Decision No. C02-991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02R-137E

IN THE MATTER OF PROPOSED AMENDMENTS TO THE ELECTRIC INTEGRATED RESOURCE PLANNING RULES, 4 CCR 723-21.

DECISION ON REHEARING, REARGUMENT, OR RECONSIDERATION

Mailed Date: September 9, 2002
Adopted Date: August 28, 2002

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of applications for rehearing, reargument, or reconsideration (RRR) to Decision No. C02-793 (Mailed Date of July 22, 2002) (Decision). In that decision we adopted, subject to requests for reconsideration, Least Cost Planning Rules (to be codified at 4 *Code of Colorado Regulations* 723-3, Rules 3600 Through 3615). The new rules will replace the existing Integrated Resource Planning Rules, 4 CCR 723-21.

2. The following parties filed individual applications for RRR: the Colorado Renewable Energy Society (CRES); the Colorado Independent Energy Association (CIEA); Public Service Company of Colorado, d/b/a Xcel Energy (Public Service); and the Colorado Office of Consumer Counsel (OCC).

Additionally, some of the parties filed joint applications for RRR: the OCC, Land & Water Fund of the Rockies (LAW Fund), City of Boulder (Boulder), Southwest Energy Efficiency Project (SWEEP), and CRES (OCC/LAW Fund/Boulder/SWEEP/CRES application for RRR); and the LAW Fund, Boulder, and CRES (LAW Fund/Boulder/CRES application for RRR).

3. CIEA filed a response to the application for RRR by Public Service and the OCC.[1] Tri-State Generation & Transmission Association, Inc (Tri-State) filed a response to the application for RRR by LAW Fund/Boulder/CRES.[2] Finally, LAW Fund/Boulder/CRES filed a motion to reject the Tri-State filing, or in the alternative to allow a response by LAW Fund/Boulder/CRES.[3]

4. Now being duly advised in the premises, we grant the applications for RRR, in part, and adopt the revised rules appended to this decision as Attachment A,[4] subject to further applications for reconsideration.

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[1] CIEA's motion to file this response is granted.

[2] Tri-State failed to file a motion to file a response. However, on our own motion we will permit Tri-State's filing.

[3] We will allow LAW Fund/Boulder/CRES to file a reply to Tri-State's response.

[4] Attachment A shows the rules as issued on July 22, 2002 under decision C02-793, with changes made as a part of the instant decision shown in red-line format.

B. Discussion

1. Motions to Respond to Applications for RRR

a. First, we address the responses to the applications for RRR filed by CIEA, Tri-State, and LAW Fund/Boulder/CRES. CIEA filed a motion to respond to some of the applications for RRR, and its proposed response. Tri-State also submitted a response to some of the applications for RRR without filing a motion requesting permission to submit its response. In their motion, LAW Fund/Boulder/CRES argue that Tri-States's response should be rejected because the Commission’s Rules of Practice and Procedure do not allow responses to RRR, and, they point out, Tri-State did not file a motion for leave to respond to the applications for RRR. Alternatively, LAW Fund/Boulder/CRES request permission to reply to Tri-State's response.

b. We grant CIEA's motion to respond to the applications for RRR; on our own motion we grant Tri-State permission to file a response to the applications for RRR; and we grant LAW Fund/Boulder/CRES's motion to reply to Tri-State's response. The present docket concerns rulemaking, and we find that the additional pleadings appropriately inform our deliberations on potential rules. Moreover, accepting the additional pleadings serves the interests of administrative efficiency: Our decision here granting some of the requests on

reconsideration means that the parties are entitled to file additional applications for RRR. Accepting the additional pleadings now will, presumably, decrease the issues and arguments raised in further requests for reconsideration. Therefore we grant leave to CIEA and Tri-State to file responses to the applications for RRR, and we grant LAW Fund/Boulder/CRES leave to file a reply to the Tri-State response.

2. Application for RRR by CIEA

a. CIEA raises two issues regarding the 250 MW exemption in Rule 3610(b). First, CIEA requests that we clarify the period of time over which the 250 MW exemption is intended to apply in order to preclude future litigation over the matter. CIEA suggests specifying that the resource acquisition period is the appropriate period over which one 250 MW exemption can be used. We agree that Rule 3610(b) does not adequately state the time parameters involved in the exemption. We also concur with CIEA's proposed clarification of the rule.

b. As further clarification, we note that a resource acquisition period from one least-cost plan (LCP) may partially overlap the resource acquisition period of a subsequent LCP filing. For example, a utility could specify an eight-year resource acquisition period in two consecutive LCP filings, with a four-year overlap between the two resource acquisition periods. We clarify here that if a utility uses a

250 MW exemption in the first resource acquisition period, the rule will preclude the utility from placing a second resource in service under a second 250 MW exemption within the remaining years of the first resource acquisition period (*i.e.,* the first four years of the second resource acquisition period in this example). However, we do not intend that the rule preclude the utility from placing in service a second resource under a second 250 MW exemption within the non-overlapping years of the second resource acquisition period, even if the utility implemented the first exempted resource within the overlapping period of the two resource acquisition periods.

c. Next, CIEA requests that we specifically limit the 250 MW exemption to one single resource. Public Service and CIEA previously proposed this requirement in their joint comments. Rule 3610(b) was based on the joint CIEA/Public Service proposal. The rule did not however, specify the single-resource limitation. CIEA now argues that utilities could apply the 250 MW exemption in two adjacent resource acquisition periods to acquire a 500 MW resource in total. We did not intend that the 250 MW exemption be used in stages to create a larger single resource. Therefore, we modify Rule 3610(b) to limit the 250 MW exemption to a single resource.

d. CIEA suggested additional language for Rule 3610(b) to address both of its concerns regarding the 250 MW

exemption. The proposed language resolves the two concerns presented by CIEA. Rule 3610(b) is revised accordingly.

3. Application for RRR by Public Service

a. In its application for RRR, Public Service suggests that we erred in requiring utilities to select resource portfolios based on the minimization of the net present value of revenue requirement (NPVRR). Public Service points out that, in the case of resource portfolios containing demand side management (DSM) resources, the portfolio with the lowest NPVRR will not necessarily be the portfolio with the lowest rate impact. This is because the portfolio with more DSM resources will generally also have lower levels of utility sales to customers. And the associated lower level of sales may cause utility rates to increase, resulting in customers who do not participate in the DSM programs subsidizing those customers who do participate. Public Service suggests that due to this lowering of sales, the proposed LCP rules are inconsistent with our decision not to mandate DSM programs.

b. Public Service suggests three options to address its concern. Its first choice is that we revise the rules to eliminate DSM resources. Alternatively, Public Service suggests that if energy efficiency remains in the definition of resources, then the rules should mandate that the utility select the resource portfolio that minimizes long-term rate impact,

rather than minimizing revenue requirement. As a third alternative, Public Service requests that the rules allow the utility to segment its Request for Proposals (RFP) so that DSM resources could be solicited separately from supply side resources.

c. We agree with Public Service that the objective of minimization of NPVRR will provide a subsidy to DSM resources.[5] As for Public Service's suggested alternatives: First, we decline to remove "energy efficiency" from the definition of "resources." We note that the definition of "energy efficiency" in the rules is broader than DSM alone. In addition, as we pointed out in the Decision, the rules are intended to allow all resources to bid in the same process, whether DSM, renewables, or traditional supply side resources, thus establishing resource neutrality and carrying out the mandates of SB 01-144.[6]

d. Second, we will not approve a segmented portfolio for DSM resources. As we stated in the Decision, SB 01-144 does not require separate portfolios for such resources. The rules allow for appropriate consideration of DSM resources

[5] Such a subsidy would likely occur between residential and commercial classes because of the difficulty of finding cost-effective DSM for residential customers. A DSM subsidy would also likely occur between participating customers and non-participating customers within a class.

[6] Section 40-2-123, C.R.S.

by permitting them to be bid in the same process applicable to other resources, and granting them a preference when cost and reliability considerations are equal to other resources. We conclude that a segregated resource portfolio is unnecessary and, in fact, contrary to the objective of these rules. Therefore, we deny this request.

e. We agree with Public Service's suggestion to adopt the minimization of the net present value of rate impact over the long-term, rather than the NPVRR, as the appropriate objective in selection of a final resource portfolio. Therefore, we modify Rule 3610(f) to state that the objective of the utility is to minimize the net present value of rate impact. We also replace the definition of NPVRR with a new definition of net present value of rate impact to include its mathematical derivation.

f. Public Service recommends three other changes to Rule 3610(f). First, Public Service suggests replacing the references to a "final resource plan" and the "bid solicitation and evaluation process" with references to the development of the LCP. Public Service states that these changes are consistent with the planning concept of the new rules. We disagree. The intent of the language at issue is not only to address the pre-bid planning process, but also to direct utilities to select resources based on the least-cost criteria

established in the rules. This least-cost selection criterion is a fundamental component of the rules. The modifications proposed by Public Service would only result in ambiguity. Therefore, we reject the proposed changes.

g. Second, Public Service suggests adding to Rule 3610(f) the language "attempt to" before the phrase "minimize the net present value of...." According to Public Service, this language is necessary to provide the utility adequate flexibility in resource selection. While we agree that the utility needs additional flexibility here, we instead modify the rule to read: "the utility's objective shall be to minimize the net present value of...."

h. Third, Public Service suggests adding the phrase "consistent with reliability considerations and with financial and development risks" to the first sentence of rule 3610(f). Public Service states that this language is necessary to provide the utility adequate flexibility in resource selection. We agree, and adopt the proposed change.

i. Next, Public service requests a modification to Rule 3603 so that the date for filing of the first plan is moved from March 31, 2003 to October 31, 2003. We agree that the latter date better fits utility planning cycles, and adopt October 31st as the filing date.

j. Consistent with its post-hearing comments, Public Service then requests that we change Rule 3603 to require the filing of a plan *at least* every four years. This change would eliminate from the rules the concept of an interim plan. According to Public Service, it would be more efficient if the utility were given the flexibility to submit plans on schedules that mirror the utility's need for resources. Additionally, Public Service sees no need to coordinate the filing of its plan with the filings of other regulated electric utilities, Tri-state and Aquila.

k. We recognize the benefits of a more flexible filing schedule. However, we also find that a firm four-year cycle will provide certainty to bidders (*i.e.* persons seeking to sell resources to utilities) and other interested parties. Bidders may establish offices and personnel in Colorado as part of their efforts to prepare for and respond to an expected bid solicitation. These bidders are often active in other states, and must plan ahead to allocate personnel and other resources to Colorado. We find that the benefits of planning certainty outweigh benefits of a more flexible schedule. Therefore, we reject Public Service's proposal. Because we will keep a fixed filing schedule for all utilities, we also maintain the requirement in Rule 3607(b) for coordination of plan filings among utilities.

l. Public Service next recommends eliminating the phrase “including the weight to be assigned to each criterion” from Rule 3612(b). Public Service argues that this phrase incorrectly suggests that bids are evaluated by a precise mathematical formula. We agree. In addition, we observe that the disputed language may be misinterpreted to indicate that the utility may use criteria other than the least-cost criteria specified in the rules (e.g. Rule 3610(f)) to evaluate bids. Therefore, we strike this phrase from Rule 3612(b).

m. Public Service requests clarification that the 250MW exemption specified in Rule 3610(b) is in addition to the 30MW/$30 million exemption listed in Rule 3611. We grant this request. We intend the two exemptions to function independently.

n. Public Service objects to Rule 3608(b)(5) (utility shall develop planning reserve margins based upon risks associated with "likely" changes in environmental regulatory requirements). Public Services proposes to delete item (5). Alternatively, Public Service proposes to move the requirement to Rule 3607(a), or modify the requirement to apply to “known changes” only According to Public Service, a utility should not, in its resource planning, be required to speculate on the enactment of future laws or regulations.

o. We recognize Public Service's concerns, and agree that a utility should not be required to account for every risk that could possibly occur. However, a utility should consider all reasonably anticipated risks in its resource planning, whether or not specific laws or rules have been finalized. Therefore, we modify Rule 3608(b)(5) to require a utility to consider "risks due to known or reasonably expected changes in environmental regulatory requirements." The requirement is intended to apply to the reserve margin/contingency planning section, and should not be moved to the existing generation evaluation section, Rule 3607(a).

p. Public Service makes three recommendations with respect to transmission. The first is a recommendation to delete the requirement that the utility include "reasonable estimates of transmission costs for resources located in different areas" from Rule 3612(b). The second recommendation is to delete the phrase "the utility shall specifically identify the location and extent of transfer capability limitations on its transmission network that may affect the future siting of resources" from Rule 3607(c)(I). Public Service argues that, because of new Federal Energy Regulatory Commission (FERC) requirements, it is inefficient for the utility to identify all system limitations, and to develop transmission costs for resource locations not yet known by the utility. CIEA, in its

reply to the application for RRR, argues that the new FERC rules are not fully implemented in Colorado, and that the utility is in the best position to identify its system constraints.

q. We conclude that the utility should provide relevant information regarding its transmission system where it is practical and reasonable to do so. Therefore, we deny Public Service's request to delete the two requirements. Our intent though can be better stated by replacing the word "specifically" with "generally" in Rule 3607(c)(I).

r. Public Service requests we delete the requirement that a utility provide information regarding its "proposed generation additions during the resource acquisition period" from Rule 3607(c)(I). Public Service points out that it will not receive bids before it files its plan, and will not know where bidders will propose facilities. CIEA counters that the language only requires the utility to report on the infrastructure upgrades needed to respond to future load projections.

s. The language at issue goes beyond load projections and is intended to address generation additions. As such, we agree with Public Service that the timing of utility actions under the rules, which are based on an option two structure, is inconsistent with this requirement. Therefore, we

grant Public Service's request to delete this requirement from Rule 3607(c)(I).

t. Next, Public Service requests modification of Rule 3608(c) (utility shall provide certain information regarding its contingency plans). Public Service first proposes to delete the phrase "for each year of the resource period." According to Public Service, a contingency plan should be developed for the portfolio as a whole, and not for each year. Public Service suggests that, "[i]nherent within this portfolio-based approach will be consideration for each year of the resource acquisition period." We disagree. We conclude that the contingency plan must be viable for each year of the resource acquisition period, and the rule reflects this determination. Therefore, we deny Public Service's suggestion.

u. In addition, Public Service proposes to strike the statement in Rule 3608(c) that, "The provisions of Rule 3613(d), Effect of Commission Decision, shall not apply to the contingency plan unless explicitly ordered by the Commission." Public Service argues that the Commission should approve contingency plans as a part of approving the least cost plan.

v. While we agree that a utility should explain the steps it would take to implement a contingency plan as a part of its LCP filing, we find that utility purchases of

contingency options may be counter-productive during the bidding phase. Therefore we maintain the rule as is. The Commission will normally not approve contingency plans as a part of a least cost plan. We adopt a separate provision in Rule 3614(b)(II) explicitly requiring utilities to apply to the Commission for approval of contingency plans when the utility recognizes such a need after opening the bids received in response to its RFP. We conclude that the utility will possess better information with which to develop its contingency plan at that time.

w. Public Service proposes two modifications to the independent auditor section, Rule 3610(e). The first modification is to add to the rule the sentence:

> As the independent auditor conducts the audit, the auditor shall advise the utility immediately if the auditor determines that the utility has taken or omitted any action that would cause the need for the auditor to report to the Commission that such action or omission adversely affects the fairness of the bid solicitation or bid evaluation process."

The second modification would require the auditor to report to the Commission on whether the utility conducted its bid solicitation and evaluation processes in a manner consistent with the Commission decisions specifically approving or modifying components of the plan.

x. We find the proposed modifications to Rule 3610(e) to be overly-restrictive and unnecessary. While we agree that the independent auditor and the utility should

communicate throughout the evaluation process, the first modification requires the independent auditor to advise the utility "immediately" if any problems are found, requiring the auditor to make an on-the-spot decision as to whether or not it will report a problem to the Commission. The second modification requires the auditor to report whether the utility process was consistent with the Commission's decisions. We find that the rules approved in the Decision appropriately specify the auditor's responsibilities without the additional modifications proposed by Public Service. Therefore, we decline to adopt them.

y. Next, Public Service proposes changes to Rule 3613(d)(I) (effect of Commission approval of the LCP). Public Service proposes to strike the provision, "Alternatively, an intervenor may present evidence that, due to changed circumstance timely known to the utility or that should have been known to a prudent person, the utility's actions were not proper." Public Service also proposes additional language for the rule:

> If an intervenor believes that there has been a material change in circumstances such that a Commission-approved plan should be modified, the intervenor shall file with the Commission a complaint requesting a modification of the approved plan and shall bear the burden of proving that a modification is warranted. Failure to seek such a modification shall preclude the intervenor from subsequently seeking a disallowance of utility investments or

> expenses on the basis of such alleged changed circumstance. Any modification of an approved plan shall have prospective application only.

According to Public Service, the current Rule 3613(d)(I) will lead to improper "Monday morning quarterbacking." If someone wishes to challenge a utility's resource choices, Public Service asserts, that party should seek a Commission order modifying an approved plan.

z. We reject Public Service's suggestions. Public Service, in effect, seeks too much. We will not confer a virtual guarantee that the costs of a utility's resource acquisitions will be recovered in rates without regard to the prudence of those choices. Public Service makes these suggestion even though the Commission, under the adopted rules, will not consider or approve the specific resources eventually chosen by a utility. Public Service's proposed modifications could be more appropriate under “option three” rules, where the commission would approve specific resources. However, under the “option two plus” concept proposed by Public Service, and adopted by the Commission, it is proper to expect the utility to continue to manage its resource acquisition process even after its plan is approved. Notably, even after Commission action on a least cost plan, the primary responsibility of managing system resources and reacting to changed circumstances must remain on the utility. We conclude that the legal presumptions and the

exceptions to those presumptions created in Rule 3613(d) are appropriate given the nature of the planning process created in the rules. In contrast, Public Service's proposed modifications to Rule 3613(d)(I) would improperly shift the utility's burden to prudently manage its resource acquisition process onto other persons. Therefore, we deny the proposed modifications.

aa. Public Service then requests reconsideration of the Commission's decision not to include language suggested in the joint CIEA/Public Service comments specifically permitting advance approval of a contract or resource. Alternately, it requests clarification that our ruling does not preclude the use of declaratory ruling procedures to seek regulatory assurances when necessary or desirable.

bb. We deny the request to adopt a rule specifically permitting advance approval of a contract or resource. Since we have chosen to implement an "option two" structure, in which a commission decision is issued before bidding, we find that a second 210-day Commission proceeding after bidding may cause unnecessary delays in the resource acquisition process. Our rulings in this docket do not prohibit parties from requesting Commission action under other Commission rules, such as a declaratory ruling under the Commission's Rules of Practice and Procedure. However, we emphasize that it is our intent to address utility resource acquisition issues within the

LCP proceedings. Other proceedings, such as a petition for a declaratory ruling may cause significant delays, and should only be used in unusual or extraordinary situations.

cc. Finally, Public Service requests extraordinary protection for bid information. It proposes that utility reports on bids and selected resources be given to Commission, Staff, and OCC only under non-disclosure agreements. Public Service argues that reports required under Rule 3614(b) reveal the bargaining position of the utility during the critical time it is negotiating contracts with winning bidders.

dd. We agree that the report information may contain confidential information. However, the Commission's confidentiality rules, 4 CCR 723-16, already address Public Service's concerns. No need exists to adopt additional confidentiality provisions as part of these rules. Therefore, we deny the request.

4. Application for RRR by OCC

a. The OCC requests reconsideration of our refusal to adopt rules requiring a rate-based utility bid. According to the OCC, our reasons for rejecting a rate-based utility bid are in error. The OCC's arguments generally concern three issues: (1) Does elimination of a self-build requirement shift risks away from ratepayers? (2) Is it possible and necessary to evaluate risks between purchase power and self-

build? (3) is a self-build proposal necessary to determine the least-cost option? Consideration of these issues, the OCC argues, suggests that utilities be required to bid rate-based utility resources. In support of its arguments, OCC provides two new articles. In its reply, however, CIEA states that the OCC's "new" information is outdated, and does not provide a basis to overturn the Commission's previous ruling.

b. We deny the application for RRR. We considered the OCC's position in the Decision, and the reasoning stated there for not requiring a rate-based utility bid is still appropriate. Notwithstanding the arguments on reconsideration, we still conclude that the costs of requiring utilities to submit bids for rate-based, self-build resources would outweigh the benefits.

5. Application for RRR by OCC/LAW Fund/Boulder/SWEEP/CRES

a. The application for RRR by OCC/Law Fund/Boulder/SWEEP/CRES raises multiple issues. First, the applicants request that Rule 3604 require that the utility plan submitted for Commission approval evaluate energy efficiency as a resource option and develop avoided cost estimates, in order to evaluate the cost-effectiveness of energy efficiency.

b. Rule 3610(f) clearly states that in selecting its final resource plan, the utility shall consider

all resource options, including energy efficiency, based on the criteria of minimizing long-term rates, with appropriate preferences for certain resources. Therefore, we deny this request.

c. Next, the parties request that the Commission review the utility's evaluation of energy efficiency investment under Rule 3613. The referenced rule provides for the utility's plan to be filed in the form of an application; the Commission will then issue a decision on the plan. We deny this request. We conclude that the adopted rules provide a logical and orderly review of utility plans. Any additional review would be redundant and add unnecessary delay.

d. Finally, the parties request an amendment to Rule 3612(a) to require RFPs to be designed to ensure that energy efficiency and renewables, including DSM, are given fullest possible consideration. As noted earlier, the rules clearly state that, in selecting its final resource portfolio, a utility shall consider all resource options, including energy efficiency, based on the criteria of minimizing rate impact, with appropriate preferences for certain resources. Therefore, we deny this request.

6. Application for RRR by LAW Fund/Boulder/CRES

a. The Law Fund/Boulder/CRES first request that the risk of increased costs from future environmental

regulations be factored into the evaluation of resource options in the resource planning process.

b. We point out that risks due to known or reasonably expected changes in environmental regulations are factored into the LCP process under Rule 3608(b)(5). The rules also address risk through the contingency planning provisions contained in Rule 3608(c), as modified by this decision. Furthermore, we note that amended Rule 3610(f) clarifies that the utility may consider development risk in selecting its final resource plan. The risk associated with changes in environmental regulations may be a component of development risk. Because the parties' concerns are already addressed in the rules, we deny their request.

c. The parties request two changes to the structure of the rules. First, the parties argue that the rules impermissibly delegate responsibility to the utilities for implementing SB01-144. They suggest that a utility be required to document its consideration of clean energy and energy efficient technologies in its report on competitive bidding. Furthermore, they suggest that this report should be made available for public comment and review, with a Commission hearing if necessary. Similarly, the parties recommend that a utility be required to document that its resource plan does, in fact, minimize the net present value of revenue requirement,

taking into account of, among other factors, the risk of increased costs due to future environmental regulations. The parties suggest that if bids for renewables or energy efficiency were received but not accepted, the utility should be required to show that acceptance of these bids would have a material impact on the utility's revenue requirement. In addition, if a utility rejects these resources due to reliability concerns, the utility should explicitly discuss and justify these concerns.

d. We deny the parties requests to amend the rules. We stated in the Decision that, as a practical matter (*i.e.* to allow utilities to timely acquire necessary resources), the Commission can conduct only a single review of a utility's resource planning and acquisition process. The decision explained that the Option two structure is the best alternative. It is best suited to encouraging competitive bidding, while reasonably streamlining the resource acquisition process. The Law Fund/Boulder/CRES request, with its after-the-fact review of the resource selection process, invites the Commission to undertake both Option two and three processes. We conclude that the planning process required in the rules, combined with Commission review of the selected resources in subsequent cost recovery proceedings, meets our obligations under SB01-144. Therefore, we deny these requests to amend the rules.

e. Next, the Law Fund/Boulder/CRES request that Rule 3612(a) (RFPs) should be revised to state that the RFPs must be designed to ensure that renewable energy, energy efficiency, and other clean energy options receive the fullest possible consideration in the bid solicitation and evaluation process. We note that Rule 3610(f) already requires that in selecting its final resource plan the utility shall consider renewable resources and energy efficiency resources, and the rule establishes a preference for these resources when costs and reliability considerations are equal. In light of the provisions already contained in the rules, we deny the parties' request.

f. Law Fund/Boulder/CRES then suggest that, given the rules' Option two structure, we should undertake a separate, up-front inquiry into the desired level of investment in renewable energy, energy efficiency, resources that produce minimal emissions or minimal environmental impact and other clean energy options. We again reject the notion of a separate portfolio for such resources. Such resources are given appropriate consideration by allowing them to be bid in the same process applicable to other resources and granting a preference to these resources when cost and reliability considerations are equal to other resources.

g. Finally, the parties argue that the LCP rules violate SB 01-144 because, under the rules, the Commission will not review the resource plans of cooperative electric generation and transmission associations (G&T). The parties argue that SB01-144 applies to cooperative G&Ts such as Tri-State. And, the parties contend, Commission review of these companies' resource plans in CPCN proceedings is insufficient, because the Commission would have before it only the resource that is the subject of the proceeding. In addition, the parties point out that energy efficiency and renewable resources are small scale, and would not be the subject of any CPCN process. The parties request that a cooperative G&T be required to present its plan for how it intends to integrate these resources in its resource planning process. The parties suggest that the Commission allow public review and comment, and a hearing if necessary on the plan.

h. We agree with the parties that SB01-144 does apply to a cooperative G&T such as Tri-State. In the case of Tri-State, we note that it is subject to the Commission's facilities jurisdiction as an electric utility (*i.e.,* Tri-State must apply for CPCNs in the same circumstances as other regulated utilities) even absent the provisions of SB01-144. We further note that SB01-144 applies to "electric utilities" generally. Therefore, we conclude that the rules should be

modified to address the Commission's obligations, under SB01-144, with respect to cooperative G&Ts such as Tri-State.[7]

i. We grant the application for RRR on this point to require an annual report from a cooperative G&T explaining how its future resource acquisition plans will comply with SB01-144. In order to promote administrative efficiency, this additional report will be made a part of the Annual Progress Reports required in Rule 3614. Parties can review the report, and may request a hearing through established complaint or show-cause procedures, if necessary.

7. Application for RRR filed by CRES

a. CRES first suggests that without bid reviews, "fullest possible consideration" is not given "clean energy and energy-efficient technologies." We addressed this argument in discussion above. This request for reconsideration is denied.

b. Next CRES suggests that a separate resource portfolio for renewables together with access to all source bidding is the best way to give "fullest possible consideration" to these resources. As explained above, SB 01-144 does not require separate portfolios for renewables, and the rules

[7] We do not necessarily concede that we *must* deal with SB01-144 as applied to Tri-State in this set of rules. However, for now, this appears to be the best place.

already allow for appropriate consideration of these resources. We deny this request.

c. CRES requests that certain renewable non-generation options (*e.g.* solar hot water, passive design) be considered as allowable DSM measures. In addition, CRES asks for clarification as to whether such DSM measures must be acquired competitively if a utility requests "non-competitive bidding" under the 30MW exemption in Rule 3611.

d. Although we are unclear about the meaning of the phrase "non-competitive bidding," we clarify our intent regarding this exemption. The exemptions in the rule referenced by CRES can be used only in limited cases, such as repair and modifications to existing resources. The exemptions discussed in Rule 3611 are simply an extension of the 10 MW exemption in the existing Integrated Resource Planning Rules, 4 CCR 723-21. We are not extending the exemptions beyond traditional supply side resources to renewable supply-side resources, (which are governed by PURPA) or energy efficiency. However, we clarify that Rule 3611(a) would apply to emergency maintenance and repairs of utility owned renewable facilities, and Rule 3611(d) would apply to improvements or modifications to existing utility owned renewable facilities.

e. As for CRES's question whether certain non-generating options, such as solar hot water and passive design,

should be considered as DSM or renewable energy, we repeat: The rules are intended to be neutral as to resource technology, and seek the resources that minimize the net present value of rates, regardless of technology. Therefore, the specific categorization of such resources between DSM and renewables is not important because any ultimately must compete with all other resources. Moreover, DSM and renewables are treated identically in SB01-144, and these rules (Rule 3610(f)) grant the identical preference to these resources.

f. CRES then suggests that a mandated bidders conference, in advance of the Commission hearing, would encourage bidders by allowing them to seek clarification and a full examination of a utility's plans. CRES notes that bidders must feel that they have a chance at success in the process. We agree with CRES that participation of potential bidders is important to the success of the LCP rules. This is why the Commission will approve the RFP, the key link between a utility's plan to acquire resources and the actual implementation of the plan. However, we note that the rules provide all parties, including bidders, the opportunity to participate in the Commission hearing on the plan, including the RFP. We therefore deny the request for a mandated bidders conference.

g. Next CRES recommends that the independent auditor provisions be invoked if the utility plans to meet part of its resource need using the stand-alone voluntary service.

h. As stated in the Decision, the purpose of the third-party overseer is to mitigate the possibility of self-dealing by utilities which choose to submit bids in response to an RFP, either directly or through an affiliate. We conclude that the same possibility for self-dealing is present in the case of the stand-alone utility service. Therefore, we adopt the recommendation of CRES. We further clarify that the costs associated with the third-party overseer in the case of stand-alone utility service will be assigned to the voluntary service offering and will not be borne by the general body of utility ratepayers.

i. CRES next suggests expanding the LCP rules to require that utilities report to the Commission, as part of the LCP, those rate structure modifications that reduce NPVRR. CRES further suggests that reductions in wind costs and natural gas price fluctuations suggest a need for utility reports on cost premiums for the Public Service WindSource program.

j. We note that least cost planning proceedings are not the appropriate forums for considering changes in rate structure. While rate structure has an important impact on resource needs, the Commission traditionally considers these

issues in Phase II rate case proceedings. In addition, we note that interested persons could file a complaint with the Commission if they believe, for instance, that the WindSource premium is inappropriate. Based on the above factors, we deny CRES's request.

k. Finally, CRES urges the Commission to further define the cost-benefit analysis in Rule 3610(b). CRES states that they it could support these rules if the full range of externalities and risks are considered in the rules.

l. We deny this request. As explained above, risks due to known or reasonably expected changes in environmental regulations are factored into the LCP process in Rule 3608(b)(5). We also address risk through the contingency planning provisions contained in Rule 3608(c), as modified by this decision. In addition, purchase power contract requirements mitigate cost risks due to changes in environmental regulations. This order also amends Rule 3610(f) to clarify that the utility may consider development risk in its final resource plan. The risk associated with changes in environmental regulations may be a component of development risk. In light of these existing provisions, no need exists to further modify the rules.

II. ORDER

A. The Commission Orders That:

1. The motion filed by Colorado Independent Energy Association for Leave to Respond to the Applications for Rehearing, Reargument, or Reconsideration is granted.

2. On our own motion, we accept the Response of Tri-State Generation & Transmission Association, Inc. to Application for Rehearing, Reargument, or Reconsideration.

3. The motion by Land and Water Fund of the Rockies, City of Boulder, and Colorado Renewable Energy Society for Leave to File Reply to Tri-State Response and Waiver of Response Time is granted. The alternative motion by these parties to Strike the August 26, 2002 Response of Tri-State Generation and Transmission Association, Inc. is denied

4. The application for rehearing, reargument, or reconsideration filed by the Colorado Independent Energy Association is granted consistent with the above discussion.

5. The application for rehearing, reargument, or reconsideration filed by Public Service Company of Colorado, d/b/a Xcel Energy is granted, in part, and denied in part, consistent with the above discussion.

6. The application for rehearing, reargument, or reconsideration filed by the Office of Consumer Counsel is denied.

7. The combined application for rehearing, reargument, or reconsideration filed by the Office of Consumer Counsel, the Land & Water Fund of the Rockies, the City of Boulder, Southwest Energy Efficiency Project, and the Colorado Renewable Energy Society is denied.

8. The application for rehearing, reargument, or reconsideration filed by the the Land & Water Fund of the Rockies, the City of Boulder, and the Colorado Renewable Energy Society is granted, in part, and denied, in part, consistent with the above discussion.

9. The application for rehearing, reargument, or reconsideration filed by the Colorado Renewable Energy Society is granted, in part, and denied, in part, consistent with the above discussion.

10. The rules appended to this decision as Attachment A are adopted, subject to the filing of further applications for rehearing, reargument, or reconsideration. The existing rules found at 4 CCR 723-21 are repealed, subject to the filing of further applications for rehearing, reargument, or reconsideration. This order adopting the attached rules shall become final 20 days following the mailed date of this decision in the absence of the filing of further applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to

this decision is timely filed, this order of adoption shall become final upon a Commission ruling on any such application, in the absence of further order of the Commission.

11. Within twenty days of final Commission action on the adopted rules, the rules shall be filed with the Secretary of state for publication in the next issue of *The Colorado Register* along with the opinion of the Attorney General regarding the legality of the rules.

12. The finally adopted rules shall also be filed with the Office of Legislative Legal Services within twenty days following issuance of the above-referenced opinion by the Attorney General.

13. The twenty day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this decision.

14. This Order is effective immediately upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING AUGUST 28, 2002.

(S E A L)

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

POLLY PAGE

JIM DYER

Commissioners

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THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

ELECTRIC LEAST-COST RESOURCE PLANNING RULES

4 *Code of Colorado Regulations* 723-3[1], Rules 3600 Through 3615

3006. Reports. Each utility shall provide reports to the Commission as follows:[2]

(e) Reports relating to least-cost resource planning as required by rules 3605, 3610(e), and 3614.

LEAST-COST RESOURCE PLANNING

3600. Special Definitions. The following definitions apply only to rules 3600 - 3615:

(a) "Availability factor" means the ratio of the time a generating facility is available to produce energy at its rated capacity, to the total amount of time in the period being measured.

(b) "Annual capacity factor" means the ratio of the net energy produced by a generating facility in a year, to the amount of energy that could have been produced if the facility operated continuously at full capacity year-round.

(c) "End-use" means the light, heat, cooling, refrigeration, motor drive, or other useful work produced by equipment that uses electricity or its substitutes.

(d) "Energy conservation" means the decrease in electricity requirements of specific customers during any selected time period, with end-use services of such customers held constant.

(e) "Energy efficiency" means increases in energy conservation, reduced demand or improved load factors resulting from hardware, equipment, devices, or practices that are installed or instituted at a customer facility. Energy efficiency measures can include fuel switching.

(f) "Heat Rate" means the ratio of energy inputs used by a generating facility expressed in BTUs (British Thermal Units), to the energy output of that facility expressed in kilowatt-hours.

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[1] These rules are intended to eventually become a part of the electric rules as proposed in the Commission's Notice of Proposed Rulemaking in Docket No. 02R-279E. *See* Decision No. C02-575. When the proposed electric rules are finalized, these Least Cost Planning rules will be incorporated therein.

[2] Material including 3006(a)-(d) is omitted, as it was published in the Commission's Notice of Proposed Rulemaking in Docket No. 02R-279E. *See* Decision No. C02-575.

(g) "Least-cost resource plan" or "plan" means a utility plan consisting of the elements set forth in rule 3604.

(h) "Net present value of rate impact " means the current worth of the average annual rates associated with a particular resource portfolio, expressed in dollars per kilowatt-hour in the year the plan is filed. The net present value of rate impact for a particular resource portfolio is first calculated by discounting the total annual revenue requirement by the appropriate discount rate. The discounted revenue requirement is then divided by the total utility kilowatt-hour requirement for that year and averaged across the years of the planning period. The total annual revenue requirement for each year of the planning period is the total expected future revenue requirements associated with a particular resource portfolio.~~"Net present value of revenue requirements" means the current worth of the expected stream of future revenue requirements associated with a particular resource portfolio, expressed in dollars in the year the plan is filed. The net present value of revenue requirements for a particular resource portfolio is obtained by applying a discount rate to the expected stream of future revenue requirements.~~

(i) "Planning period" means the future period for which a utility develops its plan, and the period, over which net present value of ~~revenue requirements~~rate impact for resources are calculated. For purposes of this rule, the planning period is twenty to forty years and begins from the date the utility files its plan with the Commission.

(j) "Renewable resource" means any facility, technology, measure, plan or action utilizing a renewable "fuel" source such as wind; solar; biomass; geothermal; municipal, animal, waste-tire or other waste; or hydroelectric generation of twenty megawatts or less.

(k) "Resource acquisition period" means the first six to ten years of the planning period, in which the utility acquires specific resources to meet projected electric system demand. The resource acquisition period begins from the date the utility files its plan with the Commission.

(l) "Resources" means supply-side resources, energy efficiency, or renewable resources used to meet electric system requirements.

(m) "Supply-side resource" means a resource that can provide electrical energy or capacity to the utility. Supply-side resources include utility-owned generating facilities, and energy or capacity purchased from other utilities and non-utilities.

(n) "Typical day load pattern" means the electric demand placed on the utility's system for each hour of the day.

3601. Overview. The purpose of these rules is to establish a process to determine the need for additional electric resources by Commission jurisdictional electric utilities, pursuant to the power to regulate public utilities delegated to the Commission by Article XXV of the Colorado Constitution and by §§ 40-2-123, 40-3-102, 40-3-111, and 40-4-101, C.R.S. It is the Commission's policy that a competitive acquisition process will normally be used to acquire new utility resources. This process is intended to result in least-cost resource

portfolios, taking into consideration projected system needs, reliability of proposed resources, expected generation loading characteristics, and various risk factors. The rules are intended to be neutral with respect to fuel type or resource technology.

3602. Applicability. This rule shall apply to all jurisdictional electric utilities in the state of Colorado that are subject to the Commission's regulatory authority. Cooperative electric associations engaged in the distribution of electricity (*i.e.* rural electric associations) are exempt from these rules. Cooperative electric generation and transmission associations are subject only to reporting requirements as specified in rule 3605.

3603. Least-Cost Resource Plan Filing Requirements. Jurisdictional electric utilities, as described in rule 3602, shall file a least-cost resource plan ("plan") pursuant to these rules on or before ~~March~~ October 31, 2003, and every four years thereafter. In addition to the required four-year cycle, a utility may file an interim plan, pursuant to rule 3604. If a utility chooses to file an interim plan more frequently than the required four-year cycle, its application must state the reasons and changed circumstances that justify the interim filing. Each utility shall file an original and fifteen copies of the plan with the Commission.

3604. Contents of the Least-Cost Resource Plan. The utility shall file a plan with the Commission that contains the information specified below. When required by the Commission, the utility shall provide work-papers to support the information contained in the plan. The plan shall include:

(a) A statement of the utility-specified resource acquisition period, and planning period. The utility shall consistently use the specified resource acquisition and planning periods throughout the entire least-cost plan and resource acquisition process. The utility shall include a detailed explanation as to why the specific period lengths were chosen in light of the assessment of base-load, intermediate and peaking needs of the utility system;

(b) An annual electric demand and energy forecast developed pursuant to rule 3606;

(c) An evaluation of existing resources developed pursuant to rule 3607;

(d) An assessment of planning reserve margins and contingency plans for the acquisition of additional resources developed pursuant to rule 3608;

(e) An assessment of need for additional resources developed pursuant to rule 3609;

(f) A description of the utility's plan for acquiring these resources pursuant to rule 3610;

(g) The proposed RFP(s) the utility intends to use to solicit bids for the resources to be acquired through a competitive acquisition process, pursuant to rule 3612; and

(h) An explanation stating whether current rate designs for each major customer class are consistent with the contents of its plan. The utility shall also explain whether possible future

changes in rate design will facilitate its proposed resource planning and resource acquisition goals.

3605. Cooperative Electric Generation and Transmission Association Reporting Requirements. Pursuant to the schedule established in rule 3603, each cooperative electric generation and transmission association shall report its forecasts, existing resource assessment, planning reserves, and needs assessment, consistent with the requirements specified in rules 3606, 3607, 3608(a) and 3609. Each cooperative generation and transmission association shall also file annual reports pursuant to rules 3614(a)(I) through 3614(a)(VI).

3606. Electric Energy and Demand Forecasts.

(a) Forecast Requirements. The utility shall prepare the following energy and demand forecasts for each year within the planning period:

(I) Annual sales of energy and coincident summer and winter peak demand in total and disaggregated among Commission jurisdictional sales, FERC jurisdictional sales, and sales subject to the jurisdiction of other states;

(II) Annual sales of energy and coincident summer and winter peak demand on a system-wide basis for each major customer class;

(III) Annual energy and capacity sales to other utilities; and capacity sales to other utilities at the time of coincident summer and winter peak demand;

(IV) Annual intra-utility energy and capacity use at the time of coincident summer and winter peak demand;

(V) Annual system losses and the allocation of such losses to the transmission and distribution components of the system. Coincident summer and winter peak system losses and the allocation of such losses to the transmission and distribution components of the systems; and

(VI) Typical day load patterns on a system-wide basis for each major customer class. This information shall be provided for peak-day, average-day, and representative off-peak days for each calendar month.

(b) Range of forecasts. The utility shall develop and justify a range of forecasts of coincident summer and winter peak demand and energy sales that its system may reasonably be required to serve during the planning period. The range shall include base case, high, and low forecast scenarios of coincident summer and winter peak demand and energy sales, based on alternative assumptions about the determinants of coincident summer and winter peak demand and energy sales during the planning period.

(c) Required Detail.

(I) In preparing forecasts, the utility shall develop forecasts of energy sales and coincident summer and winter peak demand for each major customer class. The utility shall use end-use, econometric or other

supportable methodology as the basis for these forecasts. If the utility determines not to use end-use analysis, it shall explain the reason for its determination as well as the rationale for its chosen alternative methodology.

(II) The utility shall explain the effect on its energy and coincident peak demand forecast of all existing energy efficiency and energy conservation programs for each major customer class, as well as any such measures that have been approved by the Commission but are not included in the forecasts.

(III) The utility shall maintain, as confidential, information reflecting historical and forecasted demand and energy use for individual customers in those cases when an individual customer is responsible for the majority of the demand and energy used by a particular rate class. However, when necessary in the least-cost resource plan proceedings, such information may be disclosed to parties who intervene in accordance with the terms of non-disclosure agreements approved by the Commission and executed by the parties seeking disclosure.

(d) Historical Data. The utility shall compare the annual forecast of coincident summer and winter peak demand and energy sales made by the utility to the actual coincident peak demand and energy sales experienced by the utility for the five years preceding the year in which the plan under consideration is filed. In addition, the utility shall compare the annual forecasts in its most recently filed resource plan to the annual forecasts in the current resource plan.

(e) Description and Justification. The utility shall fully explain, justify, and document the data, assumptions, methodologies, models, determinants, and any other inputs upon which it relied to develop its coincident peak demand and energy sales forecasts pursuant to this rule, as well as the forecasts themselves.

(f) Format and Graphical Presentation of Data. The utility shall include graphical presentation of the data to make the data more understandable to the public, and shall make the data available to requesting parties in such electronic formats as the Commission shall reasonably require.

3607. Evaluation of Existing Generation Resources.

(a) Existing Generation Resource Assessment. The utility shall describe its existing generation resources, all utility-owned generating facilities for which the utility has obtained a CPCN from the Commission pursuant to C.R.S. § 40-5-101 at the time the plan is filed, and existing or future purchases from other utilities or non-utilities pursuant to agreements effective at the time the plan is filed. The description shall include when applicable:

(I) Name(s) and location(s) of utility-owned generation facilities;

(II) Rated capacity and net dependable capacity of utility-owned generation facilities;

(III) Fuel type, heat rates, annual capacity factors and availability factors projected for utility-owned generation facilities over the planning period;

(IV) Estimated in-service dates for utility-owned generation facilities for which a CPCN has been granted but which are not in-service at the time the plan under consideration is filed;

(V) Estimated remaining useful lives of existing generation facilities without significant new investment or maintenance expense;

(VI) The amount of capacity and/or energy purchased from utilities and non-utilities, the duration of such purchase contracts and a description of any contract provisions that allow for modification of the amount of capacity and energy purchased pursuant to such contracts; and

(VII) The amount of capacity and energy provided pursuant to wheeling or coordination agreements, the duration of such wheeling or coordination agreements, and a description of any contract provisions that allow for modification of the amount of capacity and energy provided pursuant to such wheeling or coordination agreements.

(b) Utilities required to comply with these rules shall coordinate their plan filings such that the amount of electricity purchases and sales between utilities during the planning period is reflected uniformly in their respective plans. Disputes regarding the amount, timing, price, or other terms and conditions of such purchases and sales shall be fully explained in each utility's plan. If a utility files an interim plan as specified in rule 3603, the utility is not required to coordinate that filing with other utilities.

(c) Existing Transmission Capabilities and Future Needs.

(I) The utility shall report its existing transmission capabilities, and future needs during the planning period, for facilities of 115 kilovolts and above, including associated substations and terminal facilities. The utility shall ~~specifically~~ generally identify the location and extent of transfer capability limitations on its transmission network that may affect the future siting of resources. With respect to future needs, the utility shall explain the need for facilities based upon future load projections (including reserves). ~~and proposed generation additions during the resource acquisition period.~~ To the extent reasonably available, the utility shall include a description of the length and location of any additional facilities needed, their estimated costs, terminal points, voltage and megawatt rating, alternatives considered or under consideration, and other relevant information.

(II) In order to equitably compare possible resource alternatives, the utility shall consider all transmission costs required by, or imposed on the system by, a particular resource as part of the bid evaluation criteria.

3608. Planning Reserve Margins.

(a) The utility shall provide a description of, and justification for, the means by which it assesses the desired level of reliability on its system throughout the planning period (*e.g.,* probabilistic or deterministic reliability indices).

(b) The utility shall develop and justify planning reserve margins for each year of the resource acquisition period for the base case, high, and low forecast scenarios established under rule 3606, to include risks associated with: 1) the development of generation, 2) losses of generation capacity, 3) purchase of power, 4) losses of transmission capability, 5) ~~resource costs likely changing in the future~~ risks due to known or reasonably expected changes in environmental regulatory requirements, and 6) other risks. The utility shall develop planning reserve margins for its system for each year of the planning period outside of the resource acquisition period for the base case forecast scenario. The utility shall also quantify the recommended or required reliability performance criteria for reserve groups and power pools to which the utility is a party.

(c) Since actual circumstances may differ from the most likely estimate of future resource needs, the utility shall develop contingency plans for each year of the resource acquisition period. As a part of its plan, ~~T~~the utility shall ~~describe and justify~~provide, under seal, a description of its contingency plans for the acquisition of additional resources if actual circumstances deviate from the most likely estimate of future resource needs developed pursuant to rule 3609. The Commission will consider approval of contingency plans only after the utility receives bids, as described in rule 3614(b)(II). The provisions of rule 3613(d), Effect of the Commission Decision, shall not apply to the contingency plans unless explicitly ordered by the Commission.

3609. Assessment of Need for Additional Resources. By comparing the electric energy and demand forecasts developed pursuant to rule 3606 with the existing level of resources developed pursuant to rule 3607, and planning reserve margins developed pursuant to rule 3608, the utility shall assess the need to acquire additional resources during the resource acquisition period.

3610. Utility Plan for Meeting the Resource Need.

(a) The utility shall describe its least-cost resource plan for acquiring the resources to meet the need identified in rule 3609. The utility shall specify the portion of the resource need that it intends to meet as a part of a stand-alone voluntary tariff service, where all costs are separate from standard tariff services, if any. If the utility chooses to offer a stand-alone voluntary service it must comply with the provisions of rule 3610(e), and the costs associated with any independent auditor will be assigned to the stand-alone voluntary service offering and will not be borne by the general body of utility ratepayers. The utility shall specify the portion of the resource need that it intends to meet through a competitive acquisition process and the portion that it intends to meet through an alternative method of resource acquisition.

(b) The utility shall meet the resource need identified in the plan through a competitive acquisition process, unless the Commission approves an alternative method of resource acquisition. If the utility proposes that a portion of the resource need be met through an alternative method of resource acquisition, the utility shall identify the specific resource(s) that it wishes to acquire, and the reason the specific resource(s) should not be acquired through a competitive acquisition process. In addition, the utility shall provide a cost-benefit analysis to demonstrate the reason why the public interest would be served by acquiring the specific resource(s) through an alternative method of resource acquisition. The least-cost resource plan shall describe and estimate the cost of all new transmission facilities associated with any specific resources proposed for acquisition other than through a competitive acquisition process. The utility shall also explain and justify how the alternative method of resource acquisition complies with the requirements of the Public Utility Regulatory Policy Act and Commission rules implementing such act. ~~The utility may not acquire more than t~~The lesser of 250 megawatts, or 10% of the highest base case forecast peak requirement identified for the resource acquisition period, shall be the maximum amount of power that the utility may obtain through such alternative method of resource acquisition (I) in any single resource acquisition period, and (II) from any single specific resource, regardless of the number of ~~over how many~~ resource acquisition periods over which the units, plants or other components of the resource might be built, or the output of the resource made available for purchase.

(c) The utility shall have the flexibility to propose multiple acquisitions at various times over the resource acquisition period. However, the limits specified in paragraph (b) of this rule shall apply to the total resources acquired though an alternative method during an entire four-year least cost planning cycle.

(d) Each utility shall establish, and include as a part of its filing, a written bidding policy to ensure that bids are solicited and evaluated in a fair and reasonable manner. The utility shall specify such competitive acquisition procedures that it intends to use to obtain resources under the utility's plan.

(e) If the utility intends to accept proposals from the utility or from an affiliate of the utility, the utility shall include as part of its filing a written separation policy and the naming of an independent auditor whom the utility proposes to hire to review and report to the Commission on the fairness of the competitive acquisition process. The independent auditor shall have at least five years' experience conducting and/or reviewing the conduct of competitive electric utility resource acquisition, including computerized portfolio costing analysis. The independent auditor shall be unaffiliated with the utility; and shall not, directly or indirectly, have benefited from employment or contracts with the utility in the preceding five years, except as an independent auditor under these rules. The independent auditor shall not participate in, or advise the utility with respect to, any decisions in the bid-solicitation or bid-evaluation process. The independent auditor shall conduct an audit of the utility's bid solicitation and evaluation process to determine whether

it was conducted fairly. For purposes of such audit, the utility shall provide the independent auditor immediate and continuing access to all documents and data reviewed, used or produced by the utility in its bid solicitation and evaluation process. The utility shall make all its personnel, agents and contractors involved in the bid solicitation and evaluation available for interview by the auditor. The utility shall conduct any additional modeling requested by the independent auditor to test the assumptions and results of the bid evaluation analyses. Within sixty days of the utility's selection of final resources, the independent auditor shall file a report with the Commission containing the auditor's views on whether the utility conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported. After the filing of the independent auditor's report, the utility, other bidders in the resource acquisition process and other interested parties shall be given the opportunity to review and comment on the independent auditor's report.

(f) In selecting its final resource plan, the utility's objective shall be to minimize the net present value of ~~revenue requirement~~rate impacts, consistent with reliability considerations and with financial and development risks. The utility shall consider renewable resources; resources that produce minimal emissions or minimal environmental impact; energy-efficient technologies; and resources that provide beneficial contributions to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases; as a part of its bid solicitation and evaluation process. Further, the utility shall grant a preference to such resources where cost and reliability considerations are equal.

3611. Exemptions from competitive acquisition. The following resources need not be acquired through a competitive acquisition process and need not be included in an approved Least-Cost Plan prior to acquisition:

(a) Emergency maintenance or repairs made to utility-owned generation facilities;

(b) Capacity and/or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of not more than thirty megawatts;

(c) Capacity and/or energy from the generation facilities of other utilities or from non-utility generators pursuant to agreements for not more than a two year term (including renewal terms) or for not more than thirty megawatts of capacity;

(d) Improvements or modifications to existing utility generation facilities that change the production capability of the generation facility site in question, by not more than thirty megawatts, based on the utility's share of the total generation facility site output, and that have an estimated cost of not more than $30 million;

(e) Interruptible service provided to the utility's electric customers;

(f) Modifications to, or amendments of, existing power purchase agreements, which do not extend the agreement more than four years, that add not more than thirty MW of capacity to the utility's system, and that are cost effective in comparison to other supply-side alternatives available to the utility; and

(g) Utility investments in emission control equipment at existing generation plants.

3612. Request(s) For Proposals.

(a) Purpose of the Request(s) for Proposals. The proposed RFP(s) filed by the utility shall be designed to solicit competitive bids to acquire additional resources pursuant to rule 3610.

(b) Contents of the Request(s) for Proposals. The proposed RFP(s) shall include the bid evaluation criteria~~, including the weight to be assigned to each criterion~~ the utility plans to use in ranking the bids received. The utility shall also include in its proposed RFP(s): 1) base-load, intermediate and/or peaking needs, and preferred fuel type; 2) reasonable estimates of transmission costs for resources located in different areas; 3) the extent and degree to which resources must be dispatchable, including the requirement, if any, that resources be able to operate under automatic dispatch control; 4) the utility's proposed standard contract(s) for the acquisition of resources; 5) proposed contract term lengths; 6) discount rate and 7) general planning assumptions, and any other information necessary to implement a fair and reasonable bidding program.

3613. Commission Review and Approval of Least-Cost Resource Plans.

(a) Review on the Merits. The utility's plan, as developed pursuant to rule 3604 will be filed in the form of an application administered pursuant to the Commission's Rules of Practice and Procedure. The Commission may hold a hearing for the purpose of reviewing and rendering a decision regarding the contents of the utility's plan upon its filing.

(b) Basis for Commission Decision. Based upon the evidence of record, the Commission shall issue a written decision approving, disapproving, or ordering modifications, in whole or in part to the utility's plan. If the Commission declines to approve a plan, either in whole or in part, the utility shall make changes to the plan in response to the Commission's decision. Within 60 days of the Commission's rejection of a plan, the utility shall file an amended plan with the Commission, and provide copies to all parties who participated in the application docket concerning the utility’s plan. All such parties may participate in any hearings regarding the amended plan.

(c) Contents of the Commission Decision. The Commission decision approving or denying the plan shall address the contents of the utility's plan filed in accordance with rule 3604. If the record contains sufficient evidence, the Commission shall specifically approve or modify: (1) the utility's assessment of need for additional resources in the resource acquisition period, (2) the utility's plans for acquiring additional resources through the competitive acquisition process, or through an alternative acquisition process, and (3) components

of the utility's proposed RFP, such as the proposed evaluation criteria.

(d) Effect of the Commission Decision. A Commission decision specifically approving the components of a utility's plan creates a presumption that utility actions consistent with that approval are prudent. Because the Commission will not approve a utility's selection of specific resources, the Commission's approval of a plan creates no presumptions regarding those resources.

(I) In a proceeding concerning the utility's request to recover the investments or expenses associated with new resources:

(A) The utility must present *prima facie* evidence that its actions were consistent with Commission decisions specifically approving or modifying components of the plan.

(B) To support a Commission decision to disallow investments or expenses associated with new resources on the grounds that the utility's actions were not consistent with a Commission approved plan, an intervenor must present evidence to overcome the utility's *prima facie* evidence that its actions were consistent with Commission decisions approving or modifying components of the plan. Alternatively, an intervenor may present evidence that, due to changed circumstance timely known to the utility or that should have been known to a prudent person, the utility's actions were not proper.

(II) In a proceeding concerning the utility's request for a certificate of public convenience and necessity to meet customer need specifically approved by the Commission in its decision on the least-cost resource plan, the Commission shall take administrative notice of its decision on the plan. Any party challenging the Commission's decision regarding need for additional resources has the burden of proving that due to a change in circumstances the Commission's decision on need is no longer valid.

3614. Reports

(a) Annual Progress Reports. The utility shall file with the Commission, and provide copies to all parties to the most recent least-cost planning docket, annual progress reports after submission of its plan application. The annual progress reports will inform the Commission of the utility's efforts under the approved plan. Annual progress reports shall also contain:

(I) An updated annual electric demand and energy forecast developed pursuant to rule 3606;

(II) An updated evaluation of existing resources developed pursuant to rule 3607;

(III) An updated evaluation of planning reserve margins and contingency plans developed pursuant to rule 3608;

(IV) An updated assessment of need for additional resources developed pursuant to rule 3609;

(V) An updated report of the utility's plan to meet the resource need developed pursuant to rule 3610 and the resources the utility has acquired to date in implementation of the plan; and

(VI) In addition to the items required in 3614(a)(I) through 3614(a)(V), cooperative electric generation and transmission associations shall include in their annual report a full explanation of how its future resource acquisition plans will give fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies in its consideration of generation acquisitions for electric utilities, bearing in mind the beneficial contributions such technologies make to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases.

(b) Reports of the competitive acquisition process. The utility shall provide reports to the Commission concerning the progress and results of the competitive acquisition of resources. The following reports shall be filed:

(I) Within 30 days after bids are received in response to the RFP(s), the utility shall report: (1) the number of bids received, (2) the quantity of MW offered by bidders, (3) a breakdown of the number of bids and MW received by resource type, and (4) a description of the prices of the resources offered.

(II) If, upon examination of the bids, the utility determines that the proposed resources may not ~~be reasonably anticipated to~~ meet the utility's expected resource needs, the utility shall file an application for approval of a contingency plan, within 30 days after bids are received. The application shall include justification for need of the contingency plan, proposed action by the utility, expected costs, and expected timeframe for implementation.

~~(II)~~(III) Within 45 days after the utility has selected the winning bidders, the utility shall report: (1) the number of winning bids, (2) the quantity of MW offered by the winning bidders, (3) a breakdown of the number and MW of winning bids by resource type, name and location, and (4) a description of the prices of the winning bids.

3615. Amendment of an Approved plan. The utility may, at any time, file an application to amend the contents of a plan approved pursuant to rule 3613. Such an application shall be administered pursuant to the Commission's rules of Practice and Procedure.