

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
COLORADO

Docket No 15R-112E

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

MOTION FOR RECONSIDERATION OF DECISION No. C05—1416 “ORDER
GRANTING, IN PART, AND DENYING, IN PART, REHEARING, REARGUMENT
AND RECONSIDERATION” and Adopting Rules Implementing Section 40-2-124,
Colorado Revised Statutes Regarding Renewable Energy Standards

The Colorado Renewable Energy Society (CRES) is a non profit organization
dedicated to promoting the economic and environmental benefits of solar, wind,
biomass, geothermal and energy efficiency technologies. CRES is the Colorado
chapter of the American Solar Energy Society. With over 600 members, CRES
is the largest organization in the state advocating a sustainable energy future for
Colorado businesses and consumers.

CRES actively supported adoption of Colorado renewable energy standards in
legislation and by the initiative process. CRES has advocated for energy
efficiency and renewable energy before this Commission in numerous
proceedings for over a decade and has participated in this proceeding at every
step with CORE 37.

CRES respectfully requests further reconsideration of the rules adopted
implementing renewable energy standards (“Amendment 37”) for the following
reasons:

**PUC Rules fail to implement policy goals of Amendment 37 and Colorado
statutes.**

These rules are supposed to implement statutory policies contained in the
legislative declaration of intent and statutory framework ratified by Colorado
voters when they adopted the renewable energy standard contained in §40-2-
124 C.R.S and to establish procedures to implement the renewable energy
standard for qualifying retail utilities in Colorado.

It was the intention of the framers of this statute, who include active CRES
members, that the energy policy of the State of Colorado and of this Commission
be changed from a sole focus on “least cost” acquisition of generation resources
to include both that laudable goal and six additional goals contained in the
legislative declaration now included in the Commission’s Rule 3651 “Overview
and Purpose”. The seven policy goals of Amendment 37, now §40-2-124 C.R.S.,
are:

- Save consumers and businesses money (“least cost”)
- 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 energy prices
- Improve the natural environment

Nowhere in statute is this Commission given power to pick and chose among these policy goals, to pick their own favorites or to ignore certain policy goals in favor of others. Each word of the statute should be given meaning. The Commissioners, like judges, should not substitute their own views or values for clearly expressed policy choices contained in this new law. This is particularly true when the Commission is making rules where a clear majority of Colorado voters, through direct democracy of the initiative process, have spoken, in the only expression of voters’ preferences on state level energy legislation in history.

Unfortunately, the Commission has substituted its judgment in these rules. The Commission has preferring its “least cost” policies to the intent of the framers of the statute and substituted its “least cost” policy for the plain meaning of the statute by continuing to implement only “least cost” policy and by ignoring the other six policy goals of Amendment 37.

Other related Colorado statutes also support the seven policies contained in §40-2-124 C.R.S. These include statutory policies contained in §40-2-123 C.R.S. regarding “fullest possible” consideration of factors that encourage clean energy technologies and the policy of §7-56-210 C.R.S. that encourages local ownership of renewable energy generation facilities to improve the financial stability of rural communities. These statutes that support the seven policies of Amendment 37 have also been ignored in these rules implementing Amendment 37, despite their close relationship to the policies of Amendment 37 and the advocacy of Amendment 37 framers that they be treated in the Amendment 37 implementing rules.

The former statute requiring “fullest possible consideration” is limited to a “tie breaker” implemented in the now super ceded Commission “least cost planning” rules (see Rule 37610 (f) discussed in the Commission Order at Paragraph 38 on page 13, Decision No C04-1461) while the latter statute is equated with the 1.25 times compliance bonus in Amendment 37 (id. at paragraph 39).

The Commission has failed to implement all the policy goals §40-2-124 C.R.S.

The Commission included the legislative declaration of Amendment 37 in its Section 3651 “Overview and Purpose Rule”, but it failed to include any

meaningful implementing rules for any of the policies contained in the Amendment, save one: “least cost”.

The goals of Amendment 37 are included in the rule in the following terms:

Section 1. Legislative Declaration of Intent

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, diversity 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.¹

The Commission rule contains a reference to these statutory policies in Rule 3655 (b) Resource Acquisitions, in the following terms:

“Competitive solicitations shall be conducted by each QRU to achieve the statutory policies contained in the legislative declaration of intent.”

This represents a Commission policy choice to implement the statutory policies of Amendment 37, except for the favored policy of “least cost” by minimal attention at best. Later, in the same Rule 3655, Resource Acquisitions, at subsection (m), responses to competitive solicitations for renewable energy credits are subjected to “considerations” by Qualifying Retail Utilities that “. . . may take into consideration. . . economic development benefits, energy security benefits, amount of water used, fuel cost savings, environmental impacts. . . and any other factor that the QRU determines is relevant to the QRU’s needs.”

Later, in section (m) (III) of Section 3655, the Commission’s rule allows QRUs to reject any bid, but requires “. . . a report detailing the outcome of the solicitation and identifying which bids were selected, which were rejected, and why.” Because the report will be filed with the Commission in both a public and a confidential version, CRES fears that the public version of the report will not persuade the public that the QRUs reasons for rejecting bids will be based on anything other than standard utility modeling of “least cost.” Evidence for this

¹ To exalt the reduction, streamlining, and simplification of regulations at the expense of omitting the policy goals that should animate the regulations is to miss the point of the exercise of the vote in a democracy to change policy.

concern is found in the last such report filed with this Commission and addressed below.

CRES believes that these rules fail to include the statutory policies in addition to “least cost” in any meaningful way. First, the Commission rejected the CORE 37 rules that would have required QRUs to include all seven Amendment 37 policies in their plans. Second, the Commission failed to adopt the CORE 37 rules that required bid evaluations to include quantified values for application of each Amendment 37 policy. Third, the Commission granted reconsideration at Xcel’s request and eliminated the only provision in its Amendment 37 rules that could be argued to require implementation of Amendment 37 policies -- “weighting factors” (Decision No. C06-0091 at pages 27 and 28). It did so based on its agreement with Xcel’s arguments that Xcel was “unsure how to conduct the modeling analysis,” and that it would be a “complicated and relatively arbitrary process.”² Otherwise, the Commission’s rule omits further mention of, attention to, or implementation language regarding the six forgotten policies of Amendment 37.

The Commission’s rules lack requirements for utilities to plan to meet the six policies other than least cost, requirements for utilities to acquire resources other than RECs to respond to the requirements of these policies, and the rules lack annual reporting requirements that would tell Colorado citizens whether, or not, progress is being made toward attaining the policy goals for which they voted. Overall, the Commission rule shows a Commission substituting its own judgments and values for those preferred by the majority of Colorado voters in a free and fair election and those now required by statute.

For a preview of how one utility will respond to the Commission’s adopted rule that indicates that inattention to the six new policy goals that Colorado voters want implemented, the recently filed “Public Service Company of Colorado ‘Public Version’ All-Source RFP Bid Evaluation Report,” December, 2005 provides a more complete argument that shows clearly how one utility will implement the Amendment 37 rules with regard to renewable energy acquisitions.

Xcel Energy linked the all-source bid results with Amendment 37 implementation in the following claim in their December 28, 2005 press release:

“Xcel Energy – which currently has 282 megawatts of wind in-service or under-construction in Colorado – would increase its overall wind capacity in the state by 275 percent. Xcel Energy estimates that it also would meet the non-solar mandates of the voter-approved Renewable Energy

² CRES notes that much more litigation and contention will surround the issues of imputed debt which have been raised by QRUs in related proceedings but it seems that when a utility wants something from the Commission the amount of litigation and contention is worthy, while when it opposes something the litigation and contention becomes a problem.

Standard through 2014, essentially meeting the standard seven years earlier than required.”

PSCo claims that renewable energy generation acquired from the all source bid will meet the requirements of the renewable energy standard. So it is fair to ask how the policies of Amendment 37 were implemented in the evaluation of bids that PSCo claims meet the renewable energy standard, including all seven policies to be achieved by meeting the standard, not just the “least cost” goal.

The bid evaluation report is totally devoid of any attention to the six forgotten policy goals of Amendment 37. No attention is paid to them at all. No benefits other than “least cost” are calculated for any of the renewable energy projects evaluated. No positive values are attributed to renewable energy bids in the evaluation, other than “least cost.” Essentially, following the Commission’s lead in the rules at issue in this docket, the utility has assigned the value “zero” to each of the policy goals of amendment 37, other than “least cost.” No bids are declared winners (or losers) on the grounds of the six ignored policies, other than “least cost.” No part of the report addresses any of the six policy goals of Amendment 37 at all, except for “least cost.” Unless the Commission implements all the policy goals of the statute, this bid evaluation report will be followed by more of the same outdated utility behavior: focus solely on least cost, ignore the other policy goals.

Commission Amendment 37 rules impermissibly link compliance to Least Cost Planning and modeling.

Under the PUC’s Amendment 37 rules, new renewable resources are acquired by utilities through competitive bids for systems greater than 10 kilowatts. (Rule 3655 (a) “Resource Acquisitions.”) Competitive solicitations are conducted for solar, non-solar, and Renewable Energy Credit contracts.

The intent of Colorado voters to implement all of the seven policy goals of the statute is gutted by the Commission’s order and rule in this Docket. The order adds a new Rule 3661 (e) to “ensure consistency in modeling inputs, methodologies and assumptions between model runs made for Amendment 37 purposes and LCP purposes.” (Order, paragraph 122, page 42.) By using the “modeling inputs, methodologies, and assumptions” of the least cost planning rule, and ignoring every other policy goal of Amendment 37, the Commission has transformed the broad policies that voters ratified into the policy of sole focus on “least cost” that represents the Commission’s policy preference. The Commission should not substitute its policy judgments for those of the framers and majority of voters that passed Amendment 37 into law.

LCP modeling does not value policy goals of Amendment 37. It only considers “least cost”. The Commission’s Amendment 37 rules fail to require utility generation acquisition planning to consider Amendment 37 policy goals, other

than “least cost.” The Commission must amend its Amendment 37 rules to implement each of the policy goals of Amendment 37, not preferring its own policy preference for “least cost” over the policies contained in statute.

Again, the PSCo all-source bid evaluation report contains evidence that, on its face, shows that the six ignored benefits are not impacting renewable resource acquisition decisions that allegedly meet renewable energy standards. Three wind bids are awarded, according to the report, for 400, 300 and 75 MW, based only on “least cost” evaluation. If the required analysis of Amendment 37’s benefits to rural economic development were counted, one would think that more than three wind projects would have been awarded, since that result would share rural economic development benefits more broadly in rural Colorado.

If Amendment 37’s benefits to diversity (of technology, ownership, location, development approach) had been addressed, rather than ignored in the “all-source” bid evaluations, logic would again suggest that more than three projects would have been awarded to diversify risks that one or more of three projects awarded would fail to be ultimately developed. Likewise, having wind in many different places increases chances that wind will be blowing in one or more of them, diversifying and improving use of this renewable resource and reducing costs of integrating it with the utility system since the resource is more likely to be working if locations of wind turbines are more diverse. Since failure of PSCo’s 500 MW bid, which resulted in only 60 MW of wind presently under construction, concerns about bids awarded that do not lead to projects, and the need to treat “diversity” seriously, has become a real one.

If “reducing the impact of volatile energy prices” had been implemented in the all-source bid, greater amounts of wind would have made it through the screening procedure. Consider the asymmetrical risks to ratepayers of gas price projections. While the all source evaluation report indicates modest increases from the assumed \$4.50-\$5.00 gas prices presented by Xcel earlier in the least cost plan docket, if higher than anticipated natural gas prices follow, consumers will have no alternative than to pay the higher than anticipated prices.

However, if natural gas prices turn out to be lower than projected, consumers will first benefit from lower prices by paying less than anticipated prices for natural gas. They will have extra money available to pay for additional wind and gas demand side management that will turn out to be equivalent to buying insurance and not making a claim. It is therefore, reasonable in protection of ratepayer interests to assume higher than anticipated natural gas prices for bid evaluation purposes. But there is no evidence in the all source bid evaluation report that risks of natural gas price projections were treated in this manner to protect ratepayers. Since gas price projections are redacted from the PSCo bid evaluation report, one must assume that the company has continued its practice of low balling gas price projections in their evaluation of all-source bids. This

does not achieve the policy goal of Amendment 37 to “reduce the impact of volatile energy prices.”

PUC rules fail to implement the “net benefit” provision of Amendment 37 by ignoring the benefits of every policy goal of Amendment 37, except “least cost.”

Amendment 37 contains a rate cap of one percent so ratepayers are protected against costs of acquiring renewable exceeding the cap. The cap is accompanied by the statutory language found in §40-2-124 (g) C.R.S :

“The retail rate impact shall be determined net of new non-renewable alternative sources of electricity supply reasonably available at the time of the determination.”

The intention of the framers was to have all costs and benefits of renewable energy counted as benefits that result from acquisitions of renewable energy projects that meet the renewable energy standard. So if a renewable energy resource saved customers and businesses money, those benefits would be counted against higher costs of other renewable energy that was acquired to meet the standard. The rate cap was intended to protect ratepayers from costs of renewable energy acquisitions exceeding one percent, **NET** of all the benefits. Each of the seven policy goals of Amendment 37 were intended to provide benefits that were to be counted in the net benefits calculation.

This simple intention cannot lead to a greater negative impact on ratepayers than a one percent rate increase, since the ratepayers will enjoy calculated benefits of new renewable energy supplies that act to keep their rates and risks lower than the alternative resources reasonably available. The net benefits provision can lead to a larger renewables program, if all the net benefits are counted. Not surprisingly, this is a good result for ratepayers, since they enjoy benefits that are counted and netted against costs.

The second simple intention of framers of the “net benefits” language was that all benefits of renewable energy defined in statute should be included in net benefits calculations. Colorado voters know that there are bottom line, hard dollar benefits, as well as other benefits that are harder to quantify in dollars, that flow from achieving Amendment 37 policy goals.

Consumers obviously save money on their utility bills if renewable acquisitions result in lower utility costs (“Save consumers and businesses money or “least cost.”) If renewable energy projects “attract new businesses and jobs,” consumers will benefit from new products offered by the new businesses, access to new jobs, and improved economic conditions. Conversely, continued reliance on imported coal and natural gas will accelerate the drain of dollars from the Colorado economy.

All Colorado citizens benefit if Colorado's rural economic drought is lessened by the financial, tax, and income benefits that flow from new energy investments in rural areas. While the Front Range and recreation areas of the state have prospered, rural agriculture economies have declined. Colorado voters ratified renewable energy standards to "promote development of rural economies" and they understand that their energy dollars should be helping to meet this policy goal. Without attention to the related policies of §7-56-210 C.R.S. that encourages local ownership of renewable energy generation facilities to improve the financial stability of rural communities, the Commission's Amendment 37 rules are out of compliance with not only the seven statutory goals of the renewable energy standard, but also fail to implement the clear policy in favor of community and locally owned renewable energy projects passed by the Colorado General Assembly and signed into law by Governor Owens.

Fossil generation uses astounding amounts of water for cooling and power production purposes. Colorado has just experienced a punishing drought. Colorado voters wanted the renewable energy standard to "minimize water use for electricity generation" to reduce the pressure on water supplies. With pressure from fossil generators removed from markets for water, both rural agricultural and municipal water customers can benefit from lower long term water costs.

Having experienced first hand recent fluctuating, uncertain, and compounding increases in fossil fuel prices in own their pocket books, Colorado voters ratified Amendment 37 to "diversify Colorado's energy resources" to "reduce the impact of volatile energy prices." These goals lead to minimizing energy prices over the long term, managing risks by spreading bets across the energy table, rather than continuing sole reliance on increasingly costly and risky fossil fuels that carry attendant health care, pollution regulatory and climate change liabilities and contingent costs. Likewise, Colorado voters realized that pollution, mining, and disposal costs of the fossil fuels that provide electricity are not fully represented in their electric bills, so they voted for a renewable energy standard to "improve the natural environment" as well.

Each of these potential benefits of the policies of Amendment 37 has value to Colorado citizens and to utility ratepayers. The benefits are greater than zero and, while they might be hard to pin down in precise dollar terms, that is not an excuse that justifies the Commission's rules writing them out of the statute. Colorado ratepayers want these goals achieved. To achieve them, the Amendment 37 implementation rules must address them. The current Commission rules virtually ignore them.

There are four important ways to address the policy goals in these rules. First, utilities must be required to plan their renewable resource acquisitions to address the policy goals, in addition to "least cost." Second, the renewable energy

resource acquisition process itself must incorporate the policy goals in meaningful terms, creating compelling measurements and metrics to encourage bidder creativity and resulting in utility acquisitions that maximize the all benefits at the least cost to consumers. Third, utilities must implement the policies in their bid evaluations so that the benefits count when acquisition decisions are made. Fourth, utilities' annual compliance reports must address whether each of the goals are being met or not.

Therefore, the PUC rules fail to fully implement the policy goals of Amendment 37 and should be rewritten to include implementation of all seven policies in the renewable energy standard statute, and supported by related statutes, rather than continuing sole reliance on a single policy of "least cost." Further, the net benefits provision of the statute should be implemented by including quantified benefits of each statutory policy.

Respectfully submitted on February 23, 2006.

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