

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 07R-368E

IN THE MATTER OF THE EMERGENCY RULES AMENDING THE COMMISSION’S
ELECTRIC RESOURCE PLANNING RULES.

DECISION ADOPTING EMERGENCY RULES

Mailed Date: September 28, 2007

Adopted Date: September 19, 2007

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I. BY THE COMMISSION**A. Statement**

1. This matter comes before the Commission for adoption of emergency rules that modify our current rules for Least-Cost Planning (LCP), 4 *Code of Colorado Regulations* (CCR) 723-3-3600, *et seq.*, as required by several bills enacted by the Colorado Legislature in the 2006 and 2007 Legislative Sessions. For the reasons set forth in this decision, we now adopt on an emergency basis the rules appended to this Decision as Attachment A.

2. Pursuant to emergency rule provisions of §§24-4-103(6) and 40-2-108(2), C.R.S., we adopt these rule changes immediately, without implementing the rulemaking requirements for permanent rules generally set forth in § 24-4-103, C.R.S. The rules attached to this order are effective upon the Mailed Date of this Decision, and will remain in effect until permanent rules become effective or for 210 days, whichever period is less. By separate decision and at a later date, we will initiate a rulemaking for permanent rules pursuant to § 24-4-103, C.R.S.

3. The Colorado Legislature recently passed several new bills that impact our existing LCP rules. In general, the new legislation requires the Commission to consider various benefits of new utility resources in addition to the costs of these resources as prescribed in the current LCP rules. We find that these legislative mandates necessitate the emergency rule changes as indicated in the rules attached to this Order as Attachment A.

4. We find that immediate adoption of the emergency rules is imperative and necessary to implement the requirements of House Bill (HB)07-1037, HB07-1281, Senate Bill (SB) 07-100, and HB06-1281. Without adopting the emergency rules, the utility filings made under our existing resource planning rules, due on or before October 31, 2007, and our decisions related to those filings cannot adequately comport to the requirements of these new statutes.

We further find that adoption of these emergency rules is imperatively necessary for the preservation of public health, safety and welfare and that compliance with the requirements of § 24-4-103 generally would be contrary to the public interest.

B. Background

5. On July 3, 2007, we issued Decision No. C07-0567 that contained proposed emergency rules to the Commission's LCP rules in response to several significant legislative changes that directly affect our resource planning process. We also sought comments from stakeholders regarding those proposed emergency rules in anticipation of forthcoming utility resource planning applications scheduled to be filed in late October. Attached to that Decision were proposed rule changes developed by the Commission's Advisory Staff that we will refer to as "Option 1." In soliciting comments to the LCP rule changes, we established the scope of the inquiry to include recent legislative changes as well as Staff recommendations in the investigation into Public Service Company of Colorado's (Public Service's) 2003 LCP in Docket No. 07M-147E. We determined that promulgating rules through the normal rulemaking process was not feasible, given that time was of the essence in order to provide utilities that would file their resource planning applications at the end of October sufficient time to become familiar with the required new rules prior to filing their applications. While it was not necessary for us to solicit comments in order to enact emergency rules, we nonetheless found it reasonable and prudent to do so, given the complexity of the emergency rule changes necessary due to the newly enacted legislation.

6. Our initial Option 1 rules maintained competitive bidding as the preferred approach for electric utility resource development and procurement. Specifically, the current LCP structure would continue under the Option 1 rules, where the Commission approves the

utility's plan to meet its future resource need before the utility solicits bids for resources. This pre-bid proceeding is referred to as "Phase I." After a final decision in Phase I, the utility would generally issue a Request for Proposals (RFP) as part of an all-source solicitation in accordance with its approved plan.

7. Notably, the Option 1 rules contained three significant changes to our existing resource planning process. The first change established a resource category entitled "Section 123 Resources" which would include those resources addressed in §40-2-123(1), and include new clean energy and energy-efficient technologies; and the options addressed in § 40-2-123(2), C.R.S., including the option to construct an Integrated Gasification Combined Cycle (IGCC) facility.

8. Option 1 also included a provision for an expedited "Phase II" process to occur after bids to the utility's competitive solicitation are received. That is, under Option 1, the Commission would conduct an expedited process after the bids are received in order to establish the utility's final resource portfolio, balancing the goals of §40-2-123, C.R.S., the renewable energy standard, and other legislation such as SB07-100 and HB07-1037, with a more traditional least-cost, net present value assessment. In Phase II, the Commission would determine the narrow issue of the preferred resource portfolio while considering the complex risks and benefits of Section 123 resources, including potentially a utility IGCC resource, in the context of other bids that have been received.

9. Third, to facilitate the expedited Phase II process, we introduced the concept of an independent evaluator (IE). In the Option 1 proposal, the IE would evaluate the bids and recommend the least-cost portfolio in a report to the Commission. Specifically, the IE would perform an assessment and ranking of all bids based on least-cost criteria. The IE would also

match the successful least-cost renewable resources in the all-source solicitation with the renewable energy standard requirements under HB07-1281. A shortfall of required renewables could trigger a further targeted solicitation under our renewable energy standard rules.

10. The IE, as envisioned in Option 1, would also identify and evaluate Section 123 Resources submitted in the all-source solicitation. Based on the IE's report and recommendations, the Commission would 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 resource plan docket, including the utility, could provide comments on the IE's report. The Commission would subsequently make a decision on the resource portfolio based on the record in the Phase II process.

11. The following stakeholders filed comments on Option 1: Aquila, Inc.; CF&I Steel LP (CF&I) and Climax Molybdenum Company (Climax); the Colorado Independent Energy Association (CIEA); Colorado Lighting, Inc.; the Colorado Office of Consumer Counsel (OCC); Ms. Leslie Glustrom; the Governor's Energy Office (GEO); Interwest Energy Alliance (Interwest); Public Service Company of Colorado (Public Service); Ratepayers United of Colorado (RUC) and Ms. Nancy LaPlaca; Rocky Mountain Farmers Union and Colorado Working Landscapes; and Western Resource Advocates (WRA). Reply comments were filed by: CF&I and Climax; CIEA; GEO; Public Service; RUC and Ms. LaPlaca; and WRA.

12. The Commission held three separate deliberations on August 21, 2007, September 7, 2007, and September 19, 2007. During the deliberations on August 21, 2007, based on the initial comments of the interested parties, Advisory Staff introduced a modified set of proposed emergency rule changes identified as "Option 2." Option 2 included substantial revisions to the

initially proposed Option 1 rules, such as a more comprehensive examination of the benefits of all new utility resources, as well as a far more prominent role for the utility in the Phase II proceeding. During deliberations on September 7, 2007, while not required to do so pursuant to § 24-4-103(6), we nonetheless found it prudent to request further comments from stakeholders. Chairman Binz also offered an alternative approach to the Option 2 framework for the IE and for the Phase II process, revising the conditions when an IE would be used and the role of the IE, which we identified as “Option 2B.” Additionally, Commissioner Miller offered another option for consideration which limited the role of the IE in comparison to Option 2’s approach. By Decision No. C07-0759, we again solicited comments from stakeholders on Option 2, Option 2B, and Commissioner Miller’s concepts.

13. CF&I and Climax, CIEA, GEO, Ms. Glustrom, Interwest, Public Service, RUC and Ms. LaPlaca, and WRA filed additional comments on Option 2, Option 2B, and Commissioner Miller’s concepts.

14. At our deliberations on September 19, 2007, we adopted a modified Option 2 approach which incorporated many of the suggestions proposed in the additional comments filed as discussed in more detail below.

C. New Legislation

15. As indicated *supra*, the Colorado Legislature enacted several new legislative requirements during the 2006 and 2007 legislative sessions. These laws were enacted and became effective after the current Commission LCP rules were promulgated in 2002. This new legislation significantly impacted the current least cost resource acquisition process as required under the LCP rules. For example, the requirement to consider “new clean energy” and “energy-efficient technologies” in our consideration of resource acquisition of electric utilities effectively

renders strict adherence to the least cost resource requirement in our rules moot. Below is a discussion of each legislative change and its impact on our LCP rules.

1. HB07-1037

16. HB07-1037 establishes requirements for energy efficiency and demand-side management (DSM) resources. This legislation influences the LCP rules in several ways. First, the efficiency and DSM requirements directly reduce the utility's resource needs that would otherwise be met through competitive bidding. The utility's plan to meet the resource needs, as required in the LCP rules, must address this legislative requirement.

17. HB07-1037 specifically establishes the minimization of net present value of revenue requirements as a primary goal of resource acquisition. However, our current LCP rules establish the primary criteria as the minimization of the net present value of rate impacts. Therefore, current Commission LCP rules are now in direct conflict with the mandates of HB07-1037 and must be amended to address this new requirement. Moreover, since this new legislation establishes the minimization of revenue requirements as "a primary goal," it also provides for other criteria to be considered, beyond the current least-cost criteria contained in the LCP rules. Indeed, the new legislation requires the Commission to give "due consideration to the impacts of DSM programs on non-participants and low-income customers." Such impacts on non-participants and low-income customers require the Commission to now assess the rate impacts of DSM programs.

18. In general, HB07-1037 requires us to shift from a least-cost standard in our current LCP rules to a broader, more subjective consideration of multiple criteria which will require substantially more Commission involvement in the resource selection process.

This criteria shift applies not only to DSM measures, but also to the evaluation of all other resources.

2. HB07-1281

19. HB07-1281 increases the renewable energy resources that jurisdictional electric utilities must acquire to meet levels that are greater than those mandated by the voter-approved Amendment 37. Consequently, the current least-cost standards mandated in the LCP rules are not consistent with the renewable mandates in this new legislation. While Amendment 37 was also not precisely congruent with the current LCP rules, jurisdictional utilities were nonetheless able to meet the renewable requirements with few modifications to their resource plans. However, the increased renewable requirements mandated by HB07-1281 necessitate greater integration between the Commission's resource planning rules and the increased Renewable Energy Standard of HB07-1281. More renewables will also increase the complexity of the utility's resource planning process, since a higher presence of renewables will influence the nature of the utility's remaining resource needs and in turn, the economics and operating characteristics of the remaining resources to be procured through competitive acquisition.¹ Further, as part of our statutory charge, we must carefully consider the rate impact requirements inherent in HB07-1281 when considering the overall cost-effectiveness of all new utility resources.

¹ For example, an increase in intermittent renewable resources may require more peaking or swing resources to maintain system reliability.

3. SB07-100

20. SB07-100 provides for the designation of energy resource zones and for the construction or expansion of electric transmission facilities to transmit energy from those zones to load centers. The bill is intended to improve the economic viability of certain rural renewable resources, and thus could potentially influence the cost-effectiveness of resources brought before the Commission for consideration in the development of a utility's resource plan.

4. HB06-1281

21. HB06-1281 added additional language to §40-2-123(1) which requires the Commission to give the fullest possible consideration to new clean and energy efficient technologies, while §40-2-123(2) provides an example of how the Commission can give such consideration to resources that may be in the public interest when accounting for the benefits of advancing the development of a particular resource, or when accounting for other benefits outside of a strict cost perspective. Since we must give similar consideration to new clean energy or energy efficient resources, we must develop additional standards for such resources. It is self-evident that weighing the benefits of a specific new energy technology against another new utility resource will make resource planning far more complex.

22. HB06-1281 also provides unique "emerging technology" considerations for an IGCC resource. It requires the Commission to determine if a proposed IGCC resource is in the public interest before approving it. We must determine whether the incremental cost and rate impact of the IGCC facility is reasonable, taking into account the breakthrough nature of the project. Modeling the costs and benefits of an IGCC plant in comparison to other resources will indeed present significant challenges. These include comparing the ratepayer risks of fixed bid versus utility rate-based plants and determining if and how balance-sheet impacts of bid

resources should be considered against rate-based plants, as well as assessing the risks of new technologies. We must also assess the benefits of advancing the development of emerging technologies, assess the benefits of carbon capture and the risks of long-term carbon storage, and generally weigh the concerns and benefits of a multi-billion dollar nascent technology.

23. We find that these new legislative requirements necessitate immediate and substantial changes to our LCP rules. We conclude that HB07-1037, HB07-1281, SB-100, and HB06-1281 each have a substantial impact on a utility's resource planning process, requiring more technical expertise and more involvement from the Commission in the resource selection process.

24. By adopting the emergency rules attached to this Order as Attachment A, we adopt emergency changes to our current resource planning rules that are necessary to meet the new legislative mandates.

D. Discussion of Rule Changes

1. Overview

25. As discussed above, the most significant changes required to our current resource planning rules are related to the introduction of the new legislatively mandated "Section 123 Resources," the expedited Phase II proceeding, and the Independent Evaluator. As a result, a number of other changes are required as well.

2. Section 123 Resources

26. We introduce "Section 123 resources" as a new defined term under rule 3602. The definition of "Section 123 resources" are derived from the language contained in § 40-2-123, C.R.S. We establish the concept of "Section 123 Resources" in this emergency rulemaking to account for bids or utility-proposed resources that would not be selected under a

strict least-cost approach, but which the Commission may find to be “cost effective” when considering the criteria listed in §40-2-123.

27. In addition, by our adoption of rule 3604(i), we expect to develop in the Phase I proceeding a more precise set of standards for identifying Section 123 resources. Similarly, we add a provision to current rule 3613(c) to ensure that our Phase I decision includes a description of the three alternate scenarios for use in Phase II.

28. We find that the Commission review of resources as required in § 40-2-123, along with other legislative changes, requires the Commission to consider the cost, rate, and complex risks and benefits of the Section 123 Resources in addressing the utility’s proposed resource plan.

3. Phase II – Utility Resource Selection

29. Because we find that the new legislation places more responsibility on the Commission regarding a utility’s plan to acquire new utility resources, we incorporate a "Phase II" post-bid review process as a measured step away from the strict least-cost resource planning framework. Upon the completion of this Phase II process, we will issue a decision on a utility’s final cost-effective resource plan.

30. We find that the Commission cannot adequately consider a utility’s proposed resource plan, as provided in § 40-2-123 and other legislative changes, outside of the context of actual bids. The current LCP rules established a narrow “least-cost” criteria, so it was possible to establish parameters so that the utility could independently select resources pursuant only to a Phase I decision. However, given the numerous criteria that the Commission must now consider, it is not feasible to prescribe how the utility is to compare future bids for the various resources.

31. We are mindful that a post-bid review of a utility's resource plan was employed in the earlier integrated resource planning rules which the current LCP rules replaced. We do not seek to return to that process which entailed an extensive regulatory proceeding after the utility's competitive solicitation. Rather, we seek an expedited review of the utility's final resource plan. We intend to expedite the process as much as possible by addressing the vast majority of the issues surrounding the utility's plan to acquire new utility resources in Phase I. We also adopt certain fundamental features to our rules for the post-bid review that are intended to narrow the matters at issue in Phase II.

32. We will continue to fully examine through a complete regulatory proceeding the utility's plans filed under rule 3603, just as under the existing LCP framework. In the Phase I proceeding we will consider the all of the components of a utility's plan just as we would have done without these emergency rules. Specifically, we will approve, reject, or order modifications to: the utility's assessment of need for additional resources in the resource acquisition period; the utility's plans for acquiring additional resources to meet these needs; and the utility's evaluation criteria and requests for proposals (RFPs) to be used in its competitive solicitations. By preserving this Phase I process, we intend to resolve the primary issues surrounding a utility's resource plan before the utility solicits bids for resources or files for a Certificate of Public Convenience or Necessity for a utility resource.

33. We find it necessary, however, to modify rule 3610(a) to acknowledge that the new legislation requires utilities to develop or procure specific types of new resources, such as renewable resources and DSM. Modified rule 3610(a) further acknowledges that HB06-1281 potentially allows for an IGCC facility to be part of a utility's resource plan.

34. As another means to expedite the Phase II process, we will conceptually describe in our Phase I decision three alternate scenarios for the potential acquisition of Section 123 Resources after bids are received to the utility's competitive solicitations. In order for us to describe such alternate scenarios in our Phase I decision, we enact rule 3604(i) that requires the utility to include in its application filing under rule 3603 a recommendation for defining the three scenarios. Scenario One will represent the baseline case in which the new utility resources to be selected through the competitive bid process or through alternative means of acquisition will: (1) meet the utility's approved resource needs; (2) satisfy the minimum requirements of the recently enacted legislation, including the eligible energy resources to comply with the Renewable Energy Standard, 4 CCR 723-3-3650, *et seq.*, and the DSM resources to comply with § 40-3.2-104, C.R.S.; and, (3) minimize the net present value of the utility's revenue requirements over the planning period. The two other scenarios will represent alternative combinations of resources that meet the same resource and legislative requirements but that include proportionately more new clean energy and energy-efficient resources than the baseline case. The primary purpose of these defined scenarios as established in Phase I is to narrow the scope of the Commission's decision on the utility's final cost-effective resource plan in Phase II while allowing the Commission to give the fullest possible consideration to Section 123 Resources.

35. In light of our introduction of a Phase II process, we strike the existing rule 3614(b)(III) that requires utilities to file reports on the selected winning bidders from their competitive solicitations.

4. Independent Evaluator (IE)

36. As the third means to facilitate an expedited review of a utility's final cost-effective resource plan in Phase II, we incorporate the use of an IE to assist the Commission with the complex issues and analyses that are now before us regarding utility resource portfolio modeling, due to the legislative changes discussed above. The IE will be narrowly charged with reporting to the Commission his or her assessment of the combination of new utility resources that comport with the three alternate scenarios for the potential acquisition of Section 123 resources as described in the Commission's Phase I decision. The IE will complete a report by separately and independently analyzing the new utility resources using portfolio modeling, which is the type of analysis that Public Service has long used for evaluating the costs and benefits of various resource combinations for planning purposes. The IE's report will be completed concurrently with the utility's efforts to develop its preferred cost-effective resource plan for Commission review and approval.

37. Given the complexity of utility resource portfolio modeling, we find that an IE represents the best solution for addressing such complexity in a timely manner, while maximizing the transparency of a utility's bid evaluation and selection process and while minimizing the time required for us to issue a decision in Phase II.

38. We further note that rule 3610(e) of our existing LCP rules requires an independent auditor if the utility intends to submit a bid into its competitive resource acquisition process. That is, our current resource planning rules require an independent assessment of the bidding and evaluation process to provide additional oversight in circumstances where the utility is both a "referee" and a "player" in a competitive solicitation. However, our current rules do not accommodate a utility-built, non-bid resource except under certain scenarios and only up to 250

MW. Since §40-2-123(2) could potentially encourage a utility to seek Commission approval for an IGCC facility as part of its resource plan, we find that the IE will not only help preserve the integrity of the utility's competitive solicitations, but will also help the Commission perform its required evaluation in a post-bid review process in accordance with that statute.

39. In their comments, Aquila and Public Service, as well as other stakeholders, raised numerous concerns about the scope of the IE's work in the Phase II process, the selection of the IE, and the independence of the IE in relation to Option 2, Option 2B, and Commissioner Miller's concepts. In particular, Public Service, in its last filed comments, proposed 13 separate points for consideration regarding the role and scope of the IE. Public Service's proposals were generally as follows:

- The IE is to use the utility's resource planning model.
- The IE is to use the Commission approved assumptions developed in Phase I.
- The IE is to explain any deviations from what the utility provides regarding assumptions and any changes made in the IE's report to the Commission.
- The IE is to share modeling in progress during the evaluation period with the utility, as determined by the IE.
- The IE should not be subject to lobbying (or *ex parte* contacts) by any party, including Commission Staff.
- The IE may not make policy decisions for the Commission.
- The IE may not make modeling requests of the utility during Phase II.
- The IE's proposed scope of work is to be limited from the previous Commission proposals.
- The cost to utilize an IE may be recoverable through a rider.
- The utility, Staff and the OCC are to propose IE candidates for Commission consideration. If the parties cannot decide on a candidate, the matter will be referred to an administrative law judge for consideration. Additionally, upon completion of an IE's duties, the IE must sign a non-compete agreement not to engage in work of any kind with an entity making proposals to the utility for subsequent resource acquisition, effective for three years.

- The utility maintains the ability to accept bid prices that vary from those suggested by the IE, as well as terms that vary from the model contract.
- The utility retains the opportunity for separate Commission review and approval of contracts.

Except as otherwise noted, we find it reasonable to generally accept these proposals for the role of the IE as offered by Public Service. Our specific rule changes incorporating Public Service's IE proposals are discussed in detail below.

40. New Rule 3610(e) sets forth the process by which the Commission selects the IE. The Commission will select the IE, but the utility is to pay for and contract with the IE. The IE is to be independent of all other parties in the resource planning proceeding, including the utility and Commission Staff. We further expect the IE to serve as an expert witness in the Phase II process, subject to discovery and cross-examination. Accordingly, the IE will be subject to the same *ex parte* restrictions as all parties in communicating with the Commissioners and Advisory Staff. The Commission shall hold the IE accountable for fulfilling its obligations under these rules, and to do so, we will address the IE's contractual scope of work early in the Phase I proceeding, with input from parties, perhaps as part of the initial procedural conference in the docket.

41. We are sensitive to Public Service's concerns about the IE's access to highly confidential information concerning its system and the proposed resources. Therefore, we agree that the contract with the IE should prohibit the IE from assisting any entity making proposals to the utility for subsequent resource acquisitions for three years.

42. Rule 3610(f) requires that the utility work cooperatively with the IE. We expect that close communication and a strong professional, yet arms-length, relationship between the IE and the utility is necessary for the IE to produce a report that comprehensively and accurately

reflects the utility's system. To that end, we expect that the IE will use the same modeling software as populated by the utility's initial data sets. Both the utility and the IE are further expected to use all of the Commission-approved assumptions that are determined in Phase I. We also anticipate that the IE and the utility will need to be in regular communication in order to complete their Phase II reports and to verify that they have properly applied the Commission-approved evaluation criteria in their modeling and analyses. However, the utility and parties shall not direct the work of the position, IE. Rather, the IE shall take direction only through written Commission decisions.

43. In order to maintain the independence of the IE with respect to the positions of the parties in the utility's resource planning proceeding, rule 3610(g) places restrictions on the communications between the IE and the parties. Because the IE must have regular contact with the utility, the rule provides a mechanism by which parties can monitor the frequency and type of communications that the IE has with the utility and the parties. In general, the parties in the resource planning proceeding are restricted from initiating contacts with the IE. For these entities, the communications are conducted on a "one-way" basis such that the IE is expected to contact each of the parties as it develops its report under rule 3610(h). The exception is that the utility can initiate contacts with the IE, since a reasonable working relationship between the IE and the utility is necessary in order for the IE to fulfill its obligations under these rules.

44. For all contacts with parties, the IE shall maintain a log that briefly describes the entity communicating with the IE, the date and duration of the communication, the means of communication, the topics discussed, and the materials exchanged, if any. The log shall be posted weekly through the duration of the IE's contract. Although maintaining the log of contacts with the utility and the parties may entail substantial effort, the log will provide a

necessary record by which parties, and ultimately the Commissioners, can assess and maintain the fundamental independence of the IE.

45. Rule 3610(h) describes the reports that the utility and the IE will produce for our Phase II review of the utility's final cost-effective resource plan. In addition to reporting on its assessment of the resource combinations according to the scenario criteria established in Phase I, the IE shall report on whether the utility conducted a fair bid solicitation and bid evaluation process. In addition, the IE shall describe the reasons for differences between the approach and assumptions used in its analyses and modeling and the utility's approach and assumptions. In other words, the IE must specifically identify the changes it has made to the utility's bid evaluation modeling and the reason why it suggests such changes. Furthermore, with the Commission specifying the three alternate scenarios that the IE shall assess, the IE will be restricted from making judgment calls on policy matters as to whether certain resources or resource types should be selected over others. The IE's role is instead limited primarily to conducting a technical study according to the three alternative scenarios for Section 123 resources to help the Commission address its responsibilities under the recently enacted legislation. In contrast, the utility may include its preferred option, if different than the three required alternatives, based on general policy objectives.

46. Rule 3610(i) provides the parties an opportunity to file comments on the utility's and the IE's Phase II reports. The rule also defers to the Phase II process the resolution of the discovery-related issues concerning the utility's and the IE's reports filed under rule 3610(h), including the rights of parties to request additional modeling or analyses.

47. Rule 3610(j) describes our decision on the utility's final cost-effective resource plan and structures the Phase II to be a 90-day process. Rule 3610(j) further recognizes that our

Phase II decision precedes the utility's final due diligence and contract negotiation. As such, we acknowledge that the final contractual terms and conditions, as well as pricing, could change from the time the new utility resources were evaluated. In light of this possibility, we preserve the language in rule 3613(d) that our decision specifically approving the components of a utility's plan creates a presumption that utility actions consistent with that approval are prudent. For such application under rule 3613(d), we add a sentence to rule 3613(c) that states that our Phase II decision becomes part of our Phase I decision approving or modifying the utility's plan. However, due to our Phase II review of the utility's final cost-effective resource plan, we strike the second sentence of Rule 3613(d) that states that, because we will not approve a utility's selection of specific resources, our approval of the utility's plan creates no presumptions regarding those resources.

48. We recognize that the IE will come at a cost to the utility and ultimately ratepayers. However, we believe that these costs are worthwhile expenditures. Because the IE will help minimize the time required to complete our Phase II review, we can likewise keep to a minimum the time that the bids offered in a utility's competitive solicitation must remain binding. Typically, the longer bids must stay open, the higher the bid price to the utility and ratepayers. The IE will also help to improve the accuracy of the bid evaluation modeling, therefore reducing the possibility for poor investment decisions that involve substantial investments and subsequent costs to ratepayers. Because we find the expected benefits of the IE will outweigh the expected costs, we will allow for the utility to recover the costs of the IE on a timely basis. For Public Service, the IE costs can be recovered through either its Electric Commodity Adjustment (ECA) or its Purchased Capacity Cost Adjustment (PCCA).

49. We find that the evaluation and selection of resources within our new framework would benefit from model contracts within the utility's requests for proposals (RFPs) that minimize bidder exceptions and enhance bid comparability. Therefore, we expand rule 3612(a) to require utilities to include 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. We likewise clarify in rule 3613(c) that we intend to specifically approve or modify such model contracts, as necessary, in our Phase I decision.

5. Cost-Effective Resource Planning

50. Because we find that recent statutory enactments require factors other than cost to be accounted for in acquiring new utility resources, we strike from the rules the term "least-cost" in all instances. The title of our rules now becomes "Resource Planning Rules."

51. Despite the removal of the term "least-cost" from our rules, we do not abandon our obligation to consider the cost implications of resources selected based on factors other than cost. Consistent with HB07-1037, we recognize that a primary goal of our planning process for new utility resources is to minimize the net present value of the costs of resources. Accordingly, we replace the definition for "net present value of rate impacts" with a definition for "net present value of revenue requirements" under rule 3602.

52. We also introduce to our rules the term "cost-effective." Using the collective text of the new legislation as a guide, cost-effectiveness is premised on the reasonableness of costs and rate impacts in consideration of the benefits offered by new clean energy and energy-efficient technologies. In rules 3601 and 3613, we replace "least-cost resource plan" with "cost-effective resource plan."

53. We further find that our consideration of the cost-effectiveness of new utility resources must remain a pre-requisite. By these rules, as we explain herein, we instruct utilities to identify in their resource plans the new utility resources that minimally meet all statutory requirements and whose costs can serve as a baseline for comparisons to other alternate resource portfolios, such as portfolios that integrate increased levels of new energy technologies and demonstration projects pursuant to § 40-2-123.

6. All-Source Solicitations

54. As we explained in Decision No. C07-0567, competitive bidding continues to be our preferred approach for electric utility resource development and procurement in Colorado. We therefore integrate the new legislative requirements within our existing framework for resource planning in which all-source solicitations across all fuel types and technologies are used as the primary means by which utilities procure new resources. We continue to find that all-source competitive bidding allows the Commission to fulfill its fundamental obligation to customers to ensure the provision of reliable service at just and reasonable rates.

55. Due to the new legislation enacted since we promulgated our LCP rules, we find it necessary to remove the sentence: “The rules are intended to be neutral with respect to fuel type or resource technology.” However, we affirm our continued preference for all-source solicitations which we find to remain compatible with the new legislation. Consistent with Decision No. C04-0944, we add the following sentence to rule 3601: “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.”

7. Consideration of Resource Costs and Benefits

56. Consistent with our conclusion that recent statutory enactments require us to consider factors other than cost when reviewing, approving, or rejecting a utility's plan for acquiring new utility resources, we amend rule 3610(d) to require the utility to propose criteria for evaluating the costs and benefits of resources such as the valuation of emissions and non-energy benefits. This new rule also invites other parties to comment on the utility's proposal. Under rule 3613(c), our Phase I decision will approve or modify the utility's proposed evaluation criteria.

57. Because we expect the valuation of emissions potentially to weigh heavily when considering a utility's acquisition of new resources, we add a provision to rule 3604 that requires the utility to provide information on emissions of new utility resources that are expected to be acquired at the time the utility files its plan under rule 3603.

58. SB07-100 provides for the designation of energy resource zones and for the construction or expansion of electric transmission facilities to transmit energy from those zones to load centers. As a consequence of this new statute, we add rule 3607(c)(II) that requires the utility to report its plans for compliance with SB07-100 and to describe how such plans may affect the acquisition of new renewable resources and the acquisition of new Section 123 resources, if known.

8. Exemptions from Competitive Bidding

59. In light of the recently enacted legislation, we add two exemptions from competitive bidding under our resource planning rules.

60. First, we have recently adopted new rules in our Renewable Energy Standard that provide that certain utility-owned eligible energy resources may be acquired without competitive

bidding. We therefore add rule 3611(h) that recognizes that such utility investments in renewable resources are exempt from the competitive bidding requirements of our resource planning rules.

61. Complementing this new rule and other references to “renewable resources,” we modify our definition of a renewable resource in rule 3602(k) to point to the definition of “eligible resources” in our Renewable Energy Standard rules, as recently promulgated in accordance with HB07-1281.

62. Second, H B07-1037 provides that “the Commission shall permit electric utilities to implement cost-effective electricity DSM programs to reduce the need for additional resources that would otherwise be met through a competitive acquisition process.” We therefore add rule 3611(i) that exempts from competitive bidding, utility DSM developed in accordance with § 40-3.2-104, C.R.S. We also add a definition for DSM to rule 3602 based on the language in HB07-1037 and correspondingly modify our definitions for “energy conservation” and “energy efficiency.”

63. While we have received comments from some interested parties that the Commission may be acting outside its authority by enacting these emergency rules, we find that such is not the case. We expect Public Service to file its resource plan by the end of October, 2007. The legislation identified above clearly required a sweeping modification to our current LCP rules, as “least cost” may no longer serve as the primary standard in approving a resource plan going forward. In order to provide sufficient time to utilities to absorb and understand the rule changes made necessary by the 2006 and 2007 legislation, we found it necessary to move to enact emergency rules pursuant to § 24-4-103(6). Clearly, our rules were required to be modified by the new legislation prior to the filing of Public Service’s resource plan at the end of October, 2007.

64. However, we further find it necessary to enact these rules on an emergency basis, in order to preserve the public health, safety and welfare of the citizens of this state. The importance of putting into place a resource plan that allows Public Service to meet its electric resource needs for the next decade is vitally important and imperative. As Public Service argued during its 2004 LCP application, any delay in approving electric resources could hamper the utility's ability to provide adequate electric service to its customers. This certainly affects the public health, safety and welfare.

65. We further note that we have gone well beyond the requirements for enacting emergency rules here. We have provided the affected parties with more than adequate notice of the proposed rules, first issuing a Decision regarding the emergency rules in July 2007. All interested parties were invited to provide comment and many did so. In addition, each time we provided new options based on the comments received, we allowed yet another round of comment on those proposed options. The only practical consequence of our decision that the rules should be adopted on an emergency basis, rather than through the regular rule promulgation process, was that the rule will become effective upon adoption rather than twenty days after publication. *See, Colorado Health Care Assoc. v. Colorado Department of Social Services*, 598 F.Supp. 1400, 1408 (D.Colo. 1984). We find that our procedures did not deny any party the notice or opportunity to be heard that they would have had without a finding of an emergency. *Id.*

II. ORDER

A. The Commission Orders That:

1. The rules appended to this Decision as Attachment A are hereby adopted as emergency rules consistent with the above discussion.

2. The attached rules shall be effective on the Mailed Date of this Order.
3. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 19, 2007.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in black ink that reads 'Doug Dean'.

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RON BINZ

POLLY PAGE

CARL MILLER

Commissioners

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3 RULES REGULATING ELECTRIC UTILITIES

* * *

[signifies omission of unaffected rules]

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 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 § 40-3.2-104, C.R.S.; 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, energy 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.
- (ef) "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 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 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 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 expected to be 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.
- (~~h~~i) 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.
- (j) Descriptions of three alternate scenarios that can be used to represent, after the receipt of bids to the utility's competitive acquisition process, the costs and benefits from increasing amounts of Section 123 resources included in a cost-effective resource plan. One of the three scenarios shall represent a baseline case that describes the costs and benefits of the new utility resources required to meet the utility's needs during the planning period that minimize the net present value of revenue requirements consistent with reliability considerations, financial and development risks, and the evaluation criteria approved by the Commission under rule 3613 and that complies with the Renewable Energy Standard, 4 CCR 723-3-3650 et seq., as well as with the demand-side management resource requirements under § 40-3.2-104, C.R.S. The two other scenarios shall represent alternative combinations of resources that meet the same resource needs as the baseline case but that include proportionately more Section 123 resources.

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 subparagraphs (a)(I) through (a)(VI) of rule 3614.

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~~ demand-side management 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 subparagraph 3614(b)(II). The provisions of paragraph 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) In its filing under rule 3603, ~~The 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 § 40-3.2-104, C.R.S.; (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 service~~s~~, 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 ~~th~~rough 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 under rule 3603, 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 who 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. The utility shall pay for the services provided by the independent evaluator pursuant to a contract approved by the Commission. The terms of such contract shall prohibit the independent evaluator from assisting any entity making proposals to the utility for subsequent resource acquisitions for three years.
- (f) 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 resources. 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.~~
- (g) While the independent evaluator is under contract, the utility may initiate contacts with the independent evaluator and the independent evaluator may initiate contacts with the utility. All parties in the resource plan proceeding other than the utility are restricted from initiating contacts with the independent evaluator. For all contacts, including those with the utility, the independent evaluator shall maintain a log that briefly identifies the entities communicating with the independent evaluator, the date and duration of the communication, the means of communication, the topics discussed, and the materials exchanged, if any. Such log shall be posted weekly on the Commission's website for the duration of the independent evaluator's contract.
- (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 the cost-effective resource plans that conform to the three alternate scenarios for assessing the costs and benefits from the potential acquisition of Section 123 resources as specified in the Commission's decision approving or rejecting the utility plan developed under rule 3604. In the event that the utility's preferred cost-effective resource plan differs from all of the three alternate scenarios, the utility's report shall also set forth the utility's preferred plan. The independent evaluator's report will contain the auditor's evaluator's views on whether the utility conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported. Confidential versions of these reports 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. The Commission shall convene a procedural conference to establish the scope and a schedule for discovery concerning the reports, 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 approving, conditioning, modifying, or rejecting the utility's report submitted under paragraph 3610(h), which establishes the utility's final cost-effective resource plan. The utility shall pursue the final cost-effective resource plan either with due diligence and contract negotiations, or with applications for certificates of public convenience and necessity, as necessary. In selecting approving, conditioning, modifying, or rejecting the utility's 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 §§ 40-2-123, 40-2-124, and 40-3.2-104, C.R.S.. 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 paragraph 3660(e).
- (i) Utility investments in demand-side management developed in accordance with § 40-3.2-104, C.R.S..

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 paragraphs 3002(b) and 3002(c); and shall be administered pursuant to the Commission's Rules Regulating Practice and Procedure. The Commission may hold a hearing for the purpose of reviewing, and rendering a decision regarding, the contents of the utility's filed ~~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 filed in accordance with rule 3604. If the Commission declines to approve a plan, either in whole or in part, the utility shall make changes to the plan in response to the Commission's decision. Within 60 days of the Commission's rejection of a plan, the utility shall file an amended plan with the Commission and shall provide 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; and (4) the three alternate scenarios for assessing the costs and benefits from the potential acquisition of Section 123 resources. A Commission decision pursuant to paragraph 3610(j) shall become part of the decision approving or modifying a utility's plan developed under rule 3604.

- (d) Effect of the Commission decision. A Commission decision specifically approving the components of a utility's plan creates a presumption that utility actions consistent with that approval are prudent. ~~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-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 paragraphs~~ 3002(b) and 3002(c), shall identify each proposed amendment, shall state the reason for each proposed amendment, and shall be administered pursuant to the Commission's Rules Regulating Practice and Procedure.

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[signifies omission of unaffected rules]