

Decision No. C23-0066

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23M-0053ALL

IN THE MATTER OF REPORTING AND INFORMATION REGARDING ELIGIBILITY FOR
FEDERAL FUNDING UNDER THE INFRASTRUCTURE INVESTMENT AND JOBS ACT
OF 2021 AND/OR THE INFLATION REDUCTION ACT OF 2022.

**COMMISSION DECISION OPENING MISCELLANEOUS
PROCEEDING TO RECEIVE REPORTING AND
INFORMATION, AND SETTING INITIAL REPORTING
AND COMMENT TIMELINES**

Mailed Date: January 31, 2023
Adopted Date: January 11, 2023

I. BY THE COMMISSION

A. Statement

1. We open this miscellaneous proceeding pursuant to Rule 1307, 4 *Code of Colorado Regulations* (CCR) 723-1, to investigate and receive reporting on whether federal funding under the Infrastructure Investment and Jobs Act of 2021 (IIJA)¹ and the Inflation Reduction Act of 2022 (IRA)² is available to support ongoing or future projects for specific jurisdictional utilities and the currently active Colorado Basic Emergency Service Provider (BESP), and to request reporting from other entities and the public such that the Commission can be better aware of potential filings, processes, and steps the Commission may need to enable funding opportunities in Colorado.

¹ Pub. L. No. 117-58, 135 Stat. 429 (2021).

² Pub. L. No. 117-169, 136 Stat. 1818 (2022).

2. Initial reports from Public Service Company of Colorado (Public Service), Black Hills Colorado Gas, Inc., d/b/a Black Hills Energy and Black Hills Colorado Electric, LLC d/b/a Black Hills Energy (collectively, Black Hills), Atmos Energy Corporation (Atmos), Colorado Natural Gas, Inc. (CNG), Lumen d/b/a CenturyLink (Lumen) shall be filed within 30 days of the issuance of this order, or March 2, 2023. Other utilities and entities, including but not limited to Tri-State Generation and Transmission Association (Tri-State), cooperative electric associations, municipal electric utilities, and municipal gas utilities are encouraged to provide reports or information by that same date. Responsive comments to any initial reporting and information may be filed by March 17, 2023.

3. Initial filings shall be focused on anticipated top opportunities to procure funding, as discussed below, to better enable future efficiencies and awareness of potential funding that could benefit Colorado. Following receipt of initial filings, the Commission will consider if subsequent inquiries, informational meetings, or other requests for reporting is warranted through separate order.

B. Background

4. The IIJA provides approximately \$73 billion in federal funding for power and grid infrastructure improvements, including in areas of grid resiliency and reliability, clean energy transmission and deployment, electric vehicle (EV) infrastructure, energy efficiency, and cyber security. Potential grants, loans and funding assistance include, but are not limited to:

- A \$2.5 billion grant program for deployment of accessible EV infrastructure, hydrogen fueling infrastructure, and natural gas fueling infrastructure;³

³ Pub. L. No. 117-58, § 11401.

- A \$5 billion grant program for efforts to enhance electric grid resiliency and decrease outages;⁴
- A \$6 billion grant program enhancing electric grid reliability and resilience research, development, and demonstration;⁵
- \$2.5 billion in funding available to facilitate the construction of electric power transmission lines and related facilities;⁶
- \$3 billion in funding to carry out the Smart Grid Investment Matching Grant Program to deploy Smart Grid technologies for the enhancement of grid flexibility;⁷
- Assistance to state regulatory authorities, utility stakeholders, and electric utilities with cyber security efforts, as well as providing incentives for cyber security technology investments;⁸
- Appropriation funds for qualifying energy storage demonstrating projects and renewable energy projects;⁹
- \$250 million to capitalize an energy efficiency revolving loan fund;¹⁰
- \$550 billion for the Energy Efficiency and Conservation Block Grant Program;¹¹ and
- \$5 billion in grants and rebates for clean school buses.¹²

5. The IRA provides approximately \$370 billion in energy investments, representing the single largest investment to date by the United States to modernize its energy system. Investment opportunities include, among others, approximately \$2.9 billion to incentivize increased development of electricity transmission infrastructure; incentives that could impact

⁴ *Id.* § 40101.

⁵ *Id.* § 40103.

⁶ *Id.* § 40106.

⁷ *Id.* § 40107.

⁸ *Id.* §§ 40121-40127.

⁹ *Id.* §§ 41001 and 41007.

¹⁰ *Id.* § 40502.

¹¹ *Id.* § 40551.

¹² *Id.* § 71101.

natural gas utilities; and historic new incentives for rural electric cooperatives.¹³ Potential grants, loans and funding assistance include, but are not limited to:

- Production Tax Credit (45) and Investment Tax Credit (48) for renewable energy;¹⁴
- Hydrogen Production Tax Credit (45V) to incentivize the domestic production of clean hydrogen;¹⁵
- \$27 billion for the Greenhouse Gas Reduction Fund to mobilize financing and leverage private capital for clean energy and climate projects that reduce greenhouse gas emissions, with an emphasis on projects that benefit low-income and disadvantaged communities;¹⁶
- \$2 billion through September 30, 2030, for direct loans for certain transmission project developments;¹⁷
- \$760 million through September 30, 2029, to facilitate the siting of interstate transmission lines;¹⁸
- \$100 million available through September 29, 2031, for convening stakeholders and conducting analysis related to inter-regional transmission development;¹⁹
- \$1.55 billion in funding to reduce methane emissions from petroleum and natural gas systems, including activities to inventory, track, monitor, and directly reduce methane emissions from eligible facilities;²⁰
- \$5 billion to guarantee loans to projects that retool, repower, repurpose, or replace energy infrastructure that has ceased operations or that enable operating energy infrastructure to avoid reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases.²¹
- \$9.7 billion for the U.S. Department of Agriculture (USDA) electric infrastructure loan and loan guarantee program for rural electric cooperatives;²² and
- \$1 billion for electric infrastructure loans for renewable energy in Rural America which will finance the construction of distribution, transmission, and generation for renewable electricity.²³

¹³ See, e.g., Pub. L. No. 117-169, §§ 50151, 60113, and 22004.

¹⁴ *Id.* §§ 13101 and 13102.

¹⁵ *Id.* § 13801.

¹⁶ *Id.* § 60103.

¹⁷ *Id.* § 50151.

¹⁸ *Id.* § 50152.

¹⁹ *Id.* § 50153.

²⁰ *Id.* § 60113.

²¹ *Id.* § 50114.

²² *Id.* § 22004.

²³ *Id.* § 22001.

6. On November 4, 2022, the Colorado Office of the Utility Consumer Advocate (UCA), the Colorado Energy Office (CEO), and Western Resource Advocates (WRA) (collectively the Joint Petitioners), filed a petition and requested the Commission open a miscellaneous or other administrative proceeding to investigate whether federal funding under the IIJA and the IRA is available to support ongoing or future projects for jurisdictional utilities, the Commission, or relevant governmental entities. Joint Petitioners note that the Commission has required similar investigations and utility reporting regarding federal funding availability in the past. For example, in 2009, with the passage of the American Recovery and Reinvestment Act of 2009 (ARRA), the Commission issued Decision No. C09-0234 finding that adoption of emergency rules was imperative and necessary in order to implement the requirements of ARRA.²⁴ The rules were enacted in pertinent part “[i]n order to encourage electric utilities in the state of Colorado to aggressively seek funding for programs and projects under ARRA....” Through the rules, the Commission adopted expedited review of applications filed to request financial incentives including ratemaking treatment.

7. Joint Petitioners propose that the Commission hear from jurisdictional utilities that it regulates, in addition to any state, local, and tribal governments, about their plans being considered in light of the passage of these new laws and their plans to secure funding through the IIJA and the IRA. Joint Petitioners contend that utility reporting is critically important given the scope of the IIJA and IRA program funding available for energy investments. They argue that each of the opportunities presented in the federal legislation could decrease ratepayer financed spending in investments in Colorado, and that requiring Colorado’s utilities to report on the efforts they are making to pursue funding is important to ensure Coloradans obtain the full

²⁴ Proceeding No. 09R-0158EG, Decision No. C09-0234.

benefits of this investment in infrastructure. In addition to reporting, Joint Petitioners state that the Commission may request or benefit from scheduling Commissioners Information Meetings with utilities and relevant governmental entities tasked with program and grant implementation.

8. No comments, interventions, or responses were provided to the Joint Petition, and the Commission considered it unopposed. Through Decision No. C23-0055, we found good cause to grant the petition, in part, such that the Commission would open a proceeding for reporting, but scope the proceeding appropriately given the breadth of the IIJA and IRA. The Decision recognizes that ongoing and impending proceedings may also necessarily address, among other issues, federal funding.

9. Given the magnitude of the IIJA and IRA, reporting from certain regulated entities will assist the Commission and the public in best understanding timing of expected filings and any potential procedural opportunities the Commission may have to better enable funding opportunities that could benefit Colorado. At the same time, the Commission does not intend for this proceeding to supplant ongoing information gathering or adjudications. The Commission recognizes that funding opportunities may be appropriately raised in the context of ongoing proceedings. Further still, the Commission also recognizes that the IIJA and IRA funding is vast, and entities may not yet know each opportunity they may pursue. Utilities and other entities may seek opportunities for funding in the coming months, and perhaps years, that they are not yet anticipating given their ongoing review of the IIJA and IRA.

10. A proceeding to receive reporting is therefore beneficial, on the one hand, but on the other hand, should not be so broad as to be unmanageable. Receiving reporting may assist the Commission and the public in understanding and best preparing for the potential procedural efficiencies. The opportunity to raise collective awareness of funding opportunities expected to

be pursued should in no way inhibit ongoing proceedings, filings, or resources, nor shall it be considered prohibitive if additional funding opportunities are identified.

11. We therefore open this miscellaneous proceeding to receive reporting from Colorado's primary regulated gas and electric utilities, in addition to the current, active BESP serving Colorado's 9-1-1 Basic Emergency Service needs. These entities include Public Service, Black Hills, Atmos, CNG, and Lumen.

12. Reporting from these entities shall include at least the following:

- a) Outline primary opportunities they each currently have identified as available through the IJJA and IRA;
- b) Whether the entity intends to pursue the top identified opportunities or others, and if there are significant obstacles anticipated in pursuit of funding;²⁵
- c) A list of any ongoing proceedings in which a utility reasonably knows or anticipates the IJJA, or IRA funding is implicated;²⁶
- d) For future filings and proceedings only, whether expedited or revised Commission processes are anticipated;
- e) Process recommendations that could best facilitate state access to IJJA or IRA funding going forward; and
- f) To what extent funding opportunities might implicate federal equity or environmental justice requirements.²⁷

²⁵ The IJJA and IRA broadly scope opportunities for gas and electric utilities; energy utilities shall address the opportunities each view(s) as most pertinent in magnitude or those that are likely to implicate the need for processes before the Commission. As the only non-energy related entity reporting, Lumen is encouraged to identify if there are programs under the IJJA and IRA that may be leveraged to improve Basic Emergency Service Network diversity and resiliency in Colorado. Identification of a potential opportunity in the context of this proceeding in no way prohibits an entity from identifying or seeking future opportunities or requests through appropriate filings at the Commission.

²⁶ As discussed herein, this proceeding does not supplant the need for ongoing or future adjudication. Noting any ongoing proceedings implicated by funding opportunities from the IJJA and IRA best ensure that filers, and comments, identify but maintain the scope of reporting as administrative only. No substantive arguments or filings shall be addressed in this proceeding regarding IJJA or IRA funding. Arguments and considerations will necessarily need to be raised in the appropriate proceeding.

²⁷ For example, it may benefit the Commission to understand whether funding opportunities would implicate the Justice40 initiative. <https://www.whitehouse.gov/environmentaljustice/justice40/>.

13. All reports shall address if there are efficiencies the Commission can engage in to help facilitate collaboration as funding in Colorado is procured. For example, when deploying underground electrical transmission facilities using IIJA or IRA funding, feasibility to deploy conduit for fiber optic cable as well and any state regulatory processes that could assist in identifying or taking advantage of these efficiencies should be identified.

14. This initial information will help initiate the focus of this proceeding on any urgent procedural concerns of which the Commission and public should be aware and can help all interested persons in understanding the magnitude of funding sought by these entities.

15. While initial reporting required from these entities will assist in furthering our understanding of expected potential funding opportunities to be pursued, we recognize that a wide array of other entities, including cooperative electric utilities and municipal entities, may also have opportunities for funding through the IIJA and IRA. We do not require reporting from any other persons or entity in addition to Public Service, Black Hills, Atmos, CNG, and Lumen. However, we find that this proceeding can provide the opportunity for any interested entity to raise their pursuit of funding opportunities should Commission processes be expected or anticipated to assist in their potential procurement of federal funds. Entities and public commenters are encouraged to provide voluntary comments regarding the IIJA and IRA funding opportunities available to Colorado, focused necessarily on anticipated engagement with the Commission in pursuit of funding. Interested entities and persons are encouraged to provide comments by the initial reporting deadline and reply comment deadline.

16. Should an entity identify an opportunity that is, or is expected to be, litigated in an ongoing proceeding, filings should simply identify the ongoing or pending proceeding. This

proceeding is non-adjudicatory. Any substantive decisions requested or necessary for the Commission to consider shall be addressed through the appropriate proceeding.

17. As noted by UCA, WRA, and CEO, in 2009 the Commission found emergency, temporary rules necessary to implement funding initiatives in ARRA. Reporting and comments may alert the Commission if updated rules or processes will be necessary to implement funding opportunities presented through the IIJA and IRA. However, and consistent with the Colorado Administrative Procedure Act, and Commission Rules, should a rule revision be required, an appropriate proceeding, including those initiated by a petition for rulemaking or other filing, would necessarily be required. As always, adjudicated proceeding filings can address if expedited or other specific processes are required within the context of the filings themselves given the facts and requests at issue. Filings provided through this proceeding are for informational purposes only. Participants are on notice that they must make a request through an appropriate pleading to seek Commission action.

18. Through this proceeding, and following any initial reporting and responsive comments, the Commission will consider whether any further inquiry and updated reporting will be requested, and if any Commissioner Information Meeting or other informational process would assist the Commission and the public.

19. Initial reporting from Public Service, Black Hills, Atmos, CNG, and Lumen shall, and from any other entity or interested person may, be filed in this proceeding by March 2, 2023.

20. Responsive pleadings may be filed March 17, 2023.

21. The Commission will provide any additional direction requesting or requiring further information, setting a Commissioners Information Meeting, or directing other process through separate decision.

II. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the Commission opens this miscellaneous proceeding pursuant to 4 *Code of Colorado Regulations* (CCR) 723-1-1307 to investigate and receive reporting on whether federal funding under the Infrastructure Investment and Jobs Act of 2021 (IIJA) and the Inflation Reduction Act of 2022 (IRA) is available to support ongoing or future projects for specific jurisdictional utilities and the currently active Colorado Basic Emergency Service Provider (BESP), and to request reporting from other entities and the public such that the Commission can be better aware of potential filings, processes, and steps the Commission may need to enable funding opportunities in Colorado.

2. This proceeding is designated as an administrative proceeding under 4 CCR 723-1-1004(b) of the Commission's Rules of Practice and Procedure.

3. The Commission will conduct this non-adjudicatory proceeding *en banc*, unless and until revised through future order.

4. Public Service Company of Colorado (Public Service), Black Hills Colorado Gas, Inc., d/b/a Black Hills Energy and Black Hills Colorado Electric, LLC d/b/a Black Hills Energy (collectively, Black Hills), Atmos Energy Corporation (Atmos), Colorado Natural Gas, Inc. (CNG), Lumen d/b/a CenturyLink (Lumen) shall file initial reporting, consistent with the discussion above, no later than March 2, 2023.

5. Voluntary reporting may be provided by any interested entity or persons regarding funding opportunities, consistent with the discussion above, by March 2, 2023.

6. Responsive comments may be filed by March 17, 2023, *i.e.*, 15 days following initial reporting in this proceeding.

7. Whether additional reporting or information is requested, including through presentation at a Commissioners Information Meeting, may be considered and directed through future order.

8. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 11, 2023.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners