

February 2, 2004
Re. Renewable Energy Standard Ballot Initiative

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. Colorado has renewable energy resources that are currently underutilized.

Therefore, in order to attract new businesses and jobs, to promote development of rural economies, to minimize water use for electricity generation, to diversify Colorado's energy resources, to reduce the impact of volatile fuel prices, and to 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.

(I) Each provider of retail electric service in the State of Colorado whose retail sales exceed 100,000 megawatt-hours annually, shall be subject to the rules established under this article by the Public Utilities Commission of the State of Colorado (Commission). No additional regulatory authority of the Commission other than that specifically contained herein is provided or implied.

(II) In accordance with Article 4 of Title 24, C.R.S., on or before July 1, 2005, the Commission shall initiate one or more rulemaking processes to establish the following:

(1) Definitions of eligible electric generation technologies that utilize eligible renewable resources. Such eligible electric generation technologies must be in-service no earlier than January 1, 2003, and not utilized in any optional pricing program. Eligible renewable resources are solar electric, wind, geothermal, and biomass. A fuel cell using hydrogen derived from these eligible resources is also an eligible electric generation technology. Fossil and nuclear fuels and their derivatives are not eligible resources. Further, "biomass" shall be defined to mean:

(a) organic matter from a plant or tree that is planted for the purpose of being used to produce energy;

(b) nontoxic plant matter that regenerates, or the use of which will not result in a depletion of resources, and that is the byproduct of urban wood waste, mill residue, slash, or brush.

(c) animal wastes and products of animal wastes;

(d) methane produced at landfills or as a by-product of the treatment of wastewater residuals.

(2) (a) An electric resource standard for renewable energy generation. For each provider of retail electric service whose retail sales exceed 100,000 megawatt-hours annually, the electric resource standard shall require each provider to generate, displace, or otherwise acquire on a competitively bid basis electricity from eligible electric generation technologies at the following minimum amounts:

(i) 10% of the provider's retail electricity sales for the years 2012 through 2021; and

(ii) 20% of the provider's retail electricity sales for the years 2022 and thereafter.

(b) Of each of these amounts 5% shall be derived from eligible solar electric generation technologies.

(c) To the extent that the ability of a provider of retail electric service to acquire eligible electric generation is limited by a requirements contract with an electric supplier, the provider

shall acquire the maximum amount allowed by the contract. For any shortfalls to the amounts established by the Commission pursuant to (II)(2)(a), the provider shall acquire an equivalent amount of either (i) renewable energy credits, (ii) documented and verified energy savings through energy efficiency and conservation programs, or (iii) a combination of both. Any future contract entered into by a provider of retail electric service shall not conflict with this article.

(3) A system of extra credit multipliers. Each kilowatt-hour of electricity from eligible electric generation technologies installed in an area of Colorado designated as an enterprise zone pursuant to section 39-30-103, C.R.S., shall count as one and one-half kilowatt-hours towards compliance with this electric resource standard. Each kilowatt-hour of customer-sited eligible solar electric generation technologies shall count as three kilowatt-hours toward compliance with this electric resource standard.

(4) A standard buydown offer program. Each provider of retail electric service subject to this electric resource standard shall make available to its retail electricity customers a standard buydown offer of a minimum of \$2.00 per watt for the installation of eligible solar electric generation on customers' premises up to a maximum of twenty kilowatts per installation. Such offer shall allow customer's retail electricity consumption to be offset by the solar electricity generated. To the extent that solar electricity generation exceeds the customer's consumption during a billing month, such electricity shall be carried forward as a credit to the following month's consumption. To the extent that solar electricity generation exceeds the customer's consumption during a calendar year, the customer shall be reimbursed by the provider at its average hourly incremental cost of generation over the prior twelve month period. The provider of retail electric service shall not apply unreasonably burdensome interconnection requirements in connection with this standard buydown offer.

(a) To the extent that a provider of retail electric service subsidizes more than fifty percent of the cost of a retail customer-sited wind or solar electric energy system in Colorado with a nameplate rating of one hundred kilowatts or less, the total electricity generated by the wind or solar energy system may be counted by the provider towards its obligation under this article.

(5) A system of tradable renewable energy credits that may be used by a provider to comply with this electric resource standard. The Commission shall also analyze the effectiveness of utilizing any system of renewable energy credits in existence at the time of its rulemaking process;

(6) Policies for the recovery of costs incurred with respect to this electric resource standard for providers of retail electric service that are subject to rate regulation on the effective date of this electric resource standard. If the commission approves the terms and conditions of a renewable energy contract between the provider of electric service and another party, the renewable energy contract and its terms and conditions shall be deemed to be a prudent investment, and the commission shall approve retail rates sufficient to recover all just and reasonable costs associated with the contract. The provider of electric service shall be entitled to full recovery of its prudently incurred costs of constructing and operating its own renewable energy systems or qualified energy recovery systems as determined by the commission.

(7) Annual reports. Each provider of electric service shall submit to the commission an annual report that provides information relating to the actions taken by the provider to comply with this electric resource standard. The report shall be within the time prescribed and in a format approved by the commission. Each annual report shall include clear and concise information that sets forth, at a minimum:

(a) the provider's plans for achieving the electric resource standard. The plans shall specify the portion of the renewable resource obligation under this article that the provider intends to acquire through competitive acquisition, self-building, and/or the use of renewable energy credits.

(b) the amount of electricity that the provider generated or acquired from renewable energy systems during the reporting period and, if applicable, the amount of renewable energy credits that the provider acquired, sold, or traded during the reporting period to comply with its electric resource standard;

(c) the capacity of each renewable energy system owned, operated, or controlled by the provider, the total amount of electricity generated by each such system during the reporting period, and the percentage of that total amount that was generated directly from renewable energy;

(d) whether, during the reporting period, the provider began construction on, acquired, or placed into operation any renewable energy system or qualified energy recovery system and, if so, the date of any such event;

(e) information on the cost and timing of transmission facilities and services necessary for acquiring the energy from renewable energy facilities that are utilized to comply with the electric resource standard.

(8) Rules necessary for the administration and enforcement of this article. Such rules shall include:

(a) enforcement mechanisms that are necessary and reasonable to ensure that each provider of electric service complies with its electric resource standard; and

(b) provisions governing the imposition of administrative penalties assessed after a hearing held by the commission pursuant to section 40-6-109. The provider shall not be penalized if the provider fails to comply with the electric resource standard due to the nonperformance of a party other than the provider under a renewable energy contract, and the provider exercises reasonable diligence to come into compliance with the electric resource standard. Under no circumstances shall the costs of administrative penalties be recovered from Colorado retail customers.

(III) A provider shall not have the authority to condemn or exercise the power of eminent domain over any real estate, right-of-way, easement, or other right pursuant to section 38-2-101, C.R.S., to site the generation facilities of a renewable energy system used in whole or in part to meet this electric resource standard.

(IV) This article shall be effective on December 1, 2004.