnection Procedures (SGIP)

The following Small Generator Interconnection Procedures (SGIP) shall apply to all small generation resources including Eligible Renewable Energy Resources connected to the utility. Each utility shall also provide, on their web site, interconnection standards not included in these procedures.

(a) General Overview

(i) Applicability

(1) A request to interconnect a certified Small Generating Facility no larger than 2 MW shall be evaluated under the Level 2 Process. A request to interconnect a certified inverter-based Small Generating Facility no larger than 10 kW shall be evaluated under the Level 1 Process. A request to interconnect a Small Generating Facility larger than 2 MW but no larger than 10 MW or a Small Generating Facility that does not pass the Level 1 or Level 2 Process, shall be evaluated under the Level 3 Process.

(2) Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 of the body of these procedures.

(3) Prior to submitting its Interconnection Request, the Interconnection Customer may ask the utility interconnection contact employee or office whether the proposed interconnection is subject to these procedures. The utility shall respond within 15 Business Days.

(4) Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. The Commission expects all utilities, market participants,

and Interconnection Customers interconnected with electric systems to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and best practice recommendations from the electric reliability authority. All public utilities are expected to meet basic standards for electric system infrastructure and operational security, including physical, operational, and cyber-security practices.

(5) References in these procedures to interconnection agreement are to the Small Generator Interconnection Agreement (SGIA).

(ii) Pre-Application

The utility shall designate an employee or office from which information on the application process and on an Affected System can be obtained through informal requests from the Interconnection Customer presenting a proposed project for a specific site. The name, telephone number, and e-mail address of such contact employee or office shall be made available on the utility's Internet web site. Electric system information for specific locations, feeders, or small areas shall be provided to the Interconnection Customer upon request and may include relevant system studies, interconnection studies, and other materials useful to an understanding of an interconnection at a particular point on the utility's System, to the extent such provision does not violate confidentiality provisions of prior agreements or critical infrastructure requirements. The utility shall comply with reasonable requests for such information unless such information is proprietary or confidential and cannot be provided pursuant to a confidentiality agreement.

(iii) Interconnection Request

The Interconnection Customer (IC) shall submit its Interconnection Request to the utility, together with the processing fee or deposit specified in the Interconnection Request. The Interconnection Request shall be date- and time-stamped upon receipt. The original date- and time-stamp applied to the Interconnection Request at the time of its original submission shall be accepted as the qualifying date- and time-stamp for the purposes of any timetable in these procedures. The Interconnection Customer shall be notified of receipt by the utility within three Business Days of receiving the Interconnection Request which notification may be to an e-mail address or fax number provided by IC. The utility shall notify the Interconnection Customer within ten Business Days of the receipt of the Interconnection Request as to whether the Interconnection Request is complete or incomplete. If the Interconnection Request is incomplete, the utility shall provide, along with the notice that the Interconnection Request is incomplete, a written list detailing all information that must be provided to complete the Interconnection Request. The Interconnection Customer will have ten Business Days after receipt of the notice to submit the listed information or to request an extension of time to provide such information. If the Interconnection Customer does not provide the listed information or a request for an extension of time within the deadline, the Interconnection Request will be deemed withdrawn. An Interconnection Request will be deemed complete upon submission of the listed information to the utility.

(iv) Modification of the Interconnection Request

Any modification to machine data or equipment configuration or to the interconnection site of the Small Generating Facility not agreed to in writing by the utility and the Interconnection Customer may be deemed a withdrawal of the Interconnection Request and may require submission of a new Interconnection Request, unless proper notification of each Party by the other and a reasonable time to cure the problems created by the changes are undertaken.

(v) Site Control Documentation of site control must be submitted with the Interconnection Request. Site control may be demonstrated through:

(1) Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Small Generating Facility;

(2) An option to purchase or acquire a leasehold site for such purpose; or

(3) An exclusivity or other business relationship between the Interconnection Customer and the entity having the right to sell, lease, or grant the Interconnection Customer the right to possess or occupy a site for such purpose.

(vi) Queue Position
The utility shall place Interconnection Requests in a first come, first served order per feeder and per substation based upon the date- and time-stamp of the Interconnection Request. The order of each Interconnection Request will be used to determine the cost responsibility for the Upgrades necessary to accommodate the interconnection. At the utility's option, Interconnection Requests may be studied serially or in clusters for the purpose of the system impact study.

(b) Level 2 - Fast Track Process

(i) Applicability
The Fast Track Process is available to an Interconnection Customer proposing to interconnect its Small Generating Facility with the utility's System if the Small Generating Facility is no larger than 2 MW and if the Interconnection Customer's proposed Small Generating Facility meets the codes, standards, and certification requirements of Attachments 3 and 4 of these procedures.

(ii) Initial Review
Within 15 Business Days after the utility notifies the Interconnection Customer it has received a complete Interconnection Request, the utility shall perform an initial review using the screens set forth below, shall notify the Interconnection Customer of the results, and include with the notification copies of the analysis and data underlying the utility's determinations under the screens.

(1) Screens

A. The proposed Small Generating Facility’s Point of Interconnection must be on a portion of the utility’s Distribution System that is subject to the Tariff.

B. For interconnection of a proposed Small Generating Facility to a radial distribution circuit, the aggregated generation, including the proposed Small Generating Facility, on the circuit shall not exceed 15 % of the line section’s annual peak load as most recently measured at the substation or calculated for the line segment. A line section is that portion of a utility’s electric system connected to a customer bounded by automatic sectionalizing devices or the end of the distribution line.

C. The proposed Small Generating Facility, in aggregation with other generation on the distribution circuit, shall not contribute more than 10 % to the distribution circuit's maximum fault current at the point on the

distribution feeder voltage (primary) level nearest the proposed point of change of ownership.

D. The proposed Small Generating Facility, in aggregate with other generation on the distribution circuit, shall not cause any distribution protective devices and equipment (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or Interconnection Customer equipment on the system to exceed 87.5 % of the short circuit interrupting capability; nor shall the interconnection be proposed for a circuit that already exceeds 87.5 % of the short circuit interrupting capability.

E. Using the table below, determine the type of interconnection to a primary distribution line. This screen includes a review of the type of electrical service provided to the Interconnecting Customer, including line configuration and the transformer connection to limit the potential for creating over-voltages on the utility's electric power system due to a loss of ground during the operating time of any anti-islanding function.

Primary Distribution Line Type	**Type of Interconnection to Primary Distribution Line**	**Result/Criteria**
Three-phase, three wire	3-phase or single phase, phase-to-phase	Pass screen
Three-phase, four wire	Effectively-grounded 3 phase or Single-phase, line-to-neutral	Pass screen

F. If the proposed Small Generating Facility is to be interconnected on single-phase shared secondary, the aggregate generation capacity on the shared secondary, including the proposed Small Generating Facility, shall not exceed 20 kW.

G. If the proposed Small Generating Facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than 20 % of the nameplate rating of the service transformer.

H. No construction of facilities by the utility on its own system shall be required to accommodate the Small Generating Facility.

I. Interconnections to Distribution Networks

1) For interconnection of a proposed Small Generating Facility to the load side of spot network protectors serving more than a single customer, the proposed Small Generating Facility must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, shall not exceed the smaller of 5 % of a spot network's maximum load or 300 kW. For spot networks serving a single customer, the Small Generator Facility must use inverter-based equipment package

and either meet the requirements above or shall use a protection scheme or operate the generator so as not to exceed on-site load or otherwise prevent nuisance operation of the spot network protectors.

2) For interconnection of a proposed Small Generating Facility to the load side of area network protectors, the proposed Small Generating Facility must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, shall not exceed the smaller of 10% of an area network's minimum load or 500 kW.

3) Notwithstanding sub-sections (1) or (2) above, each utility may incorporate into its interconnection standards, any change in interconnection guidelines related to networks pursuant to standards developed under IEEE 1547 for interconnections to networks. To the extent the new IEEE standards conflict with these existing guidelines, the new standards shall apply. In addition, and with the consent of the utility, a Small Generator Facility may be interconnected to a spot or area network provided the Facility utilizes a protection scheme that will prevent any power export from the customer's site including inadvertent export under fault conditions or otherwise prevent nuisance operation of the network protectors.

(2) If the proposed interconnection passes the screens, the Interconnection Request shall be approved and the utility will provide the Interconnection Customer an executable interconnection agreement within five Business Days after the determination.

(3) If the proposed interconnection fails the screens, but the utility determines that the Small Generating Facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards, the utility shall provide the Interconnection Customer an executable interconnection agreement within five Business Days after the determination.

(4) If the proposed interconnection fails the screens, but the utility does not or cannot determine from the initial review that the Small Generating Facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards unless the Interconnection Customer is willing to consider minor modifications or further study, the utility shall provide the Interconnection Customer with the opportunity to attend a customer options meeting.

(5) Customer Options Meeting
If the utility determines the Interconnection Request cannot be approved without minor modifications at minimal cost; or a supplemental study or other additional studies or actions; or at significant cost to address safety, reliability, or power quality problems, within the five Business Day period after the determination, the utility shall notify the Interconnection Customer and provide copies of the data and analyses underlying its conclusion. Within ten Business Days of the utility's determination, the utility shall offer to convene a customer options meeting with the utility to review possible Interconnection Customer facility modifications or the screen analysis and related results, to determine what further steps are needed to permit the Small Generating Facility to be connected safely and reliably. At the

time of notification of the utility's determination, or at the customer options meeting, the utility shall:

A. Offer to perform facility modifications or minor modifications to the utility's electric system (e.g., changing meters, fuses, relay settings) and provide a non-binding good faith estimate of the limited cost to make such modifications to the utility's electric system; or

B. Offer to perform a supplemental review if the utility concludes that the supplemental review might determine that the Small Generating Facility could continue to qualify for interconnection pursuant to the Fast Track Process, and provide a non-binding good faith estimate of the costs and time of such review; or

C. Obtain the Interconnection Customer's agreement to continue evaluating the Interconnection Request under the Level 3 Study Process.

(iii) Supplemental Review

If the Interconnection Customer agrees to a supplemental review, the Interconnection Customer shall agree in writing within 15 Business Days of the offer, and submit a deposit for the estimated costs provided in (iii) (1) (B). The Interconnection Customer shall be responsible for the utility's actual costs for conducting the supplemental review. The Interconnection Customer must pay any review costs that exceed the deposit within 20 Business Days of receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced costs, the utility will return such excess within 20 Business Days of the invoice without interest.

(1) Within ten Business Days following receipt of the deposit for a supplemental review, the utility will determine if the Small Generating Facility can be interconnected safely and reliably.

A. If so, the utility shall forward an executable interconnection agreement to the Interconnection Customer within five Business Days.

B. If so, and Interconnection Customer facility modifications are required to allow the Small Generating Facility to be interconnected consistent with safety, reliability, and power quality standards under these procedures, the utility shall forward an executable interconnection agreement to the Interconnection Customer within five Business Days after confirmation that the Interconnection Customer has agreed to make the necessary changes at the Interconnection Customer's cost.

C. If so, and minor modifications to the utility's electric system are required to allow the Small Generating Facility to be interconnected consistent with safety, reliability, and power quality standards under the Level 2 Fast Track Process, the utility shall forward an executable interconnection agreement to the Interconnection Customer within ten Business Days that requires the Interconnection Customer to pay the costs of such system modifications prior to interconnection.

D. If not, the Interconnection Request will continue to be evaluated under the Level 3 Study Process.

(c) Level 3 - Study Process

(j) Applicability

The Study Process shall be used by an Interconnection Customer proposing to interconnect its Small Generating Facility with the utility's System if the Small Generating Facility (1) is larger than 2 MW but no larger than 10 MW, (2) is not certified, or (3) is certified but did not pass the Fast Track Process or the 10 kW Inverter Process.

(ii) Scoping Meeting

(1) A scoping meeting will be held within ten Business Days after the Interconnection Request is deemed complete, or as otherwise mutually agreed to by the Parties. The utility and the Interconnection Customer will bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting.

(2) The purpose of the scoping meeting is to discuss the Interconnection Request. The Parties shall further discuss whether the utility should perform a feasibility study or proceed directly to a system impact study, or a facilities study, or an interconnection agreement. If the Parties agree that a feasibility study should be performed, the utility shall provide the Interconnection Customer, as soon as possible, but not later than five Business Days after the scoping meeting, a feasibility study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(3) The scoping meeting may be omitted by mutual agreement. In order to remain in consideration for interconnection, an Interconnection Customer who has requested a feasibility study must return the executed feasibility study agreement within 15 Business Days. If the Parties agree not to perform a feasibility study, the utility shall provide the Interconnection Customer, no later than five Business Days after the scoping meeting, a system impact study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(4) Feasibility Studies, Scoping Studies, and Facility Studies may be combined for simpler projects by mutual agreement of the utility and the Parties.

(iii) Feasibility Study

(1) The feasibility study shall identify any potential adverse system impacts that would result from the interconnection of the Small Generating Facility.

(2) A deposit of the lesser of 50 percent of the good faith estimated feasibility study costs or earnest money of $1,000 may be required from the Interconnection Customer.

(3) The scope of and cost responsibilities for the feasibility study are described in the attached feasibility study agreement.

(4) If the feasibility study shows no potential for adverse system impacts, the utility shall send the Interconnection Customer a facilities study agreement, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(5) If the feasibility study shows the potential for adverse system impacts, the review process shall proceed to the appropriate system impact study(s).

(iv) System Impact Study

(1) A system impact study shall identify and detail the electric system impacts that would result if the proposed Small Generating Facility were interconnected without project modifications or electric system modifications, focusing on the adverse system impacts identified in the feasibility study, or to study potential impacts, including but not limited to those identified in the scoping meeting. A system impact study shall evaluate the impact of the proposed interconnection on the reliability of the electric system.

(2) If no transmission system impact study is required, but potential electric power Distribution System adverse system impacts are identified in the scoping meeting or shown in the feasibility study, a distribution system impact study must be performed. The utility shall send the Interconnection Customer a distribution system impact study agreement within 15 Business Days of transmittal of the feasibility study report, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study, or following the scoping meeting if no feasibility study is to be performed.

(3) In instances where the feasibility study or the distribution system impact study shows potential for transmission system adverse system impacts, within five Business Days following transmittal of the feasibility study report, the utility shall send the Interconnection Customer a transmission system impact study agreement, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study, if such a study is required.

(4) If a transmission system impact study is not required, but electric power Distribution System adverse system impacts are shown by the feasibility study to be possible and no distribution system impact study has been conducted, the utility shall send the Interconnection Customer a distribution system impact study agreement.

(5) If the feasibility study shows no potential for transmission system or Distribution System adverse system impacts, the utility shall send the Interconnection Customer either a facilities study agreement, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study, or an executable interconnection agreement, as applicable.

(6) In order to remain under consideration for interconnection, the Interconnection Customer must return executed system impact study agreements, if applicable, within 30 Business Days.

(7) A deposit of the good faith estimated costs for each system impact study may be required from the Interconnection Customer.

(8) The scope of and cost responsibilities for a system impact study are described in the attached system impact study agreement.

(9) Where transmission systems and Distribution Systems have separate owners, such as is the case with transmission-dependent utilities ("TDUs") – whether investor-owned or not – the Interconnection Customer may apply to the nearest utility (Transmission Owner, Regional Transmission Operator, or Independent utility) providing transmission service to the TDU to request project coordination.

Affected Systems shall participate in the study and provide all information necessary to prepare the study.

(v) Facilities Study

(1) Once the required system impact study(s) is completed, a system impact study report shall be prepared and transmitted to the Interconnection Customer along with a facilities study agreement within five Business Days, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the facilities study. In the case where one or both impact studies are determined to be unnecessary, a notice of the fact shall be transmitted to the Interconnection Customer within the same timeframe.

(2) In order to remain under consideration for interconnection, or, as appropriate, in the utility's interconnection queue, the Interconnection Customer must return the executed facilities study agreement or a request for an extension of time within 30 Business Days.

(3) The facilities study shall specify and estimate the cost of the equipment, engineering, procurement, and construction work (including overheads) needed to implement the conclusions of the system impact study(s).

(4) Design for any required Interconnection Facilities and/or Upgrades shall be performed under the facilities study agreement. The utility may contract with consultants to perform activities required under the facilities study agreement. The Interconnection Customer and the utility may agree to allow the Interconnection Customer to separately arrange for the design of some of the Interconnection Facilities. In such cases, facilities design will be reviewed and/or modified prior to acceptance by the utility, under the provisions of the facilities study agreement. If the Parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, the utility shall make sufficient information available to the Interconnection Customer in accordance with confidentiality and critical infrastructure requirements to permit the Interconnection Customer to obtain an independent design and cost estimate for any necessary facilities.

(5) A deposit of the good faith estimated costs for the facilities study may be required from the Interconnection Customer.

(6) The scope of and cost responsibilities for the facilities study are described in the attached facilities study agreement.

(7) Upon completion of the facilities study, and with the agreement of the Interconnection Customer to pay for Interconnection Facilities and Upgrades identified in the facilities study, the utility shall provide the Interconnection Customer an executable interconnection agreement within five Business Days.

(d) Provisions that Apply to All Interconnection Requests

(i) Reasonable Efforts
The utility shall make reasonable efforts to meet all time frames provided in these procedures unless the utility and the Interconnection Customer agree to a different schedule. If the utility cannot meet a deadline provided herein, it shall notify the Interconnection Customer, explain the reason for the failure to meet the deadline, and

provide an estimated time by which it will complete the applicable interconnection procedure in the process.

(ii) Disputes

(1) The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this article.

(2) In the event of a dispute, either Party shall provide the other Party with a written Notice of Dispute. Such Notice shall describe in detail the nature of the dispute. 4.2.3 If the dispute has not been resolved within five Business Days after receipt of the Notice, either Party may contact a mutually agreed upon third party dispute resolution service for assistance in resolving the dispute.

(3) The dispute resolution service will assist the Parties in either resolving their dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the Parties in resolving their dispute.

(4) Each Party agrees to conduct all negotiations in good faith and will be responsible for one-half of any costs paid to neutral third-parties.

(5) If neither Party elects to seek assistance from the dispute resolution service, or if the attempted dispute resolution fails, then either Party may exercise whatever rights and remedies it may have in equity or law consistent with the terms of the agreements between the Parties or it may seek resolution at the Commission.

(iii) Interconnection Metering
Except as otherwise required by Rule 3664, any metering necessitated by the use of the Small Generating Facility shall be installed at the Interconnection Customer's expense in accordance with Commission requirements or the utility's specifications.

(iv) Commissioning tests
Commissioning tests of the Interconnection Customer's installed equipment shall be performed pursuant to applicable codes and standards, including IEEE1547.1 2005”IEEE Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems”. The utility must be given at least five Business Days written notice, or as otherwise mutually agreed to by the Parties, of the tests and may be present to witness the commissioning tests. The utility shall be compensated by the Interconnection Customer for its expense in witnessing level 2 and Level 3 commissioning tests.

(v) Confidentiality

(1) Confidential information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." All design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.

(2) Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to

oppose such publication or release), or necessary to be divulged in an action to enforce an agreement between the Parties. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under agreements between the Parties, or to fulfill legal or regulatory requirements.

A. Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.

B. Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

(3) Notwithstanding anything in this article to the contrary, if the Commission, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence, the Party shall provide the requested information to the Commission, within the time provided for in the request for information. In providing the information to the Commission, the Party may request that the information be treated as confidential and non-public by the Commission and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the Confidential Information to the Commission. The Party shall notify the other Party when it is notified by the Commission that a request to release Confidential Information has been received by the Commission, at which time either of the Parties may respond before such information would be made public.

(vi) Comparability

The utility shall receive, process, and analyze all Interconnection Requests in a timely manner as set forth in this document. The utility shall use the same reasonable efforts in processing and analyzing Interconnection Requests from all Interconnection Customers, whether the Small Generating Facility is owned or operated by the utility, its subsidiaries or affiliates, or others.

(vii) Record Retention

The utility shall maintain for three years records, subject to audit, of all Interconnection Requests received under these procedures, the times required to complete Interconnection Request approvals and disapprovals, and justification for the actions taken on the Interconnection Requests.

(viii) Interconnection Agreement

After receiving an interconnection agreement from the utility, the Interconnection Customer shall have 30 Business Days or another mutually agreeable time-frame to sign and return the interconnection agreement, or request that the utility file an unexecuted interconnection agreement with the Commission. If the Interconnection Customer does not sign the interconnection agreement, or ask that it be filed unexecuted by the utility within 30 Business Days, the Interconnection Request shall be deemed withdrawn. After the interconnection agreement is signed by the Parties, the interconnection of the Small Generating Facility shall proceed under the provisions of the interconnection agreement.

(ix) Coordination with Affected Systems

The utility shall coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems with Affected System operators and, if possible, include those results (if available) in its applicable interconnection study within the time frame specified in these procedures. The utility will include such Affected System operators in all meetings held with the Interconnection Customer as required by these procedures. The Interconnection Customer will cooperate with the utility in all matters related to the conduct of studies and the determination of modifications to Affected Systems. A utility which may be an Affected System shall cooperate with the utility with whom interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to Affected Systems.

(x) Capacity of the Small Generating Facility

(1) If the Interconnection Request is for an increase in capacity for an existing Small Generating Facility, the Interconnection Request shall be evaluated on the basis of the new total capacity of the Small Generating Facility.

(2) If the Interconnection Request is for a Small Generating Facility that includes multiple energy production devices at a site for which the Interconnection Customer seeks a single Point of Interconnection, the Interconnection Request shall be evaluated on the basis of the aggregate capacity of the multiple devices.

(3) The Interconnection Request shall be evaluated using the maximum rated capacity of the Small Generating Facility.

(xi) Insurance

(1) For systems of 10 kW or less, the Customer, at its own expense, shall secure and maintain in effect during the term of the Agreement liability insurance with a combined single limit for bodily injury and property damage of not less than $300,000 for each occurrence. For systems above 10 kW and up to 2 MW, Customer, at its own expense, shall secure and maintain in effect during the term of the Agreement liability insurance with a combined single limit for bodily injury and property damage of not less than $2,000,000 for each occurrence. Insurance coverage for systems greater than 2 MW shall be determined on a case-by-case basis by the utility and shall reflect the size of the installation and the potential for system damage.

(2) Except for those solar systems installed on a residential premise which have a design capacity of 10 kW or less, the utility shall be named as an additional insured by endorsement to the insurance policy and the policy shall provide that written notice be given to the utility at least thirty (30) days prior to any cancellation or reduction of any coverage. Such liability insurance shall provide, by endorsement to the policy, that the utility shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for the payment of premium of such insurance. For all solar systems, the liability insurance shall not exclude coverage for any incident related to the subject generator or its operation.

(3) Certificates of Insurance evidencing the requisite coverage and provision(s) shall be furnished to utility prior to the Date of Interconnection of the Generation System. Utilities shall be permitted to periodically obtain proof of current insurance coverage form the generating customer in order to verify proper liability

insurance coverage. Customer will not be allowed to commence or continue interconnected operations unless evidence is provided that satisfactory insurance coverage is in effect at all times.

(e) Level 1 10 kW Inverter Process

The procedure for evaluating an Interconnection Request for a certified inverter-based Small Generating Facility no larger than 10 kW. The application process uses an all-in-one document that includes a simplified Interconnection Request, simplified procedures, and a brief set of terms and conditions.

(i) The Interconnection Customer ("Customer") completes the Interconnection Request ("Application") and submits it to the utility.

(ii) The utility acknowledges to the Customer receipt of the Application within three Business Days of receipt.

(iii) The utility evaluates the Application for completeness and notifies the Customer within ten Business Days of receipt that the Application is or is not complete and, if not, advises what material is missing.

(iv) Within 15 days the utility shall conduct an initial review, which shall include the following screening criteria:

(1) For interconnection of a proposed Small Generating Facility to a radial distribution circuit, the aggregated generation, including the proposed Small Generating Facility, on the circuit shall not exceed 15 % of the line section annual peak load as most recently measured at the substation or calculated for the line section. A line section is that portion of a utility's electric system connected to a customer bounded by automatic sectionalizing devices or the end of the distribution line.

(2) If the proposed Small Generating Facility is to be interconnected on single-phase shared secondary, the aggregate generation capacity on the shared secondary, including the proposed Small Generating Facility, shall not exceed 20 kW.

(3) If the proposed Small Generating Facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than 20% of the nameplate rating of the service transformer.

(4) No construction of facilities by the utility on its own system shall be required to accommodate the Small Generating Facility.

(5) Provided all the criteria in Section 5.4 are met, unless the utility determines and demonstrates that the Small Generating Facility cannot be interconnected safely and reliably, the utility approves and executes the Application and returns it to the Customer.

(6) After installation, the Customer returns the Certificate of Completion to the utility. Prior to parallel operation, the utility may inspect the Small Generating Facility for compliance with standards, which may include a witness test, and may schedule appropriate metering replacement, if necessary.

(7) The utility notifies the Customer in writing or by fax or e-mail that interconnection of the Small Generating Facility is authorized within five business days. If the witness test is not satisfactory, the utility has the right to disconnect the Small Generating Facility. The Customer has no right to operate in parallel until a witness test has been performed, or previously waived on the Application. The utility is obligated to complete this witness test within ten Business Days of the receipt of the Certificate of Completion.

(8) Contact Information – The Customer must provide the contact information for the legal applicant (i.e., the Interconnection Customer). If another entity is responsible for interfacing with the utility, that contact information must be provided on the Application.

Attachment 1 - Definitions

Business Day – Monday through Friday, excluding Federal Holidays.

Distribution System – The utility's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among areas.

Distribution Upgrades – The additions, modifications, and upgrades to the utility's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Small Generating Facility and render the service necessary to effect the Interconnection Customer's operation of on-site generation. Distribution Upgrades do not include Interconnection Facilities.

Interconnection Customer – Any entity, including the utility, any affiliates or subsidiaries of either, that proposes to interconnect its Small Generating Facility with the utility's System.

Interconnection Facilities – The utility's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small Generating Facility to the utility's System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades.

Interconnection Request – The Interconnection Customer's request, in accordance with the Tariff, to interconnect a new Small Generating Facility, [We will have a Tariff] or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Small Generating Facility that is interconnected with the utility's System.

Party or Parties – The utility, Interconnection Customer, or any combination of the above.

Point of Interconnection – The point where the Interconnection Facilities connect with the utility's System.

Small Generating Facility – The Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Facilities not owned by the Interconnection Customer.

Study Process – The procedure for evaluating an Interconnection Request that includes the Level 3 scoping meeting, feasibility study, system impact study, and facilities study.

System – The facilities owned, controlled, or operated by the utility that are used to provide electric service under the Tariff.

Upgrades – The required additions and modifications to the utility's System at or beyond the Point of Interconnection. Upgrades do not include Interconnection Facilities.

Attachment 2 - Level 1 10 kW Inverter Process

Application for Interconnecting a Certified Inverter-Based Small Generating Facility No Larger than 10kW

This Application is considered complete when it provides all applicable and correct information required below. Additional information to evaluate the Application may be required.

Processing Fee

A fee of _____ must accompany this Application.

Interconnection Customer

Name:

Contact Person:

Address:

City: State: Zip:

Telephone (Day): (Evening):

Fax: E-Mail Address:

Engineering Firm (If Applicable):

Contact Person:

Address:

City: State: Zip:

Telephone:

Fax: E-Mail Address:

Contact (if different from Interconnection Customer)

Name:

Address:

City: State: Zip:

Telephone (Day): (Evening):

Fax: E-Mail Address:

Owner of the facility (include % ownership by any electric utility):

Small Generating Facility Information

Location (if different from above):

Electric Service Company:

Account Number:

Small Generator 10 kW Inverter Process

Inverter Manufacturer: _____Model

Nameplate Rating: (kW) (kVA) (AC Volts)

Single Phase _____ Three Phase_____

System Design Capacity: _____ (kW) _____ (kVA)

Prime Mover: Photovoltaic Reciprocating Engine Fuel Cell

Turbine Other

Energy Source: Solar Wind Hydro Diesel Natural Gas

Fuel Oil Other (describe)

Is the equipment UL1741 Listed? Yes ____ No ____

If Yes, attach manufacturer's cut-sheet showing UL1741 listing

Estimated Installation Date: _____ Estimated In-Service Date: _____

The 10 kW Inverter Process is available only for inverter-based Small Generating Facilities no larger than 10 kW that meet the codes, standards, and certification requirements of Attachments 3 and 4 of the Small Generator Interconnection Procedures (SGIP), or the QRU has reviewed the design or tested the proposed Small Generating Facility and is satisfied that it is safe to operate.

List components of the Small Generating Facility equipment package that are currently certified:

Equipment Type Certifying Entity

1.

2.

3.

4.

5.

Interconnection Customer Signature _____

I hereby certify that, to the best of my knowledge, the information provided in this Application is true. I agree to abide by the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW and return the Certificate of Completion when the Small Generating Facility has been installed. I further agree to relinquish my claims to any REC that will be generated with my equipment as part of this agreement.

Signed: _____

Title: Date:

Contingent Approval to Interconnect the Small Generating Facility

(For Company use only)

Interconnection of the Small Generating Facility is approved contingent upon the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW and return of the Certificate of Completion.

Company Signature: _____

Title: Date:

Application ID number: _____

Company waives inspection/witness test? Yes ____ No ____

Attachment 3

Certification Codes and Standards

IEEE1547 Standard for Interconnecting Distributed Resources with Electric Power Systems (including use of IEEE 1547.1 testing protocols to establish conformity)

UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems

IEEE Std 929-2000 IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems

NFPA 70 (2005), National Electrical Code

IEEE Std C37.90.1-1989 (R1994), IEEE Standard Surge Withstand Capability (SWC) Tests for Protective Relays and Relay Systems

IEEE Std C37.90.2 (1995), IEEE Standard Withstand Capability of Relay Systems to Radiated Electromagnetic Interference from Transceivers

IEEE Std C37.108-1989 (R2002), IEEE Guide for the Protection of Network Transformers

IEEE Std C57.12.44-2000, IEEE Standard Requirements for Secondary Network Protectors

IEEE Std C62.41.2-2002, IEEE Recommended Practice on Characterization of Surges in Low Voltage (1000V and Less) AC Power Circuits

IEEE Std C62.45-1992 (R2002), IEEE Recommended Practice on Surge Testing for Equipment Connected to Low-Voltage (1000V and Less) AC Power Circuits

ANSI C84.1-1995 Electric Power Systems and Equipment – Voltage Ratings (60 Hertz)

IEEE Std 100-2000, IEEE Standard Dictionary of Electrical and Electronic Terms

NEMA MG 1-1998, Motors and Small Resources, Revision 3

IEEE Std 519-1992, IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems

NEMA MG 1-2003 (Rev 2004), Motors and Generators, Revision 1

Attachment 4

Certification of Small Generator Equipment Packages

1.0 Small Generating Facility equipment proposed for use separately or packaged with other equipment in an interconnection system shall be considered certified for interconnected operation if (1) it has been tested in accordance with industry standards for continuous utility interactive operation in compliance with the appropriate codes and standards referenced below by any Nationally Recognized Testing Laboratory (NRTL) recognized by the United States Occupational Safety and Health Administration to test and certify interconnection equipment pursuant to the relevant codes and standards listed in SGIP Attachment 3, (2) it has been labeled and is publicly listed by such NRTL at the time of the interconnection application, and (3) such NRTL makes readily available for verification all test standards and procedures it utilized in performing such equipment certification, and, with consumer approval, the test data itself. The NRTL may make such information available on its website and by encouraging such information to be included in the manufacturer's literature accompanying the equipment.

2.0 The Interconnection Customer must verify that the intended use of the equipment falls within the use or uses for which the equipment was tested, labeled, and listed by the NRTL.

3.0 Certified equipment shall not require further type-test review, testing, or additional equipment to meet the requirements of this interconnection procedure; however, nothing herein shall preclude the need for an on-site commissioning test by the parties to the interconnection nor follow-up production testing by the NRTL.

4.0 If the certified equipment package includes only interface components (switchgear, inverters, or other interface devices), then an Interconnection Customer must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and is consistent with the testing and listing specified for this type of interconnection equipment.

5.0 Provided the generator or electric source, when combined with the equipment package, is within the range of capabilities for which it was tested by the NRTL, and does not violate the interface components' labeling and listing performed by the NRTL, no further design review, testing or additional equipment on the customer side of the point of common coupling shall be required to meet the requirements of this interconnection procedure.

6.0 An equipment package does not include equipment provided by the utility.

Attachment 5

Terms and Conditions for Level 1 Interconnections -- Small Generating Facility No Larger than 10kW

1.0 Construction of the Facility

The Interconnection Customer (the "Customer") may proceed to construct the Small Generating Facility when the utility approves the Interconnection Request (the "Application") and returns it to the Customer.

2.0 Interconnection and Operation

The Customer may operate Small Generating Facility and interconnect with the utility's electric system once all of the following have occurred:

2.1 Upon completing construction, the Customer will cause the Small Generating Facility to be inspected or otherwise certified by the appropriate local electrical wiring inspector with jurisdiction, and

2.2 The Customer returns the Certificate of Completion to the utility, and

2.3 The utility has completed its inspection of the Small Generating Facility. All inspections must be conducted by the utility, at its own expense, within ten Business Days after receipt of the Certificate of Completion and shall take place at a time agreeable to the Parties. The utility shall provide a written statement that the Small Generating Facility has passed inspection or shall notify the Customer of what steps it must take to pass inspection as soon as practicable after the inspection takes place.

2.4 The utility has the right to disconnect the Small Generating Facility in the event of improper installation or failure to return the Certificate of Completion.

3.0 Safe Operations and Maintenance

The Customer shall be fully responsible to operate, maintain, and repair the Small Generating Facility as required to ensure that it complies at all times with the interconnection standards to which it has been certified.

4.0 Access

The utility shall have access to the disconnect switch and metering equipment of the Small Generating Facility at all times. The utility shall provide reasonable notice to the Customer when possible prior to using its right of access.

5.0 Disconnection

The utility may temporarily disconnect the Small Generating Facility upon the following conditions:

5.1 For scheduled outages per notice requirements in the utility's tariff or Commission rules.

5.2 For unscheduled outages or emergency conditions pursuant to the utility's tariff or Commission rules.

5.3 If the Small Generating Facility does not operate in the manner consistent with these Terms and Conditions.

5.4 The utility shall inform the Customer in advance of any scheduled disconnection, or as is reasonable after an unscheduled disconnection.

6.0 Indemnification

The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other **Party's action or inactions of its obligations under this agreement on behalf of the indemnifying** Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.0 Insurance

Customer, at its own expense, shall secure and maintain in effect during the term of this Agreement, liability insurance with a combined single limit for bodily injury and property damage of not less than $300,000 each occurrence. Such liability insurance shall not exclude coverage for any incident related to the subject generator or its operation. The utility shall be named as an additional insured under the liability policy unless the system is a solar system installed on a premise using the residential tariff and has a design capacity of 10 kW or less. The policy shall include that written notice be given to the utility at least thirty (30) days prior to any cancellation or reduction of any coverage. A copy of the liability insurance certificate must be received by the utility prior to plant operation.

Certificates of Insurance evidencing the requisite coverage and provision(s) shall be furnished to utility prior to Date of Interconnection of the Generation System. Utilities shall be permitted to periodically obtain proof of current insurance coverage from the generating customer in order to verify proper liability insurance coverage. Customer will not be allowed to commence or continue interconnected operations unless evidence is provided that satisfactory insurance coverage is in effect at all times.

8.0 Limitation of Liability

Each party's liability to the other party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred.

In no event shall either party be liable to the other party for any indirect, incidental, special, consequential, or punitive damages of any kind whatsoever, except as allowed under paragraph 6.0.

9.0 Termination

The agreement to operate in parallel may be terminated under the following conditions:

9.1 By the Customer

By providing written notice to the utility.

9.2 By the utility

If the Small Generating Facility fails to operate for any consecutive 12 month period or the Customer fails to remedy a violation of these Terms and Conditions.

9.3 Permanent Disconnection

In the event this Agreement is terminated, the utility shall have the right to disconnect its facilities or direct the Customer to disconnect its Small Generating Facility.

9.4 Survival Rights

This Agreement shall continue in effect after termination to the extent necessary to allow or require either Party to fulfill rights or obligations that arose under the Agreement.

10.0 Assignment/Transfer of Ownership of the Facility

This Agreement shall survive the transfer of ownership of the Small Generating Facility to a new owner when the new owner agrees in writing to comply with the terms of this Agreement and so notifies the utility.

3666. – 3699. [Reserved]