

Decision No. C23-0778

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23M-0569EG

IN THE MATTER OF THE COMMISSION'S IMPLEMENTATION OF HOUSE BILL 23-1281
CONCERNING INVESTOR-OWNED UTILITY DEVELOPMENT OF CLEAN HYDROGEN
PROJECTS.

**COMMISSION DECISION OPENING MISCELLANEOUS
PROCEEDING AND REQUIRING RESPONSIVE
COMMENTS**

Mailed Date: November 21, 2023
Adopted Date: November 15, 2023

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Colorado Public Utilities Commission (Commission) opens a miscellaneous Proceeding to gather information and data that will enable it to promulgate appropriate rules for the implementation of clean hydrogen projects, and to consider the requirements for and the analysis of applications for clean hydrogen projects by investor-owned utilities. This Proceeding will also serve as a pre-rulemaking repository for relevant information in preparation of a future rulemaking related to House Bill (HB) 23-1281.¹

2. We order investor-owned utilities (IOUs) to file responsive comments to this Decision no later than **November 29, 2023**. Interested persons may also file comments by this date.

¹ Codified at § 40-2-138, C.R.S. *et seq.*

B. Background and Discussion

3. On May 22, 2023, Governor Jared Polis signed into law, House Bill (HB) 23-1281 which sets out measures to advance the use of clean hydrogen in Colorado.² The Colorado General Assembly noted that it is Colorado's goal to reduce greenhouse gas pollution by more than ninety percent by 2050.³ Further, the Colorado Greenhouse Gas Pollution Reduction Roadmap, published by the Colorado Energy Office (CEO) recognizes that achieving the state's greenhouse gas pollution reduction goals from 2030 to 2050 will require further technical innovation and economies of scale to bring costs down for deployment of innovative technologies both for emission reductions of end uses and to generate energy through innovative methods such as clean hydrogen.⁴ The report goes on to state that “[c]lean hydrogen may be an important resource to lower greenhouse gas emissions from sectors that are harder to decarbonize, such as heavy-duty transportation and heavy industry.”⁵

4. Much of HB 23-1281 relates to concurrent federal efforts to create incentives to make investments in clean hydrogen more affordable and attainable.⁶ The legislation specifically states that state law should “allow for agencies of the state and users of clean hydrogen in the state to coordinate with each other to take advantage of available federal funding and tax credits...”⁷ The legislation also recognizes that Colorado joined other regional states in partnership to pursue funding from the United States Department of Energy (DOE) for a regional hydrogen hub.⁸ However, it is the Commission's understanding that Colorado and its western

² Codified at § 40-2-138, C.R.S. *et seq.*

³ HB23-1281, at Section 1(1)(a)(III).

⁴ *Id.* at subsection (b)(I) and (II) citing, *Colorado Greenhouse Gas Pollution Reduction Roadmap*, Colorado Energy Office, January 14, 2021.

⁵ *Id.*

⁶ *See* HB23-1281, at Section 1(1)(c).

⁷ *Id.* at Section 1(1)(f)(2).

⁸ *Id.* at Section 1(1)(d).

hub application did not receive regional hydrogen hub funding in the projects announced by the DOE in October 2023.⁹

5. The Commission opened an investigatory docket, Proceeding No. 23I-0426EG, on August 30, 2023, in compliance with HB 23-1281 (Investigatory Proceeding).¹⁰ This investigatory proceeding is addressing a list of specific issues, including those addressed in § 40-2-138(2)(a) - (p), C.R.S., related to clean hydrogen development and deployment.¹¹ Third-party consultant reports are expected in early 2024.

6. HB 23-1281 also requires the Commission to allow IOUs to present stand-alone applications for clean hydrogen projects for which an IOU has applied for federal funding as part of a hydrogen hub project at anytime before June 1, 2024. Pursuant to § 40-2-138(4)(a), C.R.S., these projects may only address elements located outside the Denver metropolitan area, and an IOU seeking approval of a clean hydrogen project pursuant to this section must also demonstrate that a time-sensitive review of the application is necessary based on the timing requirements for obtaining necessary funding.¹²

7. Section 40-2-138(3)(a), C.R.S., requires the Commission to establish rules no later than December 1, 2024, unless CEO files a notice with the Commission stating that the federal DOE has extended or otherwise altered the deadline regarding funding for a hydrogen hub project. Any rules adopted by the Commission must be effective no later than January 1, 2028, or no later than one year after the deployment of hydrogen electrolyzers in the State of Colorado that exceed 200 megawatts, whichever occurs earlier.

⁹See <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/13/biden-harris-administration-announces-regional-clean-hydrogen-hubs-to-drive-clean-manufacturing-and-jobs/>.

¹⁰ § 40-2-138(2), C.R.S.

¹¹ § 40-2-138(2), C.R.S.

¹² § 40-2-138(4)(b), C.R.S.

C. Findings and Conclusions

8. As addressed in Decision No. C23-0576, the Commission opens this miscellaneous Proceeding to allow for legal briefs and stakeholder comments on threshold issues related to the implementation of HB23-1281 as well as on the information assembled in this Investigatory Proceeding.

9. Through this Decision, we request initial comments on certain topics which will aid the Commission in preparing for the requirements found in HB 23-1281, including the promulgation of rules. First, we request that IOUs provide initial comments on their respective plans for filing standalone applications for clean hydrogen projects pursuant to § 40-2-138(4)(a), C.R.S. IOUs shall inform the Commission, no later than November 29, 2023, of their current intentions for submission of any hydrogen-related applications pursuant to HB23-1281 or more generally in 2024. We expect IOUs to provide any information useful to the Commission in planning for HB 23-1281 compliance and in orienting the Commission's efforts on hydrogen.

10. Further, we request that IOUs, CEO, and other interested persons file comments no later than November 29, 2023 on the proper pace of the rulemaking process outlined in § 40-2-138(3)(a), C.R.S., including whether it would be preferable for CEO to file a notice with the Commission regarding a change in deadline for DOE funding, which would extend the rulemaking timeline, pursuant to § 40-2-138(3)(a), C.R.S.

11. Once we receive these initial comments, we anticipate requesting further substantive comments related to implementation of HB 23-1281 through this Proceeding.

II. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the Commission opens this miscellaneous proceeding to receive pre-rulemaking information, data, and comments on the development of processes and standards for the development of clean hydrogen projects operated by investor-owned utilities subject to Commission jurisdiction.

2. This proceeding is designated an administrative proceeding under 4 *Code of Colorado Regulations* 723-1-1004(b).

3. Investor-owned utilities and interested persons shall file comments responsive to this Decision no later than **November 29, 2023**.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 15, 2023.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners