

Decision No. C13-1036

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13R-0901E

IN THE MATTER OF THE PROPOSED AMENDMENTS PURSUANT TO SENATE BILL
13-252 TO THE RULES IMPLEMENTING THE RENEWABLE ENERGY STANDARD
4 CODE OF COLORADO REGULATIONS 723-3.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: August 21, 2013
Adopted Date: July 31, 2013

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I. BY THE COMMISSION**A. Statement**

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to amend the renewable energy standard (RES) rules as authorized under § 40-2-124(1), C.R.S. The purpose of this limited rulemaking is to revise and clarify the RES rules contained in 4 *Code of Colorado Regulations* (CCR) 723-3-3650, *et seq.*, consistent with Senate Bill (SB) 13-252. SB 252 was enacted by the 2013 General Assembly and signed into law by Governor Hickenlooper on June 5, 2013.

2. SB 252, modifies § 40-2-124(1), C.R.S., by expanding the list of eligible energy resources that can be used to comply with the RES requirements to include resources using methane captured from active and inactive coal mines, as well as synthetic gas produced by pyrolysis of municipal solid waste.

3. In addition, SB 252 eliminates the requirement that an eligible energy resource must be located in Colorado to qualify for the “multiplier” that counts each kilowatt-hour of electricity generated as one and one-fourth kilowatt hours to demonstrate compliance with the RES. SB 13-252 also modifies this multiplier with respect to eligible energy resources that begin operation on or after January 1, 2015.

4. SB 252 further modifies the RES applicable to cooperative electric associations. The bill requires each cooperative electric association serving 100,000 or more meters to generate or cause to be generated from eligible energy resources 20 percent of the energy provided to retail customers in the years 2020 and thereafter. SB 252 also requires certain cooperative electric associations to generate or cause to be generated a portion of their total retail electric sales using distributed generation. The bill increases the maximum retail rate impact

for cooperative electric associations from one percent to two percent of the total electric bill annually for each customer.

5. Finally, SB 252 enacts § 40-2-124(8)(g), C.R.S., which requires each qualifying wholesale utility (defined as a generation and transmission cooperative electric association) to submit, beginning in 2014, an annual report to the Commission describing the steps it has taken to comply with the electric resource standard. The bill also establishes an electric resource standard for qualifying wholesale utilities.

B. Discussion

6. Our proposed rule changes are set forth in Attachment A to this NOPR. The main purpose of the proposed rules is to solicit comments from interested parties for our consideration when adopting final rules after the scheduled hearing in this proceeding.

1. Rule 3651, Overview and Purpose

7. This rule lists the purpose of the rules and establishes a process for implementing the RES for qualifying retail utilities (QRUs) pursuant to § 40-2-124, C.R.S. We propose to update this section to reflect the changes associated with SB 252.

2. Rule 3652, Definitions

8. We propose to introduce or redefine the following terms: coal mine methane, early eligible energy resources, eligible energy, eligible energy resources, greenhouse gas neutral electricity, pyrolysis, qualifying wholesale utility, and synthetic gas.

9. We intend our proposed definitions for early eligible energy and early eligible energy resources to enable the tracking of the resources to which the 1.25 multiplier is applicable for purposes of compliance with the RES. In essence, early eligible energy resources are eligible resources, excluding renewable distributed generation, that have begun operation before

January 1, 2015. We propose to update the definitions of eligible energy and eligible energy resources to include greenhouse gas neutral electricity generated from from coal mine methane or synthetic gas produced by pyrolysis of municipal solid waste.

10. The new term greenhouse gas neutral electricity recognizes that the Commission must determine whether the volume of greenhouse gases emitted into the atmosphere from the conversion into electricity of fuel from coal mine methane or synthetic gas facilities is no greater than the volume of greenhouse gases that would have been emitted had the same amount of electricity been generated by a facility converting fossil fuel to electricity.

11. We define a qualifying wholesale utility as a generation and transmission cooperative electric association that provides wholesale electric service directly to the Colorado cooperative electric associations that are its members.

3. Rule 3654, Renewable Energy Standard

12. SB 252 modifies the RES requirements for cooperative electric association QRUs serving 100,000 or more meters.¹ Our proposed paragraph 3654(c) states that such QRUs shall generate or cause to be generated eligible energy in amounts that are at least 20 percent of their retail electricity sales in Colorado beginning in years 2020 and continuing thereafter. Notably, such QRUs no longer have RES requirements associated with years prior to 2020.

4. Rule 3655, Renewable Distributed Generation

13. Paragraph 3655(i) establishes renewable distributed generation requirements for each cooperative electric association QRU serving 10,000 or more meters but less than 100,000 meters. Such QRUs must generate or cause to be generated eligible energy from renewable

¹ SB 13-252 did not change the RES requirements for cooperative electric association QRUs serving fewer than 100,000 meters.

distributed generation at a level that is at least one percent of their retail sales beginning in 2020. At least one-half of the renewable distributed generation must be derived from retail renewable distributed generation as defined in Rule 3652.

14. Similarly, paragraph 3655(h) sets the renewable distributed generation requirement for each cooperative electric association QRU serving fewer than 10,000 meters. These QRUs may generate or cause to be generated eligible energy from renewable distributed generation at a level that is at least 0.75 percent of their retail electricity sales in Colorado for each compliance year beginning in 2020. At least one-half of the renewable distributed generation must be derived from retail renewable distributed generation.

15. Finally, paragraph 3655(j) requires each cooperative electric association QRU serving 100,000 or more meters to generate or cause to be generated from renewable distributed generation in amounts that are at least one percent of its retail electricity sales in Colorado for each compliance year beginning in 2020. At least one-half of such renewable distributed generation must be derived from retail renewable distributed generation.

5. Rule 3659, Renewable Energy Credits

16. We propose to modify paragraph 3659(a) to recognize that greenhouse gas neutral electricity generated by a facility using coal mine methane or synthetic gas as resources can be used for the purpose of complying with the RES.

6. Rule 3661 Retail Rate Impact

17. SB 252 raised the retail rate impact from one to two percent for cooperative electric association QRUs. We propose to reflect that modification in paragraph 3661(b).

7. Rule 3662, Annual Compliance Report

18. We propose amendments to subparagraph 3662(a)(III) to recognize that SB 252 modifies the multiplier for eligible energy resources that begin operation after January 1, 2015. We propose a requirement that QRUs identify and report the eligible energy and renewable energy credits (RECs) acquired from early eligible energy resources (i.e., those in operation prior to January 1, 2015).

19. Paragraph 3662(f) establishes reporting requirements for qualifying wholesale utilities pursuant to § 40-2-124(8)(g), C.R.S. In compliance with SB 252, the proposed rule modification will require a qualifying wholesale utility to submit to the Commission and post on its website an annual report describing the steps it has taken during the most recent compliance year to comply with the RES by 2020.

8. Rule 3668, Environmental Impacts

20. Paragraph 3668(d) lists the greenhouse gases that the Commission will consider when determining whether the electricity generated using coal mine methane or synthetic gas is greenhouse gas neutral. It also specifies that all greenhouse gases shall be measured in terms of a carbon dioxide equivalent (CO₂e).

21. Paragraph 3668(d) further proposes that the Commission will determine that electricity generated from coal mine methane or from synthetic gas through pyrolysis at a municipal solid waste facility is greenhouse gas neutral if the volume of greenhouse gases emitted into the atmosphere is lower than or equal to the volume of greenhouse gases that would have been emitted had the same amount of electricity been generated by a facility converting fossil fuel to electricity. We invite comments on these proposed rule modifications, specifically on whether the Commission's determinations regarding greenhouse gas neutrality should be

made on a project-by-project basis and the processes for efficiently reaching such determinations.

C. Conclusion

22. The statutory authority for the rules proposed here is found at §§ 24-4-101, *et seq.*, 40-1-101, *et seq.*, 40-2-108, 40-3-102, 40-3-103, 40-4-101, and 40-4-108, C.R.S.

23. The proposed rules in legislative (*i.e.*, ~~strikeout~~/underline) format (Attachment A) are available through the Commission's Electronic Filings (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=13R-0901E

24. This matter is referred to an Administrative Law Judge (ALJ) for the issuance of a recommended decision.

25. The ALJ will conduct a hearing on the proposed rules and related issues on Monday, October 21, 2013 and Tuesday, October 22, 2013. Interested persons may submit written comments on the rules and present these orally at hearing, unless the ALJ deems oral presentations unnecessary.

26. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that initial comments be filed no later than September 16, 2013. The Commission further requests that comments responsive to the initial comments be filed no later than September 30, 2013. The Commission prefers that comments be filed using its E-Filing System at <http://www.dora.state.co.us/pls/efi/EFI.homepage>.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking, and Attachment A attached hereto, shall be filed with the Colorado Secretary of State for publication in the September 10, 2013 edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

3. A hearing on the proposed rules and related matters shall be held as follows:

DATE Monday, October 21, 2013 and Tuesday, October 22, 2013
TIME: 9:00 a.m. until not later than 5:00 p.m.
PLACE: Commission Hearing Room
 1560 Broadway, Suite 250
 Denver, Colorado

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

4. Interested persons may file written comments in this matter before hearing. The Commission requests that initial pre-filed comments be submitted no later than September 16, 2013 and that any pre-filed comments responsive to the initial comments be submitted no later than September 30, 2013. The Commission will consider all submissions, whether oral or written.

5. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 31, 2013.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

PAMELA J. PATTON

Commissioners