

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0559EG

IN THE MATTER OF MODIFICATIONS TO THE COMMISSION’S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, AND ITS RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4, TO IMPLEMENT CERTAIN PROVISIONS FROM SENATE BILL 23-292 REGARDING BEST VALUE EMPLOYMENT METRICS AND ENERGY SECTOR PUBLIC WORKS PROJECTS.

**RECOMMENDED DECISION ADOPTING RULES AND
CLOSING PROCEEDING**

Issued Date: September 18, 2025

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I. PROCEDURAL BACKGROUND

1. On December 24, 2024, the Colorado Public Utilities Commission initiated this proceeding by issuing a Notice of Proposed Rulemaking (“NOPR”) to amend the Rules

Regulating Electric Utilities consistent with Senate Bill (“SB”) 23-292.¹ The NOPR referred the proceeding to an Administrative Law Judge (“ALJ”). The proceeding was subsequently assigned to the undersigned ALJ.

2. Atmos Energy Corporation (“Atmos”), Colorado Natural Gas, Inc. (“CNG”), Interwest Energy Alliance (“Interwest”), Public Service Company of Colorado (“Public Service”), The Rocky Mountain Environmental Labor Coalition, the Colorado Building and Construction Trades Council, and AFL-CIO (“the Labor Coalition”), Tri-State Generation and Transmission, Inc. (“Tri-State”) filed initial comments. Black Hills Colorado Electric, Inc. and Black Hills Colorado Gas, Inc., collectively doing business as Black Hills Energy, the Colorado Solar and Storage Association and the Solar Energy Industries Association, the Labor Coalition, Public Service, and Tri-State filed reply comments.

3. On March 4, 2025, at 11:00 a.m., the ALJ held the public comment hearing noticed in the NOPR. During the remote public comment hearing, the ALJ discussed the proposed rules and the initial and response comments with the participants at the hearing. In addition, Public Service and the Labor Coalition committed to work collaboratively to reach consensus and/or identify areas of disagreement regarding the proposed rules. Public Service and the Labor Coalition welcomed any other participant to participate in this stakeholder process. At the conclusion of the remote public comment hearing, the ALJ continued the remote public comment hearing to May 20, 2025 at 11:00 a.m. and established a deadline of April 4, 2025 for Public Service and the Labor Coalition to file a Report of their efforts with a blue-lined version of the rules showing their proposed changes to the proposed rules, and deadlines of April 23,

¹ Decision No. C24-0940.

2025 and May 7, 2025, for participants to file initial and reply comments, respectively, regarding the additional proposed changes in the Report.

4. On March 5, 2025, the ALJ issued Decision No. R25-0157-I that memorialized the continued schedule established at the March 4, 2025 remote public comment hearing.

5. On April 1, 2025 and April 18, 2025, Public Service filed Reports stating that the participants were working through the process of building consensus regarding changes to the proposed rules.

6. On April 21, 2025, Public Service filed a Third Status Report including its proposed blue-lined changes to the proposed electric and gas rules (“Consensus Rules”). As to the electric rules, the Third Status Report stated that Atmos and CNG take no position on the proposed changes, COSSA and SEIA provided no indication about whether they support, oppose, or take no position on those changes, and the rest of the participants support the proposed changes. As to the blue-lined proposed changes to the gas rules, the Third Status Report stated that Interwest and Tri-State take no position on the proposed changes, COSSA and SEIA provided no indication about whether they support, oppose, or take no position with respect to those proposed changes, and the remainder of the participants support the proposed changes. The great majority of the changes to the proposed rules included in the Third Status Report were to proposed rules 3001(p)/4001(y).

7. On May 20, 2025, at 11:00 a.m., the ALJ held the continued remote public comment hearing. During that hearing, the ALJ discussed the proposed blue-lined changes to the rules submitted with the Third Status Report. The participants who support the blue-lined changes filed with the Third Status Report stated that they would withdraw their earlier filed proposed changes if the blue-lined changes are adopted by the Commission. The ALJ continued

the remote public comment hearing to August 19, 2025, at 11:00 a.m. and informed the participants that an Interim Decision would issue including newly redlined rules drafted in light of the comments to date, followed by another round of initial and response comments.

8. On June 10, 2025, the ALJ issued Decision No. R25-0443-I that memorialized the decision to continue the remote public comment hearing to August 19, 2025, at 11:00 a.m.

9. On July 22, 2025, the ALJ issued Decision No. R25-0537-I that proposed further revisions to certain rules, posed several questions regarding the revisions proposed by the Commission, the ALJ, and the participants, and set deadlines of August 6 and 14, 2026 for further initial and response comments, respectively.

10. Atmos, CNG, the Labor Coalition, Public Service, and Tri-State filed initial written comments by the August 6, 2025 deadline. Black Hills, Public Service, and the Labor Coalition filed response comments by the August 14, 2025 deadline.

11. At 11:00 a.m. on August 19, 2025, the ALJ held the continued remote public comment hearing. The ALJ discussed the proposed rules and the second round of initial and response comments with the participants at the hearing. The ALJ then adjourned the hearing.

II. STATUTORY BACKGROUND

12. Governor Jared Polis signed SB 23-292, which amended Titles 24 and 40 of the Colorado Revised Statutes, on May 23, 2023. The legislative declaration of SB 23-292 states:

- (1) The General Assembly hereby finds and declares that:
 - (a) The energy industry in Colorado is undergoing a historic transformation to address threats posed by climate change, which includes efforts to diversify capacity, promote the development of renewable and other clean, non-carbon generation sources, and electrify major segments of the state's economy;

- (b) These developments will require massive investments of resources from the state and public utility companies, which will ultimately be paid by residents through future taxes and utility bills;
- (c) The safe and cost-effective delivery of these projects is vital to the public health and welfare of residents and the economic security of the state, and critical to ensure that adequate power is provided to Colorado homes and businesses;
- (d) Deficient planning of these resources can result in escalating utility bills and dangerous power outages if power supply is not maintained in sufficient capacity to meet future, growing demand. for these reasons, appropriate measures must be taken to protect future energy investments, promote successful construction delivery, and prevent errors in the planning and delivery of new facilities.
- (e) One of the most challenging aspects of energy facility construction is ensuring that projects are supported by capable craft labor resources. it is essential for these projects to be staffed by a reliable and adequate supply of properly trained workers in all applicable trades and crafts required for these facilities.
- (f) Energy sector public works projects built by or for the use of regulated utilities, like traditional public projects, are often built for the collective benefit of all citizens and residents of Colorado. these projects are often funded through public tax dollars or through the collective resources acquired through Colorado utilities billing customers. like tax dollars, these resources acquired through utility rates should demand a higher standard of public benefit back to the consumers and communities from which the resources were collected.
- (g) Extensive research shows that prevailing wage laws are effective in attracting better qualified workers to projects and promoting critically needed investments in apprenticeship training required to ensure adequate craft labor skill levels and productivity. likewise, the use of registered apprenticeship training programs and project labor agreements has been proven to be the most effective strategy for providing high-level skills training and

ensuring needed qualification credentialing for workers in the construction industry.

- (h) By providing project owners, developers, and contractors unique and unparalleled access to an adequate supply of well-trained, highly skilled craft labor in affected project areas, craft labor standards promote successful project delivery goals, including quality, safety, timeliness, and cost-efficiency, by providing effective quality control over craft labor supply capabilities, as well as risk avoidance to prevent disruptions and other labor performance problems caused by inadequate craft labor capabilities;
- (i) For these reasons, incorporating prevailing wage standards and apprenticeship requirements and encouraging project labor agreements for public utilities and other energy facility planning and construction is necessary to protect and promote the public's interest in these projects;
- (j) By incorporating well established quality contracting procurement tools, such as prevailing wages, apprenticeship utilization requirements, and project labor agreements into our energy resource planning, the State of Colorado will have the capabilities to better protect its energy investments, improve construction project delivery in the energy sector, fully document and evaluate the directives set forth in section 40-2-129, and create a clear set of standards for enforcement to achieve the law's intent for the benefit of Colorado workers and the communities where they live;
- (k) Use of these quality contracting tools is already incorporated into Colorado's traditional public procurement law as prevailing wage and apprenticeship policies adopted in sections 24-92-115 (7) and Part 2 of this Article 92. In addition, project labor agreements have been successfully used in Colorado in the past for projects in the energy sector and the broader private sector construction industry. these agreements have also been upheld by the courts, for example, in *Bldg. & Constr. Trades Council v. Associated Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 230, 231 (1993), due to their ability to help secure reliable craft labor staffing and promote timely project delivery.

- (1) Due to their benefits in promoting successful project delivery in projects assisted by federal grants and tax credits, the federal government is strongly encouraging the use of these quality contracting tools generally, and especially in the energy sector, where major federal assistance programs under the recent federal "Inflation Reduction Act of 2022", PUB. L. 117-169, are providing approximately three hundred seventy billion dollars in funding to promote clean energy sources across the country.
- (2) The General Assembly further finds and declares that because cost-effective, safe, and efficient generation, transmission, and distribution systems in the energy sector are vital to the State's economy and the public welfare and safety, quality control and risk avoidance measures are necessary to ensure that the construction of projects necessary for these systems are adequately staffed by properly trained and qualified craft labor personnel.

III. APPROACH

13. In rendering this Decision, the ALJ has carefully reviewed and considered all the comments filed in this Proceeding and provided at the public comment hearing, even if this Decision does not specifically address every comment, or every nuance of every comment.

IV. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Rules 3001/4001

1. Changes proposed in NOPR:

(j) "Craft labor certification" means all documentation and certification of payroll required for an energy sector public works project.

.....

(p) "Energy Sector Public Works (ESPW) project" is a project pursuant to § 24-92-301, C.R.S., et seq., that for purposes of these rules:

- (I) has the purpose of generating, transmitting, or distributing electricity or natural gas to provide energy to Colorado individual consumers and businesses;
- (II) is built by or for a utility, including any project for which energy is purchased through a power purchase or similar agreement;
- (III) has a total project cost of \$1,000,000 or greater;
- (IV) receives a presumption of prudence for at least \$500,000 in ratepayer funding as approved in any proceeding conducted by the Commission as part of an electric resource acquisition pursuant to rule 3600, et seq., or a request for a certification of public convenience and necessity pursuant to § 40-5-101, C.R.S. et seq.; and
- (V) includes power generation with a nameplate generation capacity of one megawatt or higher, or an energy storage system as defined by § 40-2-202, C.R.S., with an energy rating of one megawatt of power capacity or four megawatt hours of usable energy capacity or higher; or
- (VI) includes pollution controls, utility gas distribution, electric transmission, geothermal systems or thermal networks, electric vehicle charging infrastructure, or carbon capture and storage.

....

- (hh) “Project labor agreement,” pursuant to § 24-92-303(9), C.R.S., means a pre-hire collective bargaining agreement between a lead contractor and construction labor organization(s) covering the affected trades necessary to perform work on a project that establishes the terms and conditions of employment of the construction workforce and includes provisions that:
 - (I) set forth effective, immediate, and mutually binding procedures for resolving jurisdictional labor disputes and grievances arising before the completion of work;
 - (II) contain guarantees against strikes, lockouts, or similar actions;
 - (III) ensure a reliable source of trained, skilled, and experienced construction craft labor;

(IV) further public policy objectives regarding improved employment opportunities for minorities, women, or other economically disadvantaged populations in the construction industry, including persons from disproportionately impacted communities, to the extent permitted by state and federal law;

(V) permit the selection of the lowest qualified responsible bidder or lowest qualified responsible offeror without regard to union or non-union status at other construction sites; and

(VI) include other terms as the parties deem appropriate.

a. Comments

14. As to the requirement that an ESPW project must have a total project cost of \$1 million proposed in Rule 3001(p), Public Service “urge[d] the Commission to establish the filing of a CPCN application as the point in time to determine whether the project is an ESPW project.”² Public Service contended that “a post-hoc scenario would be especially problematic because it would not be possible for a utility or a contractor to go back in time to satisfy requirements that would have applied during construction had the project’s final cost been known earlier.”³ While not entirely clear, it appears that “post-hoc scenario” means a scenario in which the determination of whether a project is an ESPW project is made at some point after a CPCN application is filed.

15. Tri-State believed that proposed Rule 3000(p) was “not consistent with the statute” and recommended that the Commission merely incorporate the statutory definition by reference.⁴ Using the proposed definition would “create confusion regarding the applicability of

² PSCo’s Feb. 5, 2025 Initial Comments at p. 5.

³ *Id.*

⁴ Tri-State’s Feb. 5, 2025 Initial Comments at p. 2.

each provision.”⁵ COSSA/SEIA agreed with Tri-State and recommended that Rule 3000(p) be “simplified to effectuate the intent of the legislature.”⁶

16. Atmos, CNG, and Black Hills recommended removal of all references to concepts that apply solely to electricity from Rule 4001(y).⁷ Specifically, Atmos argued that “the references to generating electricity, power purchase agreements, projects approved as part of an electric resource acquisition, and power generation facilities are unnecessary in the Gas Rules.”⁸ CNG also recommended that the “coordinate” the dollar threshold for presumption of prudence purposes in proposed Rule 4001(y)(III) with the thresholds in Rule 4102 for when a gas utility must file an application for a CPCN.⁹

2. Changes Proposed in Consensus Rules & Decision No. R25-0537-I

a. Rule 3001(p)/4001(y)

17. In the Third Status Report and Decision No. R25-0537-I, the participants and the ALJ, respectively, proposed changes to the definition for “ESPW project,” as follows (original proposed changes shown in redline, changes proposed in Consensus Rules shown in blue line, and changes proposed in Decision No. R25-0537-I shown in green line):

3001. Definitions

....

(p) “Energy Sector Public Works (ESPW) project” is a project pursuant to § 24-92-301, C.R.S., et seq., that for purposes of these rules:

(I) For an investor-owned utility:

⁵ *Id.*

⁶ COSSA/SEIA Feb. 27, 2025 Reply Comments at p. 2.

⁷ Atmos’ Feb. 5, 2025 Initial Comments at p. 3; CNG’s Feb. 5, 2025 Initial Comments at p. 3; Black Hills’ Feb. 21, 2025 Reply Comments at p. 2.

⁸ Atmos’ Feb. 5, 2025 Initial Comments at p. 3.

⁹ CNG’s Feb. 5, 2025 Initial Comments at pp. 3-4.

- (IA) has the purpose of generating, transmitting, or distributing electricity ~~or natural gas~~ to provide energy to Colorado individual consumers and businesses;
 - (IB) is built by or for a utility, including any project for which energy is purchased through a power purchase or similar agreement;
 - (IC) has a total project cost of \$1,000,000 or greater, of which the utility will request Commission approval for ratepayers to pay at least \$500,000;
 - (ID) ~~receives a presumption of prudence for~~ ~~is funded by at least \$500,000 in ratepayer funding as approved in~~ and is included for approval through any proceeding conducted by the Commission as part of an electric resource acquisition pursuant to rule 3600, et seq., or a request for a ~~certification certificate~~ of public convenience and necessity pursuant to § 40-5-101, C.R.S., et seq.; and
 - (IE) ~~includes~~ consists of either:
 - (i) ~~electric~~ power generation with a nameplate generation capacity of one megawatt or higher, or an energy storage system as defined by § 40-2202, C.R.S., with an energy rating of one megawatt of power capacity or four megawatt hours of usable energy capacity or higher; or
 - (ii) ~~(VI) includes~~ pollution controls, ~~utility gas distribution,~~ electric transmission, ~~geothermal systems or thermal networks,~~ electric vehicle charging infrastructure, or carbon capture and storage.
- (II) For a cooperative electric generation and transmission association, any project in Colorado that:
- (A) has the purpose of generating or distributing electricity for the purposes of providing energy to Colorado individual consumers and businesses from utility customer funding of \$500,000 or more as approved by a cooperative electric association that is built by or for a utility;

- (B) has a total project cost of \$1,000,000 or greater; and
- (C) consists of either:
 - (i) electric power generation with a nameplate generation capacity of one megawatt or higher, or an energy storage system as defined by § 40-2202, C.R.S., with an energy rating of one megawatt of power capacity or four megawatt hours of usable energy capacity or higher; or
 - (ii)(VI) ~~includes pollution controls, utility gas distribution, electric transmission, geothermal systems or thermal networks, electric vehicle charging infrastructure, or carbon capture and storage.~~

4001. Definitions

....

- (y) “Energy Sector Public Works (ESPW) project” is a project pursuant to § 24-92-301, C.R.S., et seq., that for purposes of these rules:
 - (I) has the purpose of ~~generating, transmitting, or distributing electricity or~~ natural gas to provide energy to Colorado individual consumers and businesses;
 - (II) is built by or for a utility, ~~including any project for which energy is purchased through a power purchase or similar agreement;~~
 - (III) has a total project cost of \$1,000,000 or greater, of which the utility will request Commission approval for ratepayers to pay at least \$500,000;
 - (IV) ~~receives a presumption of prudence for is funded by at least \$500,000 in ratepayer funding as approved in~~ and is included for approval through any proceeding conducted by the Commission as part of an electric resource acquisition pursuant to rule 3600, et seq., or a request for a ~~certification certificate~~ of public convenience and necessity pursuant to § 40-5-101, C.R.S., et seq.; and

- (V) ~~includes power generation with a nameplate generation capacity of one megawatt or higher, or an energy storage system as defined by § 40-2202, C.R.S., with an energy rating of one megawatt of power capacity or four megawatt hours of usable energy capacity or higher; or~~
- (V) includes pollution controls, utility gas transmission and distribution, electric transmission, geothermal systems or thermal networks, and hydrogen-related infrastructure construction projects electric vehicle charging infrastructure, or carbon capture and storage.

(1) Comments

18. In Rules 3001(p)/4001(y), the Consensus Rules' blue-lined changes replace the "presumption of prudence" with "funding" as one of the criteria that establishes whether a project qualifies as an "Energy Sector Public Works Project." The Commission can (and has) approved CPCNs without approving a presumption of prudence as to the costs to build the project,¹⁰ which shifts the burden of proof from the utility to any party disputing whether the costs were prudently incurred and should be placed into rate base.¹¹ The proposed change thus clarifies that a project is an ESPW project, to which all of the obligations associated therewith attach, if the utility plans to recover at least \$500,000 of the costs of the project from ratepayers, regardless of whether a presumption of prudence regarding those costs has been granted by the Commission.

19. The Third Status Report also added a subsection defining ESPW projects for "cooperative electric generation and transmission associations" ("Coops"). However, the

¹⁰ See, e.g., Decision No. C20-0648 issued in Proceeding Nos. 19A-0728E & 20A-0063E on September 10, 2020 at pp. 21, 22-23 (¶¶ 49, 52). *Contra* Rule 3617(d) ("Effect of the Commission decision. A Commission decision specifically approving the components of a utility's [electric resource] plan creates a presumption that utility actions consistent with that approval are prudent.").

¹¹ *Id.* at p. 24 n. 98 ("a presumption of prudence is a burden-shifting exercise").

Commission's jurisdiction over such coops is limited.¹² The participants agree that, while TriState is currently the "primary" coop over which the Commission exercises jurisdiction, "both SB 23-292 and the Commission's rules are written broadly to include any other [Coops] that meet the applicable statutory definitions."¹³ Because additional Coops might come under the jurisdiction of the Commission, Rule 3001(p)(II)/4001(y)(II) are written broadly to cover any such Coops, and do not merely identify Tri-State.

20. In addition, § 24-92-303(5)(a)(I)(B), C.R.S. requires an ESPW project to be "approved in any proceeding conducted by the public utilities commission as part of an electric resource acquisition or requests for certificates of convenience and necessity for construction or expansion of a project." Rule 3102 states that a utility "need not apply to the Commission for approval of [a CPCN for] construction and operation of a facility or an extension of a facility which is in the ordinary course of business."¹⁴ Rule 3102 does not specify the cost above which a project is not in the ordinary course of business that requires a CPCN. This means that "non-ERP [electric] projects that do not require a CPCN would fall outside the definition of an ESPW project, even if the project cost exceeded \$1 million."¹⁵ This could incentivize a utility to forego filing for a CPCN on a non-ERP project to avoid the requirements of § 24-92-301 *et seq.*, C.R.S. Public Service acknowledges this,¹⁶ but "emphasizes that the Commission has the discretion to determine whether a CPCN is required as part of its review processes, based on otherwise

¹² See §§ 40-2-124, 40-9.5-101 *et seq.*, C.R.S.

¹³ Tri-State's Aug. 6, 2025 Comments at pp. 4-5.

¹⁴ In contrast, Rule 4102 specifies cost thresholds above which gas utilities must file an application for a CPCN for a gas project.

¹⁵ Public Service's Aug. 6, 2025 Comments at p. 6. See also Black Hills' Aug. 14, 2025 Reply Comments at p. 2 ("a non-ERP project that does not require a CPCN—even if it exceeds \$1M—should not be classified as ESPW.").

¹⁶ *Id.* at p. 8 (Public Service "understands there may be concerns of moral hazard wherein a developer may project the cost below the threshold in order to avoid compliance with ESPW requirements").

applicable criteria.”¹⁷ Those review processes are the reports required by Rules 3205(c) and 3206(d) that forecast generation and transmission projects that are necessary to be built in the succeeding three years either in the ordinary course of business or pursuant to a CPCN. Public Service contends that the Commission can order a utility to apply for a CPCN that the utility stated in the report would be built in the ordinary course of business.

21. Section 24-92-303(5)(b)(II), C.R.S. requires a project to cost at least \$1 million to qualify as a ESPW project. Cost estimates for the types of projects covered by § 24-92-301 *et seq.* can vary significantly from the final, actual cost of the project, with estimates typically gaining certainty (and potential variances diminishing) as the project progresses. The proposed rule, including the bluelined changes in the Third Status Report, does not specify at what point in the process it is determined whether the project satisfies the \$1 million requirement. The utility participants have stressed that a “post-hoc scenario” – in which initial cost estimates of a project are below the \$1 million threshold during an ERP or CPCN proceeding, but the cost estimates and final costs later surpass \$1 million thus qualifying the project as an ESPW project to which all of the statutory and rule-based obligations apply – would be suboptimal.¹⁸ Obviously, the utility could not go back in time and re-do the project in a way that satisfies the ESPW project requirements.

22. While recognizing that allowing the \$1 million project cost requirement to be determined based on estimates creates “moral hazard,” Public Service believes that “it is highly

¹⁷ *Id.* at p. 6.

¹⁸ Public Service’s Feb. 5, 2025 Initial Comments at p. 5; Black Hills’ Aug. 14, 2025 Reply Comments at p. 2 (“Reclassifying a project as ESPW due to cost overruns after it was initially below \$1M would create unnecessary complications.”). *But see* Tri-State’s Aug. 14, 2025 Reply Comments at p. 6 (“if a project that was not originally expected to exceed \$1 million later experiences cost increases such that the project’s cost does exceed \$1 million (thus meeting the ESPW Project definition), the project would then need to comply with all applicable ESPW Project rules from such point forward. Tri-State believes these circumstances are likely to be rare in practice.”).

unlikely that projects approved through an ERP or for which a utility would normally seek a CPCN would be proximate to the \$1 million threshold.”¹⁹ As a result, the likelihood that utilities will be given the opportunity to underestimate costs to avoid the ESPW requirements is low. Public Service further contends that “the adjudication process of any new project would provide ample opportunity for parties and the Commission to review and test the assumptions of the project.”²⁰ For these reasons, Public Service believes that the issue should not be addressed by a rule change, but instead “on a case-by-case basis in the applicable proceeding.”²¹ However, if it is addressed by a rule change, Public Service requests that the cost estimate that determines whether the ESPW regulations apply be the one “provided in the ERP or approved in the CPCN proceeding, as applicable.”²² CNG asserts that the ESPW regulations should not apply to a project until all costs are known and measurable.²³

23. Similarly, as to the requirement that at least \$500,000 be recovered from ratepayers for a project to qualify as an ESPW project, Decision No. R25-0537-I made changes to proposed rules 3001(p)(I)(C) & (D) designed to eliminate ambiguity about whether an ESPW Project requires a Commission decision that ratepayers will fund \$500,000 of a project that will cost at least \$1 million overall before it will be considered and treated as an ESPW Project. The ultimate decision about whether ratepayers will pay the costs of a project is made in a rate case after the project is used and useful, or at least close to being completed. The ALJ’s interpretation of the Colorado Energy Sector Public Works Project Craft Labor Requirements

¹⁹ Public Service’s Aug. 6, 2025 Initial Comments at p. 7.

²⁰ *Id.* at p. 8.

²¹ *Id.* at p. 7.

²² *Id.* at p. 8. *See also* Labor Coalition’s Aug. 14, 2025 Reply Comments at p. 2 (“The one million dollar threshold should be determined at the time of filing the CPCN. The calculation of costs and meeting the threshold will be the closest to reality at that time.”).

²³ CNG’s Aug. 6, 2025 Comments at p. 5.

Act is that the requirements therein attach to an ESPW project early in the project life, and not at the end when the utility is seeking to place the project's costs into rate base. The changes in Decision No. R25-0537-I are intended to make clear that the requirements of the Act apply to a project from its outset if the utility intends to seek ratepayer funding of at least \$500,000 of its costs.

24. Of course, such a bright-line rule creates the same risk of moral hazard noted by Public Service with respect to the \$1 million project cost requirement.²⁴ Specifically, a utility could have an incentive to falsely claim it intended to recover less than \$500,000 from ratepayers on a project at the outset of that project to evade the requirements of Act. However, like with the \$1 million cost requirement, Public Service and Black Hills believe that it will be “a rare circumstance” that a project approved in an ERP proceeding or for which a CPCN is obtained will cost anywhere close to the \$500,000 line.²⁵ Instead, such projects will cost far more than \$500,000 and utilities will thus not have a credible argument that they intended to recover less than \$500,000 from ratepayers at the outset. Echoing the adage that “rare cases make bad law,”²⁶ Public Service asserts that, rather than changing the existing proposed rule to address rare borderline projects, such projects should be addressed on a case-by-case basis.²⁷

(2) Analysis

25. The ALJ finds and concludes that the changes from the Consensus Rules and Decision No. R25-0537-I, as shown in Decision No. R25-0537-I, are in the public interest. The ALJ agrees that the risk is low that utilities will manipulate their cost estimates and plans to

²⁴ Public Service's Aug. 6, 2025 Initial Comments at p. 8; Black Hills' Aug. 14, 2025 Reply Comments at p. 2.

²⁵ Public Service's Aug. 6, 2025 Initial Comments at p. 8.

²⁶ See *N. Sec. Co. v. United States*, 193 U.S. 197, 364 (1904) (“hard cases make bad law”) (Holmes J., dissenting).

²⁷ *Id.* at p. 9.

recover costs from ratepayers in an attempt to evade the requirements of ESPW projects. Further, the Commission has sufficient processes to uncover and correct any such action. As a result, it is not in the public interest to re-write the rule to address such a low risk that could lead to unintended consequences. The ALJ rejects CNG's proposal to have a project be deemed an ESPW project only when the costs are known and measurable. Such an approach risks the "posthoc scenario" highlighted by Public Service in which initial cost estimates of a project are below the \$1 million threshold during an ERP or CPCN proceeding, but the cost estimates and final costs later surpass \$1 million thus qualifying the project as an ESPW project to which all of the statutory and rule-based obligations apply. The ALJ agrees that it is not in the public interest for such an outcome to occur.

B. Rules 3102(e)/4102(i)

26. In the Third Status Report, the participants proposed changes to Rules 3102(e)/4102(e) as follows (original proposed changes shown in redline and changes proposed in Consensus Rules shown in blueline):

3102/4102. Certificate of Public Convenience and Necessity for Facilities

....

- (e) Within 30 days of final Commission approval of an application pursuant to this rule, or after the last contract has been entered into, that includes one or more ESPW projects, the applicant or its contractor(s) shall notify the Division of Labor Standards and Statistics within the Colorado Department of Labor and Employment (CDLE) about the project to facilitate the collection of craft labor certification(s).

1. Comments

27. Public Service, Black Hills and Tri-State argue that the changes to proposed Rule 3102(e)/4102(i) are necessary because, at the time of an ERP or CPN proceeding, the

project developer may not have executed all of the contracts required for the project. As a result, any notification to the Division of Labor Standards and Statistics (“DLSS”) of the Department of Labor and Employment would be premature and, perhaps, misleading. Providing the option to notify the DLSS after the consummation of the last contract required for the project will be more efficient and accurately informative.²⁸

2. Analysis

28. The ALJ agrees with Public Service and Black Hills. Accordingly, the changes to Rules 3102(e)/4102(i) proposed in the Consensus Rules will be adopted.

C. Rules 3211, 3611/4211, 4611

29. The NOPR added Rules 3211 and 4211 and made changes to Rules 3611 and 4611 addressing Best Value Employment Metrics and contract terms. In Decision No. R25-0537-I, the ALJ requested comment regarding what information can and should be required of bidders in the ERP process to demonstrate compliance with BVE Metrics, and whether there are contract terms in addition to those listed in Proposed Rules 3211(b) and 4211(b) that should be included.

1. Comments

30. Public Service, Black Hills, and Tri-State state that bidders into an ERP should be required to provide detailed narrative descriptions, with contracts if available, as part of their bids, addressing how the bid complies with BVE Metrics and ESPW project requirements or how the bidder will comply with those requirements in the future. Public Service and Black Hills

²⁸ Public Service’s Aug. 6, 2025 Initial Comments at pp. 10-11; Black Hills’ Aug. 14, 2025 Reply Comments at p. 3; Tri-State’s Initial Comments at pp. 7-8.

believe that the existing language is adequate because it is clear but allows for “flexibility of implementation,” which may be important because Rules 3211 and 4211 implement new requirements.²⁹ In contrast, the Labor Coalition states that:

specific metrics should be reported showing if workers are going to be paid industry standard wages (*i.e.* prevailing wages), if workers have access to both health and retirement benefits (*i.e.* prevailing wage benefit packages), if workers have access to Bonafide training opportunities (*i.e.* registered apprenticeship programs), and if local labor is going to be utilized to build the project (*i.e.* prevailing wages benefits) when workers receive prevailing wages identified for the geographical area the project is being built in.³⁰

Public Service does not oppose the addition of such metrics to Rules 3211 and 4211, but requests that it be made optional for a utility to include the cited metrics in their filings. Making it optional will preserve the flexibility that Public Service believes is necessary with the new statute.

2. Analysis

31. The ALJ agrees with Public Service, Black Hills, and Tri-State and will make no further changes to the cited proposed rules. The ALJ appreciates the Labor Coalition’s suggested language, but finds that the language of Rules 3211 and 4211 is consistent with SB 23-292. The ALJ agrees that maintaining some flexibility in implementing the new statutory requirements is necessary. If experience with these rules developed over time indicates that more specificity is required, the ALJ is confident that the Commission will make further changes.

²⁹ Public Service’s Aug. 6, 2025 Initial Comments at p. 9; Black Hills’ Aug. 14, 2025 Reply Comments at p. 3; Tri-State’s Initial Comments at p. 8.

³⁰ Labor Coalition’s Aug. 6, 2025 initial Comments at p. 3.

D. Rule 3211(c)

32. The blue-lined changes submitted with the Third Status Report proposed to add the following subsection to Rule 3211(c):

(III) A project that is exempt under 3211(f)(II), may certify compliance with the material contract terms pursuant to paragraph 3211(b) in lieu of submitting documentation for certain BVE metrics as otherwise required by subparagraphs 3211(a)(I) and (VI), by meeting the applicable requirements of the Inflation Reduction Act pursuant to § 24-92-304(1)(c)(III), C.R.S.

In Decision No. 25R-0537-I, the ALJ requested comment regarding why this provision should be adopted for projects that, by the proposed rule's express terms, are exempt from the requirements Rule 3211. The ALJ further inquired as to whether the proposed rule is enforceable by the Commission.

1. Comments

33. Tri-State notes that many of its projects “would not qualify as ESPW Projects because they are outside of Colorado, the energy is procured through power purchase agreements, or the projects are exempt pursuant to the federal Inflation Reduction Act provisions referenced in C.R.S. § 24-92-304(1)(c)(III).” However, Tri-State proposed Rule 3211(c)(III) “to avoid confusion by explicitly acknowledging the exempt status of such projects while still ensuring that these projects adhere to the legislative intent through compliance with federal requirements.”³¹ Tri-State would do so by “certifying compliance with the applicable federal labor standards (in lieu of submitting certain BVE Metrics documentation that would otherwise be required).”³² The Labor Coalition believes that the Commission “should have authority to

³¹ Tri-State's Aug. 6, 2025 Initial Comments at p. 9.

³² *Id.*

ensure that if a utility or contractor seeks the [Inflation Reduction Act] exemption that it is not used to simply bypass the labor standards in the Energy Sector Prevailing wage law.”³³

2. Analysis

34. The ALJ appreciates the comments and, based on them, will maintain proposed Rule 3211(c)(III) in the rules.

E. Rules 3618(a)/4102(i)

35. In the NOPR, the Commission proposed changes to Rule 3618(a) addressing the annual reports that utilities are required to file addressing their progress in implementing their approved ERPs. In the NOPR, the Commission added Rule 3618(a)(VI)-(VII) addressing inclusion in the report of information concerning the utility’s implementation of BVE metrics and submission of craft labor certifications to the DLSS , and the Third Status Report made minor modifications to the Commission’s proposed language. In Decision No. R25-0537-I, the ALJ requested comment on: (a) what information should be provided by utilities in annual progress reports and should the information parallel the information that bidders were required to provide based on bid documents; and (b) should a standard data template be developed to be used by all entities that are required to submit craft labor certification data to DLSS and, if so, what should it include?³⁴

1. Comments

36. Public Service and Tri-State requested that the Commission not require a standard template because the DLSS has responsibility for review and determination of compliance with applicable labor requirements and thus should make such a template if it deems one necessary.

³³ Labor Coalition’s Aug. 6, 2025 Initial Comments at p. 3.

³⁴ Decision No. R25-0537-I at p. 8 (¶ 18).

Neither opposes the creation of such a template provided that its use is optional and not mandatory.³⁵ CNG suggests that, as to Rule 4102(i), the Commission develop a template with certain basic reporting fields, such as contractors' identifying information and copies of certifications.³⁶ CNG also requests that Rule 4201(i) be modified "to allow 90 days from the date of final Commission approval of an application to notify DLSS about the project to facilitate the collection of craft labor certifications."³⁷

2. Analysis

37. The ALJ does not believe that any further changes to proposed Rules 3618(a) and 4102(i) are warranted. The ALJ concludes that, as the governmental entity with primary enforcement responsibility in this area, DLSS should make its own template, if it so chooses.

38. Pursuant to the provisions of § 40-6-109, C.R.S., the ALJ recommends that the Commission adopt the attached rules.

V. ORDER

A. The Commission Orders That:

1. The Rules Regulating Electric Utilities and the Rules Regulating Gas Utilities attached to this Recommended Decision are adopted.

³⁵ Public Service's Aug. 6, 2025 Initial Comments at p. 4; Tri-State's Aug. 6, 2025 Initial Comments at pp. 9-10.

³⁶ CNG's Aug. 6, 2025 Initial Comments at pp. 5-6.

³⁷ *Id.* at p. 6.

2. The rules in legislative format (strikethrough/redline) are attached to this Recommended Decision as Attachments A (for Electric Rules) and Attachment C (for Gas Rules). The rules in final format are attached to this Recommended Decision as Attachments B (for Electric Rules) and Attachment D (for Gas Rules). They are also available in the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFL.Show_Docket?p_session_id=&p_docket_id=24R-0559EG

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is effective as of the Issued Date.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be made available to all parties in the proceeding, who may file exceptions to it.

- a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge