

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

DOCKET NO. 07M-256E

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

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**ORDER ALLOWING  
ADDITIONAL COMMENT**

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Mailed Date: September 7, 2007

Adopted Date: September 7, 2007

**I. BY THE COMMISSION**

**A. Statement**

1. On September 7, 2007 the Commission held a Deliberations Meeting regarding the adoption of emergency rules to the Commission's current Least Cost Planning Rules, 4 *Code of Colorado Regulations*, (CCR) 723-3-3600, *et seq.* During the deliberations, the Commissioner's Advisory Staff provided members of the public in attendance, copies of what it has deemed "Revised Option Two," which delineates Advisory Staff's proposals for adoption of the emergency rules.

2. In addition, Commission Miller proposed his preferences for the role of an independent evaluator during the resource planning process. Chairman Binz also proposed an alternative for the role of an independent evaluator and how such an evaluator will be utilized.

3. While not required under the Colorado Administrative Procedures Act, § 24-4-103, C.R.S. when an agency adopts a temporary or emergency rule, the Commission nonetheless has taken comment from interested parties as to its proposed emergency rules in this matter. The Commission continues to find it prudent and helpful to continue to receive comments from

interested parties on the use of the proposed independent evaluator prior to its issuance of emergency rules. Therefore, attached to this Order as Attachment 1 is Advisory Staff's proposed Revised Option Two rules. Attached to this Order as Attachment 2 are Commissioner Miller's comments regarding the role of the proposed independent evaluator. Attached to this Order as Attachment 3 are Chairman Binz's proposals identified as Option 2B regarding the role of an independent evaluator.

4. Any interested party is encouraged to provide comments on the three proposals attached to this Order. The deadline for filing comments with the Commission is noon on Friday September 14, 2007.

## **II. ORDER**

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

1. Attached to this Order as Attachment 1 is Revised Option Two as proposed by Commission Advisory Staff; Attachment 2 which is Commissioner Miller's proposals for the use of an independent evaluator; and Attachment 3 which is Chairman Binz's proposals identified as Option 2B for the use of an independent evaluator.

2. Any interested party may file comments to these three proposals. Comments must be filed no later than noon, Friday September 14, 2007.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING  
September 7, 2007.**

(SEAL)



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

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POLLY PAGE

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CARL MILLER

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Commissioners

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

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

#### PART 3

#### RULES REGULATING ELECTRIC UTILITIES

### RESOURCE 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. This process is intended to result in cost-effective least-cost resource portfolios, taking into consideration projected system needs, reliability of proposed resources, 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. The competitive bid process should afford all resources an opportunity to bid, and all new utility resources will be compared in order to determine a cost-effective resource portfolio.

#### 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) "Cost-effective resource plan" means a designated combination of new utility resources that the Commission determines can be acquired at a reasonable cost and rate impact. A cost effective resource plan may comprise the following: renewable resources to comply with the Renewable

Energy Standard, 4 CCR 723-3-3650, et. seq.; demand-side management to comply with C.R.S. 40-3.2-104; Section 123 resources proposed to be acquired without competitive bidding; selected bids from a competitive acquisition process; and, backup bids intended to replace the loss of one or more of the selected bids.

- (d) "Demand-side management" means energy efficiency, conservation, load management, and demand response or any combination of these measures.
- (e) "End-use" means the light, heat, cooling, refrigeration, motor drive, or other useful work produced by equipment that uses electricity or its substitutes.
- (df) "Energy conservation" means the decrease in electricity requirements of specific customers during any selected time period, resulting in a reduction in end-use services, with end-use services of such customers held constant.
- (eg) "Energy efficiency" means the decrease in electricity requirements of specific customers during any selected period with end-use services of such customers held constant. ~~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.~~
- (fh) "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.~~
- (hi) "Net present value of revenue requirements" means the current worth of the total expected future revenue requirements associated with a particular resource portfolio, expressed in dollars per kilowatt hour in the year the plan is filed as discounted by the appropriate discount rate. "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.
- (ij) "Planning period" means the future period for which a utility develops its plan, and the period, over which net present value of revenue requirements 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.
- (jk) "Renewable resource" means any eligible energy resource as defined in rule 3652 of the Commission's Renewable Energy Standard, 4 CCR 723-3-3650, et. seq. ~~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) "Resource plan" or "plan" means a utility plan consisting of the elements set forth in rule 3604.
- (n) "Resources" means supply-side resources, energy efficiency demand-side management, or renewable resources used to meet electric system requirements.
- (o) "Section 123 resources" means new energy technology or demonstration projects, including new clean energy or energy-efficient technologies under § 40-2-123 (1) C.R.S., and Integrated Gasification Combined Cycle projects under § 40-2-123(2) C.R.S.
- (p) "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.
- (q) "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 resource~~ 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) A description of the projected emissions, in terms of pounds per MWh and tons per year, of sulfur dioxide, nitrogen oxides, particulate matter, mercury and carbon dioxide for new utility resources acquired during the planning period.
- (h) The proposed RFP(s) the utility intends to use to solicit bids for the resources to be acquired through a competitive acquisition process, including model contracts, pursuant to rule 3612.
- (hi) 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) The utility shall report its plans for compliance with the requirements of SB 07-100, including how such plans may affect the acquisition of eligible energy resources that comply with the Renewable Energy Standard, 4 CCR 723-3-3650, et. seq., and the acquisition of Section 123 resources.

(III) 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.

**3610. Utility Plan for Meeting the Resource Need.**

- (a) The utility shall describe its resource plan for acquiring the resources to meet the need identified in rule 3609. ~~The utility shall propose the portion of its resource need for each year of the resource acquisition period that it intends to satisfy with: (1) eligible energy resources to comply with the Renewable Energy Standard, 4 CCR 723-3-3650, et. seq.; (2) demand-side management programs to comply with C.R.S. 40-3.2-104; (3) Section 123 resources proposed to be acquired without competitive bidding; and, (4) The utility shall specify the portion of the resource need that it intends to meet as a part of a any stand-alone voluntary tariff services, where all costs are separate from standard tariff services, if any available. 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 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 resource acquisitions at various times over the resource acquisition period. 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 planning cycle.
- (d) Each utility shall ~~establish~~propose, ~~and shall include as a part of its filing,~~ a written bidding policy as part of its filing, including the assumptions, criteria, and models that will be used 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 also propose, and other interested parties may provide input as part of the resource plan proceeding, criteria for evaluating the costs and benefits of resources such as the valuation of emissions and non-energy benefits.
- (e) ~~If the utility intends to accept proposals from the utility or from an affiliate of the utility, the~~ Within sixty days of the filing of the plan under rule 3603, the utility shall file for Commission approval ~~include as part of its filing a written separation policy and the name of an~~ independent auditor evaluator whom the utility, the Staff of the Commission, and the OCC jointly propose, whom the utility proposes to hire to review, and to have report to the Commission on, the fairness of the competitive acquisition process. ~~The independent auditor 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 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 under these rules. The independent auditor shall not participate in, or advise the utility with respect to, any decisions in the bid solicitation or 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. Should the utility, the Staff, and the OCC fail to reach agreement on an independent evaluator, the Commission shall refer the matter to an administrative law judge for resolution. In any event, the Commission shall approve an independent evaluator by written decision within 120 days of the filing of the plan under rule 3603.~~

- (f) ~~Within 150 days of the filing of the plan under rule 3603, the utility will contract with the Commission-approved independent evaluator. To ensure the independence of the evaluator, Staff of the Commission will provide the scope of work outlined in the contract for services.~~
- (g) ~~For purposes of such audit, the~~The utility shall work cooperatively with the independent evaluator and shall provide the independent evaluator ~~auditor~~ immediate and continuing access to all documents and data reviewed, used, or produced by the utility in ~~the preparation of its plan and in its bid solicitation and evaluation process. The utility shall make available the appropriate utility staff to meet with the independent evaluator to answer questions and, if necessary, discuss the prosecution of work. The utility shall provide to the independent evaluator, in a timely manner so as to facilitate the deadlines outlined in these rules, the transmission studies necessary to evaluate all proposed and bid resources as well as any additional information necessary for independently modeling and recommending to the Commission a cost-effective resource plan. The utility shall make all its personnel, agents, and contractors involved in the bid solicitation and bid evaluation available for interview by the auditor. The utility shall conduct any additional modeling requested by the independent auditor to test the assumptions and results of the bid evaluation analyses.~~
- (h) Within ~~sixty~~120 days of the utility's ~~selection of final resources~~ receipt of bids to its competitive acquisition process, the utility and the independent evaluator ~~auditor~~ shall each separately file a report with the Commission ~~describing a recommended cost-effective resource plan containing the auditor's views on whether the utility conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported. To determine the incremental cost and rate impact of the recommended plan, the utility and the independent evaluator shall describe the combination of proposed and bid resources that minimizes the net present value of revenue requirements consistent with reliability considerations, financial and development risks, and the evaluation criteria approved by the Commission. The reports shall also separately rank all proposed and bid Section 123 resources that minimize the net present value of revenue requirements consistent with reliability considerations, financial and development risks, and the approved evaluation criteria. Confidential versions of these reports that protect specific bidder information and preserve opportunities for the utility's short-term trading operations will be provided to Staff of the Commission and the OCC. Non-confidential versions of the same reports will be provided to the other parties in the resource planning proceeding.~~
- (i) ~~Within 45 days after~~ After the filing of the independent evaluator's and the utility's auditor's reports, ~~the utility, other bidders in the resource acquisition process and other interested the parties in the resource plan proceeding, including the utility, shall be given the opportunity to review and to file comments on the independent auditor's reports. To prepare such comments, each party shall be afforded discovery rights including the ability to request additional modeling from the utility or the independent evaluator. Within one week of the filing of the reports, the Commission shall convene a procedural conference to establish the scope and a schedule for such discovery, balancing the parties' needs for timely information with the expedited timeline for establishing a cost-effective resource plan. The independent evaluator shall be available to testify before the Commission as an expert witness.~~

- (j) ~~Within 45 days after the receipt of the parties comments on the utility's and independent evaluator's reports, the Commission shall issue a written decision establishing a final cost-effective resource plan of proposed cost-effective resources, selected bids, and backup bids. The utility shall pursue the final cost-effective resource plan with due diligence and contract negotiations or with applications for certificates of public convenience and necessity, as necessary. In selecting the utility's its- final cost-effective resource plan, the Commission 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 bid solicitation and evaluation process, the utility shall 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 in accordance with C.R.S. §§ 40-2-123, 40-2-124, and 40-3.2-104. 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 resource Plan 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.
- (h) Utility investments in renewable resources under Rule 3660(e).

### 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. To

minimize bidder exceptions and to enhance bid comparability, the utility shall include in its proposed RFP(s) a model contract to match each type of resource need and each fuel and technology combination that could reasonably be expected to meet that need, including contracts for Section 123 resources. The Commission encourages settlement of model contracts by the utility and prospective bidders for final approval under rule 3613.

- (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 model** 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, such as the model contracts and the proposed evaluation criteria. A Commission decision pursuant to rule 3610(j) shall become part of the decision approving or modifying a utility's plan.
- (d) Effect of the Commission decision. A Commission decision specifically approving the components of a utility's plan creates a presumption that utility actions consistent with that approval are prudent. ~~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.~~
- (l) 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-final cost-effective~~ resource plan, the Commission shall take administrative notice of its decision on the plan. Any party challenging the Commission's decision regarding need for additional resources has the burden of proving that, due to a change in circumstances, the Commission's decision on need is no longer valid.

#### **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-resource~~ 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, the utility shall report: (1) the number of winning bids; (2) the quantity of MW offered by the winning bidders; (3) a breakdown of the number and MW of winning bids by resource type, name, and location; and (4) a description of the prices of the winning bids.~~

**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.

## **Miller Options for Emergency LCP Rules**

Recommended modifications to the “Option 2” rules:

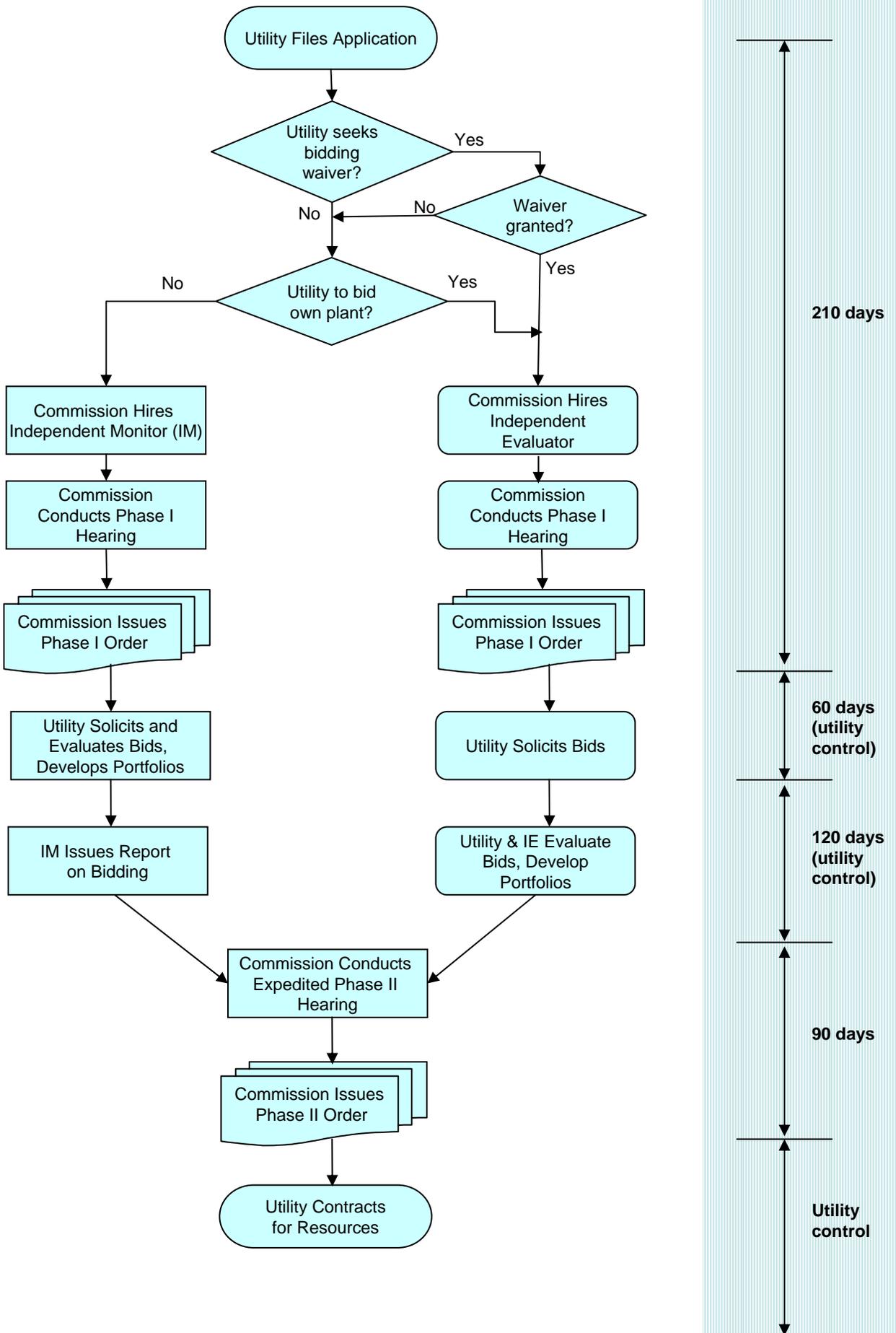
- Specify in rules that the Independent Evaluator (IE) is totally and exclusively linked to the utility filing of an IGCC plant pursuant to §40-2-123(2). The IE rule requirements are null and void without an IGCC filing.
- Establish a clear and concise job description of the scope and duties of the IE. (*e.g.*, run the model, and provide an analysis for comparison to the utility’s post-bid filing). [note – such job description is also necessary for any Independent Monitor/Auditor]
- The IE will not take direction from any party, except as ordered by the Commission. Staff and other parties will analyze and comment on the IE and utility reports.
- Selection of the IE – Consider hiring representatives from utilities and Commission staff from other states with IGCC experience, as voting members of a panel to select the IE. Perhaps potential IE candidates that do not make the short list could be considered as the third voting member.

**Outline of Binz Proposal (Option 2B)**

- The Commission will conduct a 210-day proceeding on the utility's application for approval of its Resource Plan that is very similar to the proceedings conducted in the 2003 LCP cycle. The Commission's final order in the Phase I proceeding will approve the resource need, amount of DSM, model inputs and assumptions, among other findings.
- In its Phase I order, the Commission will describe three alternate scenarios for potential Section 123 resource acquisition: Low, Medium and High cases. These scenarios will be described by ranges of capacity or energy in the final plan.

Example:

- Low Case: 0 to 50 MW of §123 resources
  - Medium Case 50 to 200 MW of §123 resources
  - High Case: 200 to 400 MW of §123 resources
- The utility will conduct an all-source bid solicitation, including solicitation of Section 123 resources and solicitation of resources required to comply with HB 07-1281.
  - If the utility proposes either 1) to bid a utility-owned resource into the competitive bid; or 2) to request a waiver of the competitive bidding rules for a utility-owned project (other than a resource described in §40-2-124(f)(I), C.R.S.), then the Commission will employ an independent evaluator (IE) in the case. The IE will prepare a parallel analysis to that of the utility.
  - If the utility does not propose a utility-owned plant, the Commission will not use an independent evaluator. Instead, the Commission will employ a consultant to monitor the bid process conducted by the utility, similar to the proposal made by WRA in its comments. The consultant will monitor the solicitation and bid evaluation process and report to the Commission on its fairness and regularity. The IM will receive special cooperation from the utility, including access to its modeling software.
  - The IE or IM will file a report with the Commission to complete its assignment and will be subject to cross-examination in hearings concerning the report.
  - As part of its bid analysis, the utility will prepare four resource acquisition scenarios, each of which will minimize NPV of revenue requirements subject to constraints. These four scenarios will be: 1) the utility's preferred option; 2) the Low Section 123 case; 3) the Medium Section 123 case; and 4) the High Section 123 case. The utility's preferred option may coincide with one of the other three cases.
  - The Commission will conduct an expedited proceeding to approve a resource plan with specific findings concerning Section 123 resources. The approval may or may not include selection of specific resources, and may or may not adopt any of the scenarios presented by the utility.
  - Following the Commission's final order in the Phase II hearings, the utility will negotiate contracts for resources in conformance with the approved resource plan.
  - Compliance with the resource plan approved by the Commission in the Phase II proceeding means the utility's consistent acquisition will be presumed to be prudent.



Issue	Initial Proposal (Option1)	Option 2	Binz Option 2B
Title of Rules	Least Cost Planning Rules	Resource Planning Rules	Resource Planning Rules
Role of Independent Evaluator (IE)	Prepares recommended resource selection based on modeling	Prepares resource selection proposal in parallel with utility, based on modeling	If employed, prepares resource selection proposal in parallel with utility, based on modeling
Role of the Independent Monitor (IM)	None	None	If employed, prepares a report as to the fairness and regularity of the bid process
Role of Utility	Cooperates with IE	Prepares resource selection proposal in parallel with IE	Prepares preferred resource selection proposal plus three additional resource scenarios; cooperates with IM or IE
Role of Commission, Phase I	Standard LCP approvals	Standard LCP approvals	Standard approvals plus guidance to utility on §123 resource scenarios
Role of Commission, Phase II	Approves final portfolio	Approves final portfolio	Approves resource plan, which <u>may or may not</u> include approval of specific resources
Bid Process	All-source	All-source	All-source
Selection of IE or IM	Utility nominates, Commission selects	Utility/Staff/OCC nominates, Commission selects	Utility/Staff/OCC nominates, Commission selects