

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 19M-0661EG

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IN THE MATTER OF THE IMPLEMENTATION OF § 40-3-117, C.R.S. REGARDING AN  
INVESTIGATION INTO PERFORMANCE-BASED RATEMAKING.

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**COMMISSION DECISION OPENING A MISCELLANEOUS  
PROCEEDING AND DESIGNATING COMMISSIONER  
GAVAN AS HEARING COMMISSIONER**

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Mailed Date: December 5, 2019

Adopted Date: December 4, 2019

**I. BY THE COMMISSION**

**A. Statement**

1. Pursuant to § 40-3-117, C.R.S. the Public Utilities Commission (Commission or PUC) opens this proceeding to explore performance-based regulation (PBR) and submit a report to the Senate Transportation and Energy Committee and the House of Representatives Energy and Environment Committee. The Commission designates Commissioner John Gavan as Hearing Commissioner,<sup>1</sup> pursuant to § 40-3-117, C.R.S., to work with the Staff of the Colorado Public Utilities Commission (Staff), and take input from stakeholders and other interested participants to review performance-based regulation (PBR) and performance-based incentive mechanisms (PIMs). The result of this examination will be a report on financial performance-based incentives and performance-based metric tracking for Colorado's investor owned utilities.

2. Section 40-3-117, C.R.S directs the Commission to investigate

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<sup>1</sup> At the Commissioners' Weekly Meeting on June 26, 2019, the Commissioners agreed to divide responsibilities for the first stages of implementation of the new obligations in the PUC Sunset Bill, Senate Bill 19-236 with Chairman Ackermann having responsibility for Distribution Resource Planning, Commissioner Gavan for Performance Based Ratemaking, and Commissioner Koncilja for Colorado Transmission Coordination Act.

financial performance-based incentives and performance-based metric tracking to identify mechanisms for aligning utility operations, expenditures, and investments with various public benefit goals, including safety, reliability, cost efficiency, emissions reductions, and expansion of distributed energy resources.

3. Further, the statute requires that the examination include a review of “existing and potential metrics, including future test years and consideration of new performance-based incentives.”

4. As a result of the review, the Commission is directed to submit its findings in a report (PBR Report) to the Senate Transportation and Energy Committee and the House of Representatives Energy and Environment Committee by November 30, 2020. This report is to include:

a general determination as to whether a transition to performance-based metrics regulation of a regulated utility would be net beneficial to the State, in terms of meeting stated objectives of the Commission and other related statutory requirements;

actions that the Commission may pursue to guide the change to performance-based metrics regulation;

directives to be given to utilities;

a list of types of future litigated proceedings within which the report could be implemented; and

a proposed timeline for transition to performance-based regulation.

5. Additionally, the report can include recommendations of legislative changes necessary to “fully realize the benefits of performance-based metrics regulation.”

6. We open this miscellaneous proceeding to conduct the examination contemplated by § 40-3-117, C. R. S. The sole purpose of this proceeding is to address the requirements of § 40-3-117, C. R. S. and submit the required report to the Senate Transportation and Energy Committee and the House of Representatives Energy and Environment Committee. This

proceeding will serve as a repository for the filing of comments, studies, and analyses, and will serve as a platform from which to conduct workshops and Commissioner Informational Meetings (CIMs), pose questions, discuss processes, and issue orders.

7. Through the course of this miscellaneous proceeding, we will invoke, pursuant to 4 *Code of Colorado Regulations* (CCR) 723-1-1111 of the Commission's Rules of Practice and Procedure, the "Permit, but Disclose" process. Interested persons may schedule *ex parte* presentations to a Commissioner that shall include Commission Staff provided that the contacts relate solely to the PBR investigation, and do not concern any matter pending before the Commission in another proceeding.<sup>2</sup> Within two business days following a permitted presentation, the person requesting the meeting is required to file in this Proceeding a letter disclosing the contact with a copy of materials provided to the Commissioner during the meeting.

8. We will attempt to accommodate all reasonable requests for *ex parte* meetings, subject to the schedule and availability of each Commissioner. To schedule an *ex parte* presentation with a Commissioner, an interested person should contact the Executive Assistants to the Commissioners and should clarify that the presentation is associated with this Proceeding.

9. We encourage stakeholders to file a notice of participation in this proceeding; parties are encouraged to file such a notice by January 8, 2020.

## II. **BACKGROUND**

10. PBR is a broad topic comprising rate setting alternatives and a wide variety of incentive mechanisms. Since the 1990s, PBR has been introduced in various forms as an alternative to traditional cost of service regulation, through which utility commissions set rates based on approved costs and anticipated revenues of a utility. With technological advances and

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<sup>2</sup> Any discussions within this process that are outside the scope of this proceeding will be considered inappropriate *ex parte* communications.

energy policy goals that include reduced energy demand and increased distributed resources, adjustments to cost of service regulation have become necessary to address, among other concerns, electric grid reliability and safety, and the financial health of utilities. A number of states, as well as several European nations, have employed alternative ratemaking strategies and performance-based incentive mechanisms with varying degrees of success.

11. PBR and PIMs are not new to the Commission, as performance-based incentive measures have been investigated in two proceedings and included in a number of proceedings for at least 15 years. A list of PIMs in Commission proceedings is extensive, with examples including: DSM performance incentives, electric trading margin sharing, base load energy and economic purchase benefits, quality of service plans, revenue decoupling, earnings sharing, cost sharing, renewable energy standard (RES) and renewable energy credits (RECs), generation plant efficiency and an equivalent availability factor performance mechanism (EAFPM), grid reliability, and multi-year rates. This list is not exhaustive as to performance measures implemented by the Commission nor as to the specific proceedings in which these measures have been ordered, but serves as an indicator of what the Commission has undertaken with regard to performance-based incentives and provides a foundation for the review required by § 40-3-117, C.R.S.

12. Other states' experiences with PBR and PIMs are instructive and should be considered in this proceeding. We note that Hawaii has recently begun a comprehensive review of PBR for the state's utilities, but similar activities have been undertaken in Oregon, Minnesota, and California, among others. Multi-year rate plans and formulaic rate setting have been ordered in Maryland, Massachusetts, New York, and North Carolina. The lessons learned from other states will be an important part of our review of new performance-based incentives, as required by § 40-3-117, C.R.S.

### **III. DISCUSSION**

13. Section 40-3-117, C.R.S. specifies that the review of financial performance-based incentives and performance-based metric tracking is to identify those that will align regulated utility operations, expenditures, and investments, with public benefit goals, which are defined as safety, reliability, cost efficiency, emissions reductions, and expansion of distributed energy resources. We also note that quality of customer service is an important public benefit goal. Therefore, the PBR Report should provide an analysis of Commission-ordered PIMs, whether still in place or discontinued, with regard to the public benefit goals articulated in § 40-3-117, C.R.S. and quality of customer service. Consistent with the statute, the PBR Report shall also include a review of future test years and consideration of new performance-based incentives.

14. Stakeholder input will be important in the process of identifying and reviewing PIMs and to that end, stakeholders representing ratepayers, utilities, environmental groups, and other governmental entities will be encouraged to submit comments and participate in workshops throughout the process. Additionally, representatives from organizations that have assisted other states in evaluating performance-based regulation are invited to participate through comments and workshop participation.

15. The PBR Report must be submitted to the Senate Transportation and Energy Committee and the House of Representatives Energy and Environment Committee by November 30, 2020, so we anticipate an expedited schedule of comments, reply comments, and workshops. In order to maximize efficiency, we anticipate three cycles of comments and associated workshops focused on how PBR and existing and potential PIMs meet the public benefit goals of 1) safety and reliability, 2) cost efficiency, and 3) emissions reductions and expansion of distributed energy resources. In addition to considering public benefit goals, PBR should be reviewed against the

Commission's mandate to protect public interest,<sup>3</sup> establish just and reasonable rates,<sup>4</sup> and a maintain the utility's right to make a profit,<sup>5</sup> as referenced in § 40-3-117(2)(a)(I).

16. A schedule for comments and workshops will be provided in a separate decision. We do, however, anticipate completing all comments and workshops by July 2020, in order to prepare the PBR Report by the November 30, 2020 deadline. A schedule for comments on cost efficiency, and emissions reductions and expansion of distributed energy resources, will be issued at a later date.

#### IV. **ORDER**

##### **A. The Commission Orders That:**

1. The Commission opens this miscellaneous proceeding for the purpose of investigating performance-based incentive mechanisms and completing a report to the Senate Transportation and Energy Committee and the House of Representatives Energy and Environment Committee as required by § 40-3-117, C.R.S., consistent with the discussion above.

2. This proceeding shall serve as a platform to conduct the statutorily required investigation specified in § 40-3-117, C.R.S., and will serve as a platform from which to receive comments, conduct workshops, and hold commissioner information meetings.

3. This Proceeding is designated as an administrative proceeding under 4 *Code of Colorado Regulations* 723-1-1004(b).

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<sup>3</sup> Consolidated Freightways Corp. v. Public Util. Comm'n, 158 Colo. 239, 406 P.2d 83 (1965)

<sup>4</sup> Cottrell v. City and County of Denver, 636 P.2d 703 (Colo. 1981) and Consumers' League of Colorado v. Colorado and S.R. Co., 53 Colo.54, 125 P.577 (1912)

<sup>5</sup> Pub. Serv. Co. v. Public Util. Comm'n, 644 P.2d 933 (Colo. 1982)

4. This Proceeding will follow the “Permit, but Disclose” process pursuant to Rule 1111 of the Commission’s Rules of Practice and Procedure 4 *Code of Colorado Regulations* 723-1.

5. The Commission designates Commissioner John Gavan as the Hearing Commissioner.

6. Persons interested in participating in this proceeding are encouraged to file a notice of participation by January 8, 2020.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING  
December 4, 2019.**

(S E A L)



ATTEST: A TRUE COPY

*Doug Dean*

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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FRANCES A. KONCILJA

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JOHN GAVAN

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Commissioners