

Decision No. R22-0596-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0249E

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION'S RULES REGULATING ELECTRIC UTILITIES TO IMPLEMENT THE PROVISIONS OF SB21-072 REGARDING TRANSMISSION UTILITY PARTICIPATION IN ORGANIZED WHOLESALE MARKETS, 4 CODE OF COLORADO REGULATIONS 723-3.

**INTERIM DECISION OF
HEARING COMMISSIONER ERIC BLANK
SETTING AN AGENDA FOR THE OCTOBER 11, 2022
RULEMAKING HEARING, AND SUGGESTING
TOPICS FOR ORAL COMMENT**

Mailed Date: October 5, 2022

I. STATEMENT

1. By this Decision, Hearing Commissioner Eric Blank issues instructions and an agenda for the rulemaking hearing scheduled for October 11, 2022 at 9:00 a.m., and encourages oral comment on the proposal to add a declaratory order process as discussed below.

II. DISCUSSION

A. Background

2. The Colorado Public Utilities Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) on June 28, 2022, to amend the Rules Regulating Electric Utilities contained in 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules) of the Rules Regulating Electric Utilities. The proposed rules implement sections of Senate Bill (SB) 21-072, which requires transmission utilities to join a Regional Transmission Organization (RTO) or Independent System Operator (ISO) that qualifies as an Organized Wholesale Market (OWM) by 2030 and set forth provisions governing participation in wholesale electricity markets.

3. The central purpose of this Proceeding is to specify filing requirements for utilities seeking to join wholesale electricity markets and reporting requirements regarding utilities' plans, commitments, and actual participation in these markets. As explained in the NOPR, the Commission aims to ensure it is sufficiently informed of the impacts of potential market participation on a regulated utility's ability to adequately and reliably serve its Colorado customers, charge just and reasonable rates, meet applicable emission reduction requirements and clean energy targets, and remain responsive to state concerns and regulation.

4. In the NOPR, the Commission designated Chairman Eric Blank as the Hearing Commissioner and set a remote hearing on the proposed rules and related issues beginning at 9:00 a.m. on October 11, 2022. The Commission encouraged interested parties to submit initial written comments no later than September 6, 2022, with any pre-filed responsive comments due no later than September 20, 2022.

5. On September 6, 2002, Initial Comments were submitted and on September 20, 2022, Reply Comments were received.

B. Request for Comment on Declaratory Order or Similar Process

6. In their Initial Comments, Western Resource Advocates, Western Grid Group, and Sustainable FERC (jointly, the Public Interest Organizations) and Interwest Energy Alliance advocate for the inclusion of a declaratory order process, prior to any required OWM participation application, through which a transmission utility could request a determination on whether a particular RTO or ISO qualifies as an OWM.¹

¹ Public Interest Organizations Initial Comments at pp.13-14; Interwest Energy Alliance Initial Comments at pp. 3-4.

7. Several Reply Comments were supportive of the general proposal to add a declaratory order process or similar procedural step to the proposed rules, or replace the requirement for an application with a process akin to a declaratory order proceeding.² For example, the Colorado Energy Office (CEO) states that it may be beneficial and more procedurally efficient to have a “voluntary declaratory order process by which an individual or group of transmission utilities could have the Commission determine if the market is a qualifying OWM in advance of an application for OWM participation.”³ And Black Hills Electric Colorado, LLC, Tri-State Generation and Transmission Association, Inc., and Public Service Company of Colorado state that the Commission should consider establishing a process to identify markets that qualify as OWMs rather than requiring individual utility applications to join a given market.⁴

8. The Hearing Commissioner notes that declaratory order processes or similar procedural avenues may allow the Commission to continue to address issues it has previously identified as concerns, such as interconnection access and the development of market governance structures, prior to and outside of the application process contemplated by the proposed rules.

9. The Hearing Commissioner wishes to further explore the proposal of a declaratory order or similar process and its implications in the context of this rulemaking. Stakeholders are encouraged to respond to the following in oral comments given at the hearing:

- Could the Commission use a declaratory order process or similar process to investigate whether specific available OWMs meet the requirements established by SB21-072, as well as whether they address other issues surrounding regional market

² See generally, CEBA Reply Comments at p. 4; Public Service Reply Comments at pp. 8 and 15; PIO Reply Comments at pp. 18-19 (noting that the burden of proof should remain with the utility); and UCA Reply Comments at pp. 4-5.

³ CEO Reply Comments at p. 12.

⁴ Joint Transmission Utilities Reply Comments at p. 3 (suggesting either a Commission-initiated declaratory order proceeding or a miscellaneous proceeding).

governance, interconnection access, transmission expansion, emissions tracking, market seams, and rate impacts (broadly and on disproportionately impacted communities)?

- Are there other issues that may be considered through a declaratory order process or similar process, and in what ways would this consideration differ from consideration in an application proceeding?
- Could the Commission use a declaratory order process or similar process to investigate the issues identified in the bullets above at an earlier time than application proceedings would allow?
- Would the outcome of a declaratory order process or similar process justify a waiver or partial waiver in any following market participation application proceeding, or a waiver or partial waiver of a requirement to file a market participation application altogether?
- Would this type of waiver opportunity provide a meaningful incentive for Transmission Utilities to pursue a declaratory order process or similar process and provide sufficient analysis and support for the Commission to make determination regarding specific market opportunities?
- Can Declaratory Order proceedings be structured to provide meaningful review by the Commission and due process to stakeholders, or would a different procedural mechanism be better suited?

10. Additionally, these rules must accommodate for the fact that regional market design will involve multiple transmission utilities, most western states, and a wide variety of stakeholders (far beyond those in this rulemaking process) all of which is ultimately subject to RTO tariff filings and jurisdiction and oversight of the Federal Energy Regulatory Commission. Under these circumstances, one other key question for the hearing on October 11, 2022 is how to structure the timing of this rulemaking to adapt to this fundamental reality.

C. Rulemaking Hearing Format and Agenda

11. The public comment hearing will be held on October 11, 2022, using the web-hosted video-conferencing service Zoom. Participants in the hearing should prepare in advance to use this platform. For those who wish to provide oral comments during the hearing,

video-conference participation is preferred. The link, access code, and call-in information to participate in the hearing are as follows:

Join Zoom Meeting

<https://us06web.zoom.us/j/86779008663?pwd=azNQRjhFTVBvWGw4V01Ua0c5WExFZz09>

Meeting ID: 867 7900 8663

Passcode: 336262

One tap mobile

+12532158782,,86779008663#,,,,*336262# US (Tacoma)

+13462487799,,86779008663#,,,,*336262# US (Houston)

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

Meeting ID: 867 7900 8663

Passcode: 336262

Find your local number: <https://us06web.zoom.us/u/kb785jgbUX>

12. Consistent with Commission practice, the public comment hearing will be webcast on the Commission's website. Persons wishing to observe, but not participate in the hearing may do so by observing the webcast of the rulemaking hearing, and need not join the hearing by telephone or video-conference. To observe the rulemaking hearing by webcast, enter this link in the web browser <https://puc.colorado.gov/webcasts> and select the audio or video option for the assigned hearing room. The Hearing Commissioner encourages interested persons who do not wish to provide comments during the hearing to observe the hearing through the webcast because this will help minimize background noise during the hearing, and may assist in the orderly progression of the hearing.

13. Participants seeking to provide oral comment during the October 11, 2022 rulemaking hearing are encouraged to sign up via the link on the Commission's calendar

<https://puc.colorado.gov/>. Signing up prior to the hearing is not required to provide oral comment at the hearing. However, participants providing information about their planned participation prior to the hearing will assist the Commission in organizing the schedule and planning the discussion.

14. The Hearing Commissioner anticipates that the hearing will begin with public comment, followed by comments from transmission utilities, continue with stakeholders that are not state agencies, and conclude with comments from the state agencies. The Hearing Commissioner anticipates that oral comments will average 3-8 minutes depending on the number of commenters and the available time. Questions and discussion may occur between each section and again at the end.

15. The Commission shall consider oral and written comments equally.

III. **ORDER**

A. **It Is Ordered That:**

1. Participants to rulemaking Proceeding No. 22R-0249E are requested to consider these questions and issues as part of their oral comments in the hearing on October 11, 2022.

2. This order confirms the hearing as follows:

DATE October 11, 2022

TIME: 9:00 a.m., continuing until concluded, but no later than
5:00 p.m.

PLACE: By video conference using Zoom at a link in the calendar
of events on the Commission's website, available at:
<https://puc.colorado.gov/> and also provided above.

3. This Decision is effective upon its Mailed Date.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

Hearing Commissioner

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Doug Dean'.

Doug Dean,
Director