

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0559EG

IN THE MATTER OF MODIFICATIONS TO THE COMMISSION’S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, AND ITS RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4, TO IMPLEMENT CERTAIN PROVISIONS FROM SENATE BILL 23-292 REGARDING BEST VALUE EMPLOYMENT METRICS AND ENERGY SECTOR PUBLIC WORKS PROJECTS.

NOTICE OF PROPOSED RULEMAKING

Issued Date: December 24, 2024

Adopted Date: December 18, 2024

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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 Commission’s Rules Regulating Electric Utilities, 3 *Code of Colorado Regulations* (“CCR”) 723-3 (“Electric Rules”) and the Commission’s Rules Regulating Gas Utilities, 4 CCR 723-4 (“Gas Rules”). Through this rulemaking, the Commission intends to establish rules that implement and clarify Senate Bill (“SB”) 23-292 directives around Best Value Employment Metrics (“BVE Metrics”)¹ and Energy Sector Public Works Projects (“ESPW Projects”). This rulemaking is the next step in developing a thoughtful framework that builds on legislation and prior proceedings and is intended to ensure that energy development by regulated utilities is performed by a qualified Colorado workforce, in a manner appropriate to the Commission’s authority and decision-making processes.

¹ While often referred to as “BVEM” or “BVEM information,” we believe “BVE Metrics” is more clear.

2. The proposed changes to the Electric and Gas Rules are set forth in legislative (*i.e.*, strikeout and underline) format (Attachments A and C) and final format (Attachments B and D). Initial written comments on these rules, alternative proposals, and additional related rules are to be filed no later than February 5, 2025, and any written comments responsive to the initial comments are to be filed no later than February 21, 2025.

3. We refer this matter to an Administrative Law Judge (“ALJ”) for a recommended decision. A public comment hearing on the proposed rules will be conducted in this matter on March 4, 2025, beginning at 11:00 a.m.

B. Background

1. BVE Metrics from 2010 Through 2020

4. The history of efforts to embed considerations related to labor in Commission proceedings goes back over a decade. In 2010, House Bill (“HB”) 10-1001 added § 40-2-129, C.R.S., which required a utility constructing new generation facilities to supply information on BVE Metrics to the Commission. Through multiple rulemakings² and further legislation,³ BVE Metrics were amended and incorporated into applications for Electric Resource Plans (“ERPs”), applications for Certificates of Public Convenience and Necessity (“CPCNs”), and other Commission activities.

5. Yet while BVE Metrics have been a subject of discussion in proceedings over the years, there has not always been consensus on how the concept should be defined and evaluated. In recent years, efforts to refine labor considerations have escalated in multiple venues, resulting in both policy changes and technical modifications.

² See, *e.g.*, Proceeding Nos. 10R-214E, 10R-243E, 13R-1151E, 15R-0325E.

³ See, *e.g.*, HB13-1292.

6. In Proceeding No. 19R-0096E, the Commission proposed a significant overhaul of the ERP and Renewable Energy Standard (“RES”) planning processes. The proposed rules included modifications to BVE Metrics requirements, including the creation of a new, focused rule and prescriptive requirements for what documentation should be submitted for projects to demonstrate compliance.⁴ These proposed rules drew heavily from comments filed in an earlier pre-rulemaking, Proceeding No. 17M-0694E, by entities such as the Rocky Mountain Environmental Labor Coalition, the Colorado Building and Construction Trades Council of AFL-CIO, and Public Service Company of Colorado (“Public Service”). In the course of this sweeping rulemaking, multiple further pieces of legislation passed that significantly affected the ERP process. SB19-236, which implemented recommendations from the Commission’s 2018 Sunset Report, also made changes to § 40-2-129, C.R.S., including prohibiting the Commission from approving any electric resource plan, acquisition, or power purchase agreement that failed to provide BVE Metrics.

7. However, the statutory changes during the 2019 legislative session were sweeping, and touched areas far beyond labor and BVE Metrics. Accordingly, by Decision No. C21-0246, issued April 23, 2021, the Commission closed the rulemaking—including halting the consideration of proposed changes to BVE Metrics—without adopting new rules, given that SB 19-236 directed the filing of new and complex Clean Energy Plans and otherwise changed the circumstances under which the rules were proposed.⁵

⁴ Proceeding No. 19R-0096E, Decision No. C19-0197, issued February 27, 2019, at ¶¶ 76-78 and Attachment A.

⁵ § 40-2-125.5, C.R.S.

2. 2021 Legislation and 2022 Legislative Audit

8. Legislation next changed the course of BVE Metrics in 2021. By HB 21-1266, the General Assembly added § 40-2-129(4), which required the Colorado Office of the State Auditor (“State Auditor”) to conduct a performance audit of the Commission’s implementation of BVE Metrics. The audit report was submitted to the Legislative Audit Committee in July 2022 (“2022 Audit Report”). The 2022 Audit Report recommended that the Commission adopt rules and guidance that:

- Require that utilities provide the Commission complete information on employment metrics in time for the Commission to consider it. If the process for approving certificates of public convenience and necessity (certificates) does not allow for the Commission’s consideration of employment metrics prior to approval, the Commission should coordinate with the Executive Director’s Office of the Department of Regulatory Agencies to work with the General Assembly to amend statute, as needed.
- Specify how the Commission will consider employment metrics, weight the metrics in relation to other factors considered in decisions, and document the consideration in written decisions prior to approvals for Resource Plans, Plan amendments, and certificates.
- Provide utilities direction on the level of detail on each employment metric that the utilities should require from bidders and submit to the Commission for its consideration.⁶

9. The Commission’s response to the State Auditor agreed with its recommendations and committed the agency to addressing these gaps through a rulemaking process, which was originally to draw on proposed rules from Proceeding No. 19R-0096E and to resolve in 2023.

C. Labor and Workforce Provisions in Senate Bill 23-292

10. Before the rulemaking contemplated to respond to the 2022 Audit Report could be initiated, the General Assembly began to work on legislation that was adopted as SB 23-292. SB 23-292 made three important changes to how labor issues are considered at the Commission:

⁶ 2022 Audit Report p. 12.

- It expanded the list of BVE Metrics to be reported and directed the Commission to promulgate rules requiring utilities to report on their implementation in annual resource planning reports;
- added the concept of ESPW Projects, which impacts projects of specified dollar and capacity amounts and that generate, transmit, or distribute energy for or on behalf of utilities; and
- further expanded the concept of certified contractors, which utilities must require customers use to receive certain ratepayer-funded rebates.

1. 2023 Modifications to BVE Metrics

11. SB 23-292 adds two factors to the prior list of four BVE Metrics that must be considered by the Commission. First, utilities will now be required to obtain and provide information about “[t]he ability of the project to employ workers from traditionally underserved communities or disproportionately impacted communities as defined by section 24-4-109(2)(b)(II),” C.R.S.⁷ Second, utilities will now be required to obtain and provide information about “[h]ow the project supports domestic manufacturing through the utilization of Colorado and domestically produced materials, including consideration of the potential for domestically manufactured materials being unavailable in the marketplace.”⁸

12. SB 23-292 also directs the Commission to promulgate rules requiring that when utilities submit annual progress reports on electric resource acquisition, they must collect and provide information on the implementation of BVE Metrics for acquisitions that are under construction.⁹

13. Finally, SB 23-292 repeals the previous audit provision and replaces it with a requirement for the Commission to submit a report to the Energy and Environment Committee of the House of Representatives and the Transportation and Energy Committee of the Senate that summarizes information regarding BVE Metrics that is reported to the Commission through

⁷ § 40-2-129(1)(a)(I)(C), C.R.S.

⁸ § 40-2-129(1)(a)(I)(D), C.R.S.

⁹ § 40-2-129(5), C.R.S.

electric utilities’ annual reports and indicate the manner in which it has been considered.¹⁰

The reporting requirement begins on December 31, 2024, and extends in perpetuity.

2. Energy Sector Public Works Projects

14. In addition to modifying the BVE Metrics provisions, SB 23-292 introduces the concept of ESPW Projects, discusses the relationship between ESPW Projects and BVE Metrics, and establishes further audit requirements.

15. The concept of “public works projects” has been established in Colorado statutes for over a decade and refers to a variety of infrastructure projects performed by state agencies that exceed certain costs, such as \$500,000.¹¹ Where state funds are expended, the agency must demonstrate that the project meets requirements around Colorado labor, prevailing wages, etc. The ESPW Project concept thus extends requirements that have traditionally been applied to state agencies to energy infrastructure developed by or on behalf of energy utilities and funded with ratepayer dollars, albeit with changes, such as which state agencies are involved in data collection. This represents a new application of the public sector requirements to energy utilities, the scope of which we have been able to find limited precedents nationally.

16. SB 23-292 defines an ESPW Project as a project in the state that “[h]as the purpose of generating, transmitting, or distributing electricity or natural gas to provide energy to Colorado individual consumers and businesses, is built by or for a public utility, including any project for which energy is purchased through a power purchaser or similar agreement, and is funded in whole or in part by”¹² state funding (direct funding, loans, tax credits, incentives, or other assistance) or utility customer funding, which is “approved in any proceeding conducted by the [Commission]

¹⁰ § 40-2-129(6)(a), C.R.S.

¹¹ § 24-92-102(8), C.R.S.

¹² § 24-92-303(5)(a)(I), C.R.S.

as part of an electric resource acquisition or requests for certificate of convenience and necessity for construction or expansion of a project”¹³ SB 23-292 also addresses projects approved by cooperative electric associations, although because we do not regulate those entities, we do not discuss those provisions further here.¹⁴

17. In addition to these criteria regarding funding sources, ESPW Projects must meet certain other requirements to be so defined. First, they must meet the requirements of one of two lists of project types. The first list of project types includes power generation with a nameplate generation capacity of one megawatt (“MW”) or higher, including generation from renewable energy, fossil fuels, energy storage, and a variety of other sources.¹⁵ The second list of project types must have a “total project cost of one million dollars or more” and include pollution controls, utility gas distribution, electric transmission projects, geothermal systems that are used to provide heat or heated water or operate as thermal energy networks, electric vehicle charging infrastructure installations, hydrogen-related infrastructure construction projects, carbon capture and storage projects, and potentially other construction projects.¹⁶

18. Where a project is an ESPW Project under these definitions, it is required that a contract between public utilities or independent power producers (“IPPs”) and lead contractors for the ESPW Project must comply with certain statutory terms related to apprenticeships and prevailing wages. While we discuss these concepts further with specific proposed rules, briefly, general contractors must certify that their contractors or subcontractors participate in certified apprenticeship programs,¹⁷ and that they provide, and document that they are paying, prevailing

¹³ § 24-92-303(5)(a)(I)(A)-(B), C.R.S.

¹⁴ § 24-92-303(5)(a)(II), C.R.S.

¹⁵ § 24-92-303(5)(b)(I), C.R.S.

¹⁶ § 24-92-304(1)(a), C.R.S.

¹⁷ § 24-92-115(7), C.R.S.

wages.¹⁸ Under SB 23-292, this documentation and certification of payroll is called craft labor certification.¹⁹ Lead contractors must require similar compliance by any subcontractors.²⁰ Pursuant to SB 23-292, these requirements must “constitute material terms of such contracts”²¹ that are necessary to “[r]eceive any approvals or authorizations” from the Commission, including approvals for utility funding or for commencement of the ESPW Project, including a CPCN approval.²² SB 23-292 further states that in the absence of material contract terms, the Commission shall not find an ESPW Project to also be in compliance with the BVE Metrics provisions at § 40-2-129, C.R.S.²³ However, as we discuss as part of specific proposed rules, SB 23-292 also sets forth certain exceptions related to, for example, use of project labor agreements (“PLAs”).

19. Finally, SB 23-292 establishes a further audit requirement related to ESPW Projects. No later than January 1, 2029, and at least five years thereafter, the Auditor’s Office is to audit the Commission’s approval of ESPW Projects to determine whether a sampling of projects are compliant with ESPW Project requirements—including consideration of craft labor certifications that are collected and maintained by the Colorado Department of Labor and Employment (“CDLE”)—and to provide “oversight and accountability” for compliance with § 40-2-129, C.R.S.²⁴

3. Certified Contractor Requirements

20. In addition to provisions on BVE Metrics and ESPW Projects, SB 23-292 sets forth labor standards for gas demand-side management (“DSM”) projects²⁵ and beneficial electrification

¹⁸ § 24-92-301, C.R.S., *et seq.*

¹⁹ § 24-92-303(4), C.R.S.

²⁰ § 24-92-304(3), C.R.S.

²¹ § 24-92-303(5)(b)(I), C.R.S.

²² § 24-92-304(2)(b), C.R.S.

²³ § 24-92-304(4), C.R.S.

²⁴ § 24-92-305(5), C.R.S.

²⁵ *See generally* § 40-3.2-105.5, C.R.S.

projects.²⁶ SB 23-292 requires that where plumbing, mechanical, and electrical work are performed under gas DSM or beneficial electrification programs in which a customer applies for a rebate directly from a utility, the utility shall provide a certified contractor list compiled by CDLE. To be added to the list of certified contractors, contractors must demonstrate they are qualified based on their participation in certain apprenticeship programs. Utilities are responsible for periodically auditing rebates that have been provided to customers to ensure that contractors or subcontractors remain compliant, and CDLE publishes a Certified Contractor List.²⁷

D. Stakeholder Outreach Prior to Permanent Rulemaking

21. In preparation for this rulemaking, Staff sought short-term technical assistance from Lawrence Berkeley National Laboratory (“LBNL”) to identify how other jurisdictions incorporate labor issues into their decision-making processes around resource acquisition. According to LBNL, some states have begun requiring PLAs for energy projects over a certain size or requiring workforce provisions for bids to be conforming, both of which present similarities to Colorado ESPW Project requirements. Limited examples appear to be available nationally that address both BVE Metrics-like and ESPW Project-like requirements, or that include the extensive list of potentially applicable categories of ESPW Projects, and we welcome comments on successful implementation and lessons learned in other states.

1. Summary of Comments

22. Staff met with representatives of labor organizations and hosted a public workshop on July 10, 2024, that was attended by over 30 potentially interested stakeholders, including regulated utilities, trade associations, labor organizations, IPPs, and nonprofits. Stakeholders

²⁶ See generally § 40-3.2-105.6, C.R.S.

²⁷ Certified Contractor List, available at <https://apprenticeship.colorado.gov/employers/certified-contractor-list> (last visited November 20, 2024).

provided a variety of comments during the workshop, and sometimes in follow-on conversations. With regard to BVE Metrics, stakeholders raised significant frustration with their implementation over time. In particular, they raised that data about BVE Metrics is often filed confidentially or is otherwise not accessible by entities that are not parties to proceedings; that the data that is provided is often vague or difficult to compare; that the Commission does not specifically explain how it considers labor issues in its decision-making processes; and that labor practices as projects are constructed are not consistent with claims regarding BVE Metrics made during the bidding process. Stakeholders also explained that labor interests are not a monolith, and some BVE Metrics are more significant to some labor groups than others. In that vein, stakeholders expressed a general hope that by emphasizing apprenticeship and prevailing wage requirements through ESPW Project requirements, some of the BVE Metrics stakeholders find most meaningful are being reinforced. Stakeholders also emphasized provisions of the statute that they believe require the Commission to reject noncompliant projects.

23. Finally, stakeholders discussed their perception that a careful balance that was made between legislative drafters given that federal requirements under the Inflation Reduction Act (“IRA”) will address similar requirements as are being set for ESPW Projects, but with the U.S. Department of the Treasury as the primary authority for assessing compliance. Stakeholders expressed a desire that the state and federal requirements should be harmonized to avoid duplicative reporting for IPPs, utilities, and other entities, and to avoid *ex post facto* audit results that show noncompliance and result in a clawback of tax credits. Stakeholders expressed concerns that the loss of planned-for tax credits after a project is approved could result in cost increases for ratepayers. Numerous stakeholders emphasized the importance of PLAs in providing quality Colorado jobs under both state and federal requirements.

2. Implementing Agencies

24. Staff also met with other state agencies and divisions which are impacted by SB 23-292, including the Office of the State Architect (“OSA”) within the Department of Personnel and Administration (“DPA”), and the Colorado State Apprenticeship Agency (“SAA”) and the Division of Labor Standards and Statistics (“DLSS”) within CDLE. OSA, DLSS, and the SAA will each have responsibility for implementing provisions of SB 23-292.

25. OSA administers state-funded planning, construction, energy conservation, and real estate transactions at state agencies and institutions of higher education. It also implements certain prevailing wage and apprenticeship program requirements for Public Projects and ESPW Projects. This includes drawing on Davis-Bacon wage determinations and industry wage surveys to calculate prevailing wages by construction type and county, including calculating apprenticeship contribution rates and fringe benefit requirements. OSA thus provides wage determinations in the form of public wage, fringe, and other benefit calculations that are used by many entities. However, OSA only assesses their use by state agencies in the context of Public Projects, not in the context of ESPW Projects, because SB 23-292 requires that craft labor certification be submitted to DLSS rather than OSA.

26. Pursuant to HB 21-1007, the SAA—publicly known as Apprenticeship Colorado—was established on July 1, 2023. As such, it is the primary point of contact for the United States Department of Labor Office of Apprenticeship and has responsibility for registering apprenticeship programs and apprentices in Colorado, providing technical assistance, conducting reviews for compliance with federal regulations,²⁸ and quality assurance assessments. The SAA oversees program sponsors which administer and operate apprenticeship programs—sponsors may

²⁸ 29 CFR parts 29 and 30.

or may not be the same as employers of workers who are in registered apprenticeship programs. Apprenticeship sponsors are responsible for reporting to the SAA on participation levels, graduation rates, and other information. This information is published in the Colorado Registered Apprenticeship Program Directory.²⁹ Additionally, the SAA maintains the Certified Contractor List for certain utility rebate programs, which we previously described.³⁰ However, while the SAA registers apprenticeship programs, it does not issue professional licenses³¹ or audit the performance of individual businesses.

27. Finally, DLSS is responsible for collecting craft labor certification pursuant to SB 23-292, which is defined as the documentation of payroll, certified as accurate, required for an ESPW Project.³² A lead contractor for an ESPW Project must obtain payroll records for all craft workers and submit them weekly to the ESPW Project owner or public utility.³³ Either the ESPW Project owner, public utility, or lead contractor is responsible for submitting the craft labor certification to DLSS on a quarterly basis.³⁴ DLSS has published an Interpretative Notice & Formal Opinion #13 to explain reporting requirements for ESPW Projects³⁵ and developed a mechanism (form) for collecting craft labor certification documents. However, as of the date of this Decision, no ESPW Projects have submitted craft labor certifications to DLSS.

²⁹ <https://apprenticeship.colorado.gov/resources/colorado-registered-apprenticeship-program-directory>

³⁰ <https://apprenticeship.colorado.gov/employers/certified-contractor-list>

³¹ Some apprenticeship-based professions require a license through the Division of Professions and Occupations within the Department of Regulatory Agencies. <https://dpo.colorado.gov/>.

³² § 24-92-303(4), C.R.S.

³³ § 24-92-305(1), C.R.S.

³⁴ § 24-92-305(4), C.R.S.

³⁵ Interpretative Notice and Formal Opinion (“INFO”) #13, <https://cdle.colorado.gov/sites/cdle/files/INFO%20%2313%20Prevailing%20Wage%20and%20Apprenticeship%20Program%20Requirements%20for%20Public%20Projects%204.30.24%20%5Baccessible%5D.pdf> (April 30, 2024 version).

E. Discussion

28. The intent of this NOPR is to implement key provisions of SB 23-292 and to follow through on the commitment made by the Commission in the 2022 Audit Report by developing useful clarity on how labor requirements can be considered effectively in decisions related to energy generation, transmission, and distribution. As a preface to the rules we propose here, we provide some context for our view of the scope and most significant issues involved in this rulemaking proceeding, all of which we invite comment on in addition to specific questions raised below.

29. Implementing SB 23-292 presents numerous complexities for the Commission. For example, because the Commission approves plans to construct infrastructure by other entities like public utilities, but we do not contract for or construct the infrastructure itself, the agency has limited direct experience with topics like prevailing wages. Additionally, Commission decisions regarding ERPs and CPCNs traditionally provide a presumption of prudence that costs can be recovered,³⁶ but cost recovery is itself addressed in the context of rate cases and other advice letters, sometimes multiple years after authorization to move forward with one or more projects has been granted and the projects have been more fully scoped. Furthermore, ESPW Projects have a complex statutory definition with numerous factors and exceptions, but they must be clearly delineated so that qualifying projects can be prepared to comply with new, expansive reporting requirements. SB 23-292 also creates interrelationships between several state agencies or divisions, some of which appear to be tasked with new roles and have never before collaborated in this way. Because of the different expertise and roles of these agencies, we may encounter

³⁶ See, e.g., Electric Rule 3617(d) (“A Commission decision specifically approving the components of a utility’s plan creates a presumption that utility actions consistent with that approval are prudent”).

uncertainties regarding data-sharing, authority, and enforcement as we move forward. In addition, state and federal variations in compliance requirements must be clarified and streamlined. All of this is occurring as the electric resource planning process continues to evolve by legislation and in practice. Given this complexity, the proposed rules set forth here were developed with certain principles in mind.

1. We Intend to Prioritize Improving Existing Processes

30. The plain language of SB 23-292 suggests a clear priority for ESPW Projects to act as a “belt and suspenders” policy approach to effectuating BVE Metrics requirements in ERPs and CPCNs, and to provide improved documentation. For example, compliance with ESPW Project requirements is necessary to also be compliant with BVE Metrics requirements, for applicable projects.³⁷ Additionally, the legislative declaration of the Colorado Energy Sector Public Works Project Craft Labor Requirements Act states that

By incorporating well established quality contracting procurement tools, such as prevailing wages, apprenticeship utilization requirements, and project labor agreements *into our energy resource planning*, the state of Colorado will have the capabilities to better protect its energy investments, improve construction project delivery in the energy sector, *fully document and evaluate the directives set forth in section 40-2-129*, and create a clear set of standards for enforcement to achieve the law’s intent for the benefit of Colorado workers and the communities where they live³⁸

31. Given this statutory definition of an ESPW Project and other statutory language, we believe it is appropriate to understand SB 23-292 as giving direction in the context of ERPs and CPCNs. The proposed rules thus require that a project must be approved by the Commission through an ERP or a CPCN proceeding to be covered by ESPW Project and/or BVE Metrics requirements. While we believe focusing on ERPs and CPCNs will provide meaningful clarity to

³⁷ § 24-92-304(4), C.R.S.

³⁸ § 24-92-302(1)(j), C.R.S. (emphasis added).

this rulemaking—and enable it to proceed efficiently given the volume of cases currently underway—it does lead to a potential patchwork of requirements where infrastructure decisions are made in other venues pursuant to law or practice.

32. For example, a gas distribution project that costs more than \$1 million dollars that is conducted in the ordinary course of business may not be subject to ESPW Project requirements, but a gas distribution project which requires a CPCN application would be. Electric vehicle charging infrastructure installations are also excluded from the ESPW Project requirements in the proposed rules: while they are specifically addressed by SB 23-292,³⁹ they are evaluated in the context of applications for transportation electric plans, not ERPs or CPCNs.⁴⁰ Additionally, SB 23-292 presents somewhat conflicting language regarding other types of projects. While it added a requirement that community solar gardens (“CSGs”) could be treated as ESPW Projects,⁴¹ it did not remove the requirement that retail distributed generation (“DG”)—which includes CSGs—is excluded from the requirement to provide BVE Metrics.⁴² While it is unclear why one requirement would exist without the other for CSGs but not for larger infrastructure investments such as generating units, CSG acquisitions (as retail DG) are typically addressed within a RES compliance plan instead of within ERPs or CPCNs. Resource acquisition pursuant to the BVE Metrics statute has generally been considered to apply to ERPs rather than RES compliance plans acquiring DG, and it is unclear whether SB 23-292 intended to change this approach.

33. Despite these potential inconsistencies, we find the approach put forward in the proposed rules to be the most logical way to read the statutory requirement that a project *both*

³⁹ § 24-92-303(5)(II)(E), C.R.S.

⁴⁰ *See generally* § 40-5-107, C.R.S.

⁴¹ § 40-2-127(3.7), C.R.S.

⁴² § 40-2-129(3), C.R.S. Pursuant to SB24-207, “inclusive” community solar would appear to be required to follow ESPW Project requirements if the project so qualifies. § 40-2-127.2(2)(a)(III), C.R.S.

receive utility customer funding through an electric resource acquisition or CPCN proceeding, *and* must meet certain nameplate capacity and cost thresholds. Moreover, far greater clarity would be needed to attach ESPW Project requirements to a larger selection of infrastructure projects beyond those that are considered within the ERP and CPCN processes. For example, it is unclear how “installation” should be defined in the context of an electric vehicle charging infrastructure installation, as this is not a defined term of art for the Commission. SB 23-292 also includes “hydrogen-related infrastructure construction projects”⁴³—are these projects electrolyzers, pipeline installations, or another activity? These are significant scoping questions, particularly given evolving processes related to electric and gas infrastructure planning.

34. Accordingly, we seek further comments and information that could help ensure that the list of projects to which SB 23-292 requirements apply is clear to regulated utilities, IPPs, contractors, and other impacted entities, including the Commission and other state agencies which must implement the requirements. We also encourage comments on whether there are additional steps that should be considered in the future, potentially through follow-on stakeholder engagement or future rulemakings.

2. We Believe SB 23-292 Must Be Implemented to Retain Colorado’s Legacy of Robust Competitive Processes

35. The second principle we applied to develop the proposed rules is to promote an even competitive playing field across projects, regardless of fuel or ownership, to the extent possible. A cornerstone of Colorado’s resource planning process has been to promote best-fit resources, regardless of ownership. Therefore, a theme of our recent resource planning proceedings has been to consider how to minimize differences in risk and reward that are solely attributable to project ownership. We believe this balance promotes competitive bids for Colorado customers.

⁴³ § 24-92-303(5)(II)(F), C.R.S.

In this vein, we suggest additions to statutory exceptions that we believe will facilitate apples-to-apples comparisons across projects regardless of ownership type. For example, PLAs are an important tool that can be used by an entity like a regulated utility in lieu of submitting documentation related to BVE Metrics and ESPW Projects. However, the statutory definition of a PLA does not address either prevailing wages or apprenticeships. While we understand that including these requirements is common practice, we are unsure whether a simple statement from a utility that it will have a PLA should be sufficient to comply with statutory requirements. Ideally, a PLA would be both statutorily compliant and would be required to address whether it meets substantially similar requirements that must be met by non-PLA entities. We seek comment on proposed rules where we have attempted to create this alignment and level playing field.

3. The Expertise of Other State Agencies is Necessary to Promote Efficiency and Assess Compliance

36. A third major consideration in developing the proposed rules was how to avoid duplicative reporting and compliance efforts by the Commission, given the other state agencies involved who have longstanding expertise. In prior proposals for rules to implement BVE Metrics, we proposed a long and specific list of information that must be provided by bidders as part of a Phase II process. However, the Phase II process is generally significantly shorter than the Phase I process in an ERP, and requires regulated utilities to quickly evaluate and present the results of multiple portfolios to the Commission. Under the proposed rules, the Phase I process should clearly delineate what information must be provided around BVE Metrics and how it will be evaluated, as well as ensure that regulated utilities submit model contracts with nonnegotiable material terms regarding ESPW Project requirements. This also responds to the 2022 Audit Report recommendation that filing requirements be more clearly specified. However, we encourage

participants with expertise in this area to address what kinds of information should be provided for BVE Metrics in particular, and to help us understand the appropriate balance of prescriptiveness and flexibility that are appropriate for rules.

37. Identifying steps where existing documentation can be obtained and submitted by bidders—such as confirmations of apprenticeship certification—will also create efficiencies and ensure that the correct subject matter experts are being consulted when BVE Metrics are being considered. We also recommend leveraging other agencies to provide compliance reporting to regulated utilities as part of their annual reports, to promote efficiency. Accordingly, we propose a requirement that a regulated utility notify DLSS of covered projects, and suggest a path for a utility to demonstrate compliance with the submission of craft labor certification information as part of its annual ERP report. If compliance challenges were to emerge, denial of related cost recovery could potentially be considered in another venue, such as a future rate case, although we welcome comments on the role of various state agencies where there are issues with compliance and enforcement.

38. Additionally, the process of implementing BVE Metrics has revealed an ongoing challenge regarding the timing that various decisions are made. As we previously stated, the Commission's authorization for a regulated utility to move forward with acquiring resources under an ERP or building infrastructure under a CPCN is an approval based on need. It positions them to receive a presumption of prudence in future rate recovery proceedings. At the time an approval is sought, the utility or an IPP may not have fully proceeded through all the steps necessary to determine the appropriate trades and contractors or subcontractors they will use. To address this issue, the proposed rules incorporate the requirement that ESPW Projects in ERPs and CPCNs

must include material contract terms around prevailing wages and registered apprenticeships, consistent with the statutory requirement.

F. Opportunities to Participate

39. The Commission welcomes comments, written or verbal, and participation throughout this Proceeding, and sets initial direction for opportunities to participate.

40. Stakeholders can view, comment, and sign up for notifications of filings in this Proceeding through the Commission's Electronic Filings (E-Filings) System. The E-Filings link for this proceeding is:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0559EG

41. To promote awareness about this Proceeding and about how to participate in Commission rulemakings more generally, we direct Staff to schedule and host an informational meeting in advance of the public comment hearing. The informational meeting will take the form of a webinar that provides information on the subject of this proceeding as well as upcoming dates and opportunities to participate. The informational meeting will be scheduled by Staff and noticed through E-Filings, the Commission's public calendar,⁴⁴ and by email to potentially interested stakeholders.⁴⁵ The purpose of an informational meeting is not to take comments, but to provide neutral, educational information.

42. A public comment hearing on the proposed rules will be conducted in this matter on March 4, 2025, beginning at 11:00 a.m. The public comment hearing will be held virtually.

43. The Commission strives to accommodate all members of the public at its hearings and meetings by providing services for foreign language users and persons with disabilities upon

⁴⁴ Available at: <https://puc.colorado.gov/puccalendar>.

⁴⁵ For questions about the informational meeting, or to receive an email when meeting registration is opened, please contact Kelly Crandall (kelly.crandall@state.co.us).

receipt of a reasonable accommodation request. Requests for such accommodations should be made at least one week prior to the event by completing the Language Access Form. Requests can also be made directly by contacting Holly Bise at (303) 894-2024 or by emailing holly.bise@state.co.us.

1. Submitting Public Comments

44. We welcome comments on the proposed rules and questions as presented in Section G and Attachments A-D. Public comments may be provided in this proceeding at any time it is open. For purposes of preparing for comments to be considered at the public comment hearing, we set an initial deadline for written comments on the rules attached to this NOPR to be filed no later than February 5, 2025. Written comments responsive to those initial comments are requested to be filed no later than February 21, 2025.

45. Comments can be provided by:

- Submitting written comments through the Commission’s Electronic Filing System (E-Filings) at <https://www.dora.state.co.us/pls/efi/EFI.homepage>.
- Submitting written comments using the Commission’s online form⁴⁶ or through email at dora_puc_website@state.co.us. These comments will be posted in E-Filings for this Proceeding.
- Mailing comments to the Commission’s offices at: Colorado Public Utilities Commission, 1560 Broadway, Suite 250, Denver, CO 80202.
- Calling (303) 869-3490 to leave oral comments (English and Spanish options).

46. Please include “Proceeding No. 24R-0559EG” in comments. The Commission prefers submission of comments through E-Filings or its online form.

⁴⁶ Available at:
<https://docs.google.com/forms/d/e/1FAIpQLScIWDeNS2FCh0NdEijNU4igpUKqRZvTIYwZ8XSA2YYx3LF6qA/viewform>.

47. For more information on how to participate in proceedings at the Commission, visit the “How to Participate” webpage: <https://puc.colorado.gov/how-to-participate>.

G. Proposed Amendments

48. This section addresses proposals to amend the Commission’s Electric and Gas Rules. Where rules are described as “current,” they refer to the currently effective rules prior to proposed amendments. “Proposed” rules refer to proposed changes, including new or reordered paragraphs, or revisions to language.⁴⁷

1. General Provisions

a. Rules 3001 and 4001. Definitions.

49. We propose to add three definitions to both the Electric Rules and the Gas Rules.

50. First, we propose to add a definition for “craft labor certification,” and to incorporate the language used at § 24-92-303(4), C.R.S. Craft labor certification is defined as the documentation and certification of payroll that is required to be submitted to DLSS for ESPW Projects. This definition is proposed to support clarity around compliance obligations.

51. Second, we propose to add a definition for ESPW Projects that follows, but reorganizes for clarity and focus, the statutory requirements in SB 23-292. As we previously described, we believe that statutory plain language suggests a focused approach to implementing ESPW Project requirements. The proposed rule addresses their purpose in generating, transmitting, or distributing electricity or natural gas; their impetus, in being built by or for a utility; and that they have a total project cost of \$1,000,000 or more.

⁴⁷ It is possible that other rulemakings may proceed concurrently with this rulemaking, and may adopt similar rule numbering. Should that occur, it will be necessary to reconcile that duplication and renumber rules adopted in one or both proceedings. The Commission will provide timely notice should any renumbering of rules be required as a result of concurrent processes.

52. To more clearly reflect Commission proceedings, in which cost recovery is generally reviewed in different venues from where planning decisions are approved, we also specify that the project must receive a presumption of prudence for at least \$500,000 in ratepayer funding as part of an ERP or CPCN application. This reasonably construes the requirement that funding be “approved” as part of an electric resource acquisition or a request for a CPCN.

53. As we previously noted, the statutory provision specifying the venues in which such decisions are made is significant and allows this rulemaking to be tightly focused to enhance existing processes. In addition to meeting those four criteria, an ESPW Project must include either power generation above a threshold nameplate capacity, which may be energy storage, or be a project type on a list that includes pollution controls, electric transmission, and other projects. The proposed definition simplifies the list of types of power generation that were provided in the statute given the statutory language appears all-encompassing to generation sources that could be bid into an ERP.

54. In proposing this definition, we also welcome comment on the following questions:

- a. ESPW Projects include projects that are funded in whole or in part by the State, through direct funding or other assistance.⁴⁸ We assume that in the absence of ratepayer funding, these projects would not come before the Commission for review—even if they were implemented by a utility. What are examples of state-funded, not ratepayer-funded, projects that are ESPW Projects, and are there examples that would come before the Commission?
- b. As was previously described, the proposed rules recognize that by statute an ESPW Project could include activities like installing electric vehicle charging infrastructure, but in practice and in law, such activities are excluded because they are not authorized through an ERP or CPCN. Given this interpretation, are there examples of similar projects which may be subject to different labor requirements, simply because of the venue in which they are considered?

⁴⁸ § 24-92-303(5)(a)(I)(A), C.R.S.

To the extent there are examples, would standardization of labor requirements be useful for utilities, bidders, labor, or other stakeholders? If so, could standardization be implemented by proposing other changes to Commission rules, or are statutory changes necessary?

- c. Section 24-92-303(5)(b)(II) states that “any other construction projects covered by this part 3” could be ESPW Projects. What kinds of construction projects are included by this language?
- d. How certain should project cost estimates be to determine whether the \$1,000,000 threshold has been met? Should the cost estimate be pegged to a particular level of certainty? Should a project that is estimated to be less than \$1,000,000 at the time of a Commission decision, such as a Phase II ERP approval, but that subsequently exceeds \$1,000,000, be treated as an ESPW Project?

55. Third, we propose to define a PLA by importing the statutory definition set forth at § 24-92-303(9), C.R.S. Defining a PLA more concretely, and understanding how PLAs work, is necessary because it is statutorily permitted as an exemption to requirements to provide BVE Metrics and to establish material contract terms around prevailing wages and apprenticeships for ESPW Projects. Federal guidance indicates that receiving IRA tax credits may be contingent on the use of PLAs, and IRA materials assert that PLAs create a distinct process for resolving labor disputes with arbitration between the parties to the PLA.⁴⁹ At the same time, the statutory definition of a PLA does not address either prevailing wages or apprenticeships. While it is our understanding that provisions around prevailing wages and apprenticeships—which are otherwise mandated for ESPW Projects—are often incorporated into PLAs as a general practice, this is not statutorily required here for reasons that are unclear at this time. To ensure that information is available to facilitate an apples-to-apples comparison between ESPW Projects using PLAs and those without,

⁴⁹ See, e.g., U.S. Department of Labor (“DOL”), The Inflation Reduction Act and Qualifying Project Labor Agreements, *available at* <https://www.dol.gov/general/inflation-reduction-act-tax-credit/project-labor-agreements> (last visited December 9, 2024); U.S. DOL, Good Jobs Initiative: Project Labor, Community Workforce, and Community Benefits Agreements Resource Guide, *available at* https://www.dol.gov/sites/dolgov/files/OPA/GoodJobs/Docs/Project_Labor_Community_Workforce.pdf (last visited December 9, 2024).

we also propose rules that would require entities seeking exemptions from requirements through the use of PLAs to address whether the PLA has comparable material contract terms to ESPW Projects. We propose this for transparency and to avoid inappropriately weighting the scales in favor of utility-owned generation, as utilities may be more inclined to use PLAs than private developers.⁵⁰

56. Finally, for simplicity, we propose to delete current Gas Rule 4001(i), which defines BVE Metrics, and replace it with a broader Labor Requirements rule, as we describe below.

2. Operating Authority

a. Rules 3102 and 4102. Certificate of Public Convenience and Necessity for Facilities.

57. Current Electric Rule 3102 and Gas Rule 4102 require BVE Metrics to be considered when an electric or gas utility files an application for a CPCN to construct and operate, or extend, a facility pursuant to § 40-5-101, C.R.S. The statute specifies that a CPCN is not required for projects that are in the ordinary course of business.

58. The current rules provide a path for information about a subset of the BVE Metrics as expanded by SB 23-292 to be included with CPCN applications for the construction or expansion of generating facilities. In the event that a contract has not yet been executed and BVE Metrics are not yet known, the applicant is to supplement the filing within 45 days after final contracts are awarded, through a process that allows for party comments. The current rules state that the status report is to be filed informationally.

59. We propose changes related to BVE Metrics and ESPW Projects due to SB 23-292. First, rather than citing specific BVE Metrics like in current Electric Rule 3102(e), we will create a distinct rule which will be referenced throughout and discussed more below. Second, we add to

⁵⁰ See Proceeding No. 21A-0141E, Decision No. C24-0052, issued January 23, 2024, at ¶ 268.

Electric paragraph 3102(b) and Gas paragraph 4102(g), which describe application requirements, provisions on applicable labor and workforce information. For a CPCN that relates to construction or expansion of generating facilities, as further set forth in § 40-2-129(1)(a)(I), C.R.S., an applicant would need to provide information about BVE Metrics, and if the project is an ESPW Project, also address material contract terms around prevailing wages and apprenticeships. The addition of ESPW Project requirements (or valid exemptions such as PLAs) ensures that critical steps around supporting a high-quality Colorado workforce—ensuring skills training through apprenticeships and competitive salaries through prevailing wages—would be included with what we suspect could be some or all CPCN applications, although we welcome comments on this. This approach also creates some clarifying parallels between the Electric and Gas Rules despite the differences in overall CPCN requirements due to Gas Infrastructure Planning, and we welcome further comments on any additional clarifications that are required due to this variation.

60. We have received numerous comments in previous proceedings about the timing of a CPCN application as compared to more specific actions to implement the project, including obtaining contractors, siting, and permitting. As was discussed in recent comments regarding a potential upcoming transmission rulemaking, utilities may file a CPCN based on need multiple years in advance of more specific steps being taken, given the size and scope of certain projects.⁵¹ The proposed rule maintains the requirement that BVE Metrics be supplemented after contracts are signed, but eliminates the comment process for several reasons. The proposed rule states that the utility should file a status report on BVE Metrics within 45 days after the last contract has been entered into. We seek comments on whether those provisions are sufficient, including whether

⁵¹ See generally Proceeding No. 23M-0472E.

45 days is reasonable or whether there needs to be a further mechanism to ensure sufficient documentation is filed.

61. The proposed rule also adds a requirement that the utility consider BVE Metrics as part of its study of alternatives to the project being proposed in the CPCN. This continues to leverage BVE Metrics as a tool of comparison between different decisions, similar to the ERP process. Ultimately, while the Commission collects and considers BVE Metrics, it is less clear what options would exist for the Commission should a utility fail to maximize domestic products, for example, and there is a specter of large cost increases if CPCNs can only be filed once major management and engineering decisions have been made. To the extent there are options to address the utility's underperformance on labor requirements, those arguments are perhaps better suited to a venue like a rate case, along with other cost recovery decisions. We welcome comments on this approach.

62. The last proposed change to the CPCN rule is to require that within 30 days of a final Commission approval of one or more ESPW Projects, the applicant must notify DLSS of the decision. We believe it will be most efficient to require a utility to notify DLSS directly rather than having the Commission provide notifications, as the utility (or its contractors) are the entities that are statutorily tasked with providing craft labor certification to DLSS. In pre-rulemaking discussions with DLSS, they requested a path to more precisely understand what projects will be covered under Commission processes, and we believe this approach could meet that goal.

3. Facilities

a. Rules 3211 and 4211. Labor Requirements.

63. Proposed Electric Rule 3211 and Gas Rule 4211 are newly created to provide a central rule for labor requirements that can be referenced throughout for consistency. While the

Electric and Gas Rules are largely intended to parallel each other, the proposed Electric Rule contains additional information due to statutory direction that BVE Metrics and ESPW Projects specifically be considered within the ERP process.

64. Paragraph (a) for each proposed rule defines BVE Metrics, drawing closely from the statutory language at § 40-2-129(1)(a)(I), C.R.S. In Proceeding No. 19R-0096E, drawing from pre-rulemaking comments, the proposed rules included a specific list of information that must be provided by bidders to demonstrate compliance with BVE Metrics. We did not include that list in this version for several reasons. First, information and data collection may have changed in the last five years. We welcome comments from stakeholders with expertise about what data can or should be required. Second, we have included the use of material contract terms for ESPW Projects as a compliance path for some of the comparable BVE Metrics, and we are interested in if there are other common contract terms or state or federal agency verifications that could take the place of multiple, detailed submissions. We are raising this both because of the challenges of comparing long lists of documents provided by different bidders which may include information that is not presented consistently, and because the Phase II ERP process has typically been fast, requiring utilities, parties, and the Commission to consider and compare a vast amount of information across hundreds or thousands of bids, efficiency is paramount. Finally, SB 23-292 added two further BVE Metrics on worker demographics and domestic manufacturing. These are new issues for which we have not previously received robust comments.

65. Proposed subparagraph (a)(I) currently suggests that one path to complying with the BVE Metric for training programs is to provide “documentation of registration of relevant apprenticeship programs” with the SAA. SAA staff proposed two options that could be used by bidders and utilities to demonstrate compliance efficiently. First, the SAA reviews graduation or

completion rates annually for each apprenticeship sponsor and sends letters confirming the rates to those entities upon request. Bidders could obtain a copy of the SAA compliance letter for those apprenticeship sponsors they are partnered with to submit with their bids. Alternatively, a bidder could provide the excerpt from SAA's publicly available apprenticeship directory showing that they are an employer-partner for a registered apprenticeship program. Because SAA collects information from apprenticeship sponsors, not directly from employers, there may be gaps where some bidders who are employers of workers in registered apprenticeships are not included in the public directory. Similarly, if the employer-partner uses subcontractors, that information may not be available to SAA. SAA requests that apprenticeship sponsors and employer-partners notify it as soon as feasible to be added to public materials. While the SAA's systems can quickly connect sponsors and partners, SAA staff caution that the process of registering an entirely new apprenticeship program can take longer. In other words, if apprenticeships used by bidders in Phase II are not already registered, this could lead to delays.

66. Paragraph (b) for each proposed rule addresses ESPW Projects. Drawing closely from the statutory language, it specifies that contracts for ESPW Projects must include provisions expressly requiring that all work performed under the contract meets the requirements of § 24-92-115(7), C.R.S., regarding apprenticeships, and complies with Part 2 of Article 92, regarding prevailing wages. While we understand that consistent with contractual best practices, utilities' contracts would generally address the necessity that parties meet all federal, state, and local legal requirements, we propose to include this explicitly for purposes of clarity, based on the statutory directive, and to facilitate documentation given future legislative audits.

67. Paragraph (c) for each proposed rule discusses the interaction between BVE Metrics and ESPW Projects, albeit in slightly different ways. The proposed Electric paragraph

states, for simplicity, that “all projects that bid into electric resource plans pursuant to rule 3600 *et seq.* are presumed to be ESPW Projects unless otherwise documented in bid information.” Given that ESPW Projects, as defined under statute, include generation resources with a nameplate capacity of over 1 MW, we believe it to be a reasonable default to set for clarity, although we seek comments on this approach. No parallel requirement is proposed for the Gas paragraph. However, for both Electric and Gas, proposed paragraph (c) states that a project that is an ESPW Project may certify compliance with the material contract terms described by paragraph (b) in lieu of separately submitting BVE Metrics documentation under subparagraphs (a)(I) and (VI). This approach is emphasized because we intend it to improve efficiency of submission requirements.

68. Paragraph (d) for the Proposed Electric Rules specifically addresses the ERP process, which is not paralleled under the Gas Rules. It includes several clarifying requirements as to how BVE Metrics and ESPW Project requirements should be addressed in ERPs, which are then bolstered by proposed changes to those rules, as we discuss below.

69. Working in parallel with our approach to not be too prescriptive about submission requirements in the proposed rules under paragraph (a), subparagraph (d)(I) specifies that the utility shall provide in its bid materials what information must be submitted for each BVE Metric and how it will evaluate that documentation. The utility must also state in its bid materials that it will reject any bid that fails to provide all required documentation. The proposed rules state that the utility should set forth a “quantitative” framework for evaluating BVE documentation. Currently, utilities collect and rank information in a variety of ways. While Public Service presented composite BVE Metric scores for portfolios based on scoring provided by a third-party

evaluator,⁵² Black Hills Energy incorporates BVE Metrics as part of a larger scoring system.⁵³ While parties, including Trial Staff of the Commission and labor interests, have looked favorably upon the Public Service approach,⁵⁴ we seek comments on the merits of both approaches (or any others that may be informative). We further seek comment on whether the rules should be more prescriptive about how BVE Metrics are scored or continue to leave some flexibility for well-designed evaluation processes that could vary on a utility-by-utility basis.

70. Subparagraph (d)(II) requires bidders to notify the utility, and provide supporting documentation, if they believe they meet an exemption, which is described by other proposed rules.

71. Subparagraph (d)(III) requires the utility to reject bids that fail to provide documentation of BVE Metrics or an exemption, consistent with the statute. It also allows for a quick process to cure if needed, based on stakeholder comments about concerns that BVE Metrics could become a black box if documentation requirements are not always precisely clear or if different quality of responses are being compared. The proposed rule draws from Rule 3613 to allow bidders to correct errors or omissions related to BVE Metrics that have resulted in a bid being dismissed, but we seek comments on the workability of this approach.

72. Subparagraph (d)(IV) requires the utility to present composite scores, or other summary information related to BVE Metrics non-confidentially, to allow for public discussion. While some utilities have presented composite scores in ERPs publicly, others have treated all BVE Metrics information as confidential or highly confidential.⁵⁵ Given the findings in the 2022 Audit Report that the Commission should commit to “document its consideration of employment

⁵² Proceeding No. 21A-0141E, Public Service Company of Colorado 120-Day Report, filed September 18, 2023, at 157-60 and Appendices I, J, and K.

⁵³ Proceeding No. 22A-0230E, Black Hills Colorado Electric 120-Day Report, filed April 17, 2024, at 42 and Appendix F.

⁵⁴ See, e.g., Proceeding No. 21A-0141E, Decision No. C24-0052, issued January 23, 2024, at ¶¶ 259-68.

⁵⁵ See, e.g., Proceeding No. 22A-0230E, Decision No. C24-0634, issued September 4, 2024, at ¶¶ 139-40.

metrics in its written decisions or elsewhere in the proceedings,”⁵⁶ we believe it necessary that utilities present meaningful information to facilitate a public discussion. While this is not a substitute for robust participation by expert entities, such as labor organizations or a third-party evaluator, to review confidential bid submissions, it would facilitate opportunities for informed public comments and enable clearer discussions of trade-offs across different portfolios being considered.

73. The next paragraphs relate to exemptions. While a utility that uses a PLA may be exempted from BVE Metrics requirements and ESPW Project contractual requirements, there are several other statutory exemptions that apply to ESPW Projects, including work performed by the utility, timing of the service agreement, and compliance with IRA requirements. Paragraphs (e) and (f) for Electric, and (d) and (e) for Gas, attempt to consolidate relevant exemptions. Notably, for the use of a PLA, § 40-2-129(1)(c), C.R.S., states that the utility “may” be exempted from BVE Metrics requirements, while § 24-92-306(2), C.R.S., states that use of a PLA means that ESPW Project contractual requirements for prevailing wages and apprenticeships “do not apply.” Because the statutory definition of a PLA does not include prevailing wages or apprenticeships, we add a requirement that a bid that uses a PLA should address whether those requirements are included within the PLA. While it does not require a project using the PLA to meet those statutory requirements, this does promote comparisons between ESPW Projects and projects providing BVE Metrics regardless of the contractual mechanism by which they will address labor issues.

74. In addition to the issues we have specifically raised, we invite comments on the following questions:

- a. For proposed subparagraphs (a)(I)-(VI) related to BVE Metrics, how should compliance be measured? In particular, what are

⁵⁶ 2022 Audit Report at 10.

examples of information that a bidder could provide to comply with the statutory language at § 40-2-129(1)(a) (I), C.R.S., that is the basis for the proposed rules?

- i. Should the rules state a list of prescriptive requirements for each subparagraph (a)(I)-(VI) that a bidder must submit so that all bids can be clearly compared, and if so, what would those requirements be? Or are the proposed rules correct in emphasizing that utilities should specify how BVE Metrics submissions will be determined to be complete and compliant, and how they will be evaluated, with their Phase I ERP applications?
 - ii. The SAA proposed two options that bidders could use to potentially demonstrate compliance with apprenticeship requirements, as described above. Which option is preferred by bidders, utilities, or other stakeholders, and why? Are there other options that should be considered? Is other information beyond what would be provided through these options necessary to demonstrate compliance with § 40-2-129(1)(a)(I)(A), C.R.S.?
 - iii. Is there any other documentation provided by federal, state, or local agencies that could be obtained by a bidder to demonstrate compliance with one or more BVE Metrics?
- e. For bidders, are there certain BVE Metrics for which it is more challenging to obtain information at the time a bid is due? Are there certain BVE Metrics which are particularly concerning to share with the Commission, utilities, and interested parties, due to concerns about confidentiality?
- f. The Commission shall not approve a resource plan or acquisition that fails to provide BVE Metrics pursuant to § 40-2-129(1)(b), C.R.S., and the proposed rules thus require a utility to reject a bid that does not include BVE Metrics. However, there are six metrics. Should a utility be able to accept a bid which provides meaningful information for five out of six metrics? Should a utility be able to accept a bid which attests it will comply with ESPW Project contract requirements, but does not address other BVE Metrics?
- g. While § 40-2-129(1)(a)(I)(F), C.R.S., states that BVE Metrics include “the ability of the project to provide industry-standard wages,” if a covered project is an ESPW Project, it will have to include material contract terms regarding prevailing wages. How are industry-standard wages and prevailing wages similar or different? Is compliance with contractual prevailing wage requirements

sufficient to comply with a requirement to provide information about industry-standard wages?

- h. The SAA produces a Certified Contractor List, as we previously noted. A function of this list is to meet the requirements of SB 23-292 as to gas DSM and beneficial electrification contractors. What kinds of occupations are involved in ESPW Project work, and are they included on the Certified Contractor List or are there gaps? If there are gaps, how can the SAA ensure it is reaching apprenticeship sponsors relevant to ESPW Projects?
- i. Should utilities be encouraged or required to hire a third-party evaluator to review BVE Metrics documentation by rule? What are the merits and drawbacks of this approach?

75. In addition to these questions, we seek comments that can help clarify the differences between compliance with ESPW Project requirements and IRA requirements, and to determine whether further rules language is needed. Pursuant to SB 23-292, work on an ESPW Project put out to bid after January 1, 2024, and that is seeking a federal production tax credit or investment tax credit, can be exempt from State requirements around prevailing wages and apprenticeships by following similar federal requirements.⁵⁷ We seek comments on at least the following questions:

- a. What are the legal and practical differences between state and federal requirements around apprenticeships and prevailing wages, if any?
- b. What proportion of projects in upcoming utility ERPs are anticipated to seek federal tax credits and be subject to federal requirements around prevailing wages and apprenticeships, as compared to state requirements for ESPW Projects?
- c. Do projects seeking federal tax credits have to submit craft labor certification or its equivalent to a federal agency, such as the U.S. Department of the Treasury? If so, what is the specific requirement and how does it compare to state requirements for ESPW Projects in parameters like granularity, frequency, etc.?

⁵⁷ § 24-92-304(1)(c)(III), C.R.S.

- d. Have utilities contracted with projects that included federal tax credits in bids and then did not receive those credits due to bidder error? If so, which party or parties bear the risk of price adjustments? If this has not yet happened, how is this issue addressed through model contracts, audits, or other practices?

4. Electric Resource Planning

a. Rule 3605. Cooperative Electric Generation and Transmission Association Requirements.

76. Current Electric Rule 3605 establishes requirements for Tri-State Generation and Transmission Association, Inc. (“Tri-State”) to submit ERPs for the Commission’s review, pursuant to § 40-2-134, C.R.S. As SB 23-292 specifies that public utilities have the definition set forth in § 40-1-103, C.R.S.,⁵⁸ we incorporate requirements for ESPW Projects, and update current BVE Metrics, that are similar to those of investor-owned utilities under the broader ERP rules and for which we describe further justification below. In large part, the changes to Rule 3605 are cosmetic and clarifying, and refer to Proposed Electric Rule 3211.

b. Rule 3611. Utility Plan for Meeting the Resource Need.

77. Proposed paragraph 3611(h) has been modified to refer to the new Proposed Electric Rule 3211.

c. Rule 3613. Bid Evaluation and Selection

78. Current Rule 3613 addresses the Phase II ERP process, providing both procedural steps to follow and citing to numerous considerations and statutes that the Commission should address when it makes a decision about a cost-effective resource portfolio based on a utility’s ERP Report and party comments. Given the large number of considerations to be included in a Phase II decision, certain formatting changes are proposed for readability. Consistent with the recommendations in the 2022 Audit Report, we also clarify that the Commission’s decision should

⁵⁸ § 24-92-303(10), C.R.S.

explain how labor requirements, from Proposed Rule 3211 and the Phase I decision, were considered in the selection of the approved portfolio. By doing this, we set the expectation that utilities will provide, and parties will address, those labor requirements pursuant to our rules, and enable us to thoughtfully integrate them into our decision-making process along with numerous other complex variables including cost, rate impact, carbon reduction, environmental impact, geographic diversity, reliability, and more.

79. We also propose a new paragraph (i) to promote transparency in the compliance process. After the Commission issues a final decision approving a resource portfolio, the utility should notify DLSS of the list of projects that are ESPW Projects, so it can prepare to receive craft labor certification information. This list of projects would also be filed informationally with the Commission. While we have initially proposed that this information be filed within 90 days, we seek comment on the merits of this proposal, such as whether project lists will be available under that time frame.

d. Rule 3616. Request(s) for Proposals.

80. Proposed paragraph (c) replaces current language specifying that a subset of BVE Metrics be addressed with a requirement that RFPs proposed in a utility ERP application meet appropriate labor requirements under Proposed Rule 3211. Paragraph (c) further emphasizes that bids will be rejected in the absence of required information, and states that contract terms required for ESPW Projects should not be considered negotiable, consistent with statutory requirements.⁵⁹ Given the evolution of contractual approaches in ERPs, we welcome comments as to the merits of this approach.

⁵⁹ § 24-92-304(4), C.R.S.

e. Rule 3617. Commission Review and Approval of Resource Plans.

81. Current Electric Rule 3617 describes the Commission's review of a utility's ERP application in Phase I, prior to bids being solicited. We propose a minor addition to paragraph (c) to ensure that the Commission's decision addresses the sufficiency of the utility's treatment of labor requirements pursuant to Proposed Rule 3211, given other proposed rules require utilities to submit model contracts, bid documents, and evaluation criteria with their applications. The purpose of this initial rule is to ensure that any solicitation process is set up in a way that will meet requirements around BVE Metrics and ESPW Projects and allow the Commission to consider labor issues as part of its ultimate decisions on cost-effective portfolios.

f. Rule 3618. Reports.

82. Utilities are required to file annual progress reports on their implementation of ERP efforts, after Phase II decisions have been made. The progress reports are generally made annually after each final Phase II decision, rather than on a particular required cadence.

83. SB 23-292 requires the Commission to promulgate rules requiring utilities to collect and provide to the Commission information about the implementation of BVE Metrics for projects that are under construction by or on behalf of the utility.⁶⁰ Consistent with the statutory requirement, we add a paragraph that requires that the utility report on BVE Metrics for projects approved from Phase II decisions. However, we seek comments on what information should be provided over time by utilities in annual progress reports. We believe the information submitted should reasonably parallel the information that bidders were required to provide based on bid documents, and we urge participants to provide examples that are concrete and measurable.

⁶⁰ § 40-2-129(5), C.R.S.

84. SB 23-292 also states that ESPW Projects that do not have appropriate, material contract terms in place should not be eligible to receive approvals or authorizations from the Commission, including for “utility funding” (presumably, this terminology means for ratepayer cost recovery, although we welcome comments on this).⁶¹ Initially, the proposed rules addressed this issue by requiring that bid materials brought forward by utilities in ERPs should include material contract terms for ESPW Project and those terms should be nonnegotiable. While the craft labor certification that must be provided under those contracts is submitted to DLSS by utilities or contractors going forward, the Commission is to be further audited in part on contractors’ compliance—data that the Commission would not have.

85. Importantly, ESPW Projects are different from public sector projects. For public sector projects, OSA has traditionally received wages, benefits, and other data from covered state agencies. The ESPW Project requirement to submit craft labor certification to DLSS is a new requirement for which DLSS does not have an existing process or system. While DLSS has created a form to collect data, because this requirement is new and untested, it has neither a standard data template nor a backend system that can automatically check compliance.

86. Because of these challenges, Staff worked with DLSS to develop an initial option for stakeholder comment. Section 24-92-305(5), C.R.S., establishes that a public utility or other owner of an ESPW Project is “responsible for maintenance of records for all craft labor certifications,” including providing copies to DLSS or requiring the lead contractor to do so. Craft labor certifications must include a sworn attestation under penalty of perjury that lead contractors and subcontractors are in compliance with employment, training, and wage requirements.⁶²

⁶¹ § 24-92-304(2)(b), C.R.S.

⁶² § 24-92-305(3), C.R.S.

87. Accordingly, the proposed rules would require utilities to attest in their annual reports that they have submitted or caused to be submitted craft labor certification, for which DLSS would collect sworn contractor and subcontractor attestations with its online submission form. DLSS would then transfer this data to the State Auditor for review as part of anticipated the 2029 audit. This would place the obligation on utilities which have ESPW Projects to confirm that data is being submitted by them or on their behalf, including by contractors and/or subcontractors. While DLSS has created an initial form for collecting data, further efficiencies may be achieved through development of a consensus proposal by impacted utilities and other stakeholders for a standard data template that could be used by all entities that are required to submit craft labor certification data to DLSS. We seek comments on the merits of these proposals as well as any other suggestions from stakeholders which could be considered by DLSS in the context of its resources and authorities.

5. Clarifying References

88. Given the evolution of the Commission's rules since BVE Metrics were first adopted in 2010, labor and workforce standards have been discussed in statutes or rulemakings which have resulted in several references to BVE Metrics throughout the Electric and Gas Rules. In the interests of simplicity, we include the following rules in which we modify current descriptions of BVE Metrics to instead reference Proposed Electric Rule 3211 or Gas Rule 4211, as appropriate:

- Rule 3656. Resource Acquisition.
- Rule 4553. Contents of a Gas Infrastructure Plan.
- Rule 4731. Clean Heat Plan Application Requirements.
- Rule 4733. Interim Clean Heat Plan Reporting.

H. Conclusion

89. The statutory authority for the rules proposed here is found at: §§ 24-4-101 *et seq.*; 24-92-302, 303, 304, 305, 306, and 307; 40-2-108; 40-2-129; 40-2-134; 40-3.2-105.5 and 105.6, C.R.S.

90. The proposed rules in legislative (*i.e.*, strikeout/underline) format (Attachments A and C) and final format (Attachments B and D) 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=24R-0559EG

91. The Commission encourages and invites public comment on all proposed rule amendments. We request that commenters propose any changes in legislative redline format.

92. The Commission refers this matter to an ALJ for the issuance of a recommended decision. A public comment hearing will be held on the proposed rules on March 4, 2025. In addition to submitting written comments, participants will have an opportunity to present comments orally at the hearing, unless the ALJ deems oral presentation unnecessary. The Commission will consider all comments in this Proceeding, whether oral or written.

93. Initial written comments on the proposed rule changes are requested by February 5, 2025. Any person wishing to file comments responding to the initial comments is requested to file such comments by February 21, 2025. These deadlines are set so that comments and responses may be considered at the public hearing, nonetheless, persons may file written comments into this proceeding at any time.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachments A-D) shall be filed with the Colorado Secretary of State for publication in the January 10, 2025, edition of *The Colorado Register*.

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

DATE: March 4, 2025

TIME: 11:00 a.m. until not later than 5:00 p.m.

PLACE: By video conference using Zoom, with a link to be provided to participants after registration.

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

4. Those wishing to observe but not participate in the virtual public comment hearing may do so by observing the Commission's webcast for the assigned hearing room at:

<https://www.youtube.com/@COPublicUtilitiesCommission/>

5. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than February 5, 2025, and any pre-filed comments responsive to the initial comments be submitted no later than February 21, 2025. The Commission will consider all submissions, whether written or oral. The Commission prefers that comments be filed into this proceeding using the Commission's E-Filings System at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0559EG

6. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 18, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners