Decision No. C02-1216

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 DENYING SECOND APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION

Mailed Date: October 28, 2002
Adopted Date: October 16, 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. C02-991 (Mailed Date of September 9, 2002) (Reconsideration Decision). In that decision, we granted in part, and subject to requests for further reconsideration, portions of the first applications for RRR filed by the parties in response to our initial decision (Decision No. C02-793) in this case. Those decisions adopted Least Cost Planning Rules (LCP Rules) to be codified at 4 *Code of Colorado Regulations* (CCR) 723-3, Rules 3600 through 3615. The LCP Rules replace the Commission's existing Integrated Resource Planning (IRP) Rules, 4 CCR 723-21.

2. The following parties filed applications for RRR to the Reconsideration Decision: Public Service Company of Colorado (Public Service); the Colorado Office of Consumer Counsel (OCC); Tri-State Generation and Transmission Association, Inc. (Tri-State); and the Land & Water Fund of the Rockies, City of Boulder, Southwest Energy Efficiency Project, and the Colorado Renewable Energy Society (LAW Fund *et al.*), jointly.

3. By Decision No. C02-1142, we requested Public Service to file supplemental comments to its application for RRR to specifically address the mathematical calculation of Net Present Value of Rate Impact (NPVRI). Public Service in its second application for RRR suggested that our proposed definition was incorrect. We also allowed other parties to file supplemental comments on this issue. Public Service timely filed a supplement on October 15, 2002. On that date Public Service also filed a response to the applications for RRR by the OCC and LAW Fund *et al.,* accompanied by a motion for leave to respond to those applications for RRR.

4. Now being duly advised in the premises, we deny all applications for RRR. The rules appended to the Reconsideration Decision as Attachment A are now adopted.

B. Discussion

1. Motions to Respond to Applications for RRR

We first address Public Service’s motion for leave to respond to the applications for RRR by OCC and LAW Fund *et al.* Under Rule 22(b), Commission Rules of Practice and Procedure, 4 CCR 723-1, no response is normally allowed to an application for RRR. Public Service's motion failed to state good cause for filing a response to the applications for RRR here. Therefore, we deny the motion.

2. Application for RRR by OCC

a. The OCC first requests that we reconsider our decision adopting the minimization of NPVRI instead of Net Present Value of Revenue Requirement as the least cost criterion. LAW Fund *et al.* also request reconsideration on this issue. The OCC and LAW Fund *et al.* provide a detailed discussion of demand side management (DSM) costs in support of their argument. However, we are not persuaded by these arguments. We thoroughly considered this issue in the Reconsideration Decision, and found that minimization of NPVRI is the appropriate objective in selection of a utility’s final resource portfolio.

b. Next, the OCC requests that, if we retain the NPVRI criterion, we require the use of the Utility Cost Test rather than the traditional Total Resource Cost test. The OCC

argues that only utility costs should be considered under the NPVRI test, rather than including individual DSM customer costs and benefits as has been Commission practice under the Total Resource Cost test. We deny this request. Although a different DSM cost-effectiveness test may be appropriate under different evaluation criteria, the proposed rules do not specify which test to use. Further, the OCC does not advocate a specific rule modification here. Because this is not the proper proceeding to resolve this issue, we deny the OCC's request.

3. Application for RRR by LAW Fund *et al.*

a. LAW Fund *et al.* request that we provide some form of Commission review or independent oversight of the utility's resource selection. They suggest four possible alternatives: 1) "option 3" discussed in the notice of proposed rulemaking; 2) rules allowing party comments with the possibility of hearings after utility selection; 3) a segregated renewable portfolio; or 4) an independent evaluator in all cases. We considered all such options in the initial decision and the Reconsideration Decision. We found that an up-front review of the utility's plan, with a common portfolio, and without an independent evaluator to address DSM and renewable resources, best meets the Commission's overall objectives and will lead to more timely decisions. Therefore, this request for reconsideration is denied.

b. Alternatively, LAW Fund *et al.* request that we clarify what remedies would be available to parties to review and challenge a utility's resource selection. They argue that a rate recovery proceeding will not be an adequate remedy.

c. Existing statutes relating to the Commission and Commission proceedings, and Commission rules (*e.g.,* the Rules of Practice and Procedure relating to utility requests for Certificates of Public Convenience and Necessity, rate cases, and complaint proceedings) adequately address what actions interested persons could take if they believe a utility has acted imprudently in its resource selection. The LCP Rules do not limit any such remedies or procedures. We also note our discussion in the Reconsideration Decision regarding the possibility of a declaratory ruling after a utility receives bids. No further clarification of the rules is necessary. Therefore, the request for reconsideration on this point is denied.

d. Next, LAW Fund *et al.* request that we put utilities on notice that they will be at risk for failure to realize ratepayer benefits of improperly rejected renewable energy and DSM resources. Rule 3613(d) (Effect of the Commission Decision) adequately addresses the effect of a Commission decision on a proposed least cost plan. The preceding discussion also points out that the rules do not limit

the rights of interested persons to dispute a utility's selection of new resources under existing law. Therefore, we deny this request.

4. Application for RRR by Public Service

a. In its application for RRR, Public Service argued that our definition of NPVRI will lead to an incorrect mathematical result, and that its computer model will not derive the costs and sales suggested by the definition. Public Service requests that we strike all but the first sentence of the definition. The application stated that, "Both the costs and the sales in each of the years must be discounted to give the proper time value weighting to both cost and sales in determining the net present value of rate impacts." However, in its supplemental comments, Public Service acknowledges that this statement was in error, and no "discounting of sales" is done by its model.

b. In its supplemental comments, Public Service suggests that our definition of NPVRI is ambiguous. Public Service offers three possible interpretations of the rule. Public Service also argues that the definition should not be so prescriptive as to prohibit slightly different, but acceptable, calculations made by standard optimization models used by Colorado utilities. A representative of New Energy Associates, the developers and owners of the STRATEGIST (PROSCREEN)

software, provided an explanation with equations and examples in response to our requests in Decision No. C02-1142.[1] Public Service continues to advocate that the first sentence of the Commission's definition is complete and sets forth all that is needed to compare resources.

c. We deny the application for RRR. First, we conclude that the definition in the proposed rules is a correct mathematical description of NPVRI. Next, we disagree that the current definition is ambiguous. Public Service offers three possible interpretations of our NPVRI definition. The first is to discount the stream of revenue requirements over the planning period to year one dollars and divide this net present value (NPV) by year one's sales. Public Service's second interpretation is to discount each year's annual revenue requirement to present value; divide each year's discounted annual revenue requirement by that year's sales; and then take the average of these quotients. Public Service's third possible interpretation is to discount the stream of annual revenue requirements; and then divide this NPV by the average annual kilowatt-hours for the planning period. Upon reviewing these three possible interpretations suggested by Public Service, we note that its first and third examples are not reasonable

[1] Public Service filed this explanation as a confidential attachment to its supplemental comments.

interpretations of the definition of a NPV calculation. Public Service's first interpretation does not accurately represent an average rate because it recognizes only the first year's sales, thus ignoring the expected sales over the balance of the planning period. The third definition, while somewhat more plausible than the first, does not calculate the average rate in each year of the planning period, as specified by the rule.

d. The second interpretation matches the rule, and our intended calculation. The rule is clear that this is what we intend. Finally, we conclude that a description of the calculation (*i.e.,* the last three sentences of the definition of NPVRI) is appropriate, given the apparent variations of potential calculations of NPVRI. We, therefore, deny the application for RRR.

5. Application for RRR by Tri-State

a. Tri-State requests reconsideration of the annual reporting requirements for cooperative generation and transmission associations. It argues that the rules dramatically expand the reporting requirements from the current IRP Rules, and from the proposals issued in the Notice of Proposed Rulemaking.

b. Tri-State contends that Rule 3614(a) requires it to file annual progress reports after submission of its plan application. This is incorrect. The rules will

require Tri-State to comply with Rules 3614(a)(I) through 3614(a)(VI); Tri-State will not be subject to the general provisions in Rule 3614(a) itself. The rules are reasonably clear that we are not requiring Tri-State to submit a plan under Rule 3610, but are using the information in the balance of Rule 3614 to comply with SB 01-144.[2]

c. Tri-State next argues that Rule 3614(a)(V) improperly imposes the requirements of Rule 3610 (least-cost plan filing requirements) upon it, by requiring it to "update" its plan pursuant to Rule 3610. Tri-State objects to this rule because it is not required to file a plan in the first place.

d. Tri-State proposes three alternatives to address the SB 01-144 requirements. First, it suggests a new rule that would require it to address SB 01-144 issues when it files an application for a certificate of public convenience and necessity. Alternately, it proposes to address SB 01-144 requirements through Rule 18 filings under 4 CCR 723-3. Finally, it suggests that it address SB 01-144 issues as part of its quadrennial Rule 3605 filing.

e. We agree that Tri-State is not required to file a plan pursuant to Rule 3610, and our intent in including cooperative generation and transmission associations in Rule 3614(a)(V) was not to subject it to "back door" regulatory

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

requirements. However, we do not agree with Tri-State's proposed alternatives. The first two suggestions, to modify Rule 3605 or to include a reporting requirement in Rule 18 filings, are inadequate because they address only utility-owned facilities, and would not cover contract generation. Tri-State's second recommendation to file information every four years would address this concern, but we do not believe a quadrennial filing adequately addresses SB 01-144.

f. Tri-State is not subject to Commission jurisdiction for ratemaking purposes, but is subject to our facilities jurisdiction. As such, Tri-State is subject to SB 01-144. As stated in prior decisions in this docket, in many cases the LCP Rules are an awkward fit for Tri-State. However, given our facilities jurisdiction over Tri-State, it is necessary to subject Tri-State to certain portions of the rules. Therefore, we deny the application for RRR.

II. ORDER

A. The Commission Orders That:

1. The Second Application for Rehearing, Reargument, or Reconsideration filed by Public Service Company of Colorado is denied.

2. The Application for Rehearing, Reargument, or Reconsideration filed by the Colorado Office of Consumer Counsel is denied.

3. The Application for Rehearing, Reargument, or Reconsideration filed by Tri-State Generation and Transmission Association, Inc., is denied.

4. The Application for Rehearing, Reargument, or Reconsideration filed by the the Land & Water Fund of the Rockies, the City of Boulder, Southwest Energy Efficiency Project, and the Colorado Renewable Energy Society is denied.

5. The rules appended to Decision No. C02-991 as Attachment A are adopted. The existing rules found at 4 *Code of Colorado Regulations* 723-21 are repealed.

6. Within 20 days of the Mailed Date of this Decision, 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.

7. The rules shall also be filed with the Office of Legislative Legal Services within 20 days following issuance of the above-referenced opinion by the Attorney General.

8. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING October 16, 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

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Commissioners

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