

Decision No. C07-0912

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 07R-419E

IN THE MATTER OF THE ELECTRIC RESOURCE PLANNING RULEMAKING TO
PERMANENTLY AMEND THE COMMISSION'S RULES, AS IMPLEMENTED IN THE
EMERGENCY RULEMAKING IN DECISION NO. C07-0829.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: October 31, 2007

Adopted Date: October 31, 2007

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission (Commission) gives notice of proposed rulemaking (NOPR) regarding permanent rules that modify the Commission's Least Cost Planning Rules (LCP), 4 *Code of Colorado Regulations* (CCR) 723-3-3600, *et seq.* These permanent rules are required as the result of several bills enacted by the Colorado Legislature in the 2006 and 2007 Legislative Sessions. In a related matter, the Commission recently enacted emergency rules on this same topic in Docket No. 07R-368E, Decision No. C07-0829, dated September 28, 2007 (Emergency Rules). This NOPR seeks to adopt permanent rules to serve as a replacement for those emergency rules. Because the emergency rules, and the proposed rules attached to this NOPR change the fundamental structure of the Least Cost Planning Rules (LCP), required because of significant legislative changes, we refer to the revised rules as Electric Resource Planning (ERP) rules.

2. As indicated *supra* the emergency rules were enacted pursuant to Decision No. C07-0829 on September 28, 2007. Prior to the enactment of the emergency rules, the previous Least Cost Planning rules required a utility to apply for approval of its resource plan that was technology neutral and emphasized the least cost resources to meet its future energy needs. However, recent legislative changes enacted pursuant to HB 07-1037, HB 07-1281, SB 07-100 and HB 06-1281, significantly impacted the LCP rules. Generally, this new legislation requires the Commission to consider various benefits of new utility resources such as “new clean energy” and energy efficient technologies,” in addition to the costs of those resources, contrary to the requirements of the LCP rules.

3. The Commission crafted the emergency rules with some care. The Commission sought to balance the requirements of the new legislation, with providing utilities the ability to put into place a resource plan that allows them to meet their future electric resource needs. The new legislation described above requires the Commission to consider various benefits of new utility resources that emphasize clean energy and energy efficient technologies, in addition to the costs of these resources as prescribed in the previous LCP rules, as discussed below. In striking that balance, the Commission has adopted, as a general matter, a regulatory scheme that allows utilities additional options for including renewable energy resources in their future resource plans.

4. The purpose of this NOPR is for the Commission to entertain suggestions on the possible changes to the LCP process and the current treatment found at 4 CCR 723-3-3600 *et seq.* In particular, the Commission seeks comment on the Rules attached to this NOPR. The proposed rule changes shown in Attachment A to this decision are identical to the emergency rule changes implemented in C07-0829.

5. The legislative changes referenced above require substantial changes to the Commission's LCP rules as indicated in our emergency rules established in Decision No. C07-0829. For example, HB 07-1037 establishes requirements for energy efficiency and demand-side management resources. Consequently the LCP rules must be amended to reflect the reduction in a utility's resource needs as a direct result of those efficiencies and demand side management requirements. Additionally, HB 07-1037 establishes a minimization of net present value of revenue requirements as a primary goal of resource acquisition. Our LCP rules establish the primary standards as the minimization of net present value rate impacts. Therefore, the LCP rules directly conflict with HB 07-1037. This 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 now require us to assess the rate impacts of DSM programs. HB 07-1037 therefore requires us to shift from a least-cost standard 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.

6. HB 07-1281 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 least-cost standards mandated in the LCP rules are not consistent with the renewable mandates in this new legislation. The increased renewable requirements mandated by HB 07-1281 necessitate greater integration between the Commission's resource planning rules and the increased Renewable Energy Standard of HB07-1281. More renewables will 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. Further, as part of our statutory charge, we are to carefully consider the rate impact requirements inherent in HB 07-1281 when considering the overall cost-effectiveness of all new utility resources.

7. SB 07-100 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.

8. HB 06-1281 added additional language to §40-2-123(1), C.R.S. 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.

9. HB 06-1281 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.

10. The most significant changes required to our previous LCP 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, as detailed in the attached proposed rules.

11. The Commission will conduct a hearing on the proposed amendments and related issues at the below-stated time and place. Interested persons may submit written comments on the amendments, including data, views, or arguments, and present these orally at hearing unless the Commission deems oral presentations unnecessary. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that such comments be filed no later than November 28, 2007. The Commission prefers that interested persons submitting comments do so both in paper and, when possible, electronic format. The Commission may post electronically submitted comments to its web site. The Commission will consider all submissions.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the November 10, 2007, edition of *The Colorado Register*.

2. A Hearing on the proposed rules and related matters shall be held as follows:

DATE: December 10, 2007

TIME: 1:30 p.m.

PLACE: Commission Hearing Room
Suite 250
1560 Broadway
Denver, Colorado

3. At the hearing referenced above, the Commission may set further hearing dates to continue the discussion and comment.

4. Interested persons may file written comments in this matter before hearing. The Commission prefers that such pre-filed comments be submitted in both paper and, when possible, electronic format no later than November 28, 2007. The Commission will consider all submissions.

5. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 31, 2007.**

(S E A L)



ATTEST: A TRUE COPY

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 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 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 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.
- (f) "Energy conservation" means the decrease in electricity requirements of specific customers during any selected time period, resulting in a reduction in end-use services.
- (g) "Energy efficiency" means the decrease in electricity requirements of specific customers during any selected period with end-use services of such customers held constant.
- (h) "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.
- (i) "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.
- (j) "Planning period" means the future period for which a utility develops its plan, and the period, over which net present value of revenue requirements 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.
- (k) "Renewable resource" means any eligible energy resource as defined in rule 3652 .
- (l) "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.
- (m) "Resource plan" or "plan" means a utility plan consisting of the elements set forth in rule 3604.
- (n) "Resources" means supply-side resources, 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. Resource Plan Filing Requirements.

Jurisdictional electric utilities shall file a 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 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 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.
- (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 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 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 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) any stand-alone voluntary tariff services, where all costs are separate from standard tariff services, if available. 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 propose a written bidding policy as part of its filing under rule 3603, including the assumptions, criteria, and models that will be used to solicit and evaluate 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) Within sixty days of the filing of the plan under rule 3603, the utility shall file for Commission approval the name of the independent evaluator who the utility, the Staff of the Commission, and the OCC jointly propose. 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) The utility shall work cooperatively with the independent evaluator and shall provide the independent evaluator 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.

- (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 120 days of the utility's receipt of bids to its competitive acquisition process, the utility and the independent evaluator 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 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 the filing of the independent evaluator's and the utility's reports, the parties in the resource plan proceeding, including the utility, shall be given the opportunity to file comments on the 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 approving, conditioning, modifying, or rejecting the utility's final cost-effective resource plan, the Commission 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..

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 resource 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 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 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 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; (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.
 - (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 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 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.

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 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]