

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**  
DOCKET NO. 07R-166E

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

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**REPLY COMMENTS OF THE INTERWEST ENERGY ALLIANCE  
ON THE NOTICE OF PROPOSED RULEMAKING**

The Interwest Energy Alliance (“Interwest”) offers the following reply comments:

The context for electric energy generation has changed substantially with the passage of HB07-1281. Large bipartisan majorities in both legislative bodies passed this legislation without significant opposition being raised. It met with enthusiastic approval from Governor Ritter, who campaigned on a “Colorado Promise” that included a “new energy economy.” The legislation reflects consensus found at the polls in November 2004 with the passage of Amendment 37 to expand the role of renewable energy.

Together with legislation that expands the role of demand side management and energy efficiency (HB07-1037), this changed context promises the only relief in sight for rate increases consumers have experienced over the past several years from high-priced fossil fuel. The new policies address concerns about the costs, risks, and liabilities of over reliance on fossil fuel in the future. While both Amendment 37 and HB 1281 are intended to provide minimum levels of compliance, the policies inherent in these laws include adding resource diversity, expanding renewable energy in generation portfolios, movement away from sole focus on “least-cost” policies to consider broader benefits, and netting all benefits against costs to determine statutorily mandated rate caps.

In sum, the policy context for renewable energy in Colorado requires the Commission to expand the role of renewable energy through its rules.

**Interconnection**

To accomplish this important task, Interwest asked that the rules at issue here include its interconnection proposal to implement HB07-1169. CREA and Tri-State ask that this be delayed until later. Delay in implementing new interconnection policy works against expanding renewable energy. The Commission should reject delay. It will be important for all Colorado utilities to be consistent with statutory interconnection policy to make statewide markets work.

## **Market Test for Utility Ownership**

Rule 3660 (e) (II) proposed comparing utility owned projects to cost of similar resources “available in the market.” Xcel suggests that the market test could be met with “representative prices” and “industry trade reports.”

Interwest asks that the Commission consider comparing utility projects to those reasonably available in the Colorado market and to projects actually bid to Xcel. Other markets in other states at other times, “representative prices” and “industry trade reports” would be poor substitutes for bids from the Colorado market to supply resources to Xcel.

To achieve broad support consistent with the public interest, a market test based on bidding to supply resources to Colorado consumers needs to be supported by transparent bid results to determine if 25 and 50 percent utility ownership serves the public interest. Transparent bid results should include revealing, not hiding under spurious “extraordinary confidentiality,” lowball fossil fuel price assumptions that have consistently hurt consumers. In section 3662, the Commission should include language that requires utilities’ compliance reports to reveal their assumed fossil fuel price projections.

## **Count Costs and Benefits of Complying Resources in Determining Net Benefits**

To date, Interwest is not aware of any objection to its proposal to change section 3661 so that all resources that are counted for compliance are counted in net benefits calculations. To accomplish this result, the Commission should revise section 3661 to eliminate the concept of “...eligible renewable energy from resources which are not commercially operational...” There is no statutory basis for ignoring all benefits of resources that are counted for compliance because they are “commercially operational.” If resources count for compliance, they should count for net benefits.

## **Implement all the Benefits and Policies in Statute**

Interwest continues to advocate that “fullest possible consideration” should not be just a tie breaker in utility acquisition procedures (40-2-123 C.R.S.). We recommend to the Commission that all the policy benefits of Amendment 37 should be implemented, not simply referenced (4 CCR 723-3, Section 3651 referring to the legislative declaration of Amendment 37). We agree with CWL and RMFU that policy to encourage community ownership of eligible resources means the Commission has an affirmative duty to address requirements of statutes in its rules (Senate Bill 04-168, 7-56-210 (1) C.R.S.) declaring state policy of encouraging local ownership of renewable energy facilities and specifically linking that policy to the rural economic development benefits:

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

## Limited Rulemaking

That the Commission proposes a “limited rulemaking” because it would be “unlikely to complete” its work by October 31st and “reiterates its intention to keep this rulemaking focused on rule changes that are required to comport our rules with the new law” while continuing rules on the books that do not meet requirements of existing law continues the Commission’s policy of substituting its policy judgments for those of the people and the General Assembly. The rules in the present docket should correct underlying flaws as well as implement new laws. There is no provision in Colorado statute that allows the Commission’s work load to provide an excuse for not complying with the law. In fact, HB 1281 itself clearly requires the commission to “revise or clarify existing rules” in 40-2-124 (1) C.R.S

In addition, the legislature spoke to implementing benefits in HB 1281, this time requiring the Commission’s rules to implement broadening of Colorado’s energy policy goals beyond “least cost.” The Commission faces the requirement in statute that it draft rules that address eligible energy resource development and ownership by QRU’s in 40-2-124, VIII (f) (I) C.R.S. in the following terms:

“...IF THE NEW ELIGIBLE ENERGY RESOURCES PROPOSED TO BE DEVELOPED AND OWNED BY THE UTILITY CAN BE CONSTRUCTED AT REASONABLE COST COMPARED TO THE COST OF SIMILAR ELIGIBLE ENERGY RESOURCES AVAILABLE IN THE MARKET. THE QUALIFYING RETAIL UTILITY SHALL BE ALLOWED TO DEVELOP AND OWN AS UTILITY RATE-BASED PROPERTY MORE THAN TWENTY-FIVE PERCENT BUT NOT MORE THAN FIFTY PERCENT OF TOTAL NEW ELIGIBLE ENERGY RESOURCES ACQUIRED AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (I), IF THE QUALIFYING RETAIL UTILITY SHOWS THAT ITS PROPOSAL WOULD PROVIDE SIGNIFICANT ECONOMIC DEVELOPMENT, EMPLOYMENT, ENERGY SECURITY, **OR OTHER BENEFITS** TO THE STATE OF COLORADO.” (emphasis supplied).

What benefits? The benefits found in the statutes referenced just above, in Amendment 37’s legislative declaration and in the Commission’s rules are those that should be included to fully implement HB 1281.

Hard utility economics for consumers cry out for this result. Spectacular fossil fuel cost increases over the past several years have made it increasingly difficult for low-income consumers to keep their utility services. Non-profit groups that aid the poor report that current electricity and natural gas prices are a key driver of homelessness. Fossil fuels have proven themselves unable to maintain low, stable utility rates. The only solid regulatory responses to this pending consumer disaster is to follow the voters’ and legislative intent, and Governor Ritter’s promise, to rapidly diversify utility resource portfolios in the direction of low-cost energy efficiency and stable-priced renewable energy generation.

Respectfully submitted this 21st day of June, 2007.

Craig Cox

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