

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0408E

IN THE MATTER OF THE PROPOSED RULES IMPLEMENTING SENATE BILL 19-236
REGARDING INTEGRATED OR ELECTRIC RESOURCE PLANS FOR WHOLESALE
ELECTRIC COOPERATIVES.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: July 31, 2019
Adopted Date: July 25, 2019

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

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to amend the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules). The proposed amendments revise certain provisions in the rules governing Electric Resource Planning (ERP Rules) at 4 CCR 723-3-3600, *et seq.*, as they apply to wholesale electric cooperatives.

2. The purpose of this NOPR is to fulfill the requirement in Senate Bill (SB) 19-236, codified at § 40-2-134, C.R.S. (Section 134), that requires the Commission to adopt rules that address application filings from wholesale electric cooperatives for Commission approval of their integrated or electric resource plans (ERPs). It is the intention of the Commission to proceed deliberatively and swiftly to conduct this rule-making.

3. Interested persons will have opportunities to submit written comments on the proposed rules and to provide oral comments at the scheduled hearing. The Commission welcomes the submission of alternative proposed rules, including both consensus proposals joined by multiple stakeholders and individual proposals. Participants are encouraged to provide redlined rules if possible.

B. Overview

4. The proposed rules attached to this Decision reflect the Commission's decade-long examination of the resource planning of Tri-State Generation and Transmission Association, Inc. (Tri-State) and the culmination of those efforts upon the enactment of Section 134.¹ The proposed rules that will govern Tri-State build substantively on the

¹ Decision No. C09-0092, issued January 30, 2009, Proceeding No. 09I-041E.

stakeholder process already applicable to Tri-State by formalizing requirements for the presentation, disclosure, and transparency of information regarding Tri-State's resource planning.² The proposed rule also takes into account the differences between Tri-State and Colorado's investor-owned electric utilities as required by Section 134, including its multi-state operations, its cooperative ownership structure, and its immediate efforts to secure full rate regulation at the federal level.

5. The proposed ERP Rules include a Phase I process that provides interested stakeholders, such as Tri-State's member rural electric cooperatives and advocates for Colorado's energy policies, access to relevant information and opportunities to examine carefully the resource options available to Tri-State in a formal application process overseen by the Commission. The proposed filing requirements for Phase I also safeguard a role for competitive bidding which has served to bring cost-effective resources to Colorado through market forces, including renewable energy resources and, most recently, new energy storage technologies.³ The proposed rules for a Phase II process will result in the structured presentation of obtainable resource options, including their relative costs and their impacts on the environment and Colorado communities.

6. The full set proposed ERP Rules is intended to shine more light into Tri-State's existing generation resources and the underpinnings of its plans to transition to a cleaner energy portfolio. They are also expected to ensure accountability of Tri-State's staff, board, and

² Decision No. C10-0101, issued February 4, 2010, Proceeding No. 09I-041E.

³ Decision No. C18-0761, issued September 10, 2018, Proceeding No. 16A-0396E.

leadership in the areas of cost-effective resource acquisition and compliance with new Colorado laws mandating a significant reduction in carbon dioxide emissions.⁴

7. This rulemaking proceeding focuses exclusively on ERP Rules for wholesale electric cooperatives consistent with Tri-State's stated commitment to work with the Commission on resource planning and its request to engage with stakeholders as it moves from the previously applicable resource planning regulatory framework to the new rules to be promulgated in this Proceeding.

C. Background

1. SB 19-236

8. On May 30, 2019, Governor Jared Polis signed into law SB 19-236. Section 134 as enacted by that statute, directs the Commission to promulgate new rules that require wholesale electric cooperatives to submit an application for approval of an integrated or ERP. In developing such rules, the Commission must consider, among other factors determined by the Commission, whether wholesale electric cooperatives: serve a multistate operational jurisdiction; have a not-for-profit ownership structure; and have a resource plan that meets the energy policy goals of Colorado.

9. On July 3, 2019, a letter from members of the Colorado General Assembly addressed to Duane Highly, Chief Executive Officer of Tri-State, and Rick Gordon, Chairman of the Board of Tri-State, was submitted to the Commission for its files.⁵ The letter states that the General Assembly worked closely with Tri-State and other stakeholders on SB 19-236 and describes the legislation as "a collaborative process meant to ensure the Colorado Public Utilities

⁴ House Bill 19-1261 "Concerning the Reduction of Greenhouse Gas Pollution, and, in Connection Therewith, Establishing Statewide Greenhouse Gas Pollution Reduction Goals."

⁵ See Proceeding No. 19V-0311E.

Commission (PUC) oversight of key aspects of Tri-State’s resource planning.”⁶ The letter further states: “Tri-State did not inform us that during these discussions it was simultaneously planning to implement changes that would transition regulatory authority to [the Federal Energy Regulatory Commission (FERC)], thereby potentially undermining critical parts of the very resource planning oversight it was negotiating.”⁷

2. 19R-0096E: ERP/RES Rulemaking

10. On February 27, 2019, the Commission issued a Notice of Proposed Rulemaking through Decision No. C19-0197 in Proceeding No. 19R-0096E to amend the Electric Rules in six areas: (1) the ERP Rules; (2) the Renewable Energy Standard (RES) Rules at 4 CCR 723-3-3650, *et seq.*; (3) the Net Metering Rules presently in 4 CCR 723-3-3664; (4) the rules governing Community Solar Gardens presently in 4 CCR 723-3-3665; (5) the provisions for utility purchases from Qualifying Facilities presently at 4 CCR 723-3-3900, *et seq.*; and (6) the Interconnections Standards and Procedures presently in 4 CCR 723-3-3667. Hearings were conducted on April 29, 2019 through May 3, 2019, and post-hearing comments were submitted on May 31, 2019. A decision adopting revised Electric Rules is pending.

11. Although Decision No. C19-0197 included no proposed revisions to the language in Rule 3605 addressing “Cooperative Electric Generation and Transmission Association Reporting Requirements,” changes to other rules cross-referenced in Rule 3605 were proposed in legislative format, including Rules 3603, 3606, 3607, and 3610. Notably, with respect to Rule 3603, Decision No. C19-0197 addressed the potential need for the Commission to take into account statutory changes enacted by the 2019 General Assembly and signed into law.

⁶ Letter at p. 1.

⁷ *Id.*

12. In addition to the ERP Rules, the attachments to Decision No. C19-0197 included other provisions in the Commission's Electric Rules that apply to wholesale electric cooperatives, because the rulemaking in Proceeding No. 19R-0096 is not limited to changes in the Commission's ERP Rules. For example, the attachments include: Rule 3000(c) listing the provisions in the Electric Rules that are applicable to wholesale electric cooperatives as well as the provisions in RES Rules that apply to a "Qualifying wholesale utility" and to its member cooperatives that are "Qualifying retail utilities." Decision No. C19-0197 also described the "Stakeholder Outreach Proceeding" that preceded the issuance of the NOPR and lists Tri-State as one of the Colorado electric utilities that participated in that proceeding. Tri-State is a Colorado wholesale electric cooperative

13. Several comments filed in Proceeding No. 19R-0096E directly address the applicability of a Commission-driven ERP process for Tri-State. Certain commenters advocated for bringing Commission regulatory oversight to resource planning aspects of Tri-State to provide rural parts of Colorado an opportunity to more fully participate in clean energy economic benefits. Some commenters observed that Tri-State is not currently subject to the same regulations as other electric utilities in Colorado, while others requested that the Commission move Tri-State toward increasing its use of renewably-generated electricity and decreasing the cost of power in Colorado. The San Juan County Commissioners, for example, recommended that the Commission require Tri-State to follow the same ERP Rules as required by other electric utilities.

14. The hearings to take oral comment in Proceeding No. 19R-0096 coincided with the final days of the 2019 General Assembly when SB 19-236 was debated and passed. At the beginning of the first day of hearings on April 29, 2019, Chairman Ackermann noted that

legislative changes could affect comments or proposed rule changes and accordingly solicited additional written comments through the end of May 31, 2019.⁸ In addition, oral comments at the hearing directly addressed ERP Rules applicable to Tri-State. For instance, a member of the city council of Northglenn, Colorado spoke on behalf of the Colorado Communities for Climate Action, expressing support for expanding Commission oversight over Tri-State to achieve a less expensive and less carbon-intensive generation portfolio.⁹ A representative of Western Resource Advocates (WRA) later cited the public comment filed in the rulemaking proceeding from individuals requesting the Commission to require Tri-State to undergo a more thorough and robust resource planning process. She suggested that the Commission use the rulemaking, consistent with those public comments, to evaluate the ERP process that governs Tri-State.¹⁰

15. A representative for Tri-State was given an opportunity by Commissioner Koncilja and others at the April 29, 2019 hearing in Proceeding No. 19R-0096E to respond to the written and oral comments addressing ERP processes for Tri-State. He admitted that comments had been filed by members of the public calling for the Commission to apply the same rules to Tri-State that presently apply to Colorado's investor-owned utilities. He stated "if the Commission was inclined to head in that direction, at a minimum, that would require a rulemaking, and extending the [Commission's] resource planning jurisdiction to a generation and transmission cooperative" also would require a new rulemaking "because the present rules just don't fit."¹¹ He welcomed the opportunity to provide written comment on the need for resource planning rules for Tri-State, but warned that such written comments would indicate that Tri-State

⁸ Transcript April 29, 2019, pp. 5-7.

⁹ Transcript April 29, 2019, pp. 13-14.

¹⁰ Transcript April 29, 2019, p. 268 and pp. 270-271.

¹¹ Transcript April 29, 2019, pp. 275-276.

supports no change to the current procedures it is using for resource planning.¹² He summarizes those procedures as follows:

Under the present framework, the Commission...requires Tri-State, after filing, to make itself available to the Commission to come in and answer questions and provide information, whatever it is that the Commission chooses. The only thing that doesn't happen is a final Commission decision approving the resource plan, as the Commission does for Public Service and Black Hills. There's certainly nothing that precludes the Commission in asking Tri-State to come in, make the presentation, walk through it, answer questions, and, then, say, we disagree. We highly recommend you to go back and try again.¹³

16. Post-hearing written comments were filed in Proceeding No. 19R-0096E by the Colorado Energy Office (CEO), WRA, the Colorado Independent Energy Association (CIEA), and Interwest Energy Alliance (Interwest).

17. CEO suggested that Proceeding No. 19R-0096E provides the proper and appropriate venue to develop and promulgate ERP Rules for Tri-State. As a general response to the new statutes enacted by the 2019 General Assembly, CEO posited that the Commission could waive current ERP filing requirements for Tri-State and allow it to file its next ERP Plan after the Commission adopts new ERP Rules.

18. WRA asserted that SB 19-236 removed any ambiguity about the Commission's jurisdiction to regulate Tri-State's resource planning process. WRA argued that the ongoing rulemaking proceeding was ideal for addressing the new rules governing the ERP process for Tri-State, because the Commission will "undoubtedly touch on 'the energy policy goals of the state.'"¹⁴

¹² Transcript April 29, 2019, p. 284.

¹³ Transcript April 29, 2019, p. 291.

¹⁴ WRA Final Comments, p. 9 in Proceeding No. 19R-0096E.

19. CIEA argued that the proposed rules in the current rulemaking proceeding adequately accommodate Tri-State “on a substantive basis” with some relatively modest clarifications and additions. CIEA suggested that the Commission should direct Tri-State to discontinue its current effort for the 2019 ERP and order Tri-State to bring a new ERP before the Commission immediately but no later than February 1, 2020.

20. Interwest argued that Tri-State should be required to act quickly to prepare a new compliant ERP pursuant to Commission rules and House Bill 19-1261 setting statewide emissions reduction goals. Echoing CIEA, Interwest argued that the new rules for Tri-State should require a plan filing no later than February 1, 2020 to help reduce costs for Tri-State’s members from the Production Tax Credits (PTCs) for wind projects and the Investment Tax Credits (ITCs) for solar projects.

21. Tri-State’s post hearing comments explained that it continues to support the current regulatory framework applicable to its ERP work. Recognizing the enactment of Section 134, however, Tri-State argued that the proper and most efficient means to develop and promulgate new ERP Rules applicable to Tri-State is in a new rulemaking proceeding. For its written comments, Tri-State incorporated the reasoning set forth in its petition filed in Proceeding No. 19V-0311E.

3. 19V-0311E: Tri-State Petition

22. In a letter addressed to Commission Director Doug Dean dated March 1, 2019, Tri-State announced the start of its stakeholder outreach in preparation of the filing of an ERP no later than October 31, 2019 (2019 ERP) in accordance with Rule 3605.

23. On May 31, 2019, Tri-State filed a Petition for Approval of a Variance to Extend the Filing of its Next Electric Resource Plan and Request for Pre-Rulemaking Proceeding (Petition) in Proceeding No. 19V-0311E.

24. Requests for intervention and substantive responses to the Petition were timely filed by Sierra Club, WRA, CEO, CIEA, and Interwest. Each objected to Tri-State's requests as set forth in its Petition, with the exception of the waiver from filing its next ERP on or before October 31, 2019.

a. Tri-State's Requests

25. Tri-State sought a variance from the timing requirements of Rules 3603 and 3605 and an extension of the deadline for filing its next resource plan from October 31, 2019 to December 31, 2020.

26. Tri-State argued that an extension from October 31, 2019 to December 31, 2020 will allow sufficient time for: (1) both it and the Commission to engage with stakeholders; (2) the Commission to conduct a rulemaking proceeding focused on resource planning rules applicable only to Tri-State; (3) Tri-State to obtain and consider stakeholder input in connection with development of its next resource plan; and (4) Tri-State to develop and file its resource plan pursuant to the new rules.

27. Tri-State further argued that it would be inequitable and would constitute a hardship to require Tri-State to develop and file by October 31, 2019, a new resource plan "consistent with any new rules promulgated pursuant to Section 134."¹⁵ Tri-State added that it also would be inequitable and would constitute a hardship to require Tri-State to complete the

¹⁵ Petition at p. 6.

preparation of its 2019 resource plan under the existing rules and then require it to prepare and file shortly thereafter a different resource plan under new rules.

28. In addition to the waiver from Rule 3605, Tri-State requested that the Commission open a miscellaneous proceeding for the purpose of soliciting input and information concerning resource planning rules for Tri-State consistent with Section 134. Tri-State warned against simply applying to Tri-State the existing ERP Rules or the new proposed ERP Rules currently under review in Proceeding No. 19R-0096E, and then requiring Tri-State to seek a waiver or variance of the rules it argues should not apply to Tri-State. Tri-State suggested that a more prudent approach would be for the Commission to identify those ERP Rules that make sense “in the context of a multi-state, not-for-profit, wholesale electric utility that does not have a certificated service territory.”¹⁶ Tri-State also states that its proposed approach is consistent with the statutory considerations required in § 40-2-134, C.R.S.

b. Responses to the Petition

29. Sierra Club argued that a pre-rulemaking proceeding, as requested by Tri-State, was unnecessary. Sierra Club alleged that Tri-State has long made the misleading claim that it is so different from other utilities that it should be regulated differently, if at all. Sierra Club noted that many other utilities operate an electric generation and transmission system spanning multiple states yet, without exception, these multi-state utilities comply with the same resource planning rules as other utilities. Sierra Club suggested that implementing the mandate in Section 134 to issue rules for Tri-State’s resource planning should be straightforward and that the burden should be on Tri-State to provide a compelling justification for not applying any of the existing or proposed ERP Rules to Tri-State.

¹⁶ *Id.* at p. 7.

30. WRA opposes a December 31, 2020 deadline for Tri-State's filing of its next ERP and suggested that, because Tri-State has a robust stakeholder framework in place as was being used for its 2019 ERP, and because Tri-State is already familiar with the Commission's current ERP process and rules, a more reasonable deadline for filing Tri-State's ERP under the new rules promulgated pursuant to Section 134 would be April 30, 2020. WRA further recommended the Commission deny Tri-State's request for a pre-rulemaking proceeding. WRA instead suggested that the Commission promulgate the new ERP Rules for Tri-State in the ongoing comprehensive rulemaking in Proceeding No. 19R-0096E rather than open a new pre-rulemaking proceeding.

31. CEO argued that the rulemaking in Proceeding No. 19R-0096E provided the proper venue to develop and promulgate ERP Rules for Tri-State. CEO stated that opening a new proceeding may result in duplicative filings and discussions and that a new proceeding solely to address ERP Rules for Tri-State "would create timing issues for the Commission's final decision on ERP rules," implying that the issues raised with respect to the investor-owned utilities would need to be decided concurrently as they relate to Tri-State.

32. CIEA wanted Tri-State to file an ERP in early 2020, arguing that the promulgation of new ERP rules for Tri-State pursuant to Section 134 could be done quickly without much complication. CIEA asserted that Tri-State is now required to bring forward ERP applications "in order to acquire new generation resources."¹⁷ Notwithstanding this change, CIEA surmises that "existing ERP rules are easily adaptable to Tri-State"¹⁸ and that except for a relatively minor issue regarding Tri-State's use of its members' load data to determine resource need, the existing ERP Rules are "well positioned" to apply to Tri-State. CIEA

¹⁷ CIEA Intervention in Proceeding No. 19V-0311E at p. 2.

¹⁸ *Id.* at p. 5

suggested that a February 1, 2020 filing date leaves “ample time to finalize the rules for Tri-State.”¹⁹ CIEA wanted Tri-State to benefit from federal ITCs for solar and PTCs for wind. CIEA argued that an extended delay in Tri-State’s next ERP filing “means that ratepayers may not get to enjoy the lower costs that stem from projects that can take advantage of those benefits.”²⁰

33. Like CIEA, Interwest advocated for an ERP filing from Tri-State in early 2020 and shared the view that adoption of ERP Rules for Tri-State pursuant to Section 134 could be done expeditiously. For example, Interwest concluded that most of the existing ERP Rules “will continue to apply to Tri-State”²¹ and that only a limited rulemaking is needed to “identify which of the existing resource planning rules do not apply to Tri-State in full”²² and “determine the filing deadline for the ERP.”²³ Interwest argued that a delay in Tri-State’s next ERP filing could:

result in a corresponding delay in emissions reductions to be brought by early analysis and actions based on the economics and environmental performance of Tri-State’s existing fleet, as well as new acquisitions which may help reduce greenhouse gas emissions and reach Colorado’s public policy goals, including the 100% clean goal by 2050 and 80% reduction in carbon emissions by 2030 from 2005 levels.²⁴

Interwest expected that required rulemaking could be completed within approximately six months and that Tri-State’s next ERP could be filed on February 1, 2020 but no later than April 1, 2020. According to Interwest, these filing deadlines would result in additional savings for Tri-State and its members, including the favorable impacts of the ITCs and PTCs.

¹⁹ *Id.* at p. 7.

²⁰ *Id.* at p. 8.

²¹ Interwest Response in Proceeding No. 19V-0311E at p. 2.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

c. Ruling on Petition

34. By Decision No. C19-0629, issued July 24, 2019, the Commission found good cause to grant Tri-State's request to waive the requirement that it file its next ERP on or before October 31, 2019. The Commission recognized that Section 134 requires the promulgation of new rules for application filings from Tri-State for approval of its ERPs, which is a significant change from Tri-State's reporting requirements in the existing ERP Rules.

35. The Commission denied Tri-State's request to establish a new deadline of December 31, 2020 for its next ERP filing. Instead, the Commission determined that a filing deadline for Tri-State's first application filing for approval of its ERP will be established in the course of the promulgation of rules applicable to Tri-State's ERPs pursuant to Section 134.

36. The Commission also denied Tri-State's request that the Commission open a miscellaneous proceeding for the purpose of soliciting input and information concerning resource planning rules for Tri-State consistent with Section 134. The Commission agreed with Sierra Club, WRA, and CEO that it is unnecessary to engage in any further stakeholder outreach prior to initiating a rulemaking proceeding to promulgate the new ERP Rules applicable to Tri-State pursuant to Section 134. The Commission concluded that Tri-State's Petition, the responses submitted to the Petition, and the numerous comments filed in the ongoing rulemaking in Proceeding No. 19R-0096E suffice for pre-rulemaking outreach prior to the Commission's issuance of a NOPR pursuant to Section 134.

37. In addition, the Commission observed that Tri-State was moving quickly in its efforts both to develop its next ERP filing pursuant to the yet-to-be adopted ERP Rules for Tri-State and to secure full rate regulation from the FERC. The Commission thus directed Tri-State to file in Proceeding No. 19V-0311E: (1) a copy of any filing submitted to the FERC

related to Tri-State's Board of Directors' actions to place Tri-State under wholesale rate regulation by the FERC under the Federal Power Act, including any wholesale rate tariff filing; (2) a notice regarding the addition of new members to Tri-State that causes the elimination of Tri-State's previous exception from FERC rate regulations under the Federal Power Act; and (3) any additional information germane to Tri-State's compliance with resource planning, renewable energy, and environmental provisions under Colorado law. The filings were intended to ensure that the Commission receive notice from Tri-State regarding its efforts to secure FERC rate regulations during the pendency of this NOPR to promulgate the ERP Rules for Tri-State pursuant to Section 134.

38. During the Commission's weekly meeting on July 17, 2019, when Decision No. C19-0629 was discussed and adopted, Tri-State issued a press release announcing that it is pursuing an "aggressive Responsible Energy Plan to transition to a cleaner energy portfolio, while ensuring reliability, increasing member flexibility and with a goal to lower wholesale rates."²⁵ The press release explains how the plan will set goals and pathways to comply with aggressive carbon reduction, renewable energy, and resource planning requirements. The press release further states: "A key part of Tri-State's approach is an engagement with former Colorado Governor Bill Ritter and the Center for the New Energy Economy (CNEE) at Colorado State University to facilitate a collaborative stakeholder process for Tri-State that will contribute to and help define the Responsible Energy Plan."²⁶ A copy of the press release was added to the administrative record for this Proceeding.

²⁵ Press Release in Proceeding No. 19V-0311E at p. 1

²⁶ *Id.* at p. 2.

D. Discussion**1. Questions and Legal Briefing**

39. Section 134 requires the Commission to consider, among other factors, whether Tri-State: serves a multistate operational jurisdiction; has a not-for-profit ownership structure; and has a resource plan that meets the energy policy goals of the state.

40. To that end, we solicit responses from Tri-State and other interested persons to the following series of questions. If Tri-State takes the position that it is not subject to some or all of the obligations listed below, Tri-State should provide a complete legal analysis of why they are not subject to these statutory requirements. As required, we encourage all the participants to provide legal briefing.

- How do Tri-State's multistate operations affect its members in Colorado? How will that factor be reflected in an ERP for Tri-State?
- How will Tri-State's cooperative ownership structure be reflected in an ERP for Tri-State?
- In addition to Tri-State's multistate operations and its cooperative ownership, what additional factors should the Commission consider in evaluating an ERP for Tri-State?
- How does Tri-State currently allocate revenues and costs, both direct and indirect to its members, including any protocols, formulas, and or cost allocation manuals?
- Has that methodology changed in the last five years?
- Will that methodology change as the result of FERC regulation?
- How does Tri-State currently allocate among its members the generation of its renewable generation, coal generation, and other resources? Does any of that allocation process adhere to state boundaries?
- Will that methodology change as the result of FERC regulation?
- What are the specific Colorado energy policy goals applicable to Tri-State? Where are these goals set forth in the statute? How will Tri-State demonstrate that it is meeting those energy policy goals in its ERP filings?

- Is Tri-State Generation and Transmission Association, Inc. a not-for-profit organization? If so, in what respects and how is the not-for-profit status distinct from its co-operative ownership structure?
- How does Tri-State meet its financial requirements? How will that factor be reflected in an ERP for Tri-State?
- How will the implementation of House Bill 19-1261 “Concerning the Reduction of Greenhouse Gas Pollution, and, in Connection Therewith, Establishing Statewide Greenhouse Gas Pollution Reduction Goals” affect the development of future ERP application filings by Tri-State pursuant to Section 134?
- How will the implementation of SB 19-236 affect the development of Tri-State’s ERP with respect to the “best value regarding employment of Colorado labor... and positive impacts on the long-term viability of Colorado communities” pursuant to § 40-2-129, C.R.S.?
- How will Tri-State’s potential participation in an Energy Imbalance Market, Regional Transmission Organization, Power Pool, or Joint Tariff pursuant to § 40-2.3-102, C.R.S., affect Tri-State’s future ERP application filings?
- How will the ERP Rules promulgated in this Proceeding affect Tri-State’s operations and future generation portfolio?
- Does the Commission have the authority to require Tri-State to conduct competitive bidding in its resource acquisition?
- How will Tri-State demonstrate compliance with a Phase I decision as defined in subparagraph 3605(g)(III)? How will a Phase I decision be enforced by the Commission?
- How will Tri-State demonstrate compliance with a Phase II decision as defined in subparagraph 3605(h)(II)? How will a Phase II decision be enforced by the Commission?
- Will a Commission decision denying or altering Tri-State’s ERP be binding on Tri-State and its Board?
- What are the regulatory consequences for Tri-State if it implements a resource acquisition outside of an approved ERP? Similarly, what are the regulatory consequences for Tri-State if it fails to implement a resource acquisition pursuant to an approved ERP?
- Is it necessary for the Commission to promulgate additional rules applicable to Tri-State beyond the ERP Rules in order to address fully the connection between Tri-State’s rates and charges and its resource planning?
- Is it necessary and or advisable for the General Assembly to enact additional legislative changes with respect to Tri-State in order to implement the statutory

policies of the State of Colorado as they relate to reduced emissions and increased generation through renewable resources?

2. Proposed Rule Changes

41. The Commission proposes modifying the Electric Rules as outlined in Attachments A (in legislative format) and B (without redlining).

42. In light of the ongoing rulemaking in Proceeding No. 19R-0096E, the proposed rules implementing SB 19-236 with respect to wholesale electric cooperatives such as Tri-State are developed primarily within Existing Rule 3605 contained within the Commission's ERP Rules, 4 CCR 723-3-3600, *et seq.* Certain provisions in the ERP Rules will also apply to Tri-State as contained in: Existing/Proposed Rule 3601. Overview and Purpose; Existing/Proposed Rule 3602. Definitions; Proposed Rule 3612/Existing Rule 3614. Confidential Information Regarding Electric Generation Facilities; Proposed Rule 3613. Best Value Employment Metrics; Existing Rule 3618/Proposed Rule 3616. Annual Reports; and Existing Rule 3619/Proposed Rule 3617. Amendment of an Approved Electric Resource Plan. In addition, Existing Rule 3000. Scope and Applicability; Existing Rule 3001. Definitions; and Existing Rule 3002. Applications will also apply to Tri-State. With the exception of Existing/Proposed Rule 3605, all of these rules are subject to review and revisions in certain generally applicable rules in the Rules Regulating Electric Utilities under review in the ongoing rulemaking in Proceeding No. 19R-0096E.

43. The proposed rules for a wholesale electric cooperative such as Tri-State mirror the two-phase ERP process currently in place for Colorado's investor-owned utilities. Accordingly, Proposed Rule 3605 includes the following paragraphs:

- 3605(a). Resource plan filing requirements;
- 3605(b). Electric energy and demand forecasts;

- 3605(c). Assessment of existing resources;
- 3605(d). Transmission resources;
- 3605(e). Planning reserve margins and contingency plans;
- 3605(f). Assessment of need for additional resources;
- 3605(g). Phase I; and
- 3605(h). Phase II.

The provisions included in these paragraphs reflect an initial proposal for the existing and proposed ERP Rules for Colorado's investor-owned electric utilities applicable to a wholesale electric cooperative that serves a multistate operational jurisdiction and has a cooperative ownership structure.

44. Because Proposed Rule 3605 includes the paragraphs listed above, the following ERP Rules being reviewed in Proceeding No. 19R-0096E are not intended to apply to a wholesale electric cooperative such as Tri-State: Existing/Proposed Rule 3603. Electric Resource Plan Filing Requirements; Existing/Proposed Rule 3604. Contents of the Electric Resource Plan; Existing/Proposed Rule 3606. Electric Energy and Demand Forecasts; Existing/Proposed Rule 3607. Assessment of Existing Resources; Existing/Proposed Rule 3608 Transmission Resources; Existing/Proposed Rule 3609 Planning Reserve Margins and Contingency Plans; Existing/Proposed Rule 3610. Assessment of Need for Resources: Proposed Existing Rule 3615/Proposed Rule 3611. Exemptions and Exclusions; Proposed Rule 3614. Phase I; and Proposed Rule 3615. Phase II.

45. Finally, SB 19-236 requires the Commission to consider the cost of carbon dioxide emissions, calculated in accordance with the most recent assessment of the social cost of carbon dioxide developed by the federal government, in various proceedings including application proceedings for the approval of an ERP. Because other types of electric utility proceedings are also required by SB 19-236 to also use a specific cost of carbon dioxide

emissions, new provisions to the Commission's Electric Rules are required to implement the newly enacted § 40-3.2-106, C.R.S. The proposed revisions to Rule 3605 are based on the assumption that such new provisions in the Commission's Electric Rules will be adopted in Proceeding No. 19R-0096E (*e.g.*, Proposed Rule 3605(a)(III)(H) depends on the Commission's calculation of the cost of carbon based on the most recent assessment of the social cost of carbon developed by the federal government).

E. Conclusion

46. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*, 40-2-108, 40-2-123, 40-2-124, 40-2-127, 40-2-134, and 40-2-129, C.R.S.

47. Prior to our issuance of this NOPR, consistent with § 24-4-103(2), C.R.S., representative groups of participants with an interest in the subject matter of this rulemaking submitted views and participated in related proceedings. These participants are included on the list of persons who receive notification of the NOPR.²⁷

48. The proposed rules in legislative (*i.e.*, ~~strikeout~~/underline) format (Attachment A) and final format (Attachment B) 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=19R-0408E

49. The Commission will conduct a hearing *en banc* on the proposed rules and related issues on October 15, 2019.

50. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to

²⁷ Service of this NOPR will be provided to parties in Proceeding No. 19V-0311E and to the interested persons submitting comments in the related rulemaking in Proceeding No. 19R-0096E.

file comments before the hearing, the Commission requests that comments be filed no later than September 11, 2019, that any pre-filed comments responsive to the initial comments be submitted no later than September 25, 2019, and that any changes are proposed in legislative redline format. The Commission prefers that comments be filed using its E-Filings System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding. The Commission will consider all submissions, whether oral or written.

51. Interested persons may provide oral comments at the public hearing unless the Commission deems oral presentations unnecessary.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking including Attachments A and B shall be filed with the Colorado Secretary of State for publication in the August 10, 2019, edition of *The Colorado Register*.

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

DATE: October 15, 2019

TIME: 9:00 a.m. until not later than 5:00 p.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

3. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Commission deems oral presentation unnecessary. The Commission prefers and encourages interested persons to pre-file comments in this proceeding (19R-0408E) through its E-Filings System at:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>.

4. The Commission requests that initial pre-filed comments be submitted no later than September 11, 2019, and that any pre-filed comments responsive to the initial comments be submitted no later than September 25, 2019. The Commission will consider all submissions, whether oral or written.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 25, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners