Decision No. C20-0661-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0096E

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, RELATING TO ELECTRIC RESOURCE PLANNING, THE RENEWABLE ENERGY STANDARD, NET METERING, COMMUNITY SOLAR GARDENS, QUALIFYING FACILITIES, AND INTERCONNECTION PROCEDURES AND STANDARDS.

INTERIM DECISION SCHEDULING REMOTE HEARING; SOLICITING ADDITIONAL COMMENTS ON TRANSMISSION-RELATED PROVISIONS IN THE ELECTRIC RESOURCE PLANNING RULES; TAKING ADMINISTRATIVE NOTICE OF CERTAIN FILINGS IN PROCEEDING NO. 20M-0008E; TAKING ADMINISTRATIVE NOTICE OF FERC DECISION NO. 872 REGARDING QUALIFIED FACILITIES; ADDRESSING CDPHE CONSULTATION PURSUANT TO § 25-7-105(1)(E)(VIII)(A), C.R.S.; AND SEVERING RENEWABLE ENERGY STANDARD AND NET METERING RULES FROM THIS RULEMAKING PROCEEDING

Mailed Date: September 15, 2020
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I. BY THE COMMISSION

A. Statement

1. On February 27, 2019, the Colorado Public Utilities Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) to amend the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 of the Rules Regulating Electric Utilities (Electric Rules).[1] The proposed amendments revise the Electric Rules in six areas: (1) the rules governing Electric Resource Planning (ERP Rules) at 4 CCR 723-3-3600, *et seq.*; (2) the Renewable Energy Standard Rules (RES Rules) at 4 CCR 723-3-3650, *et seq.*; (3) the Net Metering Rules presently in 4 CCR 723-3-3664; (4) the rules governing Community Solar Gardens (CSG Rules) presently in 4 CCR 723-3-3665; (5) the provisions for utility purchases from Qualifying Facilities (QF Rules) presently at 4 CCR 723-3-3900, *et seq.*; and (6) the Interconnection Standards and Procedures presently in 4 CCR 723-3-3667. The NOPR solicited comment, in addition to scheduling a public comment hearing, which was held April 29, through May 3, 2019.

2. After subsequent written comments and in response to legislative changes enacted by the 2019 General Assembly, through Decision No. C19-0822-I, issued October 7, 2019 (October 2019 Decision), the Commission proposed further rule revisions and scheduled a public

[1] *See* Decision No. C19-0197.

comment hearing to be held on October 29, 2019. In addition, the Commission later severed both the CSG Rules and Interconnection Standards and Procedures from this Proceeding.[2]

3. Through Decision No. C20-0207-I, issued April 2, 2020 (April 2020 Decision), the Commission proposed further rule revisions and scheduled a public comment hearing to be held on April 23, 2020.

4. Through this Decision, we schedule a final hearing in this matter for October 13, 2020. We solicit written comments from interested participants to be filed in this Proceeding prior to October 13, 2020 regarding the consideration and treatment of new transmission resources used to interconnect new generation resources acquired through the ERP process established by the ERP Rules, as discussed in detail below. We take administrative notice of certain filings made by the Colorado electric utilities in June 2020 in Proceeding No. 20M-0008E. We also take administrative notice of Order No. 872 issued on July 16, 2020 by the Federal Energy Regulatory Commission (FERC) and seek comment on whether this FERC decision or any other direction should be codified in Colorado rules at this time, pending finalization of FERC's rules regarding QFs. We also request additional information from the Colorado Department of Public Health and Environment (CDPHE) regarding CDPHE's consultation with the Commission pursuant to § 25-7-105(1)(E)(VIII)(A), C.R.S.

5. In addition, we provide notice of our intention to sever the modification of the RES Rules and Net Metering Rules from this Proceeding. Further revision to the RES Rules and Net Metering Rules will be addressed through a separate decision and NOPR.

[2] As indicated in Decision No. C19-0822-I, the Commission opened rulemaking proceedings through subsequent Decision No. C19-0900, issued November 5, 2019, Proceeding No. 19R-0608E (CSG Rules), and Decision No. C19-0951, issued November 25, 2019, Proceeding No. 19R-0654E (Interconnection Standards and Procedures).

6. Comments prior to the October 13, 2020, public comment hearing are requested on or before September 30, 2020, with response comments requested no later than October 9, 2020.

B. Request for Additional Comments on Transmission Resources in the ERP Process

7. As explained in the October 2019 Decision, Senate Bill (SB) 19-236 enacts § 40-2-125.5, C.R.S., to require or allow certain electric utilities to file a Clean Energy Plan to achieve substantial reductions in carbon dioxide emissions. Section § 25-7-105(1)(e)(VIII)(B), C.R.S., specifies that a Clean Energy Plan must cause the greenhouse gas emissions from the Colorado utility's "retail electricity sales to decrease eighty percent by 2030 relative to 2005 levels." Notably, § 40-2-125.5(4), C.R.S., requires the next ERP filed by Public Service Company of Colorado (Public Service) to include a Clean Energy Plan.

8. On February 3, 2020, pursuant to Rule 3627, Public Service, Black Hills Colorado Electric, LLC (Black Hills), and Tri-State Generation and Transmission Association, Inc. (Tri-State) filed in Proceeding No. 20M-0008E, a ten-year transmission plan. The ten-year plan recognizes that § 40-2-126(2), C.R.S., also requires Public Service and Black Hills to: (a) designate energy resource zones; (b) develop plans for the construction or expansion of transmission facilities necessary to deliver electric power consistent with the timing of the development of beneficial energy resources located in or near such zones; (c) consider how transmission can be provided to encourage local ownership of renewable energy facilities, whether through renewable energy cooperatives as provided in § 7-56-210, C.R.S., or otherwise; and (d) submit proposed plans, designations, and applications for certificates of public convenience and necessity to the Commission for simultaneous review.

9. In the 10-Year Transmission Plan for the State of Colorado to Comply with Rule 3627 of the Colorado Public Utilities Commission Rules Regulating Electric Utilities, Public Service states that transmission development for a Clean Energy Plan will be reviewed by the Commission "under existing transmission planning processes and cost recovery." Nevertheless, Public Service states that a Clean Energy Plan "will present significant drivers for transmission planning" such as "new interconnection facilities for clean energy resources" and "Decommissioning, or redevelopment, of existing transmission facilities associated with the potential for accelerated fossil-fuel retirements."[3]

10. Through Decision No. C20-0213-I, issued on April 7, 2020, the Commission issued notice of the filing of the electric utilities' biennial transmission plan filings submitted in Proceeding No. 20M-0008E. The Commission also concluded that additional information from the utilities was necessary in light of §§ 25-7-105(1)(e)(VIII)(B) and 40-2-125.5, C.R.S., that require or allow certain electric utilities to file a Clean Energy Plan. The Commission thus directed the utilities to supplement their joint transmission filings initially submitted in Proceeding No. 20M-0008E.

11. Subsequent to the April 2020 Decision in this rulemaking proceeding, the Colorado Independent Energy Association (CIEA) offered additional recommendations to the Commission regarding the consideration of transmission facilities in the Commission's ERP process. CIEA contends that the Commission should allow itself a proactive role in transmission in Phase I of an ERP and a means to address what is an "obstacle in plain sight" to Colorado's clean energy goals—that any policy addressing expected transmission constraints must be

[3] 10-Year Transmission Plan for the State of Colorado to Comply with Rule 3627 of the Colorado Public Utilities Commission Rules Regulating Electric Utilities, filed on February 3, 2020 by Public Service, Black Hills, and Tri-State in Proceeding No. 20M-0008E as updated on June 8, 2020, pp. 17-18.

available to bidders prior to upcoming Requests for Proposals (RFPs) for Tri-State, Public Service, and Black Hills (2021, 2022, and 2023 respectively). CIEA notes that bidders cannot change their interconnection points after their bids are submitted, and argues that transmission solutions adopted after those RFPs will not affect resources to be added before 2030, because the respective resource acquisition periods will extend to 2030. CIEA again proposes a modification to Rule 3608(d) that would require utilities to analyze the costs and benefits of planned transmission assets separately from its evaluation of responses to its RFP. This would replace existing language requiring utilities to utilize transmission-related costs and benefits as criteria in bid evaluation.

12. Further, CIEA recommends allowing bidders to identify interconnection points on planned transmission lines that are presented in a Rule 3627 report. CIEA claims that doing so will provide a transparent method to integrate Rule 3608(d) into the ERP and allow the Commission to evaluate transmission benefits as well as costs in Phase II. CIEA references the "chicken-and-egg" transmission problem, where the costs for new bulk system transmission lines that provide system benefits are assigned to bid portfolios, thereby rendering them non-competitive and eliminating such portfolios from inclusion in the 120-Day Report. CIEA states that in order to avoid exclusion, bidders opt to specify gen-ties, and that gen-ties now connect the bulk of Colorado's renewable generation in a "hub-and-spoke" configuration. CIEA complains that the Commission's practice of requiring interconnection only to existing transmission resources or those that have a Certificate of Public Convenience and Necessity (CPCN) limits bidders to the few remaining interconnection areas in Colorado, requiring long tie-lines, which CIEA claims is an expensive and inefficient way to integrate renewable energy.

13. CIEA points to Public Service's construction of the Rush Creek transmission line as an example of a better way to interconnect renewable resources. According to CIEA, that line will interconnect 1,600 MW of low-cost wind power, including 800 MW of projects approved as part of the Colorado Energy Plan Portfolio that, according to CIEA, would not have been selected but for the existence of the Rush Creek line. CIEA argues that the benefits of enabling multiple projects in an efficient manner are not calculated or considered in the ERP Rules, and that new bulk transmission lines benefit the future of the system beyond a given RFP by enabling future low-cost renewable generation.

14. Finally, CIEA takes issue with the Commission's statement in the April 2020 Decision that the transmission planning process provides "opportunities for transmission project development before a Phase II ERP process,"[4] arguing that projects identified through that process are unavailable in the ERP process, both in the current and proposed rules. CIEA argues that the Commission's transmission planning process is currently irrelevant from the perspective of a bidder in an RFP. Allowing bidders to specify interconnection to projects identified in the Rule 3627 transmission process would address this problem without raising the disclosure concerns the Commission expressed in the April 2020 Decision. CIEA therefore proposes a modification to Rule 3614(f)(II) that would explicitly give the Commission authority to modify a utility's RFP to enable bidders to specify interconnection to planned transmission resources.

15. In response to CIEA, Public Service argues that CIEA's proposals would fundamentally change the ERP process in a manner that should not be considered so late in this NOPR process. According to Public Service, analyzing transmission costs separately from portfolios isolates costs and prevents a holistic evaluation of all costs associated with a portfolio.

[4] April 2020 Decision at ¶ 164.

Public Service further argues that allowing bidders to propose interconnection to transmission projects only in the planning stage will introduce significant uncertainty in the future delivery of these projects. Public Service references several examples of Independent Power Producers failing to deliver on winning bids, including its own experience in Public Service's most recent ERP proceeding, Proceeding No. 16A-0396E. Such failures require utilities to find replacement projects and petition for amendments to their ERPs. Public Service argues that allowing bidders to specify interconnection to transmission projects far from the development stage without any cost consequences in the evaluation process will exacerbate this problem. Nevertheless, Public Service acknowledges the importance of transmission infrastructure development in facilitating decarbonization. Public Service states that the Commission's rules establish a process to coordinate transmission planning and that SB 07-100 created a path to facilitate transmission buildout to unlock cost-effective clean energy resources. Public Service argues that given these regulatory and statutory paths, rule changes to modify the cost evaluation process or allow bidders to specify connection to speculative transmission lines are not appropriate.

16. In contrast to Public Service's response, the Colorado Energy Office states its support for the rule modifications proposed by CIEA and urges the Commission to act in a timely manner, noting that policies to fix the issues raised by CIEA must be in place in time to be relevant for the upcoming RFP processes for Tri-State, Public Service, and Black Hills.

17. In the supplemental filing submitted in Proceeding No. 20M-0008E filed on June 8, 2020 in response to Decision No. C20-0213-I, Public Service offered the following:

> Public Service recognizes that better and earlier integration of transmission planning into the resource planning process will be critical going forward as it looks to achieve 80 percent carbon reduction by 2030 as part of its next ERP. Since the 2016 ERP, Public Service's Transmission Planning and Resource Planning groups have been actively collaborating on how to better align their

respective processes for future ERPs. This includes earlier identification to Public Service's transmission planners of the size and location of potential resources needed to meet public policy initiatives, so that Public Service can better plan the transmission necessary to accommodate these new resources and reconsideration of what Senate Bill 07-100 provided for transmission to be built in advance of identified generation resources in the identified Renewable Energy Zones.

Public Service's Transmission Planning and Resource Planning departments are coordinating efforts to generally identify the actions that will be necessary to meet Public Service's carbon reduction goals under § 40-2-125.5(3)(I), C.R.S. As part of that process, Transmission Planning has conducted analyses of the potential standalone generation injection capabilities of various locations on Public Service's transmission system. Identifying stand-alone generation injection capability is the first step to understand how the existing transmission system might accommodate development of new clean energy resources such as wind and solar. Identifying and maximizing opportunities to utilize the existing transmission system can potentially reduce future transmission costs.

Looking beyond the existing transmission system, in the Joint 10-Year Transmission Plan, Public Service identified and described conceptual new transmission plans that have been developed through the coordinated planning process and that could lay the framework for new transmission infrastructure to support Clean Energy Plan goals. These conceptual plans include the Weld-Rosedale-Box Elder - Ennis 230 & 115 kV Transmission Lines and the Weld County Transmission Expansion, the Lamar Front Range Transmission Project, and the San Luis Valley Project. Using the stand-alone injection capabilities described above along with these conceptual new transmission plans, Public Service is assessing different pathways for how it could achieve the carbon reduction targets of § 40-2-125.5(3)(I), C.R.S through combinations of actions including early coal retirements, reduced coal operations, additional renewable resources (utility scale and distributed) additional storage technologies, and continued expansion of energy efficiency programs, while also maintaining a high level of system reliability.

Through a coordinated effort, Transmission Planning and Resource Planning are utilizing the stand-alone generation injection locations and the conceptual new transmission plans to develop portfolios for analysis that meet the Company's clean energy goals. Preliminary analyses are being conducted using generic cost and performance information for renewable, storage, and other generation technologies, which, in combination with coal-related actions, could be part of a Public Service Clean Energy Plan that will be brought forward to the Commission for approval in the future. Ultimately, the specifics of Public Service's preferred Clean Energy Plan will not be known until Public Service completes its Phase II

> competitive solicitation evaluation process as part of its next ERP and reports the results of that process to the Commission. This is anticipated to occur in 2022.[5]

18. We conclude that additional comments are necessary regarding the consideration of new transmission investment in the ERP process before we adopt any revisions to the transmission-related provisions in the ERP Rules. We are concerned by CIEA's observation that the Commission's transmission planning process may be irrelevant from the perspective of a bidder in an ERP competitive solicitation, particularly when Public Service must file a Clean Energy Plan as part of its next ERP. We are further concerned about the possibility that, without modifications to the ERP Rules addressing new transmission investment, the most cost-effective development of new generation resources may be precluded due to the lack of a full presentation of transmission investments that could be operational in time to fulfill resource needs as late as 2030, the end of the resource acquisition period for a Clean Energy Plan.

19. We seek to ensure to the extent it is possible, that new utility transmission investments associated with a Clean Energy Plan filed pursuant to § 40-2-125.5(4), C.R.S., will be sufficiently addressed in Phase I prior to the issuance of the RFPs in Phase II. We are also interested in examining whether certain backstop provisions should be introduced to the ERP Rules governing the Phase II process to achieve the same end: the identification of new transmission investments that could be operational in time to fulfill resource needs as late as 2030. With respect to Phase II processes, we seek comments regarding opportunities for bidders to refresh their bids or to renegotiate contracts if the viability of new transmission resources emerges with increased certainty during bid evaluation in Phase II. We specifically seek more

[5] *Supplemental Joint Report for the State of Colorado to Comply with Rule 3627 of the Colorado Public Utilities Commission Rules Regulating Electric Utilities* (Supplemental Joint Report) filed by Public Service, Black Hills, and Tri-State on June 8, 2020 in Proceeding No. 20M-0008E, pp. 11-12.

information about the possibility of an extended bid evaluation process justified by closer examination of RFP bids and the utility's transmission system for better integration of the new resources and the avoidance of wasteful or poorly utilized radial lines.

20. For the purpose of soliciting the additional comments, we take administrative notice of: (1) the Supplemental Joint Report; and, (2) the 10-Year Transmission Plan for the State of Colorado to Comply with Rule 3627 of the Colorado Public Utilities Commission Rules Regulating Electric Utilities, filed on February 3, 2020 by Public Service, Black Hills, and Tri-State and updated on June 8, 2020. In addition, we propose the following potential revisions to the ERP Rules.

21. In Rule 3608(a), we propose to introduce maps indicating new transmission projects as required information:

> (a) The utility shall report its existing transmission capabilities, transmission facilities under construction, and future needs during the ~~planning~~ resource acquisition 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 existing and planned transmission network that may affect the future siting of resources. The utility shall identify the location of existing and planned facilities, clearly differentiating existing and planned resources.

22. In Rule 3608(b), we propose to expand the identification of planned transmission projects with the following modifications:

> (b) With respect to future needs, the utility shall submit a description of all transmission lines and facilities that could reasonably be placed into service during the resource acquisition period including, but not limited to, lines and facilities:
>
> (I) not yet in commercial operation and are currently under development at the siting or permitting stage;
>
> (II) necessary to implement an alternative plan for acquiring resources pursuant to paragraph 3614(c);
>
> (III) currently under construction; or

(IV) 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 such reports, could reasonably be placed into service during the resource acquisition period.

23. In accordance with the proposed modifications to Rules 3608(a) and (b), we propose modifying Rule 3608(c) to include the estimated construction start date for new transmission projects:

(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 construction start date;
(III) estimated in-service date;
(IV~~III~~) injection capacity and locations for generation facilities;
(V~~IV~~) injection capacity and locations for energy storage systems;
(VI~~V~~) estimated costs;
(VII~~VI~~) terminal points; and
(VIII~~VII~~) voltage and megawatt rating.

24. We further propose to introduce a new provision in Rule 3608 for facilities under development at the siting or permitting stage:

(d) For each transmission line or facility under development at the siting or permitting stage as identified in paragraph (b), the utility shall include the following information:

(I) a narrative description of the required permits;
(II) the governmental agencies issuing the required permits;
(III) the expected timeline of the permitting process, including progress made; and
(IV) the expected timeline of the acquisition of land rights, including purchases, leases, and easements.

25. With respect to the Phase I process, we propose new provisions in Proposed Rule 3614(b) that corresponds to the additional modifications to Proposed Rule 3608(b):

(V) The utility shall indicate whether it will accept bids proposing interconnection to each line or facility identified by the utility pursuant to paragraph 3608(b) and any restrictions on the eligible type or capacity of the bid resource.

26. With respect to the Phase II process, we propose new provisions in Proposed Rule 3615(b)(IV) that require a geospatial representation of the bids received to the utility's competitive solicitation for the purpose of identifying any potential transmission projects the utility might identify as part of the bid evaluation process.

> (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. The utility shall also provide one or more detailed graphics identifying the physical locations of all bid resources superimposed on a map of existing transmission resources and transmission resources that could reasonably be placed into service during the resource acquisition period. This graphic shall identify the type and AC capacity of each proposed resource.

27. We also propose a parallel provision showing the bids advanced to computer modeling based as a new provision in Proposed Rule 3615(c)(IV):

> (IV) Contemporaneously with the notification in subparagraph 3615(c)(I), the utility shall file with the Commission one or more detailed graphics identifying the physical locations of all bid resources advanced to computer-based modeling, superimposed on a map of existing transmission resources and transmission resources that could reasonably be placed into service during the resource acquisition period. This graphic shall identify the type and AC capacity of each proposed resource.

28. For the purpose of soliciting additional comments, we propose another addition to the rules governing the Phase II bid evaluation process related to transmission in the form of Proposed Rule 3615(e)(V):

> (V) As part of the utility's review of both the reasonableness of the bidder-provided interconnection cost estimates and publicly available generator interconnection study information, the utility shall pre-screen portfolios based on required transmission upgrades, interconnection costs, and potential enhancements to the injection capability on the utility's facilities as presented by the utility pursuant to paragraph 3608(b) and, if applicable, as modified by the Phase I decision. If the utility determines through this pre-screening process that modifications to its existing and planned transmission resources may result in the development of cost-effective resource plans, the utility shall propose a bid affirmation and refresh process to require all bidders either to affirm or to update bid

prices to account for such modifications to the utility's transmission resources.

29. In addition to comments regarding the proposed rule modifications set forth above, we require additional information and comment on: (1) whether applications for approval of a CPCN for new transmission facilities should be filed concurrently with the initial ERP filing that launches Phase I of an ERP proceeding, particularly when the new transmission facility is necessary for the utility to achieve either the emission reductions required for a Clean Energy Plan pursuant to § 40-2-125.5(3)(a)(I), C.R.S., or the emission reductions required pursuant to Proposed Rule 3604(m) as set forth in the April 2020 Decision; (2) whether any of the transmission-related information addressed in the rules proposed in this Decision require extraordinary protection as highly confidential information, and whether such extraordinary protection requires different non-disclosure and access provisions as compared to other information claimed to be highly confidential in an ERP proceeding; and (3) whether Proposed Rule 3615(e)(V) provides sufficient rights and protections to bidders that they will be both encouraged to submit bids and able to refresh bids if transmission resources are modified during the course of Phase II.

C. FERC Decision Addressing Qualifying Facilities

30. On July 16, 2020, the FERC issued Order No. 872[6] regarding final rules approving certain revisions to its regulations implementing sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). Within its findings, FERC states that it "support[s] the use of competitive solicitations as a means to foster competition in the procurement of generation and to encourage the development of QFs in a way that most

[6] *Qualifying Facility Rates and Requirements*, Order No. 872, 172 FERC ¶ 61,041 (July 16, 2020) (Order No. 872).

accurately reflects a purchasing utility's avoided costs."[7] Order No. 872 includes that states are afforded flexibility to use a "properly structured" competitive solicitation to determine avoided cost rates for QFs.[8]

31. FERC sets forth minimum criteria to govern processes by which competitive solicitations are to be conducted in order for a competitive solicitation to be used to set QF rates. As codified and discussed throughout Order 872, FERC finds that transparent and non-discriminatory processes for competitive solicitation, include but are not limited to, the following factors:[9]

i. The solicitation process is an open and transparent process that includes, but is not limited to, providing equally to all potential bidders substantial and meaningful information regarding transmission constraints, levels of congestion, and interconnections, subject to appropriate confidentiality safeguards;[10]

ii. Solicitations must be open to all sources, to satisfy that purchasing [an] electric utility's capacity needs, taking into account the required operating characteristics of the needed capacity;

iii. Solicitations are conducted at regular intervals;[11]

iv. Solicitations are subject to oversight by an independent administrator;[12] and

[7] Order No. 872, at ¶ 416.

[8] Order No. 872, at ¶ 418.

[9] *See,* Order No. 872, at ¶ 413 and 427; 18 *Code of Federal Regulations* 292.304(b)(8).

[10] *See,* Order No. 872, at ¶ 431 (discussing use of non-disclosure agreement and processes to balance risks of competitive advantage and transparency requirements).

[11] FERC declines to "be overly prescriptive" as to what constitutes "regular intervals" but requiring utilities to review their capacity needs frequently, that the states are best situated to determine frequency of review, and that there "may be times when a utility's review of capacity needs reveals that no capacity is needed, and it would not make sense for a competitive solicitation to be mandated at such a time." Order No. 872, at ¶ 434.

[12] FERC declines to prescribe what constitutes an "independent administrator" but includes that the "substantive requirement of this factor is that the competitive solicitation not be administered by the purchasing electric utility itself or its affiliates, but rather by a separate and unbiased, and unaffiliated entity not subject to being influenced by the purchasing utility." Order No. 872, at ¶ 434.

v. Solicitations are certified as fulfilling the above criteria by the relevant state regulatory authority or nonregulated electric utility through a post-solicitation report.[13]

32. FERC concludes that, if a utility acquires all of its capacity through a properly conducted competitive solicitation that adheres to these factors, and does not add capacity through self-building and purchasing power from other sources outside of such solicitations, the competitive solicitations could be the "exclusive vehicle" for the purchasing electric utility to pay avoided capacity costs from a QF.[14] FERC further reaffirms that, when capacity is not needed, the avoided capacity cost rate can be zero.[15]

33. Participants before FERC have requested rehearing and clarifications regarding Order No. 872. FERC's determinations are therefore not yet final for purposes of adopting updated federal rules.

34. Although FERC's rulemaking is not yet complete, this Commission is mindful of FERC's actions, and agrees with the goals of best ensuring an open and transparent competitive solicitation. We therefore find it appropriate to allow participants in this Proceeding the opportunity to address Order No. 872, including specifically whether the Colorado Commission's QF Rules should be further revised in this rulemaking.

[13] Certification requires a written, formally-issued finding by the state that the competitive solicitation and its results comply with PURPA and FERC's PURPA regulations, and must include the independent administrator's report to the same effect. Order No. 872, at ¶ 436.

[14] Order No. 872, at ¶ 421.

[15] Order No. 872, at ¶ 423 (citing *City of Ketchikan, Alaska*, FERC ¶ 61293, at 62,061 (2001)).

35. As stated in the NOPR and following orders,[16] this Commission aims to make the competitive solicitation foundational to Colorado's ongoing PURPA compliance. The Commission notes that the Electric Rules currently in effect aim to achieve the goals of ensuring a frequent competitive solicitation process as encouraged further by FERC in Order No. 872. The ERP Rules and QF Rules proposed through this rulemaking are also guided by the principles of ensuring a transparent and non-discriminatory process. Through the continuing comment processes in this Proceeding, the Commission has proposed rule revisions to ensure open solicitations and increased access of substantial and meaningful information to bidders and the public, subject to appropriate confidentiality requirements. The proposed rule revisions further include competitive solicitations at regular intervals and also provide for the backstop of tariffing provisions for QF contracts in the event competitive solicitations become irregular or the Commission finds they are too expensive for owners and developers of small QF bidders.[17] Further still, the Commission continues to include and has proposed further revisions that incorporate oversight of the bidding process by an Independent Evaluator (IE).[18]

36. Throughout this rulemaking process, including prior proceedings and workshops soliciting comments, stakeholders have remained sharply divided. Utilities continue to advocate for QF Rules to make competitive solicitation the "only" avenue for QFs to procure contracts. In stark contrast, some QF proponents have argued against competitive solicitations, going so far as

[16] Decision No. C19-0197, issued February 27, 2020, at ¶262 (including that "[t]he 'QF Rules' proposed here preserve the ERP competitive bidding process as the primary means for a QF to secure a contract for the purchase of energy or capacity from the electric utilities"); Decision No. C20-0207-I, issued April 2, 2020, at ¶¶173-176 (seeking further comment on QF Rules, and maintaining competitive bidding as the primary means to secure a contract provided competitive solicitation is reasonably open to QF bids as provided through the proposed rules).

[17] *See,* Decision No. C20-0207-I, issued April 2, 2020, at ¶ 173.

[18] *See,* Decision No. C19-0197, issued February 27, 2019, at ¶ 84

to say the Commission processes were incompliant with PURPA, given that the rules provide for competitive solicitation as the primary means a QF may procure a contract.[19]

37. In this Proceeding, the most recent comments of participants interested in the proposed changes to the QF Rules do not include consideration or discussion of FERC's July 16, 2020, Order No. 872 that supports competitive solicitations as they relate to PURPA compliance.

38. We therefore find it appropriate to take administrative notice of FERC Order No. 872 in this Proceeding, and direct Commission Staff to provide the order in the record for easy access to participants. We invite stakeholders to provide further comments given the recent FERC Order No. 872 in relation to the proposed changes to the Commission's Electric Rules in this rulemaking.

39. We encourage participants to provide additional comments and proposed redlines of further rule modifications to ensure the QF Rules adopted in this rulemaking clearly align with Order No. 872, to the extent appropriate, yet at the same time remain flexible.[20] For example, FERC includes that certification of the competitive solicitation requires a written, formally-issued finding by the state that the competitive solicitation and its results comply with PURPA and FERC PURPA regulations – and must include the independent administrator's report to the same effect.[21] We seek comment on whether the IE report and Commission orders can accommodate this requirement if FERC finalizes the rule discussed in Order No. 872, such that a Colorado rule change may not be necessary. Nevertheless, participants are encouraged to

[19] *See, e.g.,* Comments of sPower Development Company, LLC, on Additional Proposed Rule Revisions, filed April 23, 2020, Proceeding No. 19R-0096E.

[20] We do not propose additional changes to the ERP Rules or QF Rules at this time, except for the potential rule revisions addressed in this Decision.

[21] Order No. 872, at ¶ 436.

consider and comment on whether this or any other direction should be codified in Colorado rules at this time, pending finalization of FERC's federal rule considerations regarding PURPA.

40. Consistent with our determination to split off the RES and Net Metering Rules as discussed below, the current focus of the remaining rules centers on competitive solicitation processes, including without limitation as a cornerstone of PURPA compliance provided necessary factors are met. If FERC further revises its rules as they are finalized through the federal rehearing and revision process, we aim to maintain sufficient flexibility in Colorado's rules such that a follow-on rulemaking could be focused on narrow revisions, if any are required.[22]

41. Therefore, and in recognizing that the FERC rulemaking is ongoing, we focus participant's remaining comments on whether the rules proposed for a competitive solicitation need further revision in light of Order No. 872 to ensure transparent and non-discriminatory competitive solicitations.

D. CDPHE Consultation with Commission per HB 19-1261

42. The October 2019 Decision explains that House Bill (HB) 19-1261, as codified at §§ 25-7-102, 25-7-103, and 25-7-105, C.R.S., requires the Colorado Air Quality Control Commission (AQCC) within CDPHE to promulgate implementing rules and regulations necessary over time to ensure progress toward a 26 percent reduction in statewide greenhouse gas pollution by 2025, a 50 percent reduction by 2030, and a 90 percent reduction by 2050, relative to 2005 statewide levels. The October 2019 Decision further explains that, with respect

[22] The Commission understands that participants to the FERC proceeding may further appeal or otherwise challenge Order No. 872. At this time, the Colorado Commission's focus remains on bolstering ongoing compliance with PURPA through a robust, transparent competitive solicitation process both in the rule and through actual adjudication anticipated in coming months.

to the contributions of the electric utilities toward meeting such goals, HB 19-1261 cross-references the Clean Energy Plans. Specifically, § 25-7-105(e)(VIII)(B), C.R.S., encourages the development of Clean Energy Plans that require emissions caused by Colorado retail electricity sales to decrease 80 percent by 2030 relative to 2005 levels. The Commission highlights in the October 2019 Decision that § 25-7-105(1)(e)(VIII)(A), C.R.S., specifically requires the AQCC to consult with the Commission in carrying out its responsibilities including the impacts of the greenhouse gas emission reduction rules on the cost of electricity, the reliability of electric service, technology developments in electricity production, and beneficial electrification.

43. In response to the October 2019 Decision, CDPHE argues that the Colorado Legislature contemplated that the Commission might move forward with consideration of Clean Energy Plans prior to adoption of rules by AQCC addressing greenhouse gas reduction strategies from the electric utilities. The April 2020 Decision provides significant discussion about greenhouse gas emission reductions and Clean Energy Plan filings, including various proposed rule changes incorporated in the attachments to that Commission decision.

44. CDPHE filed comments on May 7, 2020 in response to the April 2020 Decision, describing the process by which CDPHE has begun to develop for publication of a Clean Energy Plan "guidance document," including the emissions evaluation and consultation process for participating in the Commission's hearings addressing Clean Energy Plan filings (*i.e.,* the next ERP proceeding filed by Public Service in accordance with the ERP Rules promulgated in this rulemaking).

45. CDHPE explains that it began engagement with stakeholders in early 2020 regarding evaluating emission calculations for Clean Energy Plan filings. Stakeholders engaging

in that process include Public Service, Black Hills, Tri-State, Platte River Power Authority, Holy Cross Energy, Colorado Springs Utilities, and Guzman Energy, as well as stakeholders from environmental advocacy organizations such as the Environmental Defense Fund, Western Resource Advocates, Center for Resource Solutions, and Sierra Club. CDPHE further states that the Regulatory Assistance Project also participates as a stakeholder. CDPHE states that formal stakeholder meetings began in March 2020 to develop the guidance document with an anticipated publication date in late summer or early fall of 2020 after a briefing to the AQCC and public comment period, as well as any briefings or processes desired by the Commission.

46. CDPHE states that, as part of the guidance document under development, CDPHE intends to incorporate an emissions accounting approach that does not disincentivize utility investment in electrification by penalizing additional electric sector emissions resulting from increased electrification that results in economy-wide net reductions of greenhouse gas emissions. CDPHE notes that, as relevant to the Commission and this rulemaking, AQCC rules "must include requirements for providers of retail or wholesale electric service in the state of Colorado to track and report emissions from all generation sources within the State and elsewhere that electricity consumption by their customers in this State causes to be emitted."[23] In its May 7, 2020 comments, CDPHE encourages the Commission to adopt ERP Rules that require utilities to report separately their wholesale and retail sales that may include imports or exports of electricity. CDPHE concludes that as investments are being made to support the electric system as a whole in Colorado, CDPHE argues that it is consistent and appropriate for the utilities to report their entire generation and sales portfolios as part of their filings.

[23] § 25-7-140(2)(a)(I), C.R.S.

47. By this Decision, we request that CDPHE file in this Proceeding the Clean Energy Plan guidance document anticipated for publication in the coming weeks. To better facilitate future engagement and coordination, and to ensure the Commission does not need rules through this process, we further request that CDPHE provide guidance to this agency regarding the requirement in § 25-7-105(1)(e)(VIII)(A), C.R.S., that the AQCC consult with the Commission in carrying out AQCC's responsibilities including on issues of the cost of electricity, the reliability of electric service, technology developments in electricity production, and beneficial electrification. This information will help the Commission and the public better understand the relationship of the rules ultimately adopted through this Proceeding and future consultation actions expected between the sister agencies in coordinating towards the shared goals set forth in statute.

E. Renewable Energy Standard and Net Metering Rules

48. The Commission explains in the NOPR that it had last conducted a comprehensive review of its RES Rules approximately ten years ago. The Commission further states that a number of the participants in this rulemaking supported a comprehensive review to address certain inconsistencies between the ERP Rules and the RES Rules and suggested that some streamlining of the rules could be achieved prior to commencement of the Commission's next ERP cycle.

49. In the April 2020 Decision, the Commission explained that while it did not address or make further proposed revisions to the RES Rules or Net Metering Rules in that decision, it will address through a separate decision, including without limitation, proposing additional changes to those sections of the Electric Rules, providing an opportunity for further

comment, and determining whether those rules should be severed from the instant rulemaking proceeding.

50. By this Decision, we conclude, based on our review of the comments, that the RES Rules and Net Metering Rules are also now severable from this particular rulemaking effort. A new, separate rulemaking to modify the RES Rules and Net Metering Rules will allow for the final promulgation in this ongoing rulemaking revised ERP Rules and QF Rules. The inconsistencies between the RES Rules and the ERP Rules are now well documented and that information will assist the Commission's development of proposed revisions to the RES Rules and Net Metering Rules to be examined in a future rulemaking proceeding that will continue into 2021. Therefore, by a separate decision, the Commission will issue a NOPR to revise the RES Rules and Net Metering Rules.

F. Comments and Hearing

51. The Commission will conduct an additional day of hearing on October 13, 2020. The focus of the hearing will be topic areas discussed in this Decision. However, oral comments on all areas of interest relevant to the rulemaking, including those that are outside of the topics addressed by this Decision, will also be permitted at the public comment hearing.

52. The public comment hearing in this matter shall be conducted remotely via GoToMeeting. Members of the public may enter a queue to provide oral comments by dialing a number for telephonic participation to be published with further instructions in a separate decision to be issued prior to the scheduled hearing.

53. The Commission will also provide access to the October 13, 2020 hearing through the GoToMeeting video conferencing platform to individuals who have an e-mail address on file for service for this Proceeding through the Commission's E-filing System. Via an e-mail message sent prior to the start of the hearing, the Commission will provide a link for access to the video conferencing platform. The email will also include applicable instructions to access and participate via the video platform. Information and direction on using GoToMeeting to attend the hearing is also provided in Attachment A to this Decision. The Commission strongly encourages participants intending to participate by video conferencing to test their ability to use GoToMeeting before the October 13, 2020 hearing.

54. The October 13, 2020 hearing will be webcast to the general public at puc.colorado.gov/webcasts (Hearing Room A). Persons seeking to attend the hearing without providing oral comment are encouraged to participate in this manner and should not use the GoToMeeting platform. Audio recordings will be available 24 hours after the hearing.

55. The Commission encourages interested persons to submit written comments before the October 13, 2020 hearing. Written comments are requested to be filed by September 30, 2020. Comments in response to the comments filed by September 30, 2020 are requested to be filed by October 9, 2020.

56. The Commission prefers that comments be filed using its E-Filings System at https://www.dora.state.co.us/pls/efi/EFI.homepage in this Proceeding.

57. The Commission will consider all submissions, whether oral or written.

II. ORDER

A. It Is Ordered That:

1. A remote hearing in this matter shall be held as follows:

DATE: October 13, 2020

TIME: 9:00 a.m. until no later than 5:00 p.m.

METHOD: By video conference using GoToMeeting

2. At the time set for the remote hearing in this matter, interested persons may present comments orally unless the Commission deems oral presentation unnecessary.

3. Consistent with the discussion above, the Commission encourages interested persons to submit written comments on the topics raised in this Decision. The Commission requests that comments be filed no later than September 30, 2020, with responsive comments filed no later than October 9, 2020. The Commission requests that any changes to its rules are proposed in legislative redline format.

4. The Commission prefers and encourages interested persons to pre-file comments in this Proceeding (19R-0096E) through its E-Filings System at:

https://www.dora.state.co.us/pls/efi/EFI.homepage.

5. The Commission takes administrative notice of the Supplemental Joint Report for the State of Colorado to Comply with Rule 3627 of the Colorado Public Utilities Commission Rules Regulating Electric Utilities and the 10-Year Transmission Plan for the State of Colorado to Comply with Rule 3627 of the Colorado Public Utilities Commission Rules Regulating Electric Utilities, initially submitted on February 3, 2020 and updated on June 8, 2020, filed by

Public Service Company of Colorado; Black Hills Colorado Electric, LLC; and Tri-State Generation and Transmission Association, Inc. in Proceeding No. 20M-0008E.

6. The Commission takes administrative notice of *Qualifying Facility Rates and Requirements*, Order No. 872, 172 FERC ¶ 61,041 (July 16, 2020) (Order No. 872).

7. Consistent with the discussion above, the Commission requests that the Colorado Department of Public Health and Environment (CDPHE) file the Clean Energy Plan guidance document no later than seven days after it is published. The Commission further requests that CDPHE provide guidance to this agency regarding the requirement in § 25-7-105(1)(e)(VIII)(A), C.R.S., regarding consultation with the Commission in accordance with the filing deadlines set forth above.

8. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING September 11, 2020.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners

ATTEST: A TRUE COPY

Doug Dean,
Director