

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-3

#### PART 3 RULES REGULATING ELECTRIC UTILITIES

##### GENERAL PROVISIONS

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[indicates omission of unaffected rules]

##### 3001. Definitions.

(XX) “Beneficial electrification” means a utility’s change in the energy source powering an end use from a nonelectric source to an electric source, including, but not limited to, transportation, water heating, space heating, or industrial processes, if the change: reduces system costs for the utility’s customers; reduces net carbon emissions; or provides for a more efficient utilization of grid resources.

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[indicates omission of unaffected rules]

##### COST OF CARBON DIOXIDE EMISSIONS

##### 3550. 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 this rule. Cooperative electric generation and transmission associations are subject to this rule.

##### 3551. Overview and Purpose.

- (a) The purpose of this rule is to establish the cost of carbon dioxide emissions pursuant to § 40-3.2-106, C.R.S.
- (b) All utilities shall consider the cost of carbon dioxide emissions, as determined by the Commission in accordance with rule 3552, when determining the cost, benefit, or net present value of any plan or proposal submitted by the utility in one of the following proceedings:

- (I) an application for approval of an electric resource plan submitted pursuant to the Commission's Electric Resource Planning Rules;
  - (II) a proceeding that considers or proposes the acquisition of new electric generating resources, including, but not limited to:
    - (A) an application for approval of a Clean Energy Plan pursuant to § 40-2-125.5, C.R.S.;
    - (B) an application for a certificate of public convenience and necessity for the construction or expansion of generating capacity pursuant to rule 3205; or
    - (C) an application for approval of a transmission plan filed pursuant to the Commission's Transmission Planning Rules;
  - (III) an application for approval of the retirement of existing utility generation;
  - (IV) an application for approval of a RES Compliance Plan filed pursuant to rule 3656 or any other application related to § 40-2-124, C.R.S.;
  - (V) an application for approval of an electric demand-side management plan, an application for the establishment of energy savings and demand reduction goals pursuant to § 40-3.2-104(2), C.R.S., or any other application related to § 40-3.2-104, C.R.S.;
  - (VI) an application for approval of a program for regulated activities to support widespread transportation electrification pursuant to § 40-5-107, C.R.S.; or
  - (VII) an application for approval of a program for regulated activities to support beneficial electrification as defined in paragraph 3001(XX).
- (c) The Commission shall apply a cost of carbon dioxide emissions, as determined by the Commission in accordance with rule 3552, to the non-energy benefits for programs that are defined to be beneficial electrification.

**3552. Calculation of the Cost of Carbon Dioxide Emissions.**

- (a) The cost of carbon dioxide emissions shall be established by the Commission based on the most recent social cost of carbon dioxide developed by the federal government, in accordance with the following.
  - (I) The cost of carbon dioxide emissions shall not be less than \$46.00 per short ton in 2020 dollars.
  - (II) The Commission shall use an escalation rate equal to or greater than the central value escalation rates established in the 2016 technical support document of the federal Interagency Working Group on Social Cost of Greenhouse Gases entitled "Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis - Under Executive Order 12866."

- (b) No later than August 1 of each year, Commission staff shall compute the cost of carbon dioxide emissions for each of the following 40 years and present its calculations to the Commission. The Commission will open a proceeding and give notice of the cost of carbon dioxide emissions calculated by Commission staff. Any interested person may file comments regarding the cost of carbon dioxide emissions in accordance with the Commission's notice.
- (c) No later than November 1 of each year, the Commission shall issue a written decision approving or modifying the cost of carbon dioxide emissions as calculated by Commission staff.

**3553. – 3574. [Reserved].**

**WORKFORCE TRANSITION PLANS**

**3575. Applicability.**

This rule shall apply to all electric utilities in the state of Colorado except municipally owned electric utilities and cooperative electric associations.

**3576. Overview and Purpose.**

The purpose of this rule is to require electric utilities to include a workforce transition plan, pursuant to § 40-2-133, C.R.S., in an Electric Resource Plan proceeding or other proceeding that addresses an accelerated retirement of certain electric generating facilities.

**3577. Contents of the Workforce Transition Plan.**

- (a) The utility shall include a workforce transition plan in any electric resource plan file filed pursuant to the Commission's Electric Resource Planning rules or in any other application filing that includes a proposed accelerated retirement of an electric generation facility.
- (b) To the extent practicable, a workforce transition plan shall include estimates of:
  - (I) the total number of workers at the electric generating facility to be retired, including all workers who deliver fuel directly to the facility, employed either by the utility or by a contractor of the utility;
  - (II) the total number of workers whose existing jobs, as a result of the retirement of the facility, will be retained, and the total number of workers whose existing jobs will be eliminated;
  - (III) with respect to the workers whose existing jobs will be eliminated due to the retirement of the electric generating facility, the total number and the number by job classification of workers:
    - (A) whose employment will end without them being offered other employment;
    - (B) whose employment will end as planned retirements;
    - (C) whose employment will end upon being offered early retirement;

- (D) whose employment will end through voluntary separation;
- (E) who will be retained by being transferred to another electric generating facility;
- (F) who will be retained by being offered other employment by the utility; and
- (G) who will be retained to continue to work for the utility in a new job classification.
- (IV) If the utility is replacing the facility being retired with a new electric generating facility the workforce transition plan shall also include the total number of:
  - (A) workers from the retired facility who will be employed at the new electric generating facility; and
  - (B) jobs at the new electric generating facility that will be outsourced to contractors or subcontractors.

**3578. – 3599. [Reserved].**

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[indicates omission of unaffected rules]

## **ELECTRIC RESOURCE PLANNING**

### **3600. 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 the~~ requirements as specified in rule 3605.

### **3601. Overview and Purpose.**

- (a) The purpose of these rules is to establish a process to determine the need for additional electric resources by electric utilities subject to the Commission's jurisdiction and to develop cost-effective resource portfolios to meet such need reliably.
- (b) An electric resource plan proceeding is conducted in two phases. In Phase I, the Commission reviews and renders a decision on the utility's proposed electric resource plan, which includes an assessment of the need for resources and a proposal to acquire resources to meet this need. The Commission also approves the process for evaluating bids to the utility's competitive solicitation and establishes the modeling parameters, including inputs and assumptions, the utility shall use for the presentation and consideration of potential cost-effective resource portfolios. In Phase II, the utility solicits bids and evaluates potential resources in accordance with the Commission's determinations in Phase I, and the Commission renders a decision establishing a final cost-effective resource plan.

- (c) It is the policy of the state of Colorado that ~~a primary goal~~s of electric utility resource planning are: to minimize the net present value of revenue requirements; to reduce the emissions of carbon dioxide and other greenhouse gases; and to. ~~It is also the policy of the state of Colorado that the Commission~~ gives the fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies.

### 3602. Definitions.

The following definitions apply to rules 3600 through ~~3649~~3617. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) "Availability factor" means the ratio of the time a generation 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 generation 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) "Cost-effective resource plan" means a designated combination of new resources that the Commission determines can be acquired and operated at a reasonable cost and rate impact.
- (d) "Demand-side resources" means energy efficiency, energy conservation, load management, and demand response or any combination of these measures.
- (e) "Electric resource plan" or "plan" means a utility plan consisting of the elements set forth in rule 3604.
- ~~(f)~~ "End-use" means the light, heat, cooling, refrigeration, motor drive, or other useful work produced by equipment that uses electricity or its substitutes.
- ~~(fg)~~ "Energy conservation" means the decrease in electricity requirements of specific customers during any selected time period, resulting in a reduction in end-use services.
- ~~(gh)~~ "Energy efficiency" means the decrease in electricity requirements of specific customers during any selected period with end-use services of such customers held constant.
- (i) "Generic resource" means the representation of a potential new supply-side utility resource for benchmarking or modeling purposes that embodies the estimated cost and performance of the represented technology without regard to a specific site location. A generic resource is generally represented by: capacity (nameplate and summer rating or incremental capacity credit); capital and fixed operations and maintenance costs; transmission interconnection and grid upgrade costs; variable operations and maintenance costs (fuel and heat rates); book (useful) life; ramp rates and production curves; forced outage rates; typical annual maintenance requirements; emission rates; and indicative pricing (levelized costs).
- ~~(hj)~~ "Heat rate" means the ratio of energy inputs used by a generation facility expressed in BTUs (British Thermal Units), to the energy output of that facility expressed in kWh.

- (ik) "Modeling error or omission" means any incorrect, incomplete, or improper input to computer-based modeling performed by the utility, for evaluating a proposed resource, ~~of a magnitude~~ that materially alters the model results.
- (jl) "Net present value of revenue requirements" means the current worth of the total expected future revenue requirements associated with a particular resource portfolio, expressed in dollars in the year the electric resource plan is filed as discounted over the planning period by the appropriate discount rate.
- (km) "Planning period" means the future period ~~for which a utility develops its plan, and the period,~~ over which ~~the costs and benefits of new resources are evaluated.~~ The planning period defines the time when net present value of revenue requirements for resources ~~are is~~ calculated. For purposes of this rule, the planning period ~~is twenty to forty years and begins from no later than~~ the January 1 following the date the utility files its plan with the Commission and extends either through the 20-year period following the last year of the resource acquisition period or the last year of the proposed contract term length in the proposed request for proposals filed pursuant to paragraph 3614(d), whichever is longer.
- (ln) "Potential resource" means a generation facility or energy storage system bid into a competitive acquisition process in accordance with an approved resource electric resource plan.
- ~~(m) "Renewable energy resources" means all renewable energy resources as defined in the Commission's RES Rules.~~
- (no) "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 and energy requirements. The resource acquisition period begins ~~from no later than the January 1 following~~ the date the utility files its electric resource plan with the Commission.
- ~~(o) "Resource plan" or "plan" means a utility plan consisting of the elements set forth in rule 3604.~~
- (p) "Resources" means supply-side resources, energy storage systems and demand-side resources used to meet electric system requirements.
- ~~(q) "Section 123 resources" means new energy technology or demonstration projects, including new clean energy or energy efficient technologies under § 40-2-123(1)(a), C.R.S. and § 40-2-123(1)(c), C.R.S., and Integrated Gasification Combined Cycle projects under § 40-2-123(2), C.R.S.~~
- (rq) "Supply-side resources" means resources that provide electrical energy or capacity to the utility. Supply-side resources include utility owned generation facilities and energy or capacity purchased from other utilities and non-utilities.
- ~~(s) "Typical day load pattern" means the electric demand placed on the utility's system for each hour of the day.~~

**3603. Electric Resource Plan Filing Requirements.**

- (a) ~~Jurisdictional e~~Electric utilities providing service to more than 500,000 retail customers shall file an electric resource plan pursuant to these rules every four years beginning March 31, 2021~~October 31, 2015~~. Electric utilities providing service to less than 500,000 retail customers shall file an electric resource plan pursuant to these rules every four years beginning March 31, 2022. Cooperative electric generation and transmission associations shall file electric resource plans in accordance with paragraph 3605(a). A filing pursuant to this paragraph 3603(a) initiates a Phase I proceeding.
- (b) 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.
- (~~bc~~) Each jurisdictional electric utility shall contemporaneously file with its electric resource plan submitted under paragraph 3603(a), a motion or motions seeking extraordinary protection of information listed as highly confidential pursuant to paragraph 3604(j) and consistent with rule 1101 of the Commission's Rules of Practice and Procedure. The utility shall specifically address appropriate confidentiality protections and nondisclosure requirements for modeling inputs and assumptions that may be used to evaluate a potential resource and that reasonably relate to that facility. The utility's motion or motions shall specify that response time shall run concurrently with the intervention deadline established in the ~~resource~~-plan proceeding. Finally, during the course of the ~~resource~~-plan proceeding, a utility may file additional motions seeking extraordinary protection of information for good cause shown.

**3604. Contents of the Electric Resource Plan.**

The utility shall file an electric resource 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 the following.

- (a) ~~A statement of the utility specified~~The proposed resource acquisition period~~and planning period;~~however the resource acquisition period for the initial filing submitted in accordance with paragraph 3603 shall extend through 2030. The utility shall consistently use the specified resource acquisition and planning periods throughout the entire electric resource plan and resource acquisition process. The utility shall include a detailed explanation as to why the specific period ~~lengths were was~~ chosen in light of the assessment of the needs of the utility system.
- (b) An annual electric demand and energy forecast developed pursuant to rule 3606.
- (c) An ~~evaluation~~assessment of existing resources developed pursuant to rule 3607.
- (d) An ~~evaluation~~assessment of transmission resources pursuant to rule 3608.
- (e) An assessment of planning reserve margins and contingency plans for the acquisition of additional resources developed pursuant to rule 3609.

- (f) An assessment of the need for additional resources developed pursuant to rule 3610 and the utility's plan for acquiring these resources for Commission review in Phase I. The utility shall include a loads and resources table for the resource acquisition period and a generic expansion plan for the entire resource planning period.
- (g) ~~The utility's plan for acquiring these resources pursuant to rule 3611, including a~~ description of the projected emissions, in terms of pounds per MWH and short-tons per year, of sulfur dioxide, nitrogen oxides, particulate matter, mercury and carbon dioxide for any resources proposed to be owned by the utility and for any new generic resources included in the utility's modeling for its electric resource plan.
- (h) The cost of the projected carbon dioxide emissions using the cost calculated by the Commission pursuant to rule 3552.
- (~~h~~) The annual water consumption for each of the utility's existing generation resources, and the water intensity (in gallons per MWH) of the existing generating system as a whole, as well as the projected water consumption for any resources proposed to be owned by the utility and for any new generic resources included in the utility's modeling for its electric resource plan.
- (~~h~~) The proposed Requests for Proposals (RFP(s)) the utility intends to use to solicit bids for energy and capacity resources to be acquired through a competitive acquisition process, including model contracts, pursuant to ~~rule 3616~~ paragraph 3614(d).
- (~~j~~) A list of the information related to the electric resource plan proceeding that the utility claims is confidential and a list of the information related to the ~~resource~~ plan proceeding that the utility claims is highly confidential. The utility shall also list the information that it will provide to owners or developers of a potential resource in RFP documents or under paragraphs 3613(a) and (b). The utility shall further explicitly list the protections it proposes for bid prices, other bid details such as best value employment metrics, information concerning a new resource that the utility proposes to build and own as a rate base investment, other modeling inputs and assumptions, and the results of bid evaluation and selection. The protections sought by the utility for these items shall be specified in the motion(s) submitted under paragraph 3603(b). For good cause shown the utility may seek to protect additional information as confidential or highly confidential by filing the appropriate motion under rule 1101 of the Commission's Rules of Practice and Procedure in a timely manner.
- (~~k~~) An assessment of potential cost-effective early retirements of utility-owned resources with retirement dates during the planning period, including the costs associated with incremental depreciation expenses and estimated operational and capital savings. For each early retirement reviewed, the utility shall describe the replacement resource need, possible system reliability impacts, and corrective actions for such impacts. Descriptions of at least three alternate plans that can be used to represent the costs and benefits from increasing amounts of renewable energy resources, demand side resources, energy storage systems, or Section 123 resources as defined in paragraph 3602(q) potentially included in a cost effective resource plan. One of the alternate plans shall represent a baseline case that describes the costs and benefits of the new utility resources required to meet the utility's needs during the planning period that minimize the net present value of revenue requirements and that complies with the RES, 4 CCR 723-3-3650, et seq., as well as with the demand side resource requirements under § 40-3-2-104, C.R.S. The other alternate plans shall represent alternative combinations of resources that meet the same



~~resource needs as the baseline case but that include proportionately more renewable energy resources, demand side resources, energy storage systems, or Section 123 resources. The utility shall propose a range of possible future scenarios and input sensitivities for the purpose of testing the robustness of the alternate plans under various parameters.~~

- ~~(m)~~ An assessment of the costs and benefits of early retirements of utility-owned resources and the acquisition of new utility resources required to reduce the carbon dioxide emissions associated with the utility's sales by 80 percent from 2005 levels by 2030.
- ~~(n)~~ A proposed base case portfolio of resources and at least one proposed alternative portfolio of resources to calculate and to present the associated net present value of revenue requirements using the cost of carbon emissions calculated by the Commission pursuant to rule 3552. The utility also may propose different costs of carbon emissions to be used with respect to the alternative portfolios of resources.
- ~~(lo)~~ An assessment of the costs and benefits of the integration of intermittent renewable energy resources on the utility's system, ~~including peer reviewed studies~~, consistent with the amounts of renewable energy resources the utility proposes to acquire.
- ~~(mp)~~ Modeling assumptions and analytical methodology proposed to assess the costs and benefits of energy storage systems including, but not limited to: integration of intermittent resources; improvement of reliability; reduction in the need for increased generation facilities to meet periods of peak demand; and avoidance, reduction, or deferral of investments.
- ~~(mq)~~ The utility shall propose how energy storage systems smaller than 30 MW in size may be accommodated in the all-source competitive acquisition process.
- ~~(r)~~ Studies, including updates to studies relied upon by the utility in previous electric resource plan proceedings, commissioned or prepared by the utility to support the development of its Phase I filing pursuant to rule 3604 or to inform the bid evaluation and modeling in Phase II.
- ~~(s)~~ A detailed listing and explanation of the information the utility will provide in its 120-Day Report regarding potential resources, proposed utility-owned resources, and the modeling of portfolios of resources to support the development of cost-effective resource plans.
- ~~(t)~~ If the Commission has approved a Clean Energy Plan for the utility in a prior proceeding pursuant to § 40-2-125.5, C.R.S., the utility shall include a progress report on the implementation of the approved Clean Energy Plan. The utility shall describe the actions taken and investments made to achieve compliance with the targets set forth in § 40-2-125.5(3), C.R.S.

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[indicates omission of unaffected rules]

### **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. C and~~ coincident summer and winter peak system losses. To the extent available, the utility shall provide and the allocation of such losses to the transmission and distribution components of the systems.
  - (VI) ~~Typical day load patterns. The electric demand placed on the utility's system for each hour of the day 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, at a minimum, 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.
- (I) The base forecast shall reflect the amounts of energy and demand savings from demand-side resources previously approved by the Commission; the distributed energy resources expected to be interconnected, both through the utility's Commission-approved plans, and outside of utility plans; expected level of transportation electrification consistent with the base assumption used in the utility's most recent transportation electrification plan filed pursuant to § 40-5-107, C.R.S.
  - (II) The utility shall provide a separate forecast of load resulting from non-transportation beneficial electrification during the resource planning period. This forecast shall include sector-specific assumptions used to develop the utility's beneficial electrification forecast.
- (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 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 electric 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 electric resource 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 Assessment of Existing Resources.**

- (a) Existing resource assessment. The utility shall describe its existing resources, all utility-owned generation facilities and energy storage systems for which the utility has obtained a CPCN from the Commission pursuant to § 40-5-101, C.R.S., at the time the electric resource 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, the following.
  - (I) Name(s) and location(s) of utility-owned generation facilities and energy storage systems and of contracted generation facilities and energy storage systems.
  - (II) Rated capacity and net dependable capacity of utility-owned and contracted generation facilities and energy storage systems.
  - (III) Fuel type, average and marginal heat rates, quick-start capability, minimum operating requirements, annual capacity factors and availability factors projected for utility-owned and contracted generation facilities and as well as availability factors for utility-owned energy storage systems over the resource acquisition period.
  - (IV) Estimated in-service dates for utility-owned generation facilities and energy storage systems for which a CPCN has been granted but which are not in service at the time the electric resource plan under consideration is filed.

- (V) Estimated remaining useful lives of utility-owned generation facilities and energy storage system without and any significant new investment or maintenance expense relating to existing generation facilities.
  - (VI) The amount of capacity and energy from generation facilities, energy storage systems, and demand-side resources 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 from generation facilities or energy storage systems purchased pursuant to such contracts.
  - (VII) The amount of capacity and energy provided from generation facilities and energy storage systems 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 from generation facilities or energy storage systems provided pursuant to such wheeling or coordination agreements.
  - (VIII) The performance characteristics of utility-owned energy storage systems including but not limited to discharge rates and durations, charging rates, response time; and cycling losses and limitations.
  - (IX) The physical and performance characteristics of energy storage systems purchased from utilities and non-utilities including but not limited to: storage technology; discharge rates and durations; charging rates; response time; and cycling losses and limitations.
  - (X) The projected emissions, in terms of pounds per MWH and short-tons per year, of sulfur dioxide, nitrogen oxides, particulate matter, mercury and carbon dioxide for the resources identified under this paragraph 3607(a).
  - (XII) The expected demand-side resources during the resource planning period from existing measures installed through utility-administered programs; and, from measures expected to be installed in the future through utility-administered programs in accordance with a Commission-approved demand-side management plan.
- (b) Coordination of plan filings. Utilities required to comply with these rules shall coordinate their electric resource 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) Benchmarking. For the purpose of identifying existing resources that potentially are not performing cost-effectively as compared to other resources available in the market, the utility shall compare the costs and performance of each of its existing supply-side resources greater than 20 MW of nameplate capacity to the costs and performance of the generic resources.

- (d) Ancillary services assessment. The utility shall identify its existing resources that provide various ancillary services necessary to support its distribution and transmission systems, including, but not limited to, black start resources, non-spinning reserves, spinning reserves, regulation and frequency response, reactive power, voltage control, system control, dispatch services, and energy imbalance services.

**3608. Transmission Resources.**

- (a) 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 generally identify the location and extent of transfer capability limitations on its transmission network that may affect the future siting of resources.
- (b) With respect to future needs, the utility shall submit a description of all transmission lines and facilities appearing in its most recent report filed with the Commission pursuant to § 40-2-126, C.R.S., and rule 3627 that, as identified in that-such reports, could reasonably be placed into service during the resource acquisition period.
- (c) For each transmission line or facility identified in paragraph (b), the utility shall include the following information detailing assumptions to be used for resource planning and bid evaluation purposes:
- (I) length and location;
  - (II) estimated in-service date;
  - (III) injection capacity and locations for generation facilities;
  - (IV) injection capacity and locations for energy storage systems;
  - (V) estimated costs;
  - (VI) terminal points; and
  - (VII) voltage and megawatt rating.
- (d) In order to equitably compare possible resource alternatives, the utility shall consider the transmission costs required by, or imposed on the system by, and the transmission benefits provided by a particular resource as part of the bid evaluation criteria.
- (e) The electric resource plan shall describe and shall estimate the cost of all new transmission facilities associated with any specific resources proposed for acquisition other than through a competitive acquisition process.

**3609. Planning Reserve Margins and Contingency Plans.**

- (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 the resource acquisition period for the base case, high, and low forecast scenarios established under rule 3606, to include risks associated with: the development of generation; losses of generation capacity purchase of power; losses of transmission capability; risks due to known or reasonably expected changes in environmental regulatory requirements; and, other risks. The utility shall develop planning reserve margins for its system over the planning period beyond 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 the resource acquisition period. As a part of its plan, the utility shall provide, under seal, a description of its proposed 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 3610; or, replacement resources in the event that resources are not developed in accordance with a Commission-approved plan under rule 3617. ~~The utility will identify the estimated costs it will incur in developing the contingency plan for addressing the acquisition of these resources (e.g., purchasing equipment options, establishing sites, engineering).~~ The Commission will consider approval of contingency plans only after the utility receives bids, as described in subparagraph ~~3618(b)(II)~~ 3615(b)(V). The provisions of ~~subparagraph 3617(d)~~ 3615(e)(III) shall not apply to the contingency plans unless explicitly ordered by the Commission.

**3610. Assessment of Need for ~~Additional~~ Resources.**

- (a) ~~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 3609, the~~ The utility shall assess the need to acquire additional resources during the resource acquisition period based on the electric energy and demand forecasts developed pursuant to rule 3606, the assessment of existing resources developed pursuant to rule 3607, planning reserve margins developed pursuant to rule 3609, and other factors including, but not limited to, the factors listed in paragraph 3610(b).
- (b) In assessing its need to acquire ~~additional~~ resources, the utility shall also:
- (I) ~~Determine-determine~~ the additional eligible energy resources, if any, the utility will need to acquire to comply with the Commission's RES rules;
  - (II) ~~Take-take~~ into account the demand-side resources it must acquire to meet the energy savings and peak demand reduction goals established under § 40-3.2-104, C.R.S. To that end, the Commission shall permit the utility to implement cost-effective demand-side resources to reduce the need for additional resources that would otherwise be met through a competitive acquisition process pursuant to rule 3611;
  - (III) ~~c~~Consider the benefits energy storage systems may provide to increase integration of intermittent resources, improve reliability; reduce the need for increased generation facilities to meet periods of peak demand; and avoid, reduce, or defer investments; and
  - (IV) address statewide goals to reduce greenhouse gas emissions in accordance with rules promulgated and implemented by the Colorado Air Quality Control Commission.

- (c) The Commission may give consideration of the likelihood of new environmental regulations and the risk of higher future costs associated with the emission of greenhouse gases such as carbon dioxide when it considers utility proposals to acquire additional resources during the resource acquisition period.

**3611. ~~Utility Plan for Meeting the Resource Need.~~**

- ~~(a) It is the Commission's policy that a competitive acquisition process will normally be used to acquire new utility resources. The competitive bid process should afford all resources an opportunity to bid, and all new utility resources will be compared in order to determine a cost-effective resource plan (i.e., an all source solicitation).~~
- ~~(b) Notwithstanding the Commission's preference for all source bidding for the acquisition of all new utility resources under these rules, the utility may propose in its filing under rule 3603, an alternative plan for acquiring the resources to meet the need identified in rule 3610. The utility shall specify the portion of the resource need that it intends to meet through an all source competitive acquisition process and the portion that it intends to meet through an alternative method of resource acquisition.~~
- ~~(c) 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 an all source competitive acquisition process. In addition, the utility shall provide a cost benefit analysis to demonstrate the reason(s) why the public interest would be served by acquiring the specific resource(s) through an alternative method of resource acquisition.~~
- ~~(d) Although the utility may propose a method for acquiring new utility resources other than all source competitive bidding, as a prerequisite, the utility shall nonetheless include in its plan filed under rule 3603 the necessary bid policies, RFPs, and model contracts for common supply side resources and energy storage systems necessary to satisfy the resource need identified under rule 3610 exclusively through all source competitive bidding.~~
- ~~(e) In the event that the utility proposes an alternative method of resource acquisition that involves the development of a new renewable energy resource or new supply side resource that the utility shall own as a rate base investment, the utility shall file, simultaneously with its plan submitted under rule 3603, an application for a CPCN for such new resource. The Commission may consolidate, in accordance with the Commission's Rules of Practice and Procedure, the proceeding addressing that application for a CPCN with the resource planning proceeding. The utility shall provide a detailed estimate of the cost of the proposed facility to be constructed and information on alternatives studied, costs for those alternatives, and criteria used to rank or eliminate those alternatives.~~
- ~~(f) The utility may participate in a competitive resource acquisition process by proposing the development of a new utility resource that the utility shall own as a rate base investment. The utility shall provide sufficient cost information in support of its proposal such that the Commission can reasonably compare the utility's proposal to alternative bids. In the event a utility proposes a rate base investment, the utility shall also propose how it intends to compare the utility rate based proposal(s) with non utility bids. The Commission may also address the regulatory treatment of such costs with respect to future recovery.~~



- ~~(g) — Each utility shall propose a written bidding policy as part of its filing under rule 3603, including the assumptions, criteria, and models that will be used to solicit and evaluate generation facility and energy storage system bids in a fair and reasonable manner. The utility shall specify the competitive acquisition procedures that it intends to use to obtain resources under the utility's plan. The utility shall also propose, and other interested parties may provide input as part of the resource plan proceeding, criteria for evaluating the costs and benefits of resources such as the valuation of emissions and non-energy benefits.~~
- ~~(h) — In the event that the utility proposes to acquire specific resources through an alternative method of resource acquisition that involves the development of a new renewable energy resource or new supply side resource that the utility shall own as a rate base investment, the utility shall provide the Commission with the following best value employment metric information regarding each resource:
  - ~~(I) — the availability of training programs, including training through apprenticeship programs registered with the United States Department of Labor, Office of Apprenticeship and Training;~~
  - ~~(II) — the employment of Colorado workers as compared to importation of out of state workers;~~
  - ~~(III) — long term career opportunities; and~~
  - ~~(IV) — industry standard wages, health care, and pension benefits.~~~~

**~~3612. Independent Evaluator.~~**

- ~~(a) — Prior to the filing of the plan under rule 3603, the utility shall file for Commission approval the name of the independent evaluator who the utility, the Staff of the Commission, and the OCC jointly propose. Should the utility, the Commission Staff, and the OCC fail to reach agreement on an independent evaluator, the Commission shall refer the matter to an administrative law judge for resolution. In any event, the Commission shall approve an independent evaluator by written decision within 30 days of the filing of the plan under rule 3603.~~
- ~~(b) — The utility shall pay for the services provided by the independent evaluator pursuant to a contract approved by the Commission. The terms of such contract shall prohibit the independent evaluator from assisting any entity making proposals to the utility for subsequent resource acquisitions for three years.~~
- ~~(c) — The utility shall work cooperatively with the independent evaluator and shall provide the independent evaluator immediate and continuing access to all documents and data reviewed, used, or produced by the utility in the preparation of its plan and in its bid solicitation, evaluation, and selection processes. The utility shall make available the appropriate utility staff to meet with the independent evaluator to answer questions and, if necessary, discuss the prosecution of work. The utility shall provide to the independent evaluator, in a timely manner so as to facilitate the deadlines outlined in these rules, bid evaluation results and modeling runs so that the independent evaluator can verify these results and can investigate options that the utility did not consider. In the event that the independent evaluator notes a problem or a deficiency in the bid evaluation process, the independent evaluator should notify the utility.~~



- (d) ~~All parties in the resource plan proceeding other than the utility are restricted from initiating contacts with the independent evaluator. The independent evaluator may initiate contact with the utility and other parties. For all contacts with parties in the resource plan proceeding, including those with the utility, the independent evaluator shall maintain a log that briefly identifies the entities communicating with the independent evaluator, the date and duration of the communication, the means of communication, the topics discussed, and the materials exchanged, if any. Such log shall be posted weekly on the Commission's website for the duration of the independent evaluator's contract.~~
- (e) ~~In the event that the utility proposes a method for resource acquisition other than all source competitive bidding, the Commission may retain the independent evaluator to assist the Commission in the rendering a decision on such alternative method for resource acquisition. The independent evaluator shall file a report with the Commission, prior to the evidentiary hearings, concerning its assessment of the costs and benefits that the utility has presented to the Commission to demonstrate the reason(s) why the public interest would be served by acquiring the specific resource(s) through that alternative method of resource acquisition. The independent evaluator shall also address in its report whether the utility's proposed competitive acquisition procedures and proposed bidding policy, including the assumptions, criteria and models, are sufficient to solicit and evaluate bids in a fair and reasonable manner.~~
- (f) ~~The independent evaluator shall generally serve as an advisor to the Commission and shall generally not be a party to the proceedings. As such, the independent evaluator shall not be subject to discovery and cross examination at hearing. The Commission shall convene at least one procedural conference to establish a procedure related to questions to the independent evaluator from the utility and parties regarding the independent evaluator's filings in the proceeding.~~

**3613. ~~Bid Evaluation and Selection.~~**

- (a) ~~Upon the receipt of bids in its competitive acquisition process, the utility shall investigate whether each potential resource meets the requirements specified in the resource solicitation and shall perform an initial assessment of the bids. Within 45 days of the utility's receipt of bids, the utility shall provide notice in writing by e-mail to the owner or developer of each potential resource stating whether its bid is advanced to computer based modeling to evaluate the cost or the ranking of the potential resource, and, if not advanced, the reasons why the utility will not further evaluate the bid using computer based modeling. If, after the utility issues notice to an owner or developer that the potential resource was not advanced to computer based modeling, the utility subsequently advances that potential resource to computer based modeling, the utility shall provide notice in writing by e-mail to the owner or developer of that potential resource within three business days of the utility's decision to advance the potential resource to computer based modeling.~~

- ~~(b) For bids advanced to computer based modeling, the utility shall, contemporaneously with the notification in paragraph 3613(a), also provide to the owner or developer the modeling inputs and assumptions that reasonably relate to that potential resource or to the transmission of electricity from that facility to the utility. The utility shall provide such information so that modeling errors or omissions may be corrected before the competitive acquisition process is completed. Such information shall explain to the owner or developer how its facility will be represented in the computer based modeling and what costs, in addition to the bid information, will be assumed with respect to the potential resource. In the event that this information contains confidential or highly confidential information, the owner or developer shall execute an appropriate nondisclosure agreement prior to receiving this information.~~
- ~~(c) Within seven calendar days after receiving the modeling inputs and assumptions from the utility pursuant to paragraph 3613(b), the owner or developer of a potential resource shall notify the utility in writing by electronic mail the specific details of any potential dispute regarding these modeling inputs and assumptions. The owner or developer shall attempt to resolve this dispute with the utility. However, if the owner or developer and utility cannot resolve the dispute within three calendar days, the utility shall immediately notify the Commission with a filing in the resource plan proceeding. If the owner or developer is not already a party to the proceeding, the owner or developer shall file a notice of intervention as of right pursuant to paragraph 1401(b) of the Commission's Rules of Practice and Procedure, within one business day of the utility's filing of its notice of dispute to the Commission, for the limited purpose of resolving the disputed modeling inputs and assumptions related to the potential resource. An Administrative Law Judge (ALJ) will expeditiously schedule a technical conference at which the utility and the owner or developer shall present their dispute for resolution. The ALJ will enter an interim order determining whether corrections to the modeling inputs and assumptions are necessary. If the ALJ determines that corrections to the modeling inputs and assumptions are necessary, the utility shall, within three business days of the issuance of the ALJ's interim decision, provide the corrected information to both the owner or developer and the independent evaluator. In its report submitted under paragraph 3613(d), the utility shall also confirm by performing additional modeling as necessary, that the potential resource is fairly and accurately represented.~~
- ~~(d) Within 120 days of the utility's receipt of bids in its competitive acquisition process, the utility shall file a report with the Commission describing the cost effective resource plans that conform to the range of scenarios for assessing the costs and benefits from the potential acquisition of increasing amounts of renewable energy resources, demand side resources, energy storage systems, or Section 123 resources as specified in the Commission's decision approving or rejecting the utility plan developed under rule 3604. In the event that the utility's preferred cost effective resource plan differs from the Commission specified scenarios, the utility's report shall also set forth the utility's preferred plan. The utility's plan shall also provide the Commission with the best value employment metrics information provided by bidders under rule 3616 and by the utility pursuant to rule 3611.~~
- ~~(e) Within 30 days after the filing of the utility's 120-day report under paragraph 3613(d), the independent evaluator shall separately file a report that contains the independent evaluator's analysis of whether the utility conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported. The independent evaluator shall provide confidential versions of these reports to Commission staff and the OGC.~~

- ~~(f) Within 45 days after the filing of the utility's 120-day report under paragraph 3613(d), the parties in the resource plan proceeding may file comments on the utility's report and the independent evaluator's report.~~
- ~~(g) Within 60 days after the filing of the utility's 120-day report under paragraph 3613(d), the utility may file comments responding to the independent evaluator's report and the parties' comments.~~
- ~~(h) Within 90 days after the receipt of the utility's 120-day report under paragraph 3613(d), the Commission shall issue a written decision approving, conditioning, modifying, or rejecting the utility's preferred cost-effective resource plan, which decision shall establish the final cost-effective resource plan. The utility shall pursue the final cost-effective resource plan either with a due diligence review and contract negotiations, or with applications for CPCNs (other than those CPCNs provided in paragraph 3611(e)), as necessary. In rendering the decision on the final cost-effective resource plan, the Commission shall weigh the public interest benefits of competitively bid resources provided by other utilities and non-utilities as well as the public interest benefits of resources owned by the utility as rate base investments. In accordance with §§ 40-2-123, 40-2-124, 40-2-129, and 40-3.2-104, C.R.S., the Commission shall also consider renewable energy resources; resources that produce minimal emissions or minimal environmental impact; energy-efficient technologies; and resources that affect employment and the long-term economic viability of Colorado communities. The Commission shall further consider resources that provide beneficial contributions to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases.~~
- ~~(i) The utility must complete the competitive acquisition process by executing contracts for potential resources within 18 months after the utility's receipt of bids in its competitive acquisition process. The utility may file a motion in the resource plan proceeding requesting to extend this deadline for good cause. The utility must execute final contracts for the potential resources prior to the completion of the competitive acquisition process to receive the presumption of prudence afforded by paragraph 3617(d).~~
- ~~(j) Upon completion of the competitive acquisition process pursuant to paragraph 3613(i), and consistent with the subsequent requirement for website posting of bids and utility proposals as required in paragraph 3613(k), protected information that was filed in the resource plan proceeding will be refiled as non-confidential or public information as specified in the Commission order described below. To satisfy this requirement the utility shall file a proposal that addresses the public release of all confidential and highly confidential information related to bids for potential resources and resources the utility proposed to build and own as a rate base investment. At a minimum the utility shall address its 120-day report in paragraph 3613(d), the independent evaluator's report in paragraph 3613(e), and all documents related to these reports filed by the utility, parties, or the independent evaluator. The utility shall file its proposal in the resource plan proceeding within 14 months after the receipt of bids in its competitive acquisition process. Parties will have 30 calendar days after the utility files its proposal to file responses. The utility then may reply to any responses filed within ten calendar days. The Commission shall issue an order specifying to the utility and other parties the documents that shall be refiled as public information.~~

~~(k) Upon completion of the competitive acquisition process under paragraph 3613(i), the utility shall post on its website the following information from all bids and utility proposals: bidder name; bid price and utility cost, stated in terms that allow reasonable comparison of the bids with utility proposals; generation technology type; size of facility; contract duration or expected useful life of facility for utility proposals; and whether the proposed power purchase contract includes an option for the utility to purchase the facility during or at the end of the contract term.~~

**~~3614. Confidential Information Regarding Electric Generation Facilities and Energy Storage Systems.~~**

~~(a) In any proceeding related to a resource plan filed under rule 3603, an amendment to an approved plan filed under rule 3619, or pursuant to a request for information made under paragraph 3615(b), the provisions regarding confidential information set forth in rules 1100 through 1103 of the Commission's Rules of Practice and Procedure shall apply, in addition to this rule 3614.~~

~~(b) The utility shall provide information claimed to be highly confidential under subparagraph 1101(b) to a reasonable number of attorneys representing a party in the resource plan proceeding, provided that those attorneys file appropriate non-disclosure agreements containing the terms listed in subparagraph 3614(b)(i). The utility shall also provide information claimed to be highly confidential under subparagraph 1101(b) to a reasonable number of subject matter experts representing a party in the resource plan proceeding, provided that the attorney representing the party files the appropriate non-disclosure agreements for the subject matter experts containing the terms in subparagraph 3614(b)(ii) and the subject matter experts' curriculum vitae.~~

~~(i) Attorney highly confidential nondisclosure agreement terms.~~

~~I [attorney name] state that I have read the protective provisions relating to confidential information contained in 4 Code of Colorado Regulations 723-1-1100 through 1103. With respect to all information claimed to be confidential and all information claimed to be highly confidential that is produced in, or arises in, the course of this proceeding in Proceeding No. [ ], I agree to be bound by the terms of the protective provisions contained in 4 Code of Colorado Regulations 723-1-1100. I hereby state that I will oversee the processes that any subject matter expert to whom I have authorized access to highly confidential information uses in order to assure that extraordinary confidentiality provisions are properly implemented and maintained. I hereby state that I will assure that extraordinary confidentiality provisions are properly implemented and maintained within my firm. I agree that all highly confidential information shall not be used or disclosed for purposes of business or competition, or for any other purpose other than for purposes of the proceeding in which the information is produced. I hereby state that I will not disclose or disseminate any highly confidential information in this Proceeding No. [ ] to any third party other than those specifically authorized to review such highly confidential information, including any third party who is or may become a bidder responding to future electric resource planning solicitations or otherwise relating to the acquisition of, contracting for, or retirement of electric generation facilities in Colorado.~~

~~(H) — Subject Matter Expert highly confidential nondisclosure agreement terms.~~

~~I [subject matter expert's name] state that I have read the protective provisions relating to confidential information contained in 4 Code of Colorado Regulations 723-1-1100 through 1103. With respect to all information claimed to be confidential and all information claimed to be highly confidential that is produced in, or arises in the course of this proceeding in Proceeding No. [ ], I agree to be bound by the terms of the protective provisions contained in 4 Code of Colorado Regulations 723-1-1100. I hereby state that I will work with my attorney, [attorney name], to assure that extraordinary confidentiality provisions are properly implemented and maintained. I hereby state that I did not and will not develop or assist in the development of any power supply proposals associated with this proceeding. I agree that all highly confidential information shall not be used or disclosed for purposes of business or competition, or for any other purpose other than for purposes of the proceeding in which the information is produced. I hereby state that I will not disclose or disseminate any highly confidential information in this Proceeding No. [ ] to any third party other than those specifically authorized to review such highly confidential information, including any third party who is or may become a bidder responding to future electric resource planning solicitations or otherwise relating to the acquisition of, contracting for, or retirement of electric generation facilities in Colorado.~~

- ~~(c) — Paragraph 3614(b) is only applicable to proceedings related to a resource plan filed pursuant to rule 3603, an amendment to an approved plan filed under rule 3619, or to a request for information made under paragraph 3615(b).~~
- ~~(d) — In the case where the utility claims that information provided pursuant to paragraphs 3604(m), 3607(a) or 3608(c) related to energy storage systems is confidential, the utility shall indicate whether or not such confidential information should be provided to developers and bidders responding to RFPs. The utility shall provide a proposed non-disclosure agreement to provide developers and bidders responding to RFPs confidential information deemed appropriate by the Commission.~~
- ~~(e) — In addition to any other remedy available to the Commission, if the Commission finds that a developer or bidder has failed to comply with any applicable rules, laws, or any conditions approved by the Commission pursuant to paragraph 3614(d), the Commission may deem that developer or bidder ineligible to bid or develop storage systems in the subsequent ERP.~~
- ~~(f) — In order to expedite access to confidential information at the beginning of the resource planning proceeding, an entity may file for intervention at any time during the 30-day notice period established in paragraph 1401(a) of the Commission's Rules of Practice and Procedure. If the entity requests an expedited decision on its motion it shall include in the title of its motion for intervention "REQUEST FOR EXPEDITED TREATMENT AND FOR SHORTENED RESPONSE TIME TO FIVE BUSINESS DAYS, PURSUANT TO RULE 3614(d)." The movant shall concurrently provide an electronic copy of the motion to the utility. Response time to any such motion is automatically shortened to five business days.~~

**3615. — Exemptions and Exclusions.**

- ~~(a) — The following resources need not be included in an approved resource plan prior to acquisition.~~

- ~~(I) — Emergency maintenance or repairs made to utility-owned generation facilities.~~
  - ~~(II) — Capacity and/or energy from newly constructed, utility-owned, supply-side resources with a nameplate rating of not more than 30-MW.~~
  - ~~(III) — 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 30-MW of capacity.~~
  - ~~(IV) — Improvements or modifications to existing utility generation facilities that change the production capability of the generation facility site in question, by not more than 30-MW, based on the utility's share of the total power generation at the facility site and that have an estimated cost of not more than \$30-million.~~
  - ~~(V) — Interruptible service provided to the utility's electric customers.~~
  - ~~(VI) — Modification to, or amendment of, existing power purchase agreements provided the modification or amendment does not extend the agreement more than four years, does not add more than 30-MW of capacity to the utility's system, and is cost effective in comparison to other supply-side alternatives available to the utility.~~
  - ~~(VII) — Utility investments in emission control equipment at existing generation plants.~~
  - ~~(VIII) — Utility administered demand-side programs implemented in accordance with § 40-3.2-104, C.R.S.~~
- ~~(b) — If the utility evaluates an existing or proposed electric generation facility offered in a competitive bidding process conducted outside of an approved resource plan, the utility shall provide the owner or developer of the electric generation facility in writing by e-mail the modeling inputs and assumptions that reasonably relate to the facility or to the transmission of electricity from that facility to the utility within 14 calendar days of the utility's decision to advance the potential resource to computer-based modeling.~~

**~~3616. — 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 3611. To minimize bidder exceptions and to enhance bid comparability, the utility shall include in its proposed RFP(s) a model contract to match each type of resource need, including contracts for supply-side resources, energy storage systems, renewable energy resources, or Section 423 resources as required by the approved resource plan.~~
- ~~(b) — Contents of the request(s) for proposals. The proposed RFP(s) shall include the bid evaluation criteria the utility plans to use in ranking the bids received. The utility shall also include in its proposed RFP(s): details concerning its resource needs; reasonable estimates of transmission costs for resources located in different areas pursuant to rule 3608, including a detailed description of how the costs of future transmission will apply to bid resources; 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; any physical and performance requirements~~

~~for energy storage systems or instructions for bidders to explain characteristics of energy storage systems, including but not limited to discharge rates and durations, charging rates, response time, and cycling losses and limitations; and methodologies or credit mechanisms to value energy storage services provided to the utility system; the utility's proposed model contract(s) for the acquisition of resources; proposed contract term lengths; discount rate; general planning assumptions; and, any other information necessary to implement a fair and reasonable bidding program.~~

- ~~(c) Employment metrics. The utility shall request from bidders the following information relating to best value employment metrics for each bid resource:~~
  - ~~(I) the availability of training programs, including training through apprenticeship programs registered with the United States Department of Labor, Office of Apprenticeship and Training;~~
  - ~~(II) the employment of Colorado workers as compared to importation of out of state workers;~~
  - ~~(III) long term career opportunities; and~~
  - ~~(IV) industry standard wages, health care, and pension benefits.~~
- ~~(d) When issuing its RFP, the utility shall provide potential bidders with the Commission's order or orders specifying the form of nondisclosure agreement necessary to obtain access to confidential and highly confidential modeling inputs and assumptions provided by the utility pursuant to paragraph 3613(b). The utility shall also provide potential bidders with an explanation of the process by which disputes regarding inputs and assumptions to computer based modeling will be addressed by the Commission pursuant to paragraph 3613(b).~~
- ~~(e) The utility shall require bidders to provide the contact name of the owner or developer designated to receive notice pursuant to paragraph 3613(a).~~
- ~~(f) The utility shall inform bidders that certain bid information submitted in response to the RFP will be made available to the public through the posting of certain bid information on the utility's website upon the completion of the competitive acquisition process pursuant to paragraph 3613(k).~~

**3617. Commission Review and Approval of Resource Plans.**

- ~~(a) Review on the merits. The utility's plan, as developed pursuant to rule 3604, shall be filed as an application; shall meet the requirements of paragraphs 3002(b) and 3002(c); and shall be administered pursuant to the Commission's Rules Regulating 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 filed resource plan.~~



- ~~(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 filed in accordance with rule 3604. 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 shall provide the amended plan to all parties who participated in the application proceeding 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: the utility's assessment of need for additional resources in the resource acquisition period; the utility's plans for acquiring additional resources through an all-source competitive acquisition process or through an alternative acquisition process; components of the utility's proposed RFP, such as the model contracts and the proposed evaluation criteria; and, the alternate scenarios for assessing the costs and benefits from the potential acquisition of increasing amounts of renewable energy resources, demand side resources, energy storage systems, or Section 123 resources. A Commission decision pursuant to paragraph 3613(h) shall become part of the decision approving or modifying a utility's plan developed under rule 3604.~~
- ~~(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.~~

  - ~~(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 circumstances 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 CPCN to meet customer need specifically approved by the Commission in its decision on the final cost effective 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.~~



**3611. Exemptions and Exclusions.**

- (a) The following resources need not be included in an approved electric resource plan prior to acquisition.
  - (I) Emergency maintenance or repairs made to utility-owned generation facilities.
  - (II) Capacity and/or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of not more than 20 MW.
  - (III) 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 20 MW of capacity.
  - (IV) Improvements or modifications to existing utility generation facilities that change the production capability of the generation facility site in question, by not more than 20 MW, based on the utility's share of the total power generation at the facility site and that have an estimated cost of not more than \$30 million.
  - (V) Interruptible service provided to the utility's electric customers.
  - (VI) Modification to, or amendment of, existing power purchase agreements provided the modification or amendment does not extend the agreement more than four years, does not add more than 20 MW of capacity to the utility's system, and is cost effective in comparison to other supply-side alternatives available to the utility.
  - (VII) Utility investments in emission control equipment at existing generation plants.
  - (VIII) Utility administered demand-side programs implemented in accordance with § 40-3.2-104, C.R.S.
- (b) If the utility evaluates an existing or proposed electric generation facility offered in a competitive bidding process conducted outside of an approved resource plan, the utility shall provide the owner or developer of the electric generation facility in writing by e-mail the modeling inputs and assumptions that reasonably relate to the facility or to the transmission of electricity from that facility to the utility within 14 calendar days of the utility's decision to advance the potential resource to computer-based modeling.

**3612. Confidential Information Regarding Electric Generation Facilities and Energy Storage Systems**

- (a) In any proceeding related to an electric resource plan filed under rule 3603, an amendment to an approved plan filed under rule 3617, or pursuant to a request for information made under paragraph 3611(b), the provisions regarding confidential information set forth in rules 1100 through 1103 of the Commission's Rules of Practice and Procedure shall apply, in addition to this rule 3612.
- (b) The utility shall provide information claimed to be highly confidential under paragraph 1101(b) to a reasonable number of attorneys representing a party in the electric resource plan proceeding.

provided that those attorneys file appropriate non-disclosure agreements containing the terms listed in subparagraph 3612(b)(II). The utility shall also provide information claimed to be highly confidential under paragraph 1101(b) to a reasonable number of subject matter experts representing a party in the plan proceeding, provided that the attorney representing the party files the appropriate non-disclosure agreements for the subject matter experts containing the terms in subparagraph 3612(b)(II) and the subject matter experts' curriculum vitae.

(I) Attorney highly confidential nondisclosure agreement terms.

I [attorney name] state that I have read the protective provisions relating to confidential information contained in 4 Code of Colorado Regulations 723-1-1100 through 1103. With respect to all information claimed to be confidential and all information claimed to be highly confidential that is produced in, or arises in, the course of this proceeding in Proceeding No. [ ], I agree to be bound by the terms of the protective provisions contained in 4 Code of Colorado Regulations 723-1-1100. I hereby state that I will oversee the processes that any subject matter expert to whom I have authorized access to highly confidential information uses in order to assure that extraordinary confidentiality provisions are properly implemented and maintained. I hereby state that I will assure that extraordinary confidentiality provisions are properly implemented and maintained within my firm. I agree that all highly confidential information shall not be used or disclosed for purposes of business or competition, or for any other purpose other than for purposes of the proceeding in which the information is produced. I hereby state that I will not disclose or disseminate any highly confidential information in this Proceeding No. [ ] to any third party other than those specifically authorized to review such highly confidential information, including any third party who is or may become a bidder responding to future electric resource planning solicitations or otherwise relating to the acquisition of, contracting for, or retirement of electric generation facilities in Colorado.

(II) Subject Matter Expert highly confidential nondisclosure agreement terms.

I [subject matter expert's name] state that I have read the protective provisions relating to confidential information contained in 4 Code of Colorado Regulations 723-1-1100 through 1103. With respect to all information claimed to be confidential and all information claimed to be highly confidential that is produced in, or arises in the course of this proceeding in Proceeding No. [ ], I agree to be bound by the terms of the protective provisions contained in 4 Code of Colorado Regulations 723-1-1100. I hereby state that I will work with my attorney, [attorney name], to assure that extraordinary confidentiality provisions are properly implemented and maintained. I hereby state that I did not and will not develop or assist in the development of any power supply proposals associated with this proceeding. I agree that all highly confidential information shall not be used or disclosed for purposes of business or competition, or for any other purpose other than for purposes of the proceeding in which the information is produced. I hereby state that I will not disclose or disseminate any highly confidential information in this Proceeding No. [ ] to any third party other than those specifically authorized to review such highly confidential information, including any third party who is or may become a bidder responding to future electric resource planning solicitations or otherwise relating to the acquisition of, contracting for, or retirement of electric generation facilities in Colorado.

- (c) Paragraph 3612(b) is only applicable to proceedings related to an electric resource plan filed pursuant to rule 3603, an amendment to an approved plan filed under rule 3617, or to a request for information made under paragraph 3611(b).
- (d) In the case where the utility claims that information provided pursuant to paragraphs 3604(p), 3607(a), or 3608(c) related to energy storage systems is confidential, the utility shall indicate whether or not such confidential information should be provided to developers and bidders responding to RFPs. The utility shall provide a proposed non-disclosure agreement to provide developers and bidders responding to RFPs confidential information deemed appropriate by the Commission.
- (e) In addition to any other remedy available to the Commission, if the Commission finds that a developer or bidder has failed to comply with any applicable rules, laws, or any conditions approved by the Commission pursuant to paragraph 3612(d), the Commission may deem that developer or bidder ineligible to bid or develop storage systems in the subsequent ERP.
- (f) In order to expedite access to confidential information at the beginning of the resource planning proceeding, an entity may file for intervention at any time during the 30-day notice period established in paragraph 1401(a) of the Commission's Rules of Practice and Procedure. If the entity requests an expedited decision on its motion it shall include in the title of its motion for intervention "REQUEST FOR EXPEDITED TREATMENT AND FOR SHORTENED RESPONSE TIME TO FIVE BUSINESS DAYS, PURSUANT TO RULE 3612(d)." The movant shall concurrently provide an electronic copy of the motion to the utility. Response time to any such motion is automatically shortened to five business days.

### **3613. Best Value Employment Metrics**

Best value employment metric information regarding each proposed new utility resource shall include the following information.

- (a) The availability of training programs, including training through apprenticeship programs registered with the United States Department of Labor, Office of Apprenticeship and Training. The utility or bidder shall provide, for example and as applicable, the following information for each craft the utility anticipates will work on the project:
  - (I) availability of training programs;
  - (II) the names of specific training programs available;
  - (III) the curriculum of the specific training programs;
  - (IV) the cost of worker training;
  - (V) the duration of the training programs;
  - (VI) the total number of hours of on-the-job training required;
  - (VII) the total number of classroom hours required;

- (VIII) the licenses and certifications obtained, if any;
- (IX) a copy of training program standards for each training program; and
- (X) a statement whether the training programs are United States Department of Labor registered apprenticeship programs and are accredited to award college credits.
- (b) The employment of Colorado workers as compared to importation of out-of-state workers. The utility or bidder shall provide, for example and as applicable, the following information for each craft the utility anticipates will work on the project:
  - (I) estimated number of workers by job classification;
  - (II) estimated length of time of service, including total man hours, by job classification;
  - (III) percentage of Colorado workers by job classification; and
  - (IV) percentage of project man hours earned by Colorado workers by job classification.
- (c) Long-term career opportunities. The utility or bidder shall provide, for example and as applicable, the following information for each craft the utility anticipates will work on the project: job classifications, licenses, certifications and skills that will be applied and the long-term career opportunities for each job classification; and
- (d) Industry-standard wages, health care, and pension benefits. The utility or bidder shall provide, for example and as applicable, the following information for each craft the utility anticipates will work on the project:
  - (I) range of wages by job classification;
  - (II) healthcare benefits by job classification;
  - (III) pension benefits by job classification;
  - (IV) prevailing wages and fringe benefits (healthcare benefits, pension benefits and other compensation) based on industry standards and the current Colorado labor agreements by job classification; and
  - (V) wages and fringe benefits (healthcare benefits, pension benefits and other compensation) by job classification.

**3614. Phase I.**

- (a) Review on the merits.
  - (I) The utility's electric resource plan shall be filed as an application; shall meet the requirements of paragraphs 3002(b) and 3002(c); and shall be administered pursuant to the Commission's Rules Regulating Practice and Procedure.

(II) The Commission may hold a hearing for the purpose of reviewing, and rendering a decision regarding, the contents of the utility's filed electric resource plan.

(b) Competitive bidding.

(I) It is the Commission's policy that a competitive acquisition process will normally be used to acquire resources.

(II) The competitive bid process should afford all resources an opportunity to bid. All bids and utility resource proposals (including the early retirement of existing resources) will be compared in order to determine a cost-effective resource plan (i.e., an all-source solicitation).

(III) The utility may participate in a competitive resource acquisition process by proposing the development of a new utility resource that the utility shall own as a rate base investment. The utility shall provide in detail all capital and operating costs for the proposed resource, as well as a firm, all-in point cost in support of its proposal such that the Commission can reasonably compare the utility's proposal to alternative bids. In the event a utility proposes a rate base investment, the utility shall also propose how it intends to compare the utility rate based proposal(s) with non-utility bids. The utility shall propose an all-in total cost for the resource above which the Company would bear the burden of establishing the prudence and reasonableness of costs. The Commission may also address the regulatory treatment of such costs with respect to future recovery. If the utility proposes to acquire resources from a bidder after new construction (e.g., a build-own transfer), the utility shall propose a method for establishing an all-in point cost such that the Commission can reasonably compare the utility's proposal to alternative bids in Phase II.

(IV) Each utility shall propose a written bidding policy as part of its filing under rule 3603, including the assumptions, criteria, and models that will be used to solicit and evaluate generation facility and energy storage system bids in a fair and reasonable manner. The utility shall specify the competitive acquisition procedures that it intends to use to obtain resources including a schedule of bid fees graduated by the size of the proposed resources. The utility shall also propose, and other interested parties may provide input as part of the electric resource plan proceeding, criteria for evaluating the costs and benefits of resources such as the valuation of emissions and non-energy benefits, including, for example, benefits associated with best value employment metrics.

(c) Alternative plan for acquiring resources.

(I) Notwithstanding the Commission's preference for all-source bidding for the acquisition of all new utility resources under these rules, the utility may propose in its filing under rule 3603, an alternative plan for acquiring the resources to meet the need identified in rule 3610. The utility shall specify the portion of the resource need that it intends to meet through an all-source competitive acquisition process and the portion that it intends to meet through an alternative method of resource acquisition.

(II) 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 an all-source competitive acquisition process. The utility shall provide a cost-benefit analysis to demonstrate the reason(s) why the public interest would be served by acquiring the specific resource(s) through an alternative method of resource acquisition.

(III) Although the utility may propose a method for acquiring new utility resources other than all-source competitive bidding, as a prerequisite, the utility shall nonetheless include in its electric resource plan the necessary bid policies, RFPs, and model contracts for common supply-side resources and energy storage systems necessary to satisfy the resource need identified under rule 3610 exclusively through all-source competitive bidding.

(IV) In the event that the utility proposes an alternative method of resource acquisition that involves the development of a new renewable energy resource or new supply-side resource that the utility shall own as a rate base investment, the utility shall file, simultaneously with its electric resource plan, an application for a CPCN for such new resource. The Commission may consolidate, in accordance with the Commission's Rules of Practice and Procedure, the proceeding addressing that application for a CPCN with the resource planning proceeding. The utility shall provide a detailed estimate of the cost of the proposed facility to be constructed and information on alternatives studied, costs for those alternatives, and criteria used to rank or eliminate those alternatives.

(V) In the event that the utility proposes to acquire specific resources through an alternative method of resource acquisition that involves the development of a new renewable energy resource or new supply-side resource that the utility shall own as a rate base investment, the utility shall provide the Commission with the best value employment metric information set forth in rule 3613 regarding each resource.

(d) Request for Proposals (RFPs).

(I) The proposed RFP(s) filed by the utility shall be designed to solicit competitive bids to acquire resources pursuant to paragraph 3614(b). To minimize bidder exceptions and to enhance bid comparability, the utility shall include in its proposed RFP(s) a model contract.

(II) The proposed RFP(s) shall include the bid evaluation criteria the utility will use in ranking the bids received. The utility shall also include in its proposed RFP(s): details concerning its resource needs; reasonable estimates of transmission costs for resources located in different areas pursuant to rule 3608, including a detailed description of how the costs of future transmission will apply to bid resources; 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; any physical and performance requirements for energy storage systems or instructions for bidders to explain characteristics of energy storage systems, including, but not limited to, discharge rates and durations, charging rates, response time, and cycling losses and limitations; and methodologies or credit mechanisms to value energy storage services provided to the utility system; the utility's proposed model contract(s) for the acquisition of resources; proposed contract term lengths; discount rate; general planning assumptions; and, any other information necessary to implement a fair and reasonable bidding program.

(III) The utility shall request from bidders the best value employment metrics for each bid resource as set forth in rule 3613.

(e) Independent evaluator.

(I) During the course of the Phase I, and no later than two weeks prior to the start of the hearing, the utility shall file for Commission approval the name of the independent evaluator who the utility, the Commission staff, and the OCC jointly propose. The Commission shall approve the independent evaluator in the Phase I decision.

(II) The utility shall pay for the services provided by the independent evaluator pursuant to a contract approved by the Commission. The terms of such contract shall prohibit the independent evaluator from assisting any entity making proposals to the utility for subsequent resource acquisitions for three years.

(f) Phase I decision.

(I) 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 electric resource plan filed in accordance with rule 3604.

(II) The Phase I decision approving or denying the electric resource 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: the utility's assessment of need for additional resources in the resource acquisition period; the utility's plans for acquiring additional resources through an all-source competitive acquisition process or through an alternative acquisition process; and components of the utility's proposed RFP, such as the model contracts and the proposed evaluation criteria.

(III) The Phase I Decision will set forth the information the utility shall provide in its 120-day report regarding potential resources, proposed utility-owned resources, and the modeling of portfolio combinations of resources to support the development of cost-effective resource plans.

(A) The Commission shall identify the costs of carbon dioxide emissions to be used in Phase II to present the costs, benefit, and net present value of revenue requirements in the 120-day report.

(B) In consideration of the base case portfolio of resources and alternative portfolios of resources proposed by the utility, the Commission shall define the base case portfolio and alternative portfolios for modeling in Phase II.

(C) In accordance with § 40-3.2-106(3), C.R.S., the Commission shall establish the relevant factors other than the cost of carbon dioxide emissions for consideration of the approval of the utility's electric resource plan.

(IV) The Phase I decision will establish whether the utility's plan provides a competitive acquisition process that is reasonably accessible to qualifying facilities smaller than 20 MW for purposes of rule 3903. If the Commission determines that the utility's plan does



not afford qualifying facilities smaller than 20 MW an opportunity to be awarded a contract pursuant to competitive bidding, the Phase I decision shall set a deadline for the utility to file tariffs for purchases from such qualifying facilities in accordance with the Rules for Small Power Producers and Cogenerators.

- (V) If the Commission declines to approve a utility's electric resource plan, either in whole or in part, the utility shall make changes to the plan in response to the Commission's decision. Within 90 days of the Commission's rejection of a plan, the utility shall file an amended plan with the Commission and shall provide the amended plan to all parties who participated in the application proceeding concerning the utility's plan. All such parties may participate in any hearings regarding the amended plan.

### **3615. Phase II.**

(a) Independent evaluator.

- (I) The utility shall work cooperatively with the independent evaluator and shall provide the independent evaluator immediate and continuing access to all documents and data reviewed, used, or produced by the utility in the preparation of its electric resource plan and in its bid solicitation, evaluation, and selection processes. The utility shall make available the appropriate utility staff to meet with the independent evaluator to answer questions and, if necessary, discuss the prosecution of work. The utility shall provide to the independent evaluator, in a timely manner so as to facilitate the deadlines outlined in these rules, bid evaluation results and modeling runs so that the independent evaluator can verify these results and can investigate options that the utility did not consider. In the event that the independent evaluator notes a problem or a deficiency in the bid evaluation process, the independent evaluator should notify the utility.
- (II) All parties in the electric resource plan proceeding other than the utility and the the Commission staff are restricted from initiating contacts with the independent evaluator. The independent evaluator may initiate contact with the utility and other parties. Commission staff may inquire about changes to (1) bid eligibility screening, (2) initial economic evaluations, and (3) computer bid evaluation and modeling, including but not limited to changes in modeling inputs, assumptions, conventions, and programming, made by the utility with or without the consent of the independent evaluator. For all contacts with parties in the plan proceeding, including those initiated by Commission staff or the utility, the independent evaluator shall maintain a log that briefly identifies the entities communicating with the independent evaluator, the date and duration of the communication, the means of communication, the topics discussed, and the materials exchanged, if any. Such log shall be posted weekly on the Commission's website for the duration of the independent evaluator's contract.
- (III) The independent evaluator shall generally not be a party to the proceedings. As such, the independent evaluator shall not be subject to discovery and cross-examination at hearing.

(b) Competitive solicitation.



- (I) When issuing its RFP, the utility shall provide potential bidders with the Commission's order or orders specifying the form of nondisclosure agreement necessary to obtain access to confidential and highly confidential modeling inputs and assumptions provided by the utility pursuant to subparagraph 3615(c)(II). The utility shall also provide potential bidders with an explanation of the process by which disputes regarding inputs and assumptions to computer-based modeling will be addressed by the Commission pursuant to subparagraph 3615(c)(II).
- (II) The utility shall require bidders to provide the contact name of the owner or developer designated to receive notice pursuant to subparagraph 3615(c)(I).
- (III) The utility shall inform bidders that certain bid information submitted in response to the RFP will be made available to the public through the posting of certain bid information on the utility's website upon the completion of the competitive acquisition process pursuant to subparagraph 3615(e)(VI).
- (IV) Within 30 days after bids are received in response to the RFP(s), the utility shall report: the identity of the bidders and the number of bids received; the quantity of MW offered by bidders; a breakdown of the number of bids and MW received by resource type; and, a description of the prices of the resources offered.
- (V) If, upon examination of the bids, the utility determines that the proposed resources may not meet the utility's expected resource needs, the utility shall file, within 30 days after bids are received, an application for approval of a contingency plan. The application shall include the information required by paragraphs 3002(b) and 3002(c), the justification for need of the contingency plan, the proposed action by the utility, the expected costs, and the expected timeframe for implementation.
- (c) Bid evaluation.

  - (I) Upon the receipt of bids to its competitive solicitation, the utility shall investigate whether each potential resource meets the requirements specified in the resource solicitation and shall perform an initial assessment of the bids, including an assessment whether the owner or developer provided the required documentation of best value employment metrics. Within 45 days of the utility's receipt of bids, the utility shall provide notice in writing by e-mail to the owner or developer of each potential resource stating whether its bid is advanced to computer-based modeling to evaluate the cost or the ranking of the potential resource, and, if not advanced, the reasons why the utility will not further evaluate the bid using computer-based modeling. If, after the utility issues notice to an owner or developer that the potential resource was not advanced to computer-based modeling, the utility subsequently advances that potential resource to computer-based modeling, the utility shall provide notice in writing by e-mail to the owner or developer of that potential resource within three business days of the utility's decision to advance the potential resource to computer-based modeling.
  - (II) For bids advanced to computer-based modeling, the utility shall, contemporaneously with the notification in subparagraph 3615(c)(I), also provide to the owner or developer the modeling inputs and assumptions that reasonably relate to that potential resource or to the transmission of electricity from that facility to the utility. The utility shall provide such

information so that modeling errors or omissions may be corrected before the competitive acquisition process is completed. Such information shall explain to the owner or developer how its facility will be represented in the computer-based modeling and what costs, in addition to the bid information, will be assumed with respect to the potential resource. In the event that this information contains confidential or highly confidential information, the owner or developer shall execute an appropriate nondisclosure agreement prior to receiving this information.

(III) Within seven calendar days after receiving the modeling inputs and assumptions from the utility pursuant to subparagraph 3615(c)(II), the owner or developer of a potential resource shall notify the utility in writing by electronic mail the specific details of any potential dispute regarding these modeling inputs and assumptions. The owner or developer shall attempt to resolve this dispute with the utility. However, if the owner or developer and utility cannot resolve the dispute within three calendar days, the utility shall immediately notify the Commission with a filing in the electric resource plan proceeding also served on the affected owner or developer. If the owner or developer is not already a party to the proceeding, the owner or developer shall file a notice of intervention as of right pursuant to paragraph 1401(b) of the Commission's Rules of Practice and Procedure, within two business days of the utility's filing of its notice of dispute to the Commission, for the limited purpose of resolving the disputed modeling inputs and assumptions related to the potential resource. An Administrative Law Judge (ALJ) will expeditiously schedule a technical conference at which the utility and the owner or developer shall present their dispute for resolution. The ALJ will enter an interim order determining whether corrections to the modeling inputs and assumptions are necessary. If the ALJ determines that corrections to the modeling inputs and assumptions are necessary, the utility shall, within three business days of the issuance of the ALJ's interim decision, provide the corrected information to both the owner or developer and the independent evaluator. In its report submitted under paragraph 3613(d), the utility shall also confirm by performing additional modeling as necessary, that the potential resource is fairly and accurately represented.

(d) 120-day report process.

(I) Within 120 days of the utility's receipt of bids in its competitive acquisition process, the utility shall file a report with the Commission presenting cost-effective resource plans in accordance with the Commission's Phase I Decision.

(A) The utility shall identify its preferred cost-effective resource plan.

(B) The utility shall apply the costs of carbon dioxide emissions as specified by the Commission to all existing and new utility resources in its modeling of the costs and benefits of the resource plans as required by the Commission's Phase I decision.

(C) The utility shall present a calculation of the net present value of revenue requirement for each portfolio required by the Phase I decision, including the defined base case portfolio of resources. The utility shall present the net present value of revenue requirement for each existing and new utility resource included in the portfolio, calculated using the cost of carbon set forth in the Phase I

decision and calculated without using the cost of carbon dioxide emissions. The utility also shall present, for each portfolio, the net present value calculation of the total costs of carbon dioxide emissions calculated by multiplying the total emissions of that portfolio by the cost of carbon dioxide.

(D) The report shall also provide the Commission with the best value employment metrics information provided by bidders under subparagraph 3614(d)(III) and by the utility pursuant to subparagraph 3614(c)(VI).

(II) Within 30 days after the filing of the utility's 120-day report, the independent evaluator shall separately file a report that contains the independent evaluator's analysis of whether the utility conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported. The independent evaluator shall provide confidential versions of these reports to Commission staff and the OCC.

(III) Within 45 days after the filing of the utility's 120-day report, the parties in the electric resource plan proceeding may file comments on the utility's report and the independent evaluator's report.

(IV) Within 60 days after the filing of the utility's 120-day report, the utility may file comments responding to the independent evaluator's report and the parties' comments.

(e) Phase II decision.

(I) Within 90 days after the receipt of the utility's 120-day report under paragraph 3613(d), the Commission shall issue a written decision approving, conditioning, modifying, or rejecting the utility's preferred cost-effective resource plan, which decision shall establish the final cost-effective resource plan.

(A) In rendering the decision on the final cost-effective resource plan, the Commission shall weigh the public interest benefits of competitively bid resources provided by other utilities and non-utilities as well as the public interest benefits of resources owned by the utility as rate base investments.

(B) In accordance with §§ 40-2-123, 40-2-124, and 40-3.2-104, C.R.S., the Commission shall also consider renewable energy resources; resources that produce minimal emissions or minimal environmental impact; energy-efficient technologies; and resources that affect employment and the long-term economic viability of Colorado communities. The Commission shall further consider resources that provide beneficial contributions to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases.

(C) In accordance with § 40-2-129, C.R.S., the Commission shall determine: whether the utility has provided best value employment metrics; whether the utility has certified compliance with the objective standards for the review of such best value employment metrics as set forth in the RFP approved in the Phase I decision; and whether the utility has agreed to use a project labor agreement for the construction or expansion of a generating facility.

- (D) In accordance with § 40-3.2-106(3), C.R.S., the Commission shall consider the net present value of the cost of carbon dioxide emissions, the net present value of revenue requirements of the cost-effective resource plan, and other relevant factors as determined by the Commission in its Phase I decision.
- (II) The utility shall pursue the final cost-effective resource plan either with a due diligence review and contract negotiations, or with applications for CPCNs (other than those CPCNs provided in subparagraph 3614(c)(V)), as necessary.
- (III) The Phase I and Phase II decisions create a presumption that utility actions consistent with those decisions are prudent.

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

    - (i) The utility must present prima facie evidence that its actions were consistent with Commission decisions specifically approving or modifying components of the electric resource plan.
    - (ii) 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 electric resource 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 circumstances timely known to the utility or that should have been known to a prudent person, the utility's actions were not proper.
  - (B) In a proceeding concerning the utility's request for a CPCN to meet customer need specifically approved by the Commission in its decision on the final cost-effective 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.
- (IV) The utility must complete Phase II by executing contracts for potential resources within 18 months after the utility's receipt of bids to its RFP(s). The utility may file a motion in the electric resource plan proceeding requesting to extend this deadline for good cause. The utility must execute final contracts for the potential resources prior to the completion of Phase II to receive the presumption of prudence afforded by subparagraph 3615(e)(III).
- (V) Upon completion of Phase II, and consistent with the subsequent requirement for website posting of bids and utility proposals as required in paragraph 3613(k), protected information that was filed in the electric resource plan proceeding will be refiled as non-confidential or public information as specified in the Commission order described below. To satisfy this requirement the utility shall file a proposal that addresses the public release of all confidential and highly confidential information related to bids for potential

resources and resources the utility proposed to build and own as a rate base investment. At a minimum the utility shall address the public release of highly confidential and confidential information in its 120-day report, the independent evaluator's report, and all documents related to these reports filed by the utility, parties, or the independent evaluator. The utility shall file its proposal in the plan proceeding within 14 months after the receipt of bids to its RFP(s). Parties will have 30 calendar days after the utility files its proposal to file responses. The utility then may reply to any responses filed within ten calendar days. The Commission shall issue an order specifying to the utility and other parties the documents that shall be refiled as public information.

- (VI) Upon completion of Phase II, the utility shall post on its website the following information from all bids and utility proposals: bidder name; bid price and utility cost, stated in terms that allow reasonable comparison of the bids with utility proposals; generation technology type; size of facility; contract duration or expected useful life of facility for utility proposals; and whether the proposed power purchase contract includes an option for the utility to purchase the facility during or at the end of the contract term.

**36183616. Annual Reports.**

- (a) Annual progress reports.—The utility shall file with the Commission, and shall provide to all parties to the most recent electric resource planning proceeding, 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 and the emerging resource needs and potential utility proposals that may be part of the utility's next ~~electric resource~~ plan filing.
- (b) Annual progress reports shall contain the following, for a running ten-year period beginning at the report date:
- (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 3609;
  - (IV) an updated assessment of need for ~~additional~~ resources developed pursuant to rule 3610;
  - (V) an updated report of the utility's plan to meet the resource need developed pursuant to ~~rule 3614~~ paragraphs 3614(b) and 3614(c) and the resources the utility has acquired to date in implementation of the electric resource plan; and
  - (VI) in addition to the items required in subparagraphs ~~(ab)~~(I) through ~~(ab)~~(V), a cooperative electric generation and transmission association shall include in its 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.

**~~3619~~3617. Amendment of an Approved Electric Resource Plan.**

The utility may file, at any time, an application to amend the contents of an electric resource plan approved pursuant to rule ~~3617~~3614 and 3615. Such an application shall meet the requirements of paragraphs 3002(b) and 3002(c), shall identify each proposed amendment, shall state the reason for each proposed amendment, and shall be administered pursuant to the Commission's Rules Regulating Practice and Procedure.

**~~3620~~3618. – 3624. [Reserved]**

\* \* \* \*

[indicates omission of unaffected rules]

**SMALL POWER PRODUCERS AND COGENERATORS**

**3900. ~~Scope and~~ Applicability.**

Rules 3900 through ~~3954~~3905 apply to utilities which purchase power from small power producers and cogenerators. These rules also apply to small power producers and cogenerators which sell power to utilities. ~~However, for qualifying facilities with a nameplate rating of 10MW or less, to the extent that rules 3900 through 3954 are inconsistent with rule 3667, rule 3667 shall control.~~

**3901. Overview and Purpose~~Definitions.~~**

The purpose of these rules is to implement Sections 201 and 210 of the federal Public Utility Regulatory Policies Act of 1978 (PURPA) in conjunction with the entirety of the provisions in the Commission's Rules Regulating Electric Utilities.

**~~3901~~3902. Definitions.**

The following definitions apply to rules 3900 through ~~3954~~3905, except where a specific rule or statute provides otherwise. In addition to the definitions stated here, the definitions found in the Public Utilities Law, ~~in the Public Utility Regulatory Policies Act of 1978~~PURPA, and in the federal regulations which are incorporated by reference apply to these rules. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) "Avoided cost" means the incremental or marginal cost to an electrical utility of electrical energy or capacity, or both, which, but for the purchase of such energy and/or capacity from qualifying facility or qualifying facilities, the utility would generate itself or would purchase from another source.
- (b) "Qualifying facility" means any small power production facility or cogeneration facility which is a qualifying facility under federal law.



- (c) "Rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale or purchase of electrical energy or capacity; any rule or practice respecting any such rate, charge, or classification; and any contract pertaining to the sale or purchase of electrical energy or capacity.

**3903. Obligation to Purchase**

- (a) For qualifying facilities with a design capacity greater than 20 MW, the utility is obligated to purchase capacity or energy from the qualifying facility if the qualifying facility is awarded a contract pursuant to the competitive bidding provisions in the Commission's Electric Resource Planning Rules. If the Commission determines that such competitive bidding is reasonably accessible to qualifying facilities smaller than 20 MW, the utility likewise is obligated to purchase capacity or energy from a qualifying facility within the Commission-determined range if the qualifying facility is awarded a contract pursuant to the competitive bidding. The Commission's findings with respect to obligations to purchase from qualifying facilities smaller than 20 MW shall be set forth in its decision rendered pursuant to paragraph 3614(f).
- (b) Each utility shall file tariffs for purchases from certain qualifying facilities with a design capacity no greater than 20 MW or some lesser amount as the Commission determines in its decision rendered pursuant to paragraphs 3903(a) and 3614(f). Such tariffs shall ensure that the obligation to purchase does not arise until such time as the qualifying facility is viable as determined by the utility pursuant to the tariffs. The utility may file separate tariffs for purchases from qualifying facilities with a design capacity of 100 kW or less.
- (c) Energy purchases from a qualifying facility shall result in the transfer of RECs generated with the purchased energy from the qualifying facility to the utility.

**39023904. Avoided Costs.**

- (a) Each utility shall pay qualifying facilities a rate for energy and capacity purchases based on the utility's avoided costs. The avoided costs shall be reduced by integration costs, including, but not limited to, costs associated with additional reserves, systems operation impacts, and curtailments.
- (b) Each electric utility shall file tariffs setting forth standard rates for purchases from qualifying facilities with a design capacity of 100 KW or less. The utility shall supplement the advice letter filing for such tariffs with support for the method used to determine the avoided cost rate. The avoided cost rate shall take into account any savings provided by a qualifying facility to the utility's distribution and transmission systems. The avoided cost rates shall be recalculated and refiled no less than once each year.
- (c) A utility shall establish its avoided costs for qualifying facilities with a design capacity of greater than 20 MW through the competitive bidding process pursuant to the Commission's Electric Resource Planning Rules. In accordance with paragraph 3903(a), the Commission may reduce such minimum design capacity below 20 MW if the smaller qualifying facilities are eligible to participate in the competitive bidding process. A utility shall use a bid or an auction or a combination procedure to establish its avoided costs for facilities with a design capacity of greater than 100 KW. The utility is obligated to purchase capacity or energy from a qualifying facility only if the qualifying facility is awarded a contract under the bid or auction or combination process.



- (d) If required by the Commission for facilities with a design capacity greater than 100 kW and less than an amount not to exceed 20 MW pursuant to paragraph 3903(b), the utility's tariffs for purchases from qualifying facilities, shall set forth a method for calculating the utility's avoided costs. The tariff shall set forth rates for purchases with scheduled delivery of firm power or power-producing capacity for a specified term as determined either at the time of delivery or under a fixed priced contract. The tariff also shall set forth rates for as-available purchases without scheduled delivery as determined at the time of delivery accounting for the time and quantity of the purchases.
- (de) If a utility can demonstrate to the Commission that a qualifying facility should receive a different rate from that established by these rules, the Commission may authorize such. The burden of establishing such different rate shall be on the utility, and the rate shall be based on the utility's system wide costing principles and other appropriate load and cost data.
- (ef) Nothing in this rule requires a utility to pay more than its avoided costs of energy and capacity, of energy, or of capacity for purchases from qualifying facilities.

**3905. Determination of Capacity.**

The design capacity of all power production facilities located at the same site shall be aggregated for purposes of determining whether a qualifying facility meets applicable thresholds specified in this section. For hydroelectric facilities, power production facilities are considered to be located at the same site if they use water from the same impoundment for power generation. For all other types of power production facilities, facilities are considered to be located at the same site if they are electrically connected through a common collector system or common interconnection facilities up to the point of interconnection to the utility's distribution or transmission system. In addition, if a utility can demonstrate to the Commission that two or more projects that do not meet the criteria specified above are nevertheless a common project that exceeds an applicable threshold, the capacity of such power production facilities shall be aggregated for purposes of determining whether the qualifying facility meets the threshold. The utility shall have the burden of proof to establish that the threshold has not been met.

**39033906. Payment of Interconnection Costs and Operations.**

- (a) A qualifying facility seeking to interconnect to a utility's transmission system shall seek network resource interconnection service pursuant to the utility's Open Access Transmission Tariff (OATT).
- (b) A qualifying facility seeking to interconnect to a utility's distribution system shall be subject to the provisions in the Commission's interconnection standards and procedures and the applicable utility tariffs.
- (ac) Each qualifying facility shall pay the cost of interconnecting with an electric utility for purchases and sales of capacity and energy. To the extent that interconnection costs can be determined in advance of interconnection, each electric utility shall establish the cost of interconnection for purchases of energy and capacity. The interconnection costs shall be fair, reasonable, and nondiscriminatory to each qualifying facility.
- (bd) The utility and qualifying facility may agree to an installment payment arrangement for interconnection costs.

- (e) The rights and obligations of a qualifying facility shall be set forth in the awarded contract based on the model contract reviewed by the Commission in Phase I of the utility's electric resource plan proceeding.
- (f) For purchases from qualifying facilities pursuant to the utility's tariffs, the tariffs shall include a standard contract with the same terms as the applicable model contract reviewed by the Commission in Phase I of the utility's electric resource plan proceeding.

**~~3904. 3909. [Reserved].~~**

**~~3910. Standards for Operating Reliability and Safety.~~**

~~Rules 3910 through 3929 establish standards, as authorized by 18 C.F.R. § 292.308, to ensure the safe and reliable interconnected operations of qualifying facilities with utilities regulated by the Commission.~~

**~~3911. Responsibility of a Utility to Provide Quality Service.~~**

- (a) ~~A utility shall provide substantially the same quality of service to its customers and to the qualifying facility after interconnection of the qualifying facility as the utility provided prior to interconnection of the qualifying facility. The interconnection of the qualifying facility to the utility shall not degrade the utility's quality of service to its other customers. The qualifying facility shall pay for the interconnection facilities necessary to preserve the utility's quality of service to its other customers.~~
- (b) ~~At the request of a qualifying facility or a utility prior to interconnection, a utility may evaluate the quality of service to be provided to the qualifying facility. The cost of conducting an evaluation shall be included as an interconnection cost of a qualifying facility. The evaluation may be used for the following purposes:~~
  - (I) ~~to estimate the effects of interconnection on the quality of service to be provided; and~~
  - (II) ~~to establish the quality of service that a utility shall provide to a qualifying facility after interconnection.~~
- (c) ~~If the qualifying facility desires a superior quality of service to that established by an evaluation performed pursuant to paragraph (b) of this rule, any increased cost shall be an interconnection cost of the qualifying facility.~~

**~~3912. Submission of Design Information by a Qualifying Facility.~~**

- (a) ~~This rule shall apply only to qualifying facilities with nameplate ratings greater than ten MW. For facilities ten MW or less, see rule 3655.~~
- (b) ~~Any person seeking to establish interconnected operations as a qualifying facility shall provide to the utility with which it proposes to interconnect detailed design information of its proposed facilities at least 150 days prior to the proposed interconnection date. At any time after submission of design information, the utility and the qualifying facility may agree to an interconnection date sooner than 150 days. At the time it provides the detailed design information to the utility, the qualifying facility also shall provide the utility with a copy of all~~

~~available manufacturers' literature for the equipment to be installed, including installation and operating instructions.~~

- ~~(c) The design information submitted by a qualifying facility shall be sufficient to enable a utility to assess the impact of the proposed interconnection on the utility's system, operating plans, and system expansion plans.~~
- ~~(d) Within 25 days after the receipt of design information, or such longer period as agreed by them, a utility shall notify a qualifying facility whether the design information is adequate or whether additional information is required. If additional information is required, the utility shall specify in writing what additional information is needed; and the qualifying facility shall promptly submit the additional information.~~

**~~3913. Conferences between a Utility and a Qualifying Facility.~~**

- ~~(a) This rule shall apply only to qualifying facilities with nameplate ratings greater than ten MW. For facilities ten MW or less, see rule 3655.~~
- ~~(b) No later than 30 days after a qualifying facility has provided design information to a utility, the utility and the qualifying facility shall confer.~~
- ~~(c) At the conference, the utility shall provide the qualifying facility with the names of governmental agencies which have requirements (such as, without limitation, electrical codes, construction codes, sizing criteria, setback distances, physical clearances, protective devices, inspections, and grounding practices) regulating interconnection.~~
- ~~(d) At the conference, the utility shall inform the qualifying facility of these rules and of the system operation requirements and the safety standards and procedures (such as, without limitation, harmonic content for output voltage levels, recommended use of induction generators, line-commutated inverters, and reliable disconnection equipment) required for interconnection.~~

**~~3914. Establishment of Requirements for a Qualifying Facility.~~**

- ~~(a) Within 25 days after submission of complete design information by a qualifying facility, a utility shall:~~
  - ~~(I) establish written operations requirements for the qualifying facility so that interconnection with the qualifying facility will not cause abnormal operation of the utility's protective equipment; and~~
  - ~~(II) inform the qualifying facility of the existing phase conductors and utility's requirements for system electrical phase sequence/rotation available to the qualifying facility and encourage the qualifying facility to use the existing phasing for the proposed interconnection. The utility shall inform the qualifying facility that any phase imbalances may affect the safety of the proposed service or neighboring customer's loads.~~
- ~~(b) In the event that phased loadings of interconnection cause phase imbalances, the cost of equipment to correct the imbalances shall be an interconnection cost of the qualifying facility.~~

**~~3915. Compliance with Requirements and Rule Standards.~~**

- ~~(a) No utility shall interconnect with a qualifying facility until the qualifying facility has established, to the satisfaction of the utility, that it has complied with the utility's requirements for interconnected operations and the standards established in rules 3910 through 3929.~~
- ~~(b) When a qualifying facility determines that it has complied with all of the requirements of a utility and the standards established in these rules for interconnected operations, the qualifying facility shall give written notice of that fact to the utility. Within 25 days after receipt of that notice, the utility and the qualifying facility shall arrange for an onsite inspection of the qualifying facility. The utility shall inspect the facilities related to the qualifying facility's interconnection with the utility. The qualifying facility shall provide the personnel necessary to operate the facility in order to demonstrate to the utility the proper operation of the qualifying facility's equipment.
  - ~~(I) If the utility determines from the inspection that the qualifying facility has complied with all of the requirements of the utility and the standards established in these rules, the utility shall certify in writing that the qualifying facility complies.~~
  - ~~(II) If the utility determines that the qualifying facility has failed to comply with any requirement of the utility or any standard established in these rules, the utility shall notify the qualifying facility in writing of the requirements or standards that the qualifying facility must meet for interconnection. Upon compliance, the qualifying facility shall give written notice to the utility; and the parties shall proceed as provided in paragraph (b) of this rule.~~~~
- ~~(c) When the qualifying facility has obtained compliance certification, the qualifying facility and the utility shall schedule a date for the initial energizing and start up testing of the qualifying facility's generating equipment. The utility at its option may be present at this test.
  - ~~(I) At the conclusion of the test, the utility shall certify in writing whether the qualifying facility may commence interconnected operations.~~
  - ~~(II) If the qualifying facility fails the start up test, the utility shall so notify the qualifying facility in writing and within five business days. When the qualifying facility has corrected the deficiencies, the parties shall schedule a new start up test; and the parties shall proceed as provided in paragraph (c) of this rule.~~~~
- ~~(d) In the event of a disagreement between a qualifying facility and a utility regarding compliance by the qualifying facility with the utility's requirements or with the standards established in these rules or the qualifying facility's failure of the start up test, either party may file with the Commission a petition for a declaratory order under paragraph 1304(j) seeking resolution of the disagreement.~~
- ~~(e) In the event that either party files a petition for a declaratory order, the Commission shall enter an order resolving the dispute. The qualifying facility or the utility shall comply with the Commission's order prior to interconnection.~~

**~~3916. Code Certification by a Qualifying Facility.~~**

- ~~(a) A qualifying facility shall provide a utility with certification that it has complied with all applicable governmental codes (such as, without limitation, National Electric Safety Code, National Electrical~~

~~Code as currently adopted by the State Electrical Board, and construction codes as currently adopted by local jurisdictional government).~~

~~(b) — A qualifying facility shall obtain all necessary certifications at its own cost.~~

**~~3917. — Utility Access to Premises of a Qualifying Facility.~~**

~~(a) — A utility shall have access to a qualifying facility prior to construction to determine if minimum setback distances and physical clearances will be met for the safety of the utility's equipment. The cost of said inspection shall be included as an interconnection cost of the qualifying facility.~~

~~(b) — A utility shall have access to a qualifying facility to repair, to maintain, or to retrieve any of the utility's equipment affected by a failure of the utility's or qualifying facility's equipment.~~

~~(c) — A utility shall have access to a qualifying facility to conduct an inspection for the purpose stated in paragraph 3921(d).~~

~~(d) — A utility shall have access to a qualifying facility to conduct an inspection pursuant to the procedures established pursuant to paragraph 3927(b).~~

~~(e) — A utility shall have access to a qualifying facility to conduct an inspection pursuant to paragraph 3927(d).~~

~~(f) — A utility shall have access to a qualifying facility to conduct an inspection pursuant to paragraph 3927(e).~~

**~~3918. — Coordination of Circuit Protection Equipment.~~**

~~(a) — Prior to interconnection and at the earliest time possible after a qualifying facility provides its complete design information, but in no event later than 25 days after submission of complete design information, a utility shall provide a written statement to the qualifying facility as to whether the utility's circuit protection equipment can accommodate the equipment of the qualifying facility.~~

~~(b) — A utility shall evaluate the effects of a proposed interconnection, together with the aggregate effects of all other interconnections, on the utility's installed circuit protection equipment. Costs of the evaluation shall be an interconnection cost paid by the qualifying facility. (c) — As part of normal planning, a utility shall evaluate the interaction between a qualifying facility's operations and the utility's installed circuit protection equipment. The cost of evaluation shall be an interconnection cost of the qualifying facility.~~

~~(d) — If the design of a qualifying facility causes replacement or significant re-coordination of the utility's circuit protection equipment, or if the design reasonably can be expected to require extraordinary operation of the utility's installed protection equipment, the utility shall not interconnect with the qualifying facility. The utility shall decline to interconnect until either the design has been modified to eliminate the problems or specific modified designs for the interconnection are established. Replacement and re-coordination costs shall be an interconnection cost of the qualifying facility.~~

- ~~(e) — A qualifying facility shall provide the utility with a description of the qualifying facility's electrical and mechanical equipment sufficient for the utility to determine the safety and adequacy of its installed service drops and supply equipment. The qualifying facility shall provide this information at the time it submits its design information to the utility.~~

**3919. — Installation of Protective Equipment by a Qualifying Facility to Accommodate Protection Equipment of a Utility.**

- ~~(a) — Within 25 days after a qualifying facility submits its complete design information, a utility shall notify the qualifying facility of any necessity to install protective equipment to accommodate the utility's system protection equipment.~~
- ~~(b) — Such notification shall be made in writing and shall list the specific types of protective equipment required and the operations of the utility which necessitate protection.~~
- ~~(c) — The qualifying facility shall be responsible for installing protective equipment to accommodate the utility's system protection equipment. The cost of this installation shall be an interconnection cost of the qualifying facility.~~
- ~~(d) — A utility shall not be responsible for the effects on a qualifying facility's equipment and systems that are caused by the utility's system or equipment.~~

**3920. — Grounding Qualifying Facility Equipment.**

- ~~(a) — A utility shall establish grounding practices that are commensurate with those in the area, taking into consideration soil conditions, the nature of other loads in the area, and the utility's experience. Grounding practices shall be consistent with applicable national, state, and local codes.~~
- ~~(b) — A qualifying facility shall ground all equipment to meet governmental codes and the utility's requirements.~~
- ~~(c) — A utility shall advise, in writing, a qualifying facility of its grounding requirements within 25 days after the qualifying facility submits its complete design information.~~
- ~~(d) — If the grounding of a qualifying facility's equipment degrades safety, necessitating improvements or modifications of the interconnection, the utility shall have the right to approve the improvements or modifications made to the interconnection to assure that they are sufficient to address the safety issue caused by the degradation. The qualifying facility shall bear the responsibility for and the cost of such improvements or modifications.~~
- ~~(e) — In the event that grounding of a qualifying facility causes electro-magnetic interference with telephone service, radio or television reception, or the operation of other electrical devices, the qualifying facility shall make the necessary grounding modifications to remove such interference. The cost of such modifications shall be an interconnection cost of the qualifying facility.~~
- ~~(f) — No qualifying facility shall commence interconnected operations until it obtains written certification that it has complied with all applicable governmental codes and until the utility approves the grounding of the qualifying facility's equipment.~~

**3921. ~~Standards for Harmonics and Frequency.~~**

- (a) ~~A utility shall establish non-discriminatory standards for the harmonic content of power and energy generated by qualifying facilities.~~
- (b) ~~No qualifying facility shall commence interconnected operations until it establishes, to the satisfaction of the utility, that it will produce power and energy at a fundamental frequency of 60 HZ and that such power will not exceed the utility's established standards for harmonic content.~~
- (c) ~~A utility shall not be responsible for onsite interference caused by harmonics, failure of motors, interference with telephone service or television or radio reception, and other manifestations of degraded quality of service which are caused by the failure of a qualifying facility to produce power and energy at 60 HZ.~~
- (d) ~~A qualifying facility shall not operate its generators in such a fashion as to impact negatively the utility's or the utility's customers' voltage range or other voltage characteristics. The qualifying facility shall have adequate voltage regulation and related protective and control equipment as required by the utility.~~
- (e) ~~A qualifying facility shall operate within the utility's power factor and voltage characteristic requirements.~~

**3922. ~~Interconnection at Different Voltage Levels.~~**

- (a) ~~A qualifying facility shall interconnect with a utility at the utility's established voltage level.~~
- (b) ~~An interconnection at a voltage level that requires the utility to install different or additional protective equipment, or that requires the utility to make other modifications of its system, shall be an interconnection cost of the qualifying facility.~~

**3923. ~~Types of Generators and Inverting Equipment.~~**

- (a) ~~A utility shall establish standards to encourage qualifying facilities to use generators that minimize the safety hazard associated with the possibility of reverse power flow during periods of line outages.~~
- (b) ~~A utility shall adopt power factor standards at the point of interconnection. Such standards shall recognize that a qualifying facility may not produce excessive reactive power during off-peak conditions and may not consume excessive reactive power during on-peak conditions. The qualifying facility shall be responsible for installing, at its expense, the equipment necessary to maintain power factor requirements.~~
- (c) ~~If a qualifying facility's abnormal power factor causes deleterious effects on a utility's system,, unless otherwise provided by contract, the utility shall correct the deleterious effects on its system at the expense of the qualifying facility. Deleterious effects on a qualifying facility's system caused by its abnormal power factor shall be corrected by the qualifying facility at its own expense.~~



**3924. ~~System Protection Equipment.~~**

- (a) ~~Prior to interconnection, a qualifying facility shall install protective equipment that will automatically disconnect its generating equipment from a utility's power lines in the event of failure of the qualifying facility's generating equipment, a power line outage, or a nearby system fault.~~
  - (I) ~~The protective equipment, or separate equipment, shall have the ability to isolate the energy generated or supplied by a utility or by a qualifying facility. The equipment shall be accessible to and by the utility and the qualifying facility.~~
  - (II) ~~A utility shall have the right to operate the protective equipment whenever, in its judgment, it is necessary to maintain safe operating conditions or whenever the operations of a qualifying facility adversely affect the utility's system.~~
  - (III) ~~A qualifying facility shall have the right to operate the protective equipment whenever, in its judgment, it is necessary to maintain safe operating conditions or whenever the operations of a utility adversely affect the qualifying facility's equipment.~~
  - (IV) ~~Protective equipment that isolates a qualifying facility's generation shall be lockable by a utility only in the open position. Equipment that isolates a utility's generation or supply shall be lockable by a qualifying facility only in the open position. This equipment shall be installed so that there can be visual verification that the equipment is locked in the open position.~~
- (b) ~~Prior to interconnection, a utility shall require a qualifying facility to demonstrate the proper functioning and operation of its protective equipment to the satisfaction of the utility.~~
- (c) ~~A qualifying facility shall install overcurrent protection between major components of all switched interconnections.~~
- (d) ~~A qualifying facility shall install protective relaying equipment to confine the effects of faults, lightning strikes, or other abnormalities and to protect its and a utility's equipment.~~
- (e) ~~Prior to making significant modifications to its equipment, a qualifying facility shall notify a utility with which the QF is interconnected of the proposed modifications. If a qualifying facility plans to make significant modifications to its equipment, or if future difficulties arise on the systems of the qualifying facility or the utility as a result of the interconnection, the utility may require different or additional protective equipment or may require modifications as a condition of continued interconnected operations. The cost of such protective equipment or modifications shall be a cost of the qualifying facility.~~
- (f) ~~No specific number of system protective devices is required by this rule.~~

**3925. ~~Meters.~~**

- (a) ~~A utility shall own, install, and maintain meters and associated metering equipment to measure the generation of a qualifying facility.~~

~~(b) — A qualifying facility shall supply, at no expense to the utility, a suitable location for the installation of metering equipment.~~

~~(c) — The cost of meters and associated metering equipment, their installation, and their maintenance shall be an interconnection cost of the qualifying facility.~~

~~3926. — Maintenance and Inspection of a Qualifying Facility.~~

~~(a) — Prior to interconnection, a qualifying facility shall establish a planned maintenance schedule containing dates, times, and procedures. No qualifying facility shall commence interconnected operations until the utility approves the proposed maintenance schedule. The utility shall not withhold approval unreasonably.~~

~~(b) — A utility shall establish written procedures for inspecting a qualifying facility and shall provide a copy of the procedures to the qualifying facility prior to interconnection. Inspection procedures may be modified on a case by case basis.~~

~~(c) — A qualifying facility shall keep records of maintenance, and a utility shall keep records of inspections. Each shall have access to the records of the other.~~

~~(d) — A utility may inspect a qualifying facility, on demand, to determine if the qualifying facility is complying with the previously approved maintenance schedule and is safely operating all protective equipment.~~

~~(e) — A utility may inspect the qualifying facility and its records, on demand, to determine if the qualifying facility is, or has been, reselling the utility's energy and/or capacity to the utility.~~

~~(f) — Personnel from both a utility and a qualifying facility shall have the right to witness inspections. For inspections to determine safety or the reselling of the utility's energy or capacity to the utility, the utility shall inform the qualifying facility that it intends to inspect the facility. If the qualifying facility declines, the inspection shall be conducted without the presence of qualifying facility personnel. If the qualifying facility fails the inspection, the utility shall have the right to disconnect the qualifying facility from the utility's system until the qualifying facility can demonstrate the proper functioning of the qualifying facility's protection and control equipment to the satisfaction of utility representatives.~~

~~3927. — Disconnection of a Qualifying Facility.~~

~~(a) — If a utility determines that a qualifying facility has not complied with its maintenance schedule, that a qualifying facility's protective equipment is not operating properly, or that a qualifying facility has been reselling the utility's energy or capacity to the utility, the utility may disconnect the qualifying facility without notice or may give the qualifying facility up to 30 days' notice of disconnection.~~

~~(b) — A notice of disconnection shall inform the qualifying facility of the maintenance to be performed, the operational practices to be modified or terminated, or the repairs to be made to protective equipment to prevent disconnection. To avoid disconnection, the qualifying facility shall comply with all requirements prior to the date of the proposed disconnection. The qualifying facility shall notify the utility when it has complied, at which time the utility shall re-inspect the qualifying facility. If the utility determines that the qualifying facility has complied, the qualifying facility shall not be disconnected. If the utility determines that the qualifying facility has not complied, the qualifying facility shall be disconnected as provided in the notice of disconnection.~~

~~(c) — A utility and a qualifying facility may agree to a reasonable continuance of a disconnection, or to a reconnection where the qualifying facility has been disconnected, if the utility believes that the qualifying facility is making a bona fide effort to comply. If the qualifying facility has been disconnected for reselling the utility's energy and/or capacity to the utility, the agreement shall be conditioned on the qualifying facility's paying the utility for the resold energy and/or capacity.~~

~~3928. — Qualifying Facility to File Generation Schedule.~~

~~A qualifying facility shall provide a utility with a proposed schedule of generation prior to interconnection. The schedule may be used by the utility to coordinate normal maintenance of its distribution facilities, to coordinate its bulk power supplies, or to coordinate regular operations for the safety of maintenance personnel.~~

~~3929. — 3949. — [Reserved].~~

~~3950. — Indemnification and Insurance.~~

~~(a) — A utility shall indemnify a qualifying facility against all loss, damage, expense, and liability to third persons for injury or death caused by the utility's ownership, construction, operation, maintenance, or failure of its facilities used in the interconnected operations. The utility, at the request of the qualifying facility, shall defend any suit asserting a claim covered by its indemnification. The utility shall pay all costs incurred by the qualifying facility to enforce this indemnification.~~

~~(b) — A qualifying facility shall indemnify a utility against all loss, damage, expense, and liability to third persons for injury or death caused by the qualifying facility's ownership, construction, maintenance, or failure of its facilities used in the interconnected operations. The qualifying facility, at the request of the utility, shall defend any suit asserting a claim covered by its indemnification. The qualifying facility shall pay all costs incurred by the utility to enforce this indemnification.~~

~~(c) — Absent a written agreement to the contrary, a utility and a qualifying facility shall hold each other harmless from liability for all damages caused to the facilities of the other party by reason of the improper or otherwise out of compliance operation of, or non-operation of, their facilities.~~

~~(d) — A qualifying facility shall obtain liability insurance in an amount the utility determines to be reasonably adequate to protect the public and the utility against damages caused by the interconnected operations. Prior to interconnection, the qualifying facility shall provide the utility with a current, valid certificate of insurance naming the utility as a beneficiary. A utility may waive the right to be named as an additional insured.~~

~~3951.—Discontinuance of Sales or Purchases During System Emergencies, and Notice.~~

- ~~(a) — A qualifying facility shall provide energy or capacity to a utility during a system emergency on the utility's system to the extent required by 18 C.F.R. § 292.307.~~
- ~~(b) — Unless waived by the utility, a qualifying facility which discontinues sales to or purchases from a utility due to a system emergency:~~
  - ~~(I) — shall make a reasonable effort to notify the utility by telephone prior to discontinuance. If the qualifying facility is unable to give prior telephone notice to the utility, the qualifying facility shall notify the utility by telephone no later than two hours after the termination of the emergency. No utility shall be entitled to telephone notification under this rule unless it provides its current telephone number to the qualifying facility; and~~
  - ~~(II) — shall give written notice to the utility no later than five days after the termination of the emergency causing the discontinuance. The written notice shall describe the emergency, the duration of the emergency, and the reasons for the discontinuance.~~
- ~~(c) — During a system emergency, a utility may discontinue purchases from a qualifying facility as provided in 18 C.F.R. § 292.307. Unless waived by the qualifying facility, a utility which discontinues purchases from or sales to a qualifying facility due to a system emergency shall give written notice to the qualifying facility no later than ten days after termination of the emergency causing the discontinuance. The written notice shall describe the emergency, the duration of the system emergency, and the reasons for the discontinuance.~~
- ~~(d) — As used in this rule, "system emergency" means a condition on a utility's system that is likely to result in imminent and significant disruption of service to customers or that is likely imminently to endanger life or property.~~

~~3952.—Other Discontinuances.~~

~~Within ten days prior to any type of temporary discontinuance of purchases or sales other than one due to a system emergency, the utility or the qualifying facility shall notify the other party, except that this notification shall not be required if the parties previously have agreed upon the discontinuance or if the discontinuance is less than 15 minutes in duration.~~

~~3953.—Exemption of Qualifying Facilities from Certain Colorado Laws and Regulations.~~

- ~~(a) — A qualifying facility shall be exempt from Colorado law and regulations as provided in 18 C.F.R. § 292.602(c), except that a qualifying facility shall not be exempt from rules 3900 through 3954.~~
- ~~(b) — The exemption provided for in 18 C.F.R. § 292.602(c) shall not divest the Commission of the authority to review contracts for purchases and sales of power and energy under §§ 201 and 210 of the Public Utility Regulatory Policies Act of 1978.~~

~~3954~~3907. – 3975.      **[Reserved].**