

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23M-0472E

IN THE MATTER OF THE COMMISSION'S REVIEW OF THE PROVISIONS ADDRESSING TRANSMISSION CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND TRANSMISSION PLANNING IN THE RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS (CCR) 723-3.

**COMMISSION DECISION OPENING A REPOSITORY
PROCEEDING AND SOLICITING INPUT FROM
INTERESTED PARTICIPANTS**

Mailed Date: September 28, 2023

Adopted Date: April 19, 2023

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I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission opens a miscellaneous proceeding to consider changes to the Commission’s Rules Regulating Electric Utilities in 4 *Code of Colorado Regulations* (CCR) 723-3 related to the development, construction, and cost recovery of

transmission infrastructure. We direct the Staff of the Colorado Public Utilities Commission (Staff) to work with stakeholders and other interested participants to elicit and compile responses to questions set forth in this Decision and later raised by Staff during the course of this Proceeding. Staff will also elicit, and compile rule changes proposed by interested participants for the development of a future Notice of Proposed Rulemaking (NOPR). This proceeding will thus serve as a repository for the filing of comments, responses, proposed rule changes and other relevant information.

2. This proceeding specifically addresses the existing rule governing construction or extension of transmission facilities, Rule 3206, and the rule governing transmission planning, Rule 3627. Certain new rules may also be necessary to govern cost recovery of transmission investment pursuant to § 40-5-101(4), C.R.S., potentially causing changes the Transmission Cost Adjustment (TCA) for the state's investor-owned electric utilities. New rules may also be needed given changes in both transmission technology and the policy environment since the existing rules addressing transmission resources were promulgated.

3. Stakeholders and other interested participants should submit initial comments, their responses to the questions posed in Attachment A to this Decision, and any proposed rule changes in redline format, or proposed draft new rule language no later than December 1, 2023. Comments responsive to those initial filings may be made no later than January 31, 2024.

B. Discussion

4. The Commission last took up transmission planning rules in 2010 in Proceeding No. 10R-526E. In the years since the resulting Rule 3627 was adopted in 2011,¹ six Commission reviews of joint utility transmission plans have been completed. While the final decisions in each of the proceedings have found the utility transmission plans to be adequate “to meet present and future energy needs in a reliable manner” in accordance with Rule 3627, the five most recent such decisions have also articulated significant shortcomings of the Commission’s transmission planning process and recommended that the Commission take up a rulemaking to address these shortcomings.

5. For example, in Decision No. R17-0580 in Proceeding Nos. 15M-0853E, 16M-0063E, and 15M-0856E, ALJ Mana L. Jennings-Fader wrote extensively about shortcomings in the Rule 3627 process and the need for a transmission planning rulemaking. The ALJ questioned whether there was a need for such planning in the context of federally mandated regional planning occurring under FERC Orders 890 and 1000. The ALJ noted that regardless of the sub-regional and regional plans resulting from those FERC decisions, the reality is that individual utilities build transmission to serve their local needs because: (1) Colorado statute requires utilities to prove that current or future convenience or necessity require the construction of any transmission asset; (2) Colorado utilities must be sensitive to the rate impacts of transmission construction and so will restrain construction proposals only to what they know they need or will need in the future; and (3) Colorado utilities know that the Commission is unlikely to approve transmission projects that are oversized. The ALJ noted that the

¹Decision No. R17-0580, issued on July 31, 2017, Proceeding Nos. 15M-0853E, 16M-0063E, & 15M-0856E.

Commission Decisions promulgating the Transmission Planning Rules and the Commission Decisions discussing the 2012 Ten-Year Plan and the 2014 Ten-Year Plan each contain language that support widely differing interpretations of what the Transmission Planning Rules were intended to achieve and what they require be contained in the Rule 3627 ten-year plans. The ALJ concluded that the public interest would be well-served by the Commission opening a rulemaking on the transmission planning rules.

6. Likewise, in Decision No. C19-0236 in Proceeding No. 18M-0080E,² the Commission adopted ALJ Steven H. Denman's Decision No. R18-1139 (to which no exceptions were filed) without modification but chose to issue a Commission Decision for the sole purpose of stating its intent to open a transmission planning rulemaking in the future, citing the needs described by ALJ Jennings-Fader in Decision No. R17-0580.

7. In Decision No. R21-0073 in Proceeding No. 20M-0008E,³ ALJ Robert I. Garvey amplified ALJ Jennings-Fader's call for a transmission rulemaking and added substantively to her list of motivations. In particular, the ALJ referenced the October 22, 2020 Commissioners' Information Meeting (CIM) on Advanced Transmission Technologies (ATT) and the filing of what at the time was called the "Joint Transmission Proposal" in Proceeding No. 19R-0096E, a rulemaking that included potential modifications to the Commission's rules governing Electric Resource Planning. The ALJ noted that these developments indicate that the standards, objectives, and essential needs of transmission planning in Colorado had "...evolved beyond the manner in which the Transmission Planning Rules sought to improve the coordination of electric

² Decision No. C19-0236, issued on March 12, 2019, Proceeding No. 18M-0080E. Decision No. C19-0236 adopted Decision No. R18-1139, issued on December 14, 2018

³ Decision No. R21-0073, issued on February 11, 2021, Proceeding No. 20M-0008E.

generation and transmission planning at the time when those rules were initially promulgated.”⁴ The ALJ concluded that: “Numerous drivers have emerged recently that are contributing to rapidly changing demands on the transmission system. These include: low and declining costs for renewable resources, many of which have been and will continue to be constructed distant from load centers; the flurry of recent utility decisions to retire coal-fired power plants; the advent of [non-wires alternatives (NWA)] and advanced transmission technologies that may offer lower-cost alternatives to conventional transmission solutions in some applications; and the decarbonization of the Colorado economy in accordance with H.B. 19-1261. These drivers add to and amplify ALJ Jennings-Fader’s call for a rulemaking on the Transmission Planning Rules.”⁵

8. In 2022, through Decision No. R22-0690 in Proceeding 22M-0016E,⁶ ALJ Melody Mirbaba added to the list of substantive reasons for a transmission planning rulemaking. She noted that while the rules do not currently require reporting on maintenance-driven asset renewal or replacement activities, such reporting could position the Commission and utilities to identify projects on existing assets that could present transmission planning alternatives that may address numerous needs at the same time, thereby creating ratepayer cost-savings while also ensuring that utilities contemplating major transmission line rebuilds have evaluated bigger picture transmission planning implications. ALJ Mirbaba suggested that the Commission could address these circumstances by amending the rules to require utilities to include in their Rule 3627 filings a narrative describing for each utility’s planned rebuilds for lines operated or to be operated at and above 100 kV: how the utility evaluated each project as a part of its overall

⁴ *Id.*, ¶ 33.

⁵ *Id.*, ¶ 52 – 53.

⁶ Decision No. R22-0690, issued on November 14, 2022, Proceeding No. 22M-0016E.

transmission planning and either how the project serves an existing or anticipated transmission need beyond conventional system maintenance, or why the project is not a candidate to do so.”⁷ ALJ Mirbaba further expressed concern about the absence of rigorous procedures by utilities to identify, analyze and implement ATT as part of their transmission planning process. Instead, she found that “...the record in this Proceeding strongly supports the conclusion that if the Commission wishes to encourage rigorous identification, analysis and adoption of cost-effective ATT and NWA applications, it will need to adopt new rules that explicitly require it.”⁸

9. ALJ Mirbaba further suggested that the Commission consider whether CPCN standards for transmission projects should be amended to require utilities to evaluate specific alternatives to a project, such as ATT, NWAs, or other unconventional alternatives, and whether to modify the transmission planning rules to require a more robust analysis of project alternatives at the transmission planning stage, with defined standards as to minimum expectations for such analysis.⁹ Like her predecessors, ALJ Mirbaba concluded that the Commission should open a rulemaking to amend its transmission planning rules.¹⁰

10. In addition to the potential improvements identified by ALJs in prior Transmission Planning proceedings pursuant to Rule 3627, the Commission has recognized other potential issues related to the development, construction, and cost recovery of transmission infrastructure to potentially be address through revising the Commission’s Electric Rules. These topics include the consideration of perceived shortcomings in transmission planning conducted by the Colorado Coordinated Planning Group (CCPG), regional and inter-regional transmission

⁷ *Id.*, ¶ 104.

⁸ *Id.*, ¶ 105.

⁹ *Id.*, ¶ 108.

¹⁰ *Id.*, ¶ 110.

linkages, formal cost-benefit frameworks for all or a subset of transmission projects, and the use of performance incentive mechanisms (PIMs) and related reforms to cost recovery and after-the-fact prudency reviews.

11. For instance, many utility transmission projects are exempted from Rule 3206 CPCN requirements because they are determined to be “in the course of ordinary business.” We seek to examine whether certain projects, such as major line rebuilds, should continue to be exempted from CPCN requirements. It also may be beneficial to consider whether the annual filings required by Rule 3206 and the biennial filings required by Rule 3627 should be filed as application proceedings instead of as reports. We also seek to examine potential rule changes: (1) addressing administrative details, such as the timing of the Rule 3206 Reports; (2) updating the standards and definitions referred to in the rules; and (3) clarifying ambiguities such as the permissible noise levels in areas zoned as agricultural.

12. The accuracy of the cost estimates utilities provide in their CPCN applications is also one of the disputes frequently raised in those proceedings, as are the magnitudes of allowable contingencies and risk reserves.¹¹ A review of Rule 3206 may suggest modifications that could reduce the degree of controversy over such issues and yield more efficient proceedings.

13. By the same token, in Decision No. C22-0270 issued in Proceeding No. 21A-0096E, the Commission adopted a PIM for the Colorado Power Pathway (CPP) to incent both cost control and timely completion of project segments.¹² In granting a CPCN for the CPP,

¹¹ See, for example, Proceeding No. 21A-0096E, Hearing Exhibit 1501, Answer Testimony of Adam Gribb, pp. 11-25; Proceeding No. 20A-0082E, Hearing Exhibit 400, Answer Testimony of Adam Gribb, pp. 5-18.; Proceeding No. 21A-0298E, Hearing Exhibit 500, Answer Testimony of Adam Gribb, pp. 7-17.

¹² Decision No. C22-0270, issued on June 2, 2022, Proceeding No. 21A-0096E, ¶81, ¶86-106.

the Commission determined that “ ... in certain instances, performance-based mechanisms can be important tools to incentivize utility action to reduce greenhouse gases and ensure timely and cost-efficient completion of generation and transmission building projects.”¹³ A rulemaking would provide an opportunity for the Commission to consider requiring that all or a subset of future transmission CPCN applications include PIM proposals, rather than relying on the parties to coalesce on an acceptable PIM solely via answer and rebuttal testimony. This could result in more efficient proceedings.

14. Significant new statutes adopted since the 2019 legislative session also may warrant that additional information be incorporated into the Rule 3627 utility filings, so that the Commission and other stakeholders can better understand how the utilities’ plans either do or do not support advancement toward the policy goals established by these statutes. For example, § 40-2-125.5(3)(I), C.R.S., requires that Public Service Company of Colorado (Public Service) reduce its carbon dioxide emissions 80 percent relative to its 2005 emissions by 2030. However, Rule 3627 does not currently require Public Service (or any other utility that decides to voluntarily achieve significant emission reductions) to report on how its transmission plan will support the integration of resources needed to achieve the target emission reduction. We seek input on whether new rules are required to ensure that the biannual Rule 3627 filings contain the information needed to determine whether utility transmission plans will enable goals for the electric system established by these statutes.

15. Finally, in Proceeding Nos. 22AL-0478 and 22AL-0483, the Commission recently concluded that a rulemaking is necessary to examine the issues surrounding cost recovery of transmission investments and the use of the TCA. For instance, through Decision No. C23-0592,

¹³ *Id.*, ¶80.

the Commission modified Public Service's TCA tariff to specify that only the costs of qualified TCA projects are to be recovered through the rate adjustment mechanism.¹⁴ Similarly, through Decision No. C23-0593, the Commission modified the TCA tariff of Black Hills Colorado Electric, LLC to reflect a narrower scope of eligible projects.¹⁵ In both proceedings, the Commission found merit in reexamining policies governing cost recovery of transmission investments, such as material changes in cost estimates over time and determinations of the prudence of incurred transmission costs, in a future rulemaking.

C. Solicitation of Comments and Proposed Rules

16. We open this miscellaneous proceeding to receive information as a precursor to an eventual rulemaking updating several provisions in the Commission's Electric Rules related to transmission. We seek comments on the general issues discussed herein, responses to our questions in Attachment A to this Decision, and proposals for new and modified rules governing transmission resource planning and CPCNs.

17. We direct Staff to lead this information gathering process including engaging with stakeholders and other interested participants in workshops to develop draft rule language for a future NOPR. This proceeding also serves as a repository for reports, decisions of other state public utilities commissions, or draft rule language useful to the Commission in developing changes to the Electric Rules discussed herein.

18. We invite stakeholders and other interested participants to submit initial comments in response to this Decision and to file initial rule change proposals no later than December 1, 2023. We seek input about issues that should be examined in this new proceeding,

¹⁴ Decision No. C23-0592, issued on September 7, 2023, Proceeding Nos. 22AL-0530E & 22AL-0478E.

¹⁵ Decision No. C23-0593, issued on September 7, 2023, Proceeding No. 22AL-0483E.

as well as discussion of additional information that may be useful in the course a future rulemaking proceeding. We further welcome suggestions as to topics the Commission should explore through workshops, as part of this proceeding.

19. Responsive comments may be filed no later than January 31, 2024.

20. This proceeding will commence as a non-adjudicatory, miscellaneous proceeding and there will be no parties. We request that persons interested in participating in this proceeding file a notice of participation. These notice filings should be made no later than December 1, 2023. All filings in this proceeding should be made pursuant to subparagraph 1204(a)(II)(C) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

21. Inquiries should be directed to Dan Greenberg (dan.greenberg@state.co.us).

II. **ORDER**

A. **The Commission Orders That:**

1. The Commission opens this miscellaneous proceeding to serve as a repository for data and information related to potential revisions to the Commission's Rules Regulating Electric Utilities in 4 *Code of Colorado Regulations* (CCR) 723-3 as they relate to transmission resources, consistent with the discussion above.

2. This Proceeding is designated as an administrative proceeding under 4 CCR 723-1-1004(b).

3. Interested parties are encouraged to make filings in this Proceeding in accordance with the deadlines set forth above.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 19, 2023.**

(S E A L)



ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

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Commissioners