

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 07M-256E

IN THE MATTER OF POSSIBLE RULE REVISIONS TO THE COMMISSION'S ELECTRIC
LEAST-COST RESOURCE PLANNING RULES.

**ORDER SOLICITING COMMENTS ON
POSSIBLE RULE CHANGES**

Mailed Date: July 3, 2007
Adopted Date: June 27, 2007

I. BY THE COMMISSION

A. Statement

1. The Commission opens this docket upon its own motion to solicit comments from stakeholders concerning possible revisions to our rules for Least-Cost Planning (LCP), 4 *Code of Colorado Regulations* (CCR) 723-3-3600, *et. seq.*, in anticipation of utility LCP applications that will be submitted on or before October 31, 2007. Pursuant to the current LCP rules, jurisdictional electric utilities are required to file a least cost plan every four years. Therefore, any changes we may make to the rules must allow affected utilities ample time to respond to any new rules by the October 31 filing date.

2. We note that there is insufficient time to complete a formal rulemaking prior to the October 31, 2007 LCP filing deadline. Therefore, we are soliciting comments from parties on possible rule changes, with the intent of issuing emergency rules as quickly as possible.

3. We specifically solicit comments from parties on possible LCP rule changes shown in Attachment A. The possible LCP rule revisions stem from recent legislative changes, as well as from Staff recommendations in the investigation into Public Service Company of

Colorado's (Public Service) 2003 LCP. In addition, a recent complaint case¹ before the Commission provided an indication that Public Service may propose to construct an Integrated Gasification Combined-Cycle (IGCC) power generation plant under the provisions of § 40-2-123 (2), C.R.S. in conjunction with its 2007 LCP filing.

4. In Docket No. 07M-147E we directed Staff to file a report regarding Public Service's 2003 LCP resource acquisition process in two parts. *See*, Commission Decision No. C07-0378. The first part of Staff's report, entitled Volume 1: Commission Rules and Practices, was filed on June 14, 2007 and included recommendations for possible rule changes on a going forward basis. By Decision No. C07-0529, we directed Staff to include the rule issues raised in Volume 1 in this LCP rule investigation.

B. Recent Legislation

5. The majority of the proposed rule revisions relate to legislation passed by the Colorado legislature and signed by Governor Bill Owens and Governor Bill Ritter respectively in the 2006 and 2007 legislative sessions. The three specific bills to which Staff's proposed rule changes respond are House Bill (HB) 06-1281, HB 07-1037, and HB 07-1281.

6. HB 06-1281 significantly modified § 40-2-123, C.R.S. to include provisions related to the development of IGCC in Colorado. In light of these new provisions, we seek comments from parties on how we should assess and evaluate new clean energy and energy-efficient technologies, including, but not limited to IGCC, within a competitive bidding framework.

7. HB 07-1037 states that "a primary goal of electric least-cost planning is to minimize the net present value of revenue requirements." In contrast, our existing LCP rule

¹ See Docket No. 07F-088E

4 CCR 723-3-3610(f) states that “the utility’s objective shall be to minimize the net present value of rate impacts.” We seek comments on the proposed rule change incorporating the shift to net present value of revenue requirements in light of this specific provision of HB 07-1037.

8. HB 07-1281 expands the renewable energy standard in Colorado, likely requiring utilities to develop or procure more renewable energy during the resource acquisition periods proposed in the 2007 LCP filings. We are therefore interested in comments from parties on the integration of our LCP process with the procurement of renewable resources. We note that the Commission is currently undertaking a rulemaking in Docket No. 07R-166E to address this legislation directly, but we seek additional comment here as to how those requirements should be integrated into the LCP rules.

C. Overview of Draft Rule Changes

9. As a general principle, the attached rule revisions are intended to maintain the present LCP process except for specific changes that are either necessitated by enacted legislation, since the adoption of our LCP rules, or that we may subsequently find appropriate in light of Staff’s Volume 1 report. To that end, competitive bidding will remain the preferred approach for electric utility resource development and procurement in Colorado. With the exception of certain recommendations flowing from Staff’s Volume 1 report, most of the proposed changes on which we seek comment involve an expansion of rule 3610 concerning a utility’s plan for meeting its future resource needs.

10. While we reaffirm our basic commitment to least-cost resource acquisition, we acknowledge that recently enacted legislation requires us also to consider cost-effective renewable and new technologies pursuant to §§ 40-2-123 and 40-2-124. We intend to integrate this consideration into the existing framework and retain all-source solicitations as the primary

mechanism by which utilities procure new resources to maximize cost controls over new technologies and renewable resources. We also continue to capture the benefits of competitive bidding for ratepayers across all fuel types and technologies.

11. The possible emergency rules contain two significant changes. The first change establishes a resource category entitled “Section 123 Resources” which would include those addresses in § 40-2-123 (1), new energy technology resources; and those addressed in § 40-2-123 (2), Utility IGCC generation. Under the emergency rules, the current LCP structure continues, wherein the Commission approves the utility’s plan to meet the resource need. The utility would issue Requests for Proposal (RFPs) as it currently does. However, the emergency rules add a provision for an expedited proceeding to occur after bids are received, in which the Commission selects specific resources, rather than the utility selecting resources as is required in the current rules. After the bids for the all-source solicitation are received, the Commission would conduct an expedited procedure to establish the final preferred resource portfolio, balancing the goals of § 40-2-123, the renewable energy standard, and other legislation, with the traditional least-cost net present value assessment.

12. The intent is to resolve all such issues within the regular LCP process to the greatest extent possible. For example, we would expect parties to address in a regular LCP proceeding the relative benefits of one resource compared to another, as well as the relative costs and risks associated with utility-built, rate-based, generation facilities, and contracted purchase power agreements. The Commission would decide the narrow issue of resource selection in the subsequent expedited proceeding. The expedited proceeding would allow the Commission to consider all Section 123 resources in the context of other bids that have been received, rather

than considering a § 40-2-123 (2) IGCC resource through a waiver to the LCP process before any other bids are received.

13. The second major change is the introduction of an independent bid evaluator into the LCP process. The proposed independent bid evaluator would make recommendations concerning the least-cost bids to an all-source solicitation in a report to the Commission. Public Service was instrumental in developing HB 06-1281, so that its anticipated waiver from our competitive bid requirements may constructively be similar to utility bids that would trigger the use of an independent auditor under existing rules.

14. The independent evaluator would perform an assessment and ranking of all bids based on least-cost criteria. For instance, the independent evaluator would match the successful least-cost renewable resources in the all-source solicitation with the renewable energy standard requirements under HB 07-1281. A shortfall of required renewables could then trigger a further targeted solicitation under our renewable energy standard rules.

15. The independent evaluator would also identify and evaluate Section 123 Resources submitted in the all-source solicitation. Based on the evaluator's report and recommendations, the Commission could then weigh the non-price benefits of individual Section 123 bids and consider whether the overall benefits of any such resource is in the public interest when compared to other bids from the all-source solicitation. Parties to the LCP docket would provide comments on the independent evaluator's report, and the Commission would make a decision on the resource portfolio based on the LCP proceeding, the independent evaluator's report, and party comments.

16. In accordance with the introduction of an independent bid evaluator to our LCP framework, the proposed rules would require us to issue an order adopting or modifying the

evaluator's recommendations on resource selection. Our decision would become part of the utility's approved LCP.

17. As under our present LCP rules, a utility's actions, consistent with an approved LCP, would sustain a presumption of prudence for cost recovery in future rate proceedings, or for Certificate of Public Convenience and Necessity application proceedings.

18. In addition to proposals related to the recent legislative changes, we also solicit comments from stakeholders on the rule changes proposed in Volume 1 of Staff's report in Docket No. 07M-147E, to the extent those comments apply to the rule considerations addressed in this docket.

19. Subsequent to the hearing in which we determined to seek comment on the attached proposed emergency rules, Staff completed and filed with the Commission Volume 2 of its report on Public Service's 2003 LCP. Due to this timing, the recommendations contained in that portion of Staff's report are not reflected in our proposed emergency rules. We wish to receive comments on the recommendations of Volume 2, especially as they pertain to model contracts, and we invite parties to comment in this docket.

20. While we note that the emergency rulemaking process we undertake here is a bit out of the ordinary, we find that it best allows for the adoption of rules that take into account recent legislative changes, as well as recommendations for LCP rule changes from Staff's report. Time is of the essence, since affected utilities must file their LCP application no later than October 31, 2007. Therefore, a regular rulemaking is not possible, given the time requirements under the Colorado Administrative Procedures Act for rulemaking procedures. To ensure fair and effective LCP rules, we find it best to proceed with this hybrid emergency rulemaking process.

D. Comments from Stakeholders

21. We request that stakeholders file written comments with the Commission on or before July 20, 2007. We then request that stakeholders file written reply comments on or before July 30, 2007. Parties filing comments are to file a disk with an electronic copy of all comments, in a text-searchable format, so that we can post the comments on our website.

II. ORDER**A. The Commission Orders That:**

1. The Commission invites parties to submit written comments on the draft Least Cost Planning rule revisions in Attachment A to this Order.

2. Initial written comments must be filed on or before July 20, 2007.

3. Written comments replying to the initial written comments must be filed on or before July 30, 2007.

4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 27, 2007.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RON BINZ

POLLY PAGE

CARL MILLER

Commissioners

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3

RULES REGULATING ELECTRIC UTILITIES

LEAST-COST 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 requirements as specified in rule 3605.

3601. Overview and Purpose.

The purpose of these rules is to establish a process to determine the need for additional electric resources by Commission jurisdictional electric utilities. It is the Commission's policy that a competitive acquisition process will normally be used to acquire new utility resources. The competitive acquisition process is intended to be neutral with respect to fuel type or resource technology. This process is intended to result in least-cost resource portfolios, taking into consideration projected system needs, reliability of proposed resources, the beneficial contributions of new clean energy and energy-efficient technologies, expected generation loading characteristics, and various risk factors. ~~The rules are intended to be neutral with respect to fuel type or resource technology.~~

3602. Definitions.

The following definitions apply to rules 3600 through 3615. 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 generating 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 generating 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) "End-use" means the light, heat, cooling, refrigeration, motor drive, or other useful work produced by equipment that uses electricity or its substitutes.

- (d) "Energy conservation" means the decrease in electricity requirements of specific customers during any selected time period, with end-use services of such customers held constant.
- (e) "Energy efficiency" means increases in energy conservation, reduced demand or improved load factors resulting from hardware, equipment, devices, or practices that are installed or instituted at a customer facility. Energy efficiency measures can include fuel switching.
- (f) "Heat Rate" means the ratio of energy inputs used by a generating facility expressed in BTUs (British Thermal Units), to the energy output of that facility expressed in kilowatt hours.
- (g) "Least-cost resource plan" or "plan" means a utility plan consisting of the elements set forth in rule 3604.
- (h) "Net present value of rate impact" means the current worth of the average annual rates associated with a particular resource portfolio, expressed in dollars per kilowatt hour in the year the plan is filed. The net present value of rate impact for a particular resource portfolio is first calculated by discounting the total annual revenue requirement by the appropriate discount rate. The discounted revenue requirement is then divided by the total utility kilowatt hour requirement for that year and averaged across the years of the planning period. The total annual revenue requirement for each year of the planning period is the total expected future revenue requirements associated with a particular resource portfolio.
- (i) "Planning period" means the future period for which a utility develops its plan, and the period, over which net present value of rate impact for resources are calculated. For purposes of this rule, the planning period is twenty to forty years and begins from the date the utility files its plan with the Commission.
- (j) "Renewable resource" means any facility, technology, measure, plan or action utilizing a renewable "fuel" source such as wind; solar; biomass; geothermal; municipal, animal, waste-tire or other waste; or hydroelectric generation of twenty megawatts or less.
- (k) "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. The resource acquisition period begins from the date the utility files its plan with the Commission.
- (l) "Resources" means supply-side resources, energy efficiency, or renewable resources used to meet electric system requirements.
- (m) "Section 123 resource" means a new energy technology or demonstration project, including a new clean energy or energy-efficient technology under § 40-2-123 (1) C.R.S., and an Integrated Gasification Combined Cycle project under § 40-2-123 (2), C.R.S.
- (n) "Supply-side resource" means a resource that can provide electrical energy or capacity to the utility. Supply-side resources include utility owned generating facilities, and energy or capacity purchased from other utilities and non-utilities.
- (p) "Typical day load pattern" means the electric demand placed on the utility's system for each hour of the day.

3603. Least-Cost Resource Plan Filing Requirements.

Jurisdictional electric utilities, as described in rule 3602, shall file a least-cost resource plan (plan) pursuant to these rules on or before October 31, 2003, and every four years thereafter. 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. Each utility shall file an original and fifteen copies of the plan with the Commission.

3604. Contents of the Least-Cost Resource Plan.

The utility shall file a 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 resource acquisition period, and planning period. The utility shall consistently use the specified resource acquisition and planning periods throughout the entire least-cost plan and resource acquisition process. The utility shall include a detailed explanation as to why the specific period lengths were chosen in light of the assessment of base-load, intermediate and peaking needs of the utility system.
- (b) An annual electric demand and energy forecast developed pursuant to rule 3606.
- (c) An evaluation of existing resources developed pursuant to rule 3607.
- (d) An assessment of planning reserve margins and contingency plans for the acquisition of additional resources developed pursuant to rule 3608.
- (e) An assessment of need for additional resources developed pursuant to rule 3609.
- (f) A description of the utility's plan for acquiring these resources pursuant to rule 3610.
- (g) The proposed RFP(s) the utility intends to use to solicit bids for the resources to be acquired through a competitive acquisition process, pursuant to rule 3612.
- (h) An explanation stating whether current rate designs for each major customer class are consistent with the contents of its plan. The utility shall also explain whether possible future changes in rate design will facilitate its proposed resource planning and resource acquisition goals.

3605. Cooperative Electric Generation and Transmission Association Reporting Requirements.

Pursuant to the schedule established in rule 3603, each cooperative electric generation and transmission association shall report its forecasts, existing resource assessment, planning reserves, and needs assessment, consistent with the requirements specified in rules 3606, 3607, 3608(a) and 3609. Each cooperative generation and transmission association shall also file annual reports pursuant to rules 3614(a)(I) through 3614(a)(VI).

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. Coincident summer and winter peak system losses and the allocation of such losses to the transmission and distribution components of the systems.
 - (VI) Typical day load patterns 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 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.
- (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 explain the effect on its energy and coincident peak demand forecast of all existing energy efficiency and energy conservation programs for each major customer class, as well as any such measures that have been approved by the Commission but are not included in the forecasts.
 - (III) 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 least-cost 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 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 of Existing Generation Resources.

- (a) Existing generation resource assessment. The utility shall describe its existing generation resources, all utility-owned generating facilities for which the utility has obtained a CPCN from the Commission pursuant to § 40-5-101, C.R.S., at the time the 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.
 - (II) Rated capacity and net dependable capacity of utility-owned generation facilities.
 - (III) Fuel type, heat rates, annual capacity factors and availability factors projected for utility-owned generation facilities over the planning period.
 - (IV) Estimated in-service dates for utility-owned generation facilities for which a CPCN has been granted but which are not in service at the time the plan under consideration is filed.
 - (V) Estimated remaining useful lives of existing generation facilities without significant new investment or maintenance expense.
 - (VI) The amount of capacity and/or energy 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 purchased pursuant to such contracts.
 - (VII) The amount of capacity and energy provided 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 provided pursuant to such wheeling or coordination agreements.

- (b) Utilities required to comply with these rules shall coordinate their 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) Existing transmission capabilities and future needs.
 - (I) 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. With respect to future needs, the utility shall explain the need for facilities based upon future load projections (including reserves). To the extent reasonably available, the utility shall include a description of the length and location of any additional facilities needed, their estimated costs, terminal points, voltage and megawatt rating, alternatives considered or under consideration, and other relevant information.
 - (II) In order to equitably compare possible resource alternatives, the utility shall consider all transmission costs required by, or imposed on the system by, a particular resource as part of the bid evaluation criteria.

3608. Planning Reserve Margins.

- (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 each year of the resource acquisition period for the base case, high, and low forecast scenarios established under rule 3606, to include risks associated with: (1) the development of generation, (2) losses of generation capacity, (3) purchase of power, (4) losses of transmission capability, (5) risks due to known or reasonably expected changes in environmental regulatory requirements, and (6) other risks. The utility shall develop planning reserve margins for its system for each year of the planning period outside of 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 each year of the resource acquisition period. As a part of its plan, the utility shall provide, under seal, a description of its 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 3609. The Commission will consider approval of contingency plans only after the utility receives bids, as described in rule 3614(b)(II). The

provisions of rule 3613(d) shall not apply to the contingency plans unless explicitly ordered by the Commission.

3609. Assessment of Need for Additional Resources.

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 3608, the utility shall assess the need to acquire additional resources during the resource acquisition period. The utility shall specify the portion of its resource need for each year of the resource acquisition period that must be satisfied with eligible energy resources to comply with the Renewable Energy Standard, 4 CCR 723-3-3650, et. seq.

3610. Utility Plan for Meeting the Resource Need.

- (a) The utility shall describe its least-cost resource plan for acquiring the resources to meet the need identified in rule 3609. The utility shall specify the portion of the resource need that it intends to meet as a part of a stand-alone voluntary tariff service, where all costs are separate from standard tariff services, if any. If the utility chooses to offer a stand-alone voluntary service, it must comply with the provisions of rule 3610(e); and the costs associated with any independent auditor will be assigned to the stand-alone voluntary service offering and will not be borne by the general body of utility ratepayers. The utility shall specify the portion of the resource need that it intends to meet through a competitive acquisition process and the portion that it intends to meet through an alternative method of resource acquisition.
- (b) The utility shall meet the resource need identified in the plan through a competitive acquisition process, unless the Commission approves an alternative method of resource acquisition. 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 a 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. The least-cost 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. The utility shall also explain and shall justify how the alternative method of resource acquisition complies with the requirements of the Public Utility Regulatory Policies Act of 1978 and Commission rules implementing that act. The lesser of 250 megawatts or ten percent of the highest base case forecast peak requirement identified for the resource acquisition period shall be the maximum amount of power that the utility may obtain through such alternative method of resource acquisition (1) in any single resource acquisition period and (2) from any single specific resource, regardless of the number of resource acquisition periods over which the units, plants, or other components of the resource might be built or the output of the resource made available for purchase.
- (c) The utility shall have the flexibility to propose multiple acquisitions at various times over the resource acquisition period as detailed in the utility's plan. However, the limits specified in paragraph (b) of this rule shall apply to the total resources acquired through an alternative method during an entire four-year least-cost planning cycle. Updating or refreshing of bids shall only be

- performed as specified in the utility's plan or pursuant to an explicit Commission order modifying an approved plan.
- (d) Each utility shall establish, ~~and shall include~~ a written bidding policy as a part of its filing, including the assumptions, criteria, and models that will be used to ~~a written bidding policy to ensure that bids are solicited~~ and evaluated 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 propose as a part of its filed plan, and other interested parties may provide input as a part of the LCP proceeding, criteria for evaluating benefits, such as the valuation of emissions and other non-energy benefits, with respect to bids for Section 123 resources or with respect to proposed Section 123 resources to be acquired through an alternative form of resource acquisition.
- (e) ~~If the utility intends to accept proposals from the utility or from an affiliate of the utility,~~ The utility shall include as part of its filing ~~a written separation policy and the name of an independent bid evaluator auditor whom the utility proposes~~ the Commission to hire to review and evaluate the bids. The utility shall pay for the services of the bid evaluator. The bid evaluator, and to have will report to the Commission on, the fairness of the competitive acquisition process and will review and rank proposed resources based on the assumptions, criteria, and models approved or modified by the Commission in its decision made under Rule 3613. The independent auditor-bid evaluator shall have at least five years' experience conducting and/or reviewing the conduct of competitive electric utility resource acquisition, including computerized portfolio costing analysis. The independent auditor-bid evaluator shall be unaffiliated with the utility and shall not have benefited, directly or indirectly, from employment or contracts with the utility in the preceding five years, except as an independent auditor-bid evaluator under these rules. The independent auditor-bid evaluator shall ~~not participate in, or advise only the utility~~ Commission with respect to, ~~any decisions in the utility's bid solicitation or and the results of the evaluator's bid evaluation process. The independent auditor shall conduct an audit of the utility's bid solicitation and evaluation process to determine whether it was conducted fairly.~~ For purposes of such auditbid evaluation, the utility shall provide the independent auditor-bid evaluator immediate and continuing access to all documents and data reviewed, used, or produced by the utility in its bid solicitation ~~and evaluation process~~. The utility shall make all its personnel, agents, and contractors involved in the bid solicitation ~~and bid evaluation~~ available for interview by the auditorbid evaluator. The utility shall conduct any additional modeling requested by the independent auditor-bid evaluator to test the assumptions and results of the bid evaluation evaluator's analyses.
- (f) Within sixty days of the utility's selection of final resources receipt of bids to its competitive acquisition process, the independent auditor-bid evaluator shall file a report with the Commission containing the ~~auditor's views on whether the utility conducted a fair bid solicitation and bid evaluation process~~ bid evaluator's recommended least-cost resource portfolio, with any deficiencies specifically reported. The bid evaluator shall provide a confidential version of its report to Staff of the Commission, OCC, and the Utility. The bid evaluator shall provide a non-confidential version of the report to all parties in the docket. The independent bid evaluator shall rank all proposed resources according to least-cost criteria to minimize the net present value of revenue requirements, consistent with reliability considerations and with financial and development risks. The independent bid evaluator shall also rank all proposed Section 123

~~resources based on the evaluation criteria established for Section 123 resources in the Commission's decision approving or modifying the utility's plan. The independent bid evaluator shall rank all proposed eligible energy resources that could be used by the utility to meet the renewable energy standard. Within 30 days a~~After the filing of the independent ~~auditor's bid evaluator's~~ report, the utility ~~and other bidders in the resource acquisition process and other interested parties shall be given the opportunity to review and to may file~~ comments on the ~~independent auditor's~~ report.

- (fg) ~~The Commission shall review the independent bid evaluator's report, as well as the comments from the utility, other bidders, and other interested parties, and shall issue within 90 days after the receipt of the report a written decision approving, disapproving, or ordering modifications, in whole or in part, the independent bid evaluator's recommend least-cost resource portfolio. In selecting its final resource plan, the utility's objective shall be to minimize the net present value of rate impacts, consistent with reliability considerations and with financial and development risks. In its review of the independent bid evaluator's recommendations, the Commission shall consider the minimization of the net present value of revenue requirements as a primary goal. solicitation and evaluation process, the utility~~ The Commission shall also consider renewable resources; resources that produce minimal emissions or minimal environmental impact; energy-efficient technologies; and resources that provide beneficial contributions to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases. ~~Further, the utility shall grant a preference to such resources where cost and reliability considerations are equal.~~

3611. Exemptions from Competitive Acquisition.

The following resources need not be acquired through a competitive acquisition process and need not be included in an approved Least-Cost Plan prior to acquisition:

- (a) Emergency maintenance or repairs made to utility-owned generation facilities.
- (b) Capacity and/or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of not more than 30 megawatts.
- (c) 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 megawatts of capacity.
- (d) 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 megawatts, 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.
- (e) Interruptible service provided to the utility's electric customers.
- (f) 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.

- (g) Utility investments in emission control equipment at existing generation plants.

3612. 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 3610. The utility shall include a model contract to match each type of need and fuel included in its proposed RFP(s) as well as a model contract for Section 123 resources.
- (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): (1) base-load, intermediate, and/or peaking needs and preferred fuel type; (2) reasonable estimates of transmission costs for resources located in different areas; (3) 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; (4) the utility's proposed standard contract(s) for the acquisition of resources; (5) proposed contract term lengths; (6) discount rate; (7) general planning assumptions; and (8) any other information necessary to implement a fair and reasonable bidding program.

3613. Commission Review and Approval of Least-Cost 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 rules 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 least-cost 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. 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 copies to all parties who participated in the application docket 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: (1) the utility's assessment of need for additional resources in the resource acquisition period; (2) the utility's plans for acquiring additional resources through the competitive acquisition process or through an alternative acquisition process; and (3) components of the utility's proposed RFP(s), such as the proposed evaluation criteria and all model contracts. A Commission decision pursuant to Rule 3610(g) shall become part of the decision approving or modifying a utility's plan.
- (d) Effect of the Commission decision. A utility shall implement its approved plan. A Commission decision specifically approving the components of a utility's plan creates a presumption that utility actions consistent with that approval are prudent. Because the Commission will not approve a utility's selection of specific resources, the Commission's approval of a plan creates no presumptions regarding those resources.

- (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 certificate of public convenience and necessity to meet customer need specifically approved by the Commission in its decision on the least-cost 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.

3614. Reports.

- (a) Annual progress reports. The utility shall file with the Commission, and shall provide to all parties to the most recent least-cost planning docket, 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. Annual progress reports shall also contain the following:
 - (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 3608.
 - (IV) An updated assessment of need for additional resources developed pursuant to rule 3609.
 - (V) An updated report of the utility's plan to meet the resource need developed pursuant to rule 3610 and the resources the utility has acquired to date in implementation of the plan.
 - (VI) In addition to the items required in subparagraphs(a)(I) through (a)(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.

- (b) Reports of the competitive acquisition process. The utility shall provide reports to the Commission concerning the progress and results of the competitive acquisition of resources. The following reports shall be filed:
- (I) Within 30 days after bids are received in response to the RFP(s), the utility shall report: (1) the identity of the bidders and the number of bids received, (2) the quantity of MW offered by bidders, (3) a breakdown of the number of bids and MW received by resource type, and (4) a description of the prices of the resources offered.
 - (II) 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 rules 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.
 - (III) Within 45 days after the ~~utility has selected the winning bidders~~issuance of a Commission decision pursuant to rule 3610(g), the utility shall report: (1) the identity of the bidders and the number of ~~winning-selected~~ bids; (2) the quantity of MW offered by the ~~winning selected~~ bidders; (3) a breakdown of the number and MW of ~~winning-selected~~ bids by resource type, name, and location; and (4) a description of the prices of the ~~winning selected~~ bids.
- (c) Unless explicitly ordered by the Commission, reports provided to the Commission under Rule 3614 does not constitute an amendment to the contents of a plan approved pursuant to Rule 3613.
- (d) Based on allegations of an inconsistency between the utility's actions and an approved plan, a party may petition the Commission to open a proceeding for the purpose of developing a record of evidence to be used in a separate future proceeding concerning the utility's request to recover the investments or expenses associated with new resources. The Commission may open such a proceeding on its own motion.

3615. Amendment of an Approved Plan.

The utility may file, at any time, an application to amend the contents of a plan approved pursuant to rule 3613. Such an application shall meet the requirements of rules 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. A utility is obligated to amend the contents of an approved plan as a result of significantly changed circumstances that conflict with the record of evidence used to support the Commission decision specifically approving or modifying the utility's approved plan.