

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-214E

IN THE MATTER OF THE PROPOSED REVISIONS TO THE COMMISSION’S ELECTRIC
RESOURCE PLANNING RULES 4 CCR 723-3600 THROUGH 3618.

NOTICE OF PROPOSED RULEMAKING

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I. BY THE COMMISSION

A. Statement

1. The Commission gives this Notice Of Proposed Rulemaking (NOPR) to revise its current Electric Resource Planning (ERP) rules contained in 4 *Code of Colorado Regulations* (CCR) 723-3-3600, *et seq.* The intent of this limited rulemaking is to revise and to clarify the existing ERP rules to better match the outcome of our rulings in recent ERP application filings, and to better match current statutory requirements. The proposed changes are shown in Attachment A.

B. Background

2. On September 28, 2007, the Commission adopted emergency rules in Decision No. C07-0829, Docket No. 07R-368E (Emergency Rules), which amended the Least Cost Planning (LCP) rules for electric utilities that were in effect prior to that time. The Commission then adopted these same Emergency Rules as permanent rules in Decision No. C07-1101, Docket No. 07R-419E. The Commission pursued emergency rulemaking procedures, as the LCP rules required the jurisdictional Colorado electric utilities to file resource plans in 2007, and

emergency rules were required to implement recent legislative changes. The general purpose of the Emergency Rules was to incorporate certain statutory changes, which required greater Commission involvement in determining the public interest with respect to the selection of future electric resources.

3. The most significant change that the Commission implemented in the Emergency Rules involved a separate expedited “Phase II” proceeding after the utility receives bids for new resources, allowing the Commission to weigh public interest factors in reaching a decision on the utility’s final resource selections. The Emergency Rules also incorporated an Independent Evaluator (IE) to assist the Commissioners in analyzing the bids and proposals in Phase II, because of the complexity and expedited nature of the Phase II process.

4. Public Service Company of Colorado (Public Service) filed an application under these new rules in Docket No. 07A-447E, and Black Hills/Colorado Electric Utility Company (Black Hills) filed an application under the new rules in Docket No. 08A-346E.

C. Introduction

5. The proposed rule changes in this NOPR reflect our intention to improve our practices based on the experiences we gained through those first applications of the relatively new ERP process. We are also mindful that, due to the compressed timeframe in which our ERP rules were promulgated, there was little opportunity to bring all of our resource planning rules current with Colorado’s evolving energy policies. The Colorado General Assembly has also placed additional requirements on the Commission and the investor-owned electric utilities since our ERP rules were developed in 2007. Thus, we are inclined to bring our ERP rules up to date in this rulemaking, although our intention is to keep this proceeding narrowly focused on the changes described above.

6. In order to expedite this proceeding we adopt the following schedule:

Written Comments Due May 6, 2010
Hearing May 27, 2010 at 1:30 p.m.
Written Reply Comments Due June 21, 2010
Commission Deliberations July 9, 2010

7. To maintain this tight schedule, we limit the scope of this NOPR to the issues identified herein. However, as a part of the written comments and hearings we encourage parties to identify other possible procedures the Commission could adopt to allow the utility to better inform the Commission and parties about its upcoming filings, resulting in a more efficient resource planning process. For example, the Federal Energy Regulatory Commission has enacted policies that require utilities to work with the regulator before filing certain applications to improve the efficiency of the subsequent formal hearing process. Therefore, we invite comments regarding whether the Commission could improve the ERP process by working through specific areas prior to the initial filing of the resource plans.

8. We are aware that the legislature has passed HB10-1365, and this bill would require jurisdictional utilities to make expedited filings with the Commission this fall regarding certain existing electric resources. We do not expect the rule changes proposed in this NOPR to materially impact the HB10-1365 filings, as utilities can follow the guidelines in the new legislation and current ERP rules to make such filings. Further, we intend for this NOPR to be narrow in scope and duration so as to not impede the personnel resources necessary to complete the anticipated HB10-1365 process.

9. We have attached a redline version of the proposed rule changes in Attachment A. All changes are shown as underlined/strikeout text. In addition, we highlighted the substantive rule changes and provided notations indicating the reason for the change.

The remaining changes that are not highlighted reflect changes that we made for clarification purposes and to better match the rules with current statutory requirements.

D. Discussion

10. Below we provide a discussion about the areas of the rules that we propose to change, and also provide rule-by-rule descriptions for the proposed changes.

1. Utility Rate Base Resource Ownership

11. One significant change we propose in this NOPR incorporates specific decisions regarding utility ownership that we made in the recent ERP cases. Utility rate based resource ownership was a significant issue in both the Public Service and Black Hills cases, and we propose to include options identified in those proceedings.

12. Our current ERP Rules require all resources to be acquired through a competitive resource acquisition process, with limited exemptions. The rules require the resource need to be fulfilled through a bidding process where Independent Power Producers (IPPs) or utility affiliates provide fixed-price resource bids. An exemption allows a 250 MW utility resource proposal, if the utility can provide justification for the selection of this resource outside of the all-source bid comparison (existing paragraph 3610(b)). The rules also provide other small resource exemptions (existing rule 3614). However, in both the recent Public Service and Black Hills ERP cases, the Commission granted waivers allowing significant rate based utility ownership.

13. In Docket No. 07A-447E, the recent Public Service ERP proceeding, the Commission granted a waiver of the ERP rules to allow rate based utility ownership beyond the 250 MW limit in paragraph 3610(b). In the Phase I decision we allowed Public Service the opportunity to submit in Phase II a proposal for rate based utility-owned resources by providing a “CPCN quality” cost estimate for these resources, against which other bid resources would be

compared. The cost estimates for the proposed utility-owned resources would then be used as a cap in future rate recovery proceedings, although the Commission could entertain subsequent utility requests to modify the cap due to changes in circumstances that outside the utility's control – just as bidders can petition for such differences in contract negotiations. In the Phase II proceeding, the Commission weighed the qualitative factors associated with utility and IPP ownership and the quantitative Phase II cost comparisons to determine the appropriate level of utility-owned rate base resources.

14. In Docket No. 08A-346E, the recent Black Hills ERP proceeding, the Commission granted a waiver of the ERP rules to allow rate based utility ownership beyond the 3610(b) limits, but this was entirely different from the Public Service waiver. For Black Hills, the Commission allowed a “carve-out” from the resource need to be constructed by the utility and owned as rate based plant. This was largely necessary due to the expedited nature of the docket, as Black Hills's full-requirements service contract with Public Service was approaching expiration.

15. As we discussed in both of those cases, we recognize the benefits in utility resource ownership as well as for IPP resource contracting. We find that each of the two approaches we implemented in the Public Service and Black Hills ERP cases provide a reasonable middle ground for utility ownership, so we include a variation of these concepts in the rules proposed in this NOPR.

16. We propose two options for utility rate based ownership within the rules. The first is the approach used in the Public Service case, where the utility would propose a plan in Phase I of how to compare rate based proposals with IPP bids in Phase II. The second option is a variation of the Black Hills case, where the utility would propose in Phase I a carve-out for

specific rate based resources, and the utility would need to justify why such a carve-out is warranted. However, in addition to the requirements in the past Black Hills ERP, we propose requiring the utility to put forth a full Certificate of Public Convenience and Necessity (CPCN) filing concurrently with its Phase I application for this option. The CPCN filing would then become one aspect of the case that the utility must put forward to justify the Phase I carve-out. As discussed below, if the utility proposes such a Phase I carve-out, it may be necessary for the IE to oversee the modeling in Phase I rather than only in Phase II.

2. Confidentiality

17. Highly confidential protection for bid prices, other bid details, utility proposals, utility costs, and bid evaluation results were a significant issue in Public Service's and Black Hills' recent ERP proceedings. However, we find that it would be best to address these issues in the context of an actual resource plan filing. Rather than propose specific rules here, we add a requirement that the utility propose, in Phase I, its plan to address confidential information in Phase II. The utility will propose specific treatment to match its plan, and parties can then provide input as a part of their Phase I testimony. The Commission would then determine how highly confidential material would be designated and projected in Phase II prior to commencement of Phase II.

3. IE Modeling

18. Modeling by the IE presented significant concerns in the Public Service ERP.¹ Requiring the IE to model the Public Service system in parallel to Public Service's modeling efforts proved overly expensive and time consuming. While the IE provided a high quality

¹ The Black Hills ERP did not have a Phase II proceeding before the Commission, so no IE modeling was performed.

analysis in its report, we feel that it is not essential for the IE to duplicate fully the modeling effort performed by the utility.

19. One of the IE's most important objectives is to analyze the utility's modeling efforts because parties do not have the access to or the time to fully review the bids and proposals under the expedited Phase II timelines. Further, no party has ever had the personnel resources or expertise to fully duplicate the modeling that Public Service performs, so it is important for the IE to investigate the utility modeling efforts.

20. To strike a reasonable balance, we propose removing the IE modeling requirement and instead focus the IE's efforts on initial screening and oversight of the utility modeling. There was value in the IE looking at areas that Public Service did not model, so we also add a requirement for the utility to perform some limited modeling runs at the request of the IE.

4. Segmented Bidding and the IE in Phase I

21. Although the current ERP rules require all-source bidding, where all bids are compared to one another in Phase II, Public Service and Black Hills both proposed to carve-out specific segments in Phase I.

22. The decision to separate a specific segment of resources from all-source bidding requires a determination that the costs for that set of resources will be reasonable. That is, that the specified level of segmented resources are expected to be acquired at an anticipated cost. To the extent those expectations are realized, actual bids can reasonably be compared only to other bids within that segment.

23. Except for narrow segments required by statute (*e.g.*, renewable resources necessary to meet statutory minimums), the Commission would normally decide the proper level of specific resources in Phase II, after bids are received and cost modeling is preformed for these

resources. When segmentation is proposed, the Commission must consider the resource costs in Phase I, even though the actual costs of other resources are not yet known. For example, if a utility proposes a Phase I carve-out for rate based resources, the Commission would compare the cost of the utility proposal to anticipated bid prices for resources that would fill that same resource need. The overall cost-effectiveness of a planned resource portfolio developed through segmented bidding would likely be addressed using resource portfolio modeling akin to that used in Phase II. Therefore, the Commission may need to consider using the IE in Phase I. We modify current rules to allow the use of an IE in Phase I, and we require the IE to be selected at the beginning of the Phase I process.

5. Phase II Comments

24. In the Public Service ERP case, parties generally did not provide firm recommendations in their Phase II comments, and did not seem to provide the detailed analysis that parties usually provide in testimony.

25. We implemented the new Phase II process as an expedited procedure because it is not feasible to hold both a 210-day Phase I process and full 210-day Phase II process. We added the IE, in part, as a substitute for party comments, because parties do not have time to perform a full review under the compressed Phase II timelines. Phase II comments are further hindered because parties cannot introduce new evidence since there is not a traditional evidentiary hearing in Phase II. Confidentiality limitations may also prevent many parties from being able to provide meaningful input.

26. We understand that the IE function may replace some or all of the need for party comments. On the other hand, our processes generally work best when the Commission makes a

determination based on filings that present multiple perspectives on the issues, and the IE is not tasked with representing the many parties' interests.

27. We recognize there is no perfect solution for this issue, so we offer four options for commenters to consider:

- a) Eliminate Phase II comments completely
- b) Maintain the status quo (as shown in the rules in Attachment A)
- c) Improve confidentiality handling to allow more parties access to information
- d) Hold limited hearings so that parties can introduce new evidence.

28. In addition, our current rules do not provide for the utility to file responsive comments to parties' Phase II comments. However, Public Service filed such reply comments in its recent ERP case. We granted this request, and the responsive comments were helpful. We note that in a traditional application, the applicant has the burden of proof, and our rules allow the applicant to file rebuttal testimony. Similarly, in Phase II, the utility has the burden of proof, so we add a rule provision to allow the utility to file responsive comments.

6. Scenario Planning

29. Current rule 3604(j) requires the utility to propose for modeling a base scenario and two other scenarios with increasing "Section 123 resources." Through the course of the Public Service ERP case, the Section 123 concept was generally used only to represent resources that have not yet been commercially proven. The Phase II process, however, is intended to consider a wider range of resources. In fact, in the Public Service Phase II proceeding we explicitly considered demand-side resources and renewable resources that were clearly commercially proven resources. Therefore, we clarify in the rules that all such resources will be considered in Phase II.

7. New RES statute

30. The new RES statute requires Commission consideration of jobs impacts and the economic viability of Colorado communities in resource acquisitions. Therefore, we add a requirement for the utility to provide such information to the Commission concerning proposed resources.

8. Renewable Integration Studies

31. In the past, Public Service prepared wind integration studies that were subject to a Technical Review Committee (TRC). However, in the most recent ERP filing Public Service did not submit with its initial filing a TRC-reviewed integration study addressing the types and levels of renewable resources that were proposed to be acquired.

32. Requiring a utility to provide, as a part of its initial ERP filing, renewable integration studies addressing proposed types and levels of renewables resources would make ERP proceedings more efficient. Further, we require that such studies be vetted through a TRC process.

9. Other Changes

33. We propose a requirement that the utility provide emissions information for its existing generation facilities. We find that this is appropriate because of the increasing interplay between new renewable resources and existing fossil-fueled resources.

34. We propose modifying the Overview and Purpose introduction to the ERP rules. This language remains largely unchanged from the prior LCP rules. In light of the numerous changes in energy policies in Colorado since the LCP rules were promulgated, we crafted a new introductory rule for the ERP rules.

35. Finally, we propose many small language changes to better reflect current statutes and policies. Many statutory changes have been enacted regarding renewable energy, demand-side resources, and resource planning, so we modified many rules to reflect these changes.

E. Description of Individual Rule Changes

1. Rule 3601 Overview and Purpose

36. We propose a new formulation of this rule while preserving the notion that the Commission's primary responsibility is to ensure that investor-owned electric utilities provide reliable service at just and reasonable rates. We also propose adding specific language derived from statutes to set forth the most fundamental resource planning policies in Colorado.

2. Rule 3602 Definitions

37. The principal change we propose to this rule involves paragraph 3602(c), which that defines a "cost-effective resource plan." Our revisions are intended to acknowledge the possibility that a cost-effective resource plan may be the result of an alternative to competitive bidding, which, for example, may involve the acquisition of new resources that the utility will own and operate as rate base investments.

38. The other proposed changes to the definitions under this rule are mostly cosmetic and are intended to add symmetry among the terms describing the four principal types of resources considered in a utility's plan: "supply-side resources," "demand-side resources," "renewable energy resources," and "Section 123 resources."

3. Rule 3603 Resource Plan Filing Requirements

39. We propose updating this rule by resetting the first plan filing date to October 31, 2011 and by eliminating the requirement for filing sixteen hard-copies of the resource plan in light of the Commission's new e-filing requirements.

4. Rule 3604 Contents of the Resource Plan

40. As described below, the concept of future needs for new utility resources has evolved in recent years to the point where such needs are no longer a simple a matter of supply-side capacity requirements. We thus propose to modify paragraph 3604(a) by eliminating the terms “base-load, intermediate, and peaking” that presently modify the term “needs of the utility system.” We do not intend to signal by these changes that meeting future capacity needs is no longer a critical component of a utility’s resource plan. Rather, we seek to bring this rule up to date by acknowledging that resource needs now involve energy, energy production, and capacity considerations.

41. Although not a new requirement, we insert a provision as paragraph 3604(b) that the utility’s plan include an evaluation of available transmission resources. This change is intended to signal the importance of having such information in the utility’s initial plan filing so that questions about how transmission availability and cost allocation will be handled in Phase II can be answered in Phase I.

42. We propose to modify paragraph 3604(h) to acknowledge a role for bids from demand-response providers. We also clarify that the normal competitive bid process envisioned for supply-side resources under these rules entails both bids for purchased power agreements (PPAs) with utilities and non-utilities as well as proposals for utility-owned resources.

43. We propose no longer requiring information on rate designs in future resource plans under paragraph 3604(i), as it is our impression that such information has historically served a very minor function in past utility resource plan proceedings.

44. However, we propose requiring utilities to set forth a proposal for handling bid prices, other bid details, utility proposals, utility costs, and bid evaluation results that the utility

may seek to protect as highly confidential material in Phase II. It is our intent that by requiring such a proposal from the utility in its initial filing, issues surrounding the treatment of highly confidential information in Phase II can be fully addressed in Phase I.

45. As discussed above, we seek to enhance the role that scenario planning will play in our consideration of future resource plans. We also seek to ensure that the resource plans presented to the Commission adequately explore alternative combinations of supply-side resources, demand-side resources, renewable energy resources, and Section 123 resources. We therefore propose to modify paragraph 3604(j) accordingly. In addition, we propose to strike the phrase “after the receipt of bids to the utility’s competitive acquisition process” to acknowledge that an alternative approach to all-source bidding might entail segmented bidding.

46. The other proposed changes to this paragraph 3604(j) entail listing specific benefits and risks the Commission considers when evaluating a cost-effective resource plan. Although we propose striking the list of specific benefits and risks in the existing rule, this should not be viewed as downgrading these important considerations. Rather, it reflects our understanding that the Commission considers even more benefits and risks associated with new resources, beyond those specifically enumerated in the existing rule language.

47. We add a new provision under this rule as paragraph 3604(k) requiring the utility to provide a peer-reviewed assessment of the integration of intermittent renewable energy resources on the utility’s system, as Public Service has provided in the past. Such information will be even more necessary as the passage and signing of House Bill 10-1001 has increased the renewable energy standard for the two jurisdictional electric utilities in Colorado.

5. Rule 3607 Evaluation of Existing Resources

48. We have addressed the provision of demand-response resources provided by third-parties in recent proceedings, and we therefore propose to update subparagraph 3607(a)(VI) to acknowledge that such resources may be assessed as part of a utility's portfolio of existing resources. The presence of third-party demand response resources also prompts us to strike "generation" from the title of this rule.

49. Likewise, we have devoted considerable attention to the emissions of existing supply-side resources in several recent dockets. In light of this reality, we propose a new requirement in subparagraph 3607(a)(VIII) that the utility present in its plan the projected emissions from its portfolio of existing resources.

6. Rule 3608 Transmission Resources

50. We propose no new rules regarding transmission in this rulemaking. However, the Commission is presently undertaking rulemaking-related initiatives to address both the issuance of CPCNs for transmission facilities and the implementation of transmission planning. We may find it necessary to promulgate new transmission-related rules within these resource planning rules after those two transmission-focused efforts reach their completion. At this stage, we only propose consolidating the existing transmission-related provisions in our ERP rules under their own rule number.

7. Rule 3609 Planning Reserve Margins and Contingency Plans

51. We propose no rule changes in this section. However, we add "contingency plans" to the title of this rule, since the provisions governing the utility's contingency plans are contained in the paragraph 3609(c).

8. Rule 3610 Assessment of Need for Additional Resources

52. The existing rule language defining a resource need focuses primarily on peak capacity requirements. While meeting system peak demands reliability and cost effectiveness are paramount, there are other dimensions to resource needs that deserve our attention. We therefore propose to update this rule in several respects. First, we note in new paragraph 3610(b) that a utility's resource needs may be driven, in part, by the state's renewable energy standard. Second, we recognize that Colorado statutes now emphasize electric energy savings and demand reductions, and that acquiring demand-side resources, reduces the need for supply-side resources.

53. Third, in a new paragraph 3610(c), we incorporate language from § 40-2-123, C.R.S., which permits the Commission to consider the likelihood of new environmental regulations and the risks of future costs associated with greenhouse gas emissions. Such environmental considerations can relate directly to both the utility's future need for resources and to the types of resources acquired to meet future resource needs.

9. Rule 3611 Utility Plan for Meeting the Resource Need

54. We propose to reaffirm our commitment to competitive bidding in a new paragraph 3611(a). This language is extracted from existing rule 3601 Overview and Purpose.

55. In paragraph 3611(b) and (c), we propose language changes in anticipation of future plan filings in which the utility proposes acquiring new utility resources by means other than all-source competitive bidding. The rule changes would accommodate requests by the utility to implement segmented bidding, by which the utility will seek to acquire specific types of resources through targeted solicitations. They would also accommodate requests to carve out from future needs specific levels of energy and capacity that would be met by resources acquired without competitive bidding (*e.g.*, a proposed supply-side resource that the utility intends to own

and operate as a rate base investment). We likewise propose eliminating the 250 MW cap on alternative means of resource acquisition.²

56. A new paragraph 3611(d) is intended to ensure that, should the Commission reject a utility's proposed alternative to all-source competitive bidding, the utility's initial plan filing provides the Commission with sufficient material to pursue that preferred approach for acquiring new utility resources. Such materials include requests for proposals (RFPs), model contracts, and written bidding policies that would be used to implement competitive as envisioned under our rules.

57. Utility ownership was proposed by both jurisdictional electric utilities in their most recent resource plans in Docket Nos. 07A-447E and 08A-346E. In anticipation of future filings in which a utility may seek Commission approval of a plan to acquire new resources that the utility will own and operate as rate base investments absent competitive bidding, we propose a new paragraph 3611(e) requiring the utility to file, simultaneous with the resource plan, a complete application for a CPCN. Such an application would ensure that the Commission has before it a complete description of the proposed facilities, the estimated cost of those facilities (where such estimates would be of the quality the Commission traditionally expects in a CPCN application), details concerning construction milestones, and, importantly, information on the alternatives studied, the costs for those alternatives, and the criteria used to eliminate those alternatives.

² We note that the transmission-related language in this renumbered rule 3611(c) would be found under rule 3608 Transmission Resources. We also propose eliminating the language in this rule regarding the Public Utility Regulatory Policies Act of 1978 and seek comment on whether this change, which is intended to keep our ERP rules current, should be made at this time.

58. The new proposed paragraph 3611(f) further recognizes that a utility may instead seek to own and operate new resources as rate base investments by competing against bids from other utilities and non-utilities in Phase II. This new provision ensures the proposals submitted by the utility are comparable to the bids from other entities pursuant to the bid evaluation and selection process set forth elsewhere in our ERP rules.

59. Our proposed paragraph 3611(h) incorporates the new statutory provisions in § 40-2-129, C.R.S., that require the Commission to consider the affect on employment and the long-term economic viability of Colorado communities in matters involving utility resource acquisition.

10. Rule 3612 Independent Evaluator

60. We intend to retain the IE within our resource planning framework and thus move our rules governing the selection of the IE and the IE's relationship with the utility, the parties, and the Commission under its own heading. As discussed above, in light of our experiences with the IE's retained in Docket Nos. 07A-447E and 08A-346E, we also seek to modify the role that the IE would play in future resource planning proceedings.

61. First, modify paragraph 3612(a) so that the selection process for the IE begins prior to the utility's filing of its plan. This change would accommodate the other change we propose in a new paragraph 3612(e) permitting the Commission to engage the services of the IE in Phase I if the utility seeks to implement segmented bidding or proposes to acquire resources that it will own and operate as a rate base investment.

62. Second, we propose no longer requiring the IE to independently model the bids and proposals in Phase II of the resource plan proceeding. Although we now envision a role for the IE where independent modeling is no longer required, we propose requiring the utility to

provide the IE with bid evaluation results and model runs so that the IE can verify the utility's results and can investigate options that the utility did not consider. The specific rule changes associated with this new role for the IE are found in paragraph 3612(c).

63. Third, we propose modifying the provisions that govern contacts with the IE and the disclosure of those contacts in paragraph 3612(d). Given that the IE would no longer be required to independently model bids and proposals, we anticipate that there will be fewer necessary contacts between the utility and the IE. A reduced level of contacts would further make the maintenance of the contacts log more practical with respect to IE and utility contacts. In addition, we seek to eliminate the prohibition on contacts with the IE that are initiated by the parties. This proposed change ties to proper maintenance of the contact log, such that the utility can monitor the contacts the IE may have with other parties. It also ties to the proposed changes to the bid evaluation and selection process, whereby the utility shall have the opportunity to file a response to the IE's report in Phase II.

64. Fourth, we propose modifying the rules governing the IE's relationship with the Commissioners during the resource plan docket. We propose stating explicitly that the IE is not a party to the proceeding but will instead serve the Commissioners in an advisory capacity. The IE would thus not be subject to traditional discovery and cross-examination at hearing. The Commission would, however, convene at least one procedural conference to establish how questions to the IE from the utility and the parties would be handled in light of the IE's monitoring and reporting obligations.

11. Rule 3613 Bid Evaluation and Selection

65. The provisions under rule 3613 Bid Evaluation and Selection derive from the existing provisions in our ERP rules governing the Phase II processes.

66. Given that we no longer expect the IE to independently model bids and proposals under this set of proposed rule changes, the stages of Phase II would also change. Under paragraph 3613(a), for example, only the utility would file a “120-day” report describing its bid evaluation results and the development of its preferred resource portfolio. We stress, however, that this change does not mean the IE would wait until the filing of the utility’s report to begin work on behalf of the Commissioners. Given the compressed schedule in Phase II, we expect the IE to closely monitor the receipt of bids and proposals, the initial screening of bids and proposals, the development of levelized costs that represent the bids and proposals, the short-listing of bids and proposals for portfolio modeling, and the final modeling of the short-listed bids and proposals as these important tasks are completed by the utility.

67. Under our proposal for paragraph 3613(b), the IE would file its report within 45 days of the submission of the utility’s “120-day” report.³ The IE’s report would address whether the utility conducted a fair bid solicitation and evaluation process and would identify any deficiencies in the utility’s practices.

68. In paragraph 3613(c) the provisions regarding discovery matters in Phase II would be stricken, consistent with our proposed changes under rule 3612 Independent Evaluator.

69. We add a new paragraph 3613(d) to provide the utility an opportunity to file responsive comments concerning the report filed by the IE and the comments filed by the parties in the proceeding. Given the tight timeline in Phase II, we would again expect the IE to keep the utility aware of any deficiencies the IE intends to report to the Commission on a proactive basis,

³ This paragraph would also be modified to eliminate the provisions concerning the highly confidential versions of the “120-day report,” since the issues surrounding confidentiality would instead be addressed under our proposed rules where the Commission would review the utility’s proposed treatment of material deemed highly confidential in Phase I.

such that the utility would have a reasonable opportunity to correct such deficiencies before it submitted its “120-day report.”⁴

70. We preserve the status quo concerning the overall timeline for Phase II in the rules proposed here. Thus, the comments from parties in Phase II would continue to be subject to a very tight deadline. As discussed above, we are interested in hearing from stakeholders, and in particular from those parties who submitted Phase II comments in Docket No. 07A-447E, whether this aspect of our Phase II process should be modified.

71. We also propose modifying paragraph 3613(e) to recognize that the Commission expects to weigh the costs and benefits of new resources the utility will own against the cost and benefits of new resources owned and operated by third-parties. We also propose updating this paragraph regarding the specific considerations the Commission will entertain in reaching a decision on the utility’s resource plan.

12. Rule 3614 Exemptions

72. We propose modifying the title of this section, as resource plans involve more than just the competitive acquisition of new utility resources. We further propose corresponding changes to paragraph 3614(a).

73. Among the changes to the list of exemptions we are proposing here, we would strike interruptible service. However, we would include interruptible service in a new list of items that the Commission need not consider in a resource plan proceeding, as explained below. We also propose striking the exemption of investments the utility makes in renewable energy resources that it would own as rate base investments under § 40-2-124(1)(f)(I), C.R.S.

⁴ We note that the IE contacts log should help the parties monitor the frequency and nature of discussions between the IE and the utility.

This change would require the utility to address the acquisition of such resources in its resource plan even though such an acquisition need not entail competitive bidding. In other words, the utility would need to follow these resource planning rules to acquire new utility-owned renewable resources greater than 30 MW even if competitive bidding were not the route pursued to acquire them.

74. In addition, we propose eliminating the exemption of demand-side resources from the utility's plan, as we expect future resource plans to explore the costs and benefits of including increasing amounts of demand-side resources as part of the utility's resource planning process. Again, however, the requirement that demand-side resources be addressed in the utility's resource plan does not mean that utility investments in demand-side resources must be competitively bid. The exemption from competitive bidding for utility investments in demand-side resources as set forth in § 40-3.2-104(3), C.R.S. is echoed in our proposed paragraph 3610(b)(II).

75. The changes described above may increase the types of resources considered in the plan, we are mindful that resource plans are inherently complex and lengthy. Therefore, to avoid excessive resource plan proceedings beyond what the Commission can manage under our normal timelines for adjudication, we list in paragraph 3614(b) three topics that the Commission would not generally explore in the context of a resource plan: (1) renewable distributed generation (*i.e.*, renewable generation resources located "on-site" at customer homes and business or that are less than 30 MW); (2) demand-side resources already addressed under a Commission-approved demand-side management plan; and (3) details surrounding interruptible service provided to the utility's electric customers.

13. Rule 3615 Requests for Proposals

76. The changes we propose under this rule primarily relate to changes proposed in the other rules. For example, we propose replacing the provisions regarding fuels and technologies in paragraph 3615(a) with provisions regarding supply-side resources, renewable energy resources, demand-side resources, and Section 123 resources. Likewise, we change the language modifying “resource need” in paragraph 3615(b) to conform to the changes we propose in rule 3610.

14. Rule 3616 Commission Review and Approval of Resource Plans

77. Finally, we propose modifying paragraph 3616(c) by clarifying that all-source competitive bidding remains the Commission’s preferred approach to resource acquisition and by specifying that the basic scenarios the Commission seeks to examine in a resource plan involve increasing amounts of renewable energy resources, demand-side resources, and Section 123 resources.

F. Conclusion

78. The Commission *en banc* will conduct a hearing on the proposed rules and related issues on May 27, 2010 at the Commission’s offices. Interested persons may submit written comments on the rules 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 May 6, 2010. Reply comments may be submitted after the hearing by June 21, 2010.

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 April 25, 2010 edition of *The Colorado Register*.

2. A hearing on the proposed rules and related matters shall be held before the Commission *en banc* as follows:

DATE	May 27, 2010
TIME:	1:30 p.m.
PLACE:	Commission Hearing Room 1560 Broadway, Suite 250 Denver, Colorado

At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Commission deems oral comments unnecessary.

3. Interested persons may file written comments in this matter before hearing. The Commission requests that such pre-filed comments be submitted no later than May 6, 2010. Post-hearing reply comments should be submitted by June 21, 2010. All submissions, whether oral or written, will be considered by the Commission.

4. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 7, 2010.**

(SEAL)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

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

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BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to describe the electric service to be provided by jurisdictional utilities and master meter operators to their customers; to designate the manner of regulation over such utilities and master meter operators; and to describe the services these utilities and master meter operators shall provide. In addition, these rules identify the specific provisions applicable to public utilities or other persons over which the Commission has limited jurisdiction. These rules address a wide variety of subject areas including, but not limited to, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, master meter operations, flexible regulation, procedures for administering the Low-Income Energy Assistance Act, cost allocation between regulated and unregulated operations, recovery of costs, the acquisition of renewable energy, small power producers and cogeneration facilities, and appeals regarding local government land use decisions. The statutory authority for these rules can be found at §§ 29-20-108, 40-1-103.5, 40-2-108, [40-2-123](#), 40-2-124, [40-2-129](#), 40-3-102, 40-3-103, 40-3-104.3, 40-3-111, 40-3-114, [40-3.2-104](#), 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, 40-8.7-105(5), 40-9.5-107(5), and 40-9.5-118, C.R.S.

GENERAL PROVISIONS

3000. Scope and Applicability.

- (a) Absent a specific statute, rule, or Commission Order which provides otherwise, all rules in this Part 3 (the 3000 series) shall apply to all jurisdictional electric utilities and electric master meter operators and to Commission proceedings concerning electric utilities or electric master meter operators providing electric service.
- (b) The following rules in this Part 3 shall apply to cooperative electric associations which have elected to exempt themselves from the Public Utilities Law pursuant to § 40-9.5-103, C.R.S.:
 - (l) Rules 3002 (a)(I), (a)(II), (a)(IV), (a)(V), (a)(XVI), (b), and (c) concerning the filing of applications for certificate of public convenience and necessity for franchise or service territory, for certificate amendments, to merge or transfer, or for appeals of local land use decisions.

- (II) Rules 3005 (a)(III) (IV), (d), (e), (g), and (h) concerning records under RUS accounting system and preservation of records.
 - (III) Rule 3006 (a) (b) (c) (d) and (e) concerning the filing of annual reports, designation for service of process, and election of applicability of Title 40, Article 8.5.
 - (IV) Rules 3008 (b) and (d) concerning incorporation by reference.
 - (V) Rules 3100 and 3103 concerning application for and amendment of a certificate of public convenience and necessity relating to a franchise.
 - (VI) Rules 3101 and 3103 concerning application for and amendment of a certificate of public convenience and necessity relating to service territory.
 - (VII) Rule 3104 concerning application to transfer assets, to obtain a controlling interest, or to merge with another entity.
 - (VIII) Rule 3204 concerning incidents occurring in connection with the operation of facilities.
 - (IX) Rule 3207 (a) and (b), concerning construction and expansion of distribution facilities.
 - (X) Rules 3250 through 3253 concerning major event reporting.
 - (XI) Rule 3411 concerning the Low-Income Energy Assistance Act unless the cooperative electric association has exempted themselves pursuant to rule 3411(c).
 - (XII) Rules 3650(b), 3651, 3652, 3654(b), (e) through (j) and (m); 3659(a)(I) through (a)(V), (b) through (k), 3660(i), 3661(b), (c), (g), and (j), 3662(a)(I), (a)(II), (a)(IV) through (a)(X), (a)(XIII), (a)(XV), (b), (d) and (e), and 3665.
 - (XIII) Rules 3700 through 3707 concerning appeals of local governmental land use decisions actions.
- (c) The following rules in this Part 3 shall apply to **cooperative electric generation and transmission associations**:
- (I) Rules 3002 (a)(III), (a)(XVI), (b), and (c) concerning the filing of applications for certificates of public convenience and necessity for facilities or for appeals of local land use decisions.
 - (II) Rule 3006(hj) concerning the filing of ~~least-cost~~electric resource planning reports.
 - (III) Rule 3102 concerning applications for certificates of public convenience and necessity for facilities.
 - (IV) Rule 3103 concerning amendments to certificates of public convenience and necessity for facilities.

- (V) Rule 3104 concerning application to transfer, to obtain a controlling interest, or to merger with another entity.
- (VI) Rule 3200 concerning construction, installation, maintenance, and operation of facilities.
- (VII) Rule 3204 concerning incidents occurring in connection with the operation of facilities.
- (VIII) Rule 3205 concerning construction or expansion of generating capacity.
- (IX) Rule 3206 concerning construction or extension of transmission facilities.
- (X) Rule 3253(a) concerning major event reporting.
- (XI) Rules 3602, 3605, and ~~3614~~3617(a) concerning ~~least-cost~~electric resource planning.
- (XII) Rules 3700 through 3707 concerning appeals of local governmental land use decisions actions.

* * *

[indicates omission of unaffected rules]

3006. Reports.

- (a) On or before April 30th of each year, each utility shall file with the Commission an annual report for the preceding calendar year. The utility shall submit the annual report on forms prescribed by the Commission; shall properly complete the forms; and shall ensure the forms are verified and signed by a person authorized to act on behalf of the utility; and shall file the required number of copies pursuant to rule 1204(a)(IV) of the Commission's Rules of Practice and Procedure. If the Commission grants the utility an extension of time to file the annual report, the utility nevertheless shall file with the Commission, on or before April 30, the utility's total gross operating revenue from intrastate utility business transacted in Colorado for the preceding calendar year.
- (b) If a certified public accountant prepares an annual report for a utility, the utility shall file two copies of the report with the Commission within 30 days after publication.
- (c) A cooperative electric association shall file with the Commission a report listing its designation of service.
- (d) A cooperative electric association shall file with the Commission a report of election to be governed by § 40-8.5-102, C.R.S., pertaining to unclaimed monies. This report shall be filed within 60 days of the election.
- (e) Pursuant to rule 3204, a utility shall file with the Commission a report concerning any incident which results in death, serious injury, or significant property damage.

- (f) Pursuant to rules 3252 and 3253, a utility shall file with the Commission a report concerning any major event.
- (g) Pursuant to rule 3411(e)(IV), a utility shall file with the Commission a report concerning its fund administration of the Low-Income Energy Assistance Act.
- (h) Pursuant to rules 3503(a), 3504(a), and 3503(i), a utility shall file with the Commission cost assignment and allocation manuals, fully-distributed cost studies, and required updates.
- (i) Pursuant to rule ~~3614~~3617(a), a utility shall file with the Commission an annual progress report concerning the utility's ~~least-cost~~electric resource plan.
- (j) Pursuant to rule ~~3614~~3617(b), a utility shall file with the Commission reports on competitive acquisition bidding of the utility's ~~least-cost~~electric resource plan.
- (k) Pursuant to rule 3662, a utility shall file with the Commission its annual compliance report.
- (l) A utility shall file with the Commission any report required by a rule in this 3000 series of rules.
- (m) A utility shall file with the Commission such special reports as the Commission may require.

* * *

[indicates omission of unaffected rules]

ELECTRIC 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 subject to the Commission's jurisdiction. ~~It is the Commission's policy that a competitive acquisition process will normally be used to acquire new utility resources. This process is intended and to develop result in cost-effective resource portfolios to meet such need reliably, 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. It is the policy of the state of Colorado that a primary goal of electric utility resource~~

planning is to minimize the net present value of revenue requirements. It is also the policy of the state of Colorado that the Commission gives the fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies.

3602. Definitions.

The following definitions apply to rules 3600 through ~~3645~~3618. 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.~~ Ownership 
- (d) "Demand-side ~~management~~resources" 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 energy resources" means ~~anyall eligible-renewable~~ energy resources as defined in the Commission's Renewable Energy Standard Rules~~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, and demand-side ~~management resources, 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 resources" means ~~a~~ resources 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~~2011, 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~~ the 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 evaluation of transmission resources pursuant to rule 3608.

- (e) An assessment of planning reserve margins and contingency plans for the acquisition of additional resources developed pursuant to rule ~~3608~~3609.
- (ef) An assessment of the need for additional resources developed pursuant to rule ~~3609~~3610.
- (fg) ~~A description of t~~he utility's plan for acquiring these resources pursuant to rule ~~3610~~3611, including.
- (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 these 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 energy, capacity, or demand-side resources to be acquired from other utilities and non-utilities through a competitive acquisition process, including model contracts, pursuant to rule ~~3612~~3615. Ownership
- (i) The proposed treatment of and possible future disclosure of bid prices, other bid details, costs of utility self-build proposals and details associated with such proposals, bid evaluation results, and any other information that the utility may seek to protect as highly confidential. 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. Confidentiality
- (j) Descriptions of at least 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 renewable energy resources, demand-side resources, and 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 renewable energy resources, demand-side resources, and Section 123 resources. Segmented Bidding
Scenario Planning
- (k) An assessment of the costs and benefits of the integration of intermittent renewable energy resources on the utility's system, including peer-reviewed studies, consistent with the amounts of renewable energy resources the utility proposes to acquire. Integration Studies

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~~3609(a) and ~~3609~~3610. Each cooperative generation and transmission association shall also file annual reports pursuant to subparagraphs (a)(I) through (a)(VI) of rule ~~3614~~3617.

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 Certificate of Public Convenience and Necessity (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, and demand-side resources 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.

(VIII) 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 the resources identified under this paragraph 3607(a).

(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.

3608. Transmission Resources.

(e) ~~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)(b)~~ 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)~~ ~~(c)~~ In order to equitably compare possible resource alternatives, the utility shall consider ~~all the~~ transmission costs required by, or imposed on the system by, and the transmission benefits provided by a particular resource as part of the bid evaluation criteria.

~~(d)~~ 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.

36083609. Planning Reserve Margins and Contingency Plans.

(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~~3610. The Commission will consider approval of contingency plans only after the utility receives bids, as described in subparagraph ~~3614~~3617(b)(II). The provisions of paragraph ~~3613~~3616(d) shall not apply to the contingency plans unless explicitly ordered by the Commission.

~~3609~~3610. Assessment of Need for Additional Resources.

- (a) 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~~3609, the utility shall assess the need to acquire additional resources during the resource acquisition period.
- (b) In assessing its need to acquire additional resources, the utility shall also:
- (I) Determine the additional eligible energy resources the utility will acquire to comply with the Commission's Renewable Energy Standard Rules.
- (II) Take into account the demand-side resources it must acquire to meet the energy savings and peak demand reduction goals established under § 40-3.2-104, C.R.S. To that end, the Commission shall permit the utility to implement cost-effective demand-side resources to reduce the need for additional resources that would otherwise be met through a competitive acquisition process pursuant to Rule 3611. A non-utility may bid demand response resources in the utility's competitive acquisitions.
- (c) The Commission may give consideration of the likelihood of new environmental regulations and the risk of higher future costs associated with the emission of greenhouse gases such as carbon dioxide when it considers utility proposals to acquire additional resources during the resource acquisition period.

~~3610~~3611. Utility Plan for Meeting the Resource Need.

- (a) It is the Commission's policy that a competitive acquisition process will normally be used to acquire new utility resources. 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 (i.e., an all-source solicitation).

Segmented Bidding

(b) ~~Notwithstanding the Commission's preference for such all-source bidding for the acquisition of all new utility resources under these rules, the utility may propose i~~ In its filing under rule 3603, ~~the utility shall describe its resource an alternative~~ plan for acquiring the resources to meet the need identified in rule ~~3609~~3610. 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 an all-source competitive acquisition process and the portion that it intends to meet through an alternative method of resource acquisition.~~

(bc) ~~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 an all-source 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.~~

Segmented Bidding

(d) ~~Although the utility may propose a method for acquiring new utility resources other than all-source competitive bidding, the utility shall nonetheless include in its plan filed under rule 3603 the necessary bid policies, RFPs, and model contracts necessary to satisfy the resource need identified under rule 3609 exclusively through all-source competitive bidding.~~

Ownership

(ee) ~~In the event that the utility proposes an alternative method of resource acquisition that involves the development of a new renewable energy resource or new supply-side resource that the utility shall own as a rate base investment, the utility shall file, simultaneously with its plan submitted under rule 3603, an application for a CPCN for such new resource. The Commission may consolidate, in accordance with the Commission's Rules of Practice and Procedures, the proceeding addressing that application for a CPCN with the resource planning proceeding. The utility shall provide a detailed estimate of the cost of the proposed facility to be constructed and information on alternatives studied, costs for those alternatives, and criteria used to rank or eliminate those alternatives. 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.~~

Ownership

(f) The utility may participate in a competitive resource acquisition process by proposing the development of a new utility resource that the utility shall own as a rate base investment. The utility shall provide sufficient cost information in support of its proposal such that the Commission can reasonably compare the utility's proposal to alternative bids. The Commission may also address the regulatory treatment of such costs with respect to future recovery

(dg) 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.

(h) Under any plan submitted under rule 3603, the utility shall provide the Commission with the following information regarding each new utility resource:

(I) The availability of training programs, including trading through apprenticeship programs registered with the United States Department of Labor, Office of Apprenticeship and Training;

(II) The employment of Colorado workers as compared to importation of out-of-state workers;

(III) Long-term career opportunities; and

(IV) Industry-standard wages, health care, and pension benefits.

3612. Independent Evaluator.

IE in Phase I

(ea) ~~Within sixty days of~~Prior to the filing of the plan under rule 3603, the utility shall file for Commission approval the name of the independent evaluator (IE) 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~~IE, the Commission shall refer the matter to an administrative law judge for resolution. In any event, the Commission shall approve an ~~independent evaluator~~IE by written decision within ~~120~~30 days of the filing of the plan under rule 3603.

(b) The utility shall pay for the services provided by the independent evaluator~~IE~~ pursuant to a contract approved by the Commission. The terms of such contract shall prohibit the ~~independent evaluator~~IE from assisting any entity making proposals to the utility for subsequent resource acquisitions for three years.

(fc) The utility shall work cooperatively with the ~~independent evaluator~~IE and shall provide the ~~independent evaluator~~IE 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~~and selection processes. The utility shall make available the appropriate utility staff to

meet with the ~~independent evaluator~~IE to answer questions and, if necessary, discuss the prosecution of work. The utility shall provide to the ~~independent evaluator~~IE, 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 bid evaluation results and modeling runs so that the IE can verify these results and can investigate options that the utility did not consider.~~

IE Modeling

(gd) 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 with parties in the resource plan proceeding, including those with the utility, the ~~independent evaluator~~IE shall maintain a log that briefly identifies the entities communicating with the ~~independent evaluator~~IE, 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~~IE's contract.

(e) In the event that the utility proposes a method for resource acquisition other than all-source competitive bidding, the Commission may retain the IE to assist the Commission in the rendering a decision on such alternative method for resource acquisition. The IE shall file a report with the Commission, prior to the evidentiary hearings, concerning its assessment of the costs and benefits that the utility has presented to the Commission to demonstrate the reason(s) why the public interest would be served by acquiring the specific resource(s) through that alternative method of resource acquisition. The IE shall also address in its report whether the utility's proposed competitive acquisition procedures and proposed bidding policy, including the assumptions, criteria and models, are sufficient to solicit and evaluate bids in a fair and reasonable manner.

IE in Phase I

(f) The IE shall serve as an advisor to the Commission and shall not be a party to the proceedings. As such, the IE shall not be subject to discovery and cross-examination at hearing. The Commission shall convene at least one procedural conference to establish a procedure related to questions to the IE from the utility and parties regarding the IE's filings in the proceeding.

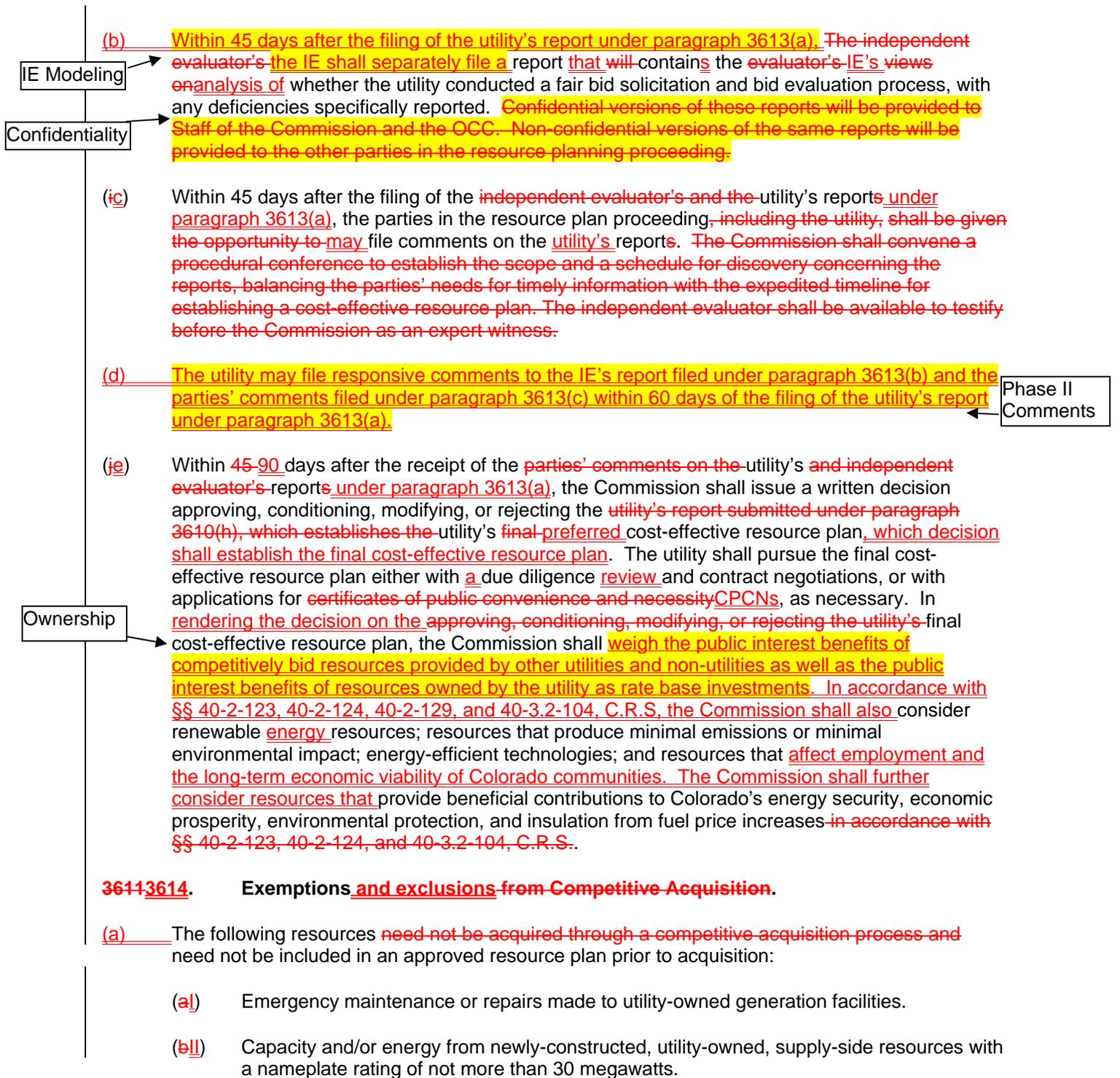
3613. Bid Evaluation and Selection.

(ha) Within 120 days of the utility's receipt of bids ~~to in~~ 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 ~~increasing amounts of renewable energy resources, demand-side resources, and~~ 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.

IE Modeling

Scenario Planning





- (~~eIII~~) 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.
- (~~eIV~~) 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.~~

- (~~fV~~) 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.

- (~~gVI~~) 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..~~

~~(b) The Commission may elect not to consider the acquisition of the following resources in a proceeding concerning a utility's resource plan:~~

- ~~(I) Renewable distributed generation as defined under the Commission's Renewable Energy Standard Rules;~~
- ~~(II) Demand-side resources addressed in Commission-approved demand-side management plan;~~
- ~~(III) Interruptible service provided to the utility's electric customers pursuant to a Commission-approved tariff.~~

36123615. 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 ~~36103611~~. 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 supply-side resources, renewable energy resources, demand-side resources, and 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) details concerning its base-load, intermediate, and/or peaking resource

Scenario Planning



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.

36133616. 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 an all-source~~ 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 increasing amounts of renewable energy resources, demand-side resources, and Section 123 resources. A Commission decision pursuant to paragraph ~~3640(f)~~3613(e) shall become part of the decision approving or modifying a utility's plan developed under rule 3604.

Segmented Bidding



Scenario Planning



(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 CPCN 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.

36143617. 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~~3609.
 - (IV) An updated assessment of need for additional resources developed pursuant to rule ~~3609~~3610.
 - (V) An updated report of the utility's plan to meet the resource need developed pursuant to rule ~~3610~~3611 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.

36153618. 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 36133616. 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.

36163619. – 3649. [Reserved]

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[indicates omission of unaffected rules]