

**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.

---

**ORDER ADOPTING RULES**

---

Mailed Date: August 31, 2010  
Adopted Date: July 29, 2010

**TABLE OF CONTENTS**

I. BY THE COMMISSION .....	2
A. Statement .....	2
B. Background.....	3
C. Discussion.....	4
1. Early stakeholder involvement process.....	4
2. Utility rate base resource ownership .....	5
3. Transmission issues.....	7
4. Scenario planning and risk analysis .....	9
5. Segmented bidding.....	10
6. Renewable integration studies.....	11
7. Emissions information for existing generation facilities.....	11
8. Water usage .....	12
9. Comparison between utility-built proposals and IPP bids .....	12
10. Minimization of NPV of revenue requirements .....	13
11. Best-value employment metrics .....	13
12. Bidding of demand-side resources .....	15
13. Coordination with RES compliance plan filings.....	17
14. Exemptions and exclusions .....	19
15. Confidentiality.....	20
16. Independent Evaluator (IE) .....	23

17. Phase II comments and potential hearings .....	26
18. Other rule changes.....	27
II. ORDER.....	27

---

## **I. BY THE COMMISSION**

### **A. Statement**

1. The Commission issued a Notice Of Proposed Rulemaking (NOPR) to revise the Electric Resource Planning (ERP) rules contained in 4 *Code of Colorado Regulations* (CCR) 723-3-3600, *et seq.* Decision No. C10-0347, mailed April 15, 2010. The NOPR commenced this rulemaking proceeding. A copy of the proposed rules was attached to the NOPR.

2. The intent of this limited rulemaking is to revise and to clarify the existing ERP rules to better match the outcomes of the recent ERP application dockets, and to better match the current statutory requirements. The proposed rules accompanying the NOPR were published in the April 25, 2010 edition of *The Colorado Register*.

3. The Commission invited interested persons to file written comments on or before May 6, 2010 and post-hearing reply comments on or before June 21, 2010. The Commission conducted an *en banc* hearing on May 27, 2010.

4. The following interested persons provided written and/or oral comments: Colorado Independent Energy Association (CIEA), Black Hills/Colorado Electric Utility Company, LP (Black Hills), the Colorado Office of Consumer Counsel (OCC), Colorado Building and Construction Trades Council (CBCTC), Public Service Company of Colorado (Public Service), Western Resource Advocates (WRA), Federal Executive Agencies (FEA), Interwest Energy Alliance (Interwest), Wyoming-Colorado Intertie, LLC (WCI),

Tradewind Energy and Horizon Wind Energy, LLC (Tradewind and Horizon), and Climax Molybdenum Company and CF&I Steel, L.P. (CF&I and Climax).

5. Being fully advised in the matter and consistent with the discussion below, we adopt the changes shown in Attachment A to this Order. To the extent specific recommendations made by interested persons are not discussed below, we decline to adopt such recommendations.

**B. Background**

6. The Commission adopted emergency electric resource planning rules by Decision No. C07-0829, issued September 28, 2007 in Docket No. 07R-368E (Emergency Rules). These emergency rules amended the Least Cost Planning (LCP) rules that governed electric utility resource planning prior to that time, in order to implement certain legislative changes. The Commission adopted the same rules on a permanent basis by Decision No. C07-1101, issued in Docket No. 07R-419E.

7. The most significant changes that the Commission implemented in the emergency rules involved a separate expedited “Phase II” proceeding. The Phase II proceeding begins after the utility receives bids for new resources. It allows the Commission to weigh public interest factors in reaching a decision on the final resource selections by jurisdictional electric utilities. The emergency rules also introduced the concept of an Independent Evaluator (IE) to assist the Commission in analyzing the bids and proposals in Phase II, because of the complexity and expedited nature of the Phase II process.

8. 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. The purpose of

the instant rulemaking is to revise and to clarify the existing ERP rules to incorporate the lessons learned in these two application dockets.

9. As stated in the NOPR, the Commission is aware the General Assembly enacted House Bill (HB) 10-1365, which requires jurisdictional utilities to make expedited filings with the Commission regarding certain existing electric resources. We do not expect the rule changes promulgated in the instant rulemaking to materially impact these filings, as utilities can follow the guidelines in the new legislation. Public Service and Black Hills each filed an emissions reduction plan under HB 10-1365 on August 13, 2010, in Docket Nos. 10M-245E and 10M-254E, respectively.

### **C. Discussion**

#### **1. Early stakeholder involvement process**

10. In its initial comments, WRA recommended adding a rule that would require electric utilities to initiate a pre-filing stakeholder process. In response, Public Service indicated a willingness to hold a pre-filing workshop four months before filing a “Phase I” plan. However, Public Service stated it would not have its plan prepared to share with parties at that time. The workshop would instead provide a forum for interested parties to provide insights on the relevant issues. In its reply comments, WRA opined that Public Service’s proposal amounted to a one-way exchange of ideas and generally argued that the utility must provide more information regarding its upcoming plans so that stakeholders can provide meaningful input.

11. We find that pre-filing discussions between the utility and interested parties might be helpful, but we agree with Public Service that the timelines of the ERP rules do not permit a utility to prepare a draft plan before the filing due date. The position of Black Hills that a pre-filing requirement could convert a two-phase process into a three-phase process is also

well-taken. Given the lengthy timeline of the ERP rules, we find that a pre-filing requirement is not practical.

12. We nonetheless agree with WRA that it could be helpful for utilities to hold pre-filing discussions with stakeholders on the general policy proposals. We also agree with Black Hills that it may be possible to use the pre-filing process to reduce or define the issues that will be litigated in Phase I.

13. Instead of adopting a pre-filing requirement, we find it would be more appropriate to enhance the post-case reporting rules. The current rules require the utility to file an annual progress report to its approved plan, which includes an update of its forecast and needs assessment. We therefore add provisions to Rule 3617 Reports, which will require the utility to provide more information beyond the resource acquisition period used in the previously approved plan, covering the period extending at least ten years from the date of the report. We will also require the utility to discuss the types of resources that may be acquired in the next ERP filing, and the utility's anticipated actions to fulfill that need. The Commission may also request the utility to make a public presentation regarding this enhanced annual report.

## **2. Utility rate base resource ownership**

14. In the NOPR, we proposed rule changes to accommodate the two approaches utilized in Docket Nos. 07A-447E and 08A-346E regarding proposals to develop new resources that the utility would own and whose costs would be recovered through the utility's rates. We also summarized the current ERP rules, explained the rule waivers related to utility ownership granted in the latest two ERP proceedings, and discussed the relative benefits in the utility resource ownership and in contracting for resources owned by independent power producers (IPPs).

15. The first set of proposed rule change reflects the approach used in Docket No. 07A-447E, where the utility would propose a plan in Phase I for comparing rate based proposals with IPP bids in Phase II. The second set of proposed rule changes is a variation on the decision reached in Docket No. 08A-346E, where the utility would propose in Phase I a carve-out for specific rate based resources, and the utility would need to justify such a carve-out. In order to exercise this Phase I option, we proposed a rule requirement for the utility to put forth a full Certificate of Public Convenience and Necessity (CPCN) filing concurrently with its ERP application. As discussed below, if the utility proposes such a carve-out, it may be necessary for the IE to oversee the modeling in Phase I rather than only in Phase II.

16. CIEA opposes these changes, asserting that the proposed exemption language will “swallow the rule” without any specific requirements to (1) study market alternatives, (2) place a ceiling on the carve-out amount, and (3) establish strict criteria the utility must meet to justify the carve-out. In response, Public Service and Black Hills argued that the rule revisions provide a more balanced approach.

17. Interwest also opposes the utility ownership options presented in the NOPR and generally advocates an alternative approach that focuses on incentives associated with resource contracting. However, Interwest does not provide a specific proposal or rule language.

18. First, we reaffirm that competitive resource acquisition is an essential element to our ERP Rules. As such, we will amend proposed Rule 3611(d) to clarify that the utility must comply with certain bidding requirements as a prerequisite to proposing a method other than all-source competitive bidding.

19. Second, we agree with Public Service and Black Hills that utility ownership issues were fully vetted in the recent ERP dockets and that our ERP Rules should now be

modified to accommodate proposals for utility ownership. We find that the language in the NOPR pertaining to utility resource ownership properly allows the utility to present its plan, the parties to offer alternatives, and the Commission to find a reasonable balance of IPP contracting and utility ownership.

20. Finally, although we are sympathetic to the general policy proposals put forth by Interwest, these proposals go beyond the intent of this NOPR.

### **3. Transmission issues**

21. In the NOPR, we proposed to move the transmission-related provisions in our ERP Rules into a separate transmission section, Rule 3608 Transmission Resources. We also noted that the Commission was undertaking separate rulemakings and miscellaneous dockets related to CPCNs for electric transmission facilities and transmission planning, and thus we did not propose substantive changes in the instant rulemaking. In response to the comments filed by interested persons, however, we address certain transmission-related rule changes here.

#### **a. New Transmission Resources**

22. Several interested persons commented on the link between electric transmission and generation planning. In its reply comments, Tradewind/Horizon lists the information that it believes the utility should be required to provide in its ERP filings regarding new transmission lines. We agree that some of these proposed changes to Rules 3608 (b) and (c) will be helpful in integrating the transmission planning information into the ERP process. However, we find that proposed changes to Rules (e) and (f) will be more appropriately addressed in Docket No. 10R-526E.

**b. Evaluation of Existing Transmission**

23. Black Hills objected to proposed Rule 3604(d), which restates the requirement under the existing ERP Rules that the utility include an evaluation of existing transmission resources in its ERP filing. Black Hills questions how it can provide this information without knowing the location of the resources that will be bid, especially if these resources will be located outside of its service territory.

24. We recognize that the utility cannot be certain with respect to the location of the resources that will be bid. However, bidders need to understand the utility's transmission system, including information on availability and constraints, so that they can optimize their bids. The Commission must also evaluate transmission availability in Phase I to reach an optimal Phase I Decision. Moreover, the proposed rule does not require the utility to evaluate transmission resources of neighboring utilities. We therefore adopt the language as proposed in the NOPR.

**c. Transmission Benefits**

25. Public Service opposed proposed Rule 3608(c), which would require the utility to address the transmission benefits associated with a proposed generation resource, in addition to transmission costs. Public Service argued that such an analysis is complicated and cannot be accomplished within the 120-day Phase II process. On the other hand, CIEA asserted that if transmission costs are considered, then benefits should be considered as well. In the alternative, CIEA suggested that the Commission address these issues in a separate docket, similarly to the manner in which the Commission addressed demand-side management (DSM) issues for Public Service before addressing Public Services ERP filing in Docket No. 07A-447E.



26. We agree with CIEA that the rules should require an assessment of transmission benefits associated with a proposed generation resource, in addition to costs. We understand that this analysis may be complex and that the timelines involved in Phase II process may limit the level of detail that is presented. Nevertheless, the utility should use reasonable efforts to provide the best available information. We thus adopt the language as proposed in the NOPR.

#### **4. Scenario planning and risk analysis**

27. Rule 3604(j) currently requires the utility to propose for modeling a base scenario and two other scenarios with increasing levels of new clean energy resources under “Section 123.” In Docket No. 07A-447E, the Section 123 concept was generally used to represent only new clean energy resources that have not yet been commercially proven. The Phase II process, however, is intended to consider a wider range of new clean energy resources. In the NOPR, we therefore proposed certain changes to further that intent.

28. In its comments, WRA proposes additional language changes in several parts of the ERP rules related to risk analysis. Public Service opposed these additions as redundant of other provisions of the rules.

29. We agree with WRA that a wide range of input variability should be considered. However, we also agree with Public Service that the general risk analysis language proposed by WRA is not necessary and vague. We modify proposed Rules 3604(j) and 3613(a) to clarify the utility should propose a broad range of circumstances and scenarios for consideration in the resource evaluation.

30. In accordance with these rule changes, we envision utilities would analyze at least three resource plans that include varying amounts of traditional fossil-fueled resources, renewable energy resources, and demand-side resources. If the utility makes use of sophisticated

modeling programs, these plans would be optimized under Commission-approved future scenarios that are represented by differing model inputs, such as load forecasts, fuel costs, carbon costs, and other alternative inputs. For example, future trends in plug-in hybrid vehicles, carbon reduction policies or natural gas availability could significantly impact the future viability of certain resources, warranting an analysis of such cases. As a part of this scenario analysis the utility may propose, and the Commission may require, that changes in model inputs be analyzed as sensitivities if the re-optimization of the plans is either impractical or unnecessary. The Commission will consider these analyses when assessing the robustness of the plans across the multiple scenarios.

## **5. Segmented bidding**

31. In the NOPR, we proposed rule changes to accommodate proposals made in Phase I for segmented acquisitions of resources in Phase II. This represented a departure from the current ERP rules, which require all-source bidding. All-source bidding contemplates that the Commission will generally decide an appropriate level of specific resources in Phase II, after bids are received and cost modeling is preformed for these resources. The only exceptions are resource acquisitions needed to meet specific statutory requirements, such as certain components of Colorado's Renewable Energy Standard.

32. If the utility proposes segmented bidding in Phase I, the Commission will not yet know the costs of actual resources before ruling on the merits of such a proposal. Therefore, the NOPR would require the utility to provide adequate justification for any proposed Phase I segmentation. We find this approach to be reasonable and will adopt these provisions, as shown in the rules in Attachment A.

33. In the event that a utility proposes in Phase I to employ segmented bidding, the Commission may also retain an IE in Phase I to assist the Commission in ruling on the issue. We therefore modify current rules to allow the use of an IE in Phase I and we require such IE to be selected at the beginning of the Phase I process. See Rule 3612(e).

## **6. Renewable integration studies**

34. In their comments, several interested persons recommended changes to proposed rules that would require the utility to include intermittent renewable integration studies. Black Hills raised concerns with the term “peer reviewed” and argued that the utility should be able to use existing studies if new studies are not needed. CF&I and Climax argued that the Commission should define the term “peer reviewed” but did not suggest a definition. Public Service suggested striking the requirement that such integration studies be consistent with the amount of renewable energy resources the utility proposes to acquire, because the utility may not know the precise amount of renewable resources that it will acquire when it will initiate the study.

35. We disagree with Black Hills and CF&I and Climax and find that the term “peer reviewed” is susceptible to a reasonable interpretation and does not need to be defined further. We also find that it is important for the integration studies to be consistent with the level of intermittent renewable resources proposed. We therefore adopt the language proposed in the NOPR.

## **7. Emissions information for existing generation facilities**

36. In the NOPR, we proposed a requirement that the utility provide information on emissions associated with its existing generation facilities. We find that this is appropriate

because of the increasing interplay between new renewable resources and existing fossil-fueled resources.

## **8. Water usage**

37. WRA proposed to add a proposed Rule 3604(h) requiring the utility to file water usage information for existing and proposed generation resources. Black Hills objected to this proposal, arguing that the water rights for existing resources are already in place, and water rights for new resources are governed by the Colorado Division of Water Resources.

38. We agree that it may be helpful to understand the water consumption associated with existing and proposed generation resources when considering the overall resource selection. It is also true that the Commission has no jurisdiction over water rights. However, implementation or retirement of generation resources will affect the utility's total water use and it may be one of the factors in resource selection. We therefore adopt the language proposed by WRA.

## **9. Comparison between utility-built proposals and IPP bids**

39. In its comments, the OCC argued that the Commission should require the utility to put forth a "CPCN quality" utility generation proposal. The OCC contended that an IPP bid must be compared to a utility self-built proposal to determine whether such bid is in the public interest. For the reasons stated in Docket No. 07A-447E, we continue to disagree with the OCC that comparison to a "CPCN quality" utility generation proposal is required for the Commission to determine whether acquisition of an IPP bid is in the public interest or that such a comparison is likely to produce meaningful results. We decline to adopt the changes proposed by the OCC with respect to this issue.

**10. Minimization of NPV of revenue requirements**

40. In its comments, WRA argued that minimization of net present value of revenue requirements in Rule 3601 should not be a primary goal of resource planning when compared to other goals. In response, Public Service stated this language merely implements statutory requirements.

41. We agree with Public Service on this matter. Section 40-3.2-104, C.R.S., states “[i]t is the policy of the state of Colorado that a primary goal of electric utility least-cost resource planning is to minimize the net present value of revenue requirements.” We therefore find it is appropriate to maintain this language in our ERP Rules and to not adopt WRA’s recommendation.

**11. Best-value employment metrics**

42. In the NOPR, we noted that the intent of proposed Rule 3611(h) was to implement § 40-2-129, C.R.S. The newly enacted statute requires the Commission to consider “best value” employment metrics in connection with electric utility resource acquisition. The Commission also proposed modifications to Rule 3613(e) to ensure resources that “affect employment and the long-term economic viability of Colorado communities” will be considered in the future ERP proceedings, pursuant to the statute.

43. Public Service and Black Hills generally argued against the placement of the “best value” employment metrics language in Rule 3611. The utilities argued that, for competitively bid resources provided by third-parties, the utility would not have the requisite information until after the bidders submit their proposals. Black Hills suggested modifications to proposed rules that would address “best value” employment metrics in both Phase I and Phase II proceedings. Specifically, Black Hills proposed to add language clarifying that the utility shall request the

statutorily-mandated information from bidders prior to Phase II and that the utility would provide the same information for utility-owned resources in Phase I. Public Service generally suggested moving the NOPR language concerning bid evaluation and selection from Rule 3611 to Rule 3613.

44. The CBCTC expressed general support for the new language proposed in Rule 3611(h). In its initial comments, the CBCTC suggested minor changes to the proposed language, arguing these changes more closely tracked with the requirements of § 40-2-129, C.R.S. In its reply comments, the CBCTC suggested several additional changes. While some of its proposed changes would ensure that best value metrics are considered in both Phase I and Phase II, other proposals would elevate the consideration of “best value” employment metrics as a primary factor in the Commission’s review of utility resource acquisition plans. Notably, the CBCTC argued that Requests For Proposals (RFPs) should include a listing of major subcontractors and that the bidders certify their best value employment metrics under penalty of perjury, bid disqualification, and disqualification from future resource solicitations.

45. We agree with Black Hills and Public Service that Rule 3611(h) is problematic as proposed in the NOPR and that additional rule changes are necessary to ensure that “best value” employment metrics are provided to the Commission in Phase I or Phase II. We therefore modify the rules based, in part, upon the comments of Black Hills and Public Service. Specifically, we modify Rule 3611(h) to require utilities to report on these metrics in Phase I filings for utility-owned assets proposed to be acquired outside of competitive bidding. We will also modify Rule 3615(c) to require bidders to provide the best value employment metrics information with their bids, so that the utility can provide that information to the Commission in its Phase II reports. We decline to adopt the additional changes proposed by CBCTC.

## **12. Bidding of demand-side resources**

46. The Commission proposed several rule changes in the NOPR to acknowledge that demand-side resources may play a significant role in meeting the utility's need for new resources. For example, the NOPR proposed that certain demand-side resources be considered as part of the utility's portfolio of existing resources under Rule 3607 Evaluation of Existing Resources. Similarly, in the NOPR we proposed elimination of the exemption of demand side resources from the ERP. Consistent with the recent ERP proceedings, we expect utilities to explore costs and benefits of including increasing amounts of demand-side resources as part of the ERP resource planning process.

47. We also intended to establish an opportunity for bids for demand-side resources to compete in competitive all-source solicitations with the rule changes proposed in the NOPR. In particular, the NOPR included a provision in proposed Rule 3610(b)(II) that would explicitly allow for non-utilities to bid demand response resources in the utility's competitive acquisitions to meet future capacity needs. Even though the NOPR contemplated competitive bidding to acquire some demand-side resource, other rule changes proposed in the NOPR recognized that utility investments in demand-side resources do not need to be competitively bid under § 40-3.2-104, C.R.S.

48. In its written comments, Public Service expressed opposition to "all new rule language that suggests that DSM must be acquired through a competitive acquisition process or through all-source bidding." Public Service argued that the Commission has already charged the Company with acquiring as much cost effective demand side resources as can reasonably be acquired in its Colorado service territory from 2009 to 2020. Public Service also expressed concerns that the acquisition of additional demand-side resources through all-source bidding

would result in the duplication of the Company's energy efficiency and demand response programs. Public Service further described the difficulties it had with bids for demand-side resources in a previous all-source competitive acquisition process.

49. During the hearing, the OCC opined that bidding for demand-side resources in an all-source process is not necessarily problematic. This is because a cost-effective demand-side resource bid by a third party could displace a less desirable supply-side resource to the benefit of ratepayers. In reply comments, Public Service countered that the downside to bidding for demand-side resources in all-source solicitations is that the work needed to prepare the RFPs and to implement the bid solicitation and evaluation processes could outweigh any benefits.

50. For its part, WRA supported for competitive bidding of demand-side resources. WRA concluded that competitive bidding would give customers the benefit of some market competition on certain DSM programs.

51. We find the question of whether demand-side resources should be acquired through a competitive acquisition process, in conjunction with the utility-administered DSM programs, to be particularly challenging. We would have preferred more discussion concerning this issue among the stakeholders participating in this proceeding. There may be solutions that address Public Service's concerns regarding potential impacts of competitively bid demand-side resources on its ability to meet its energy savings and demand reduction goals and on its demand response programs like the Interruptible Service Option Credit (ISOC) program.

52. Because this issue has not been sufficiently vetted in this proceeding, we will not adopt the proposed rule changes relating to competitively bid demand-side resources at this time. However, we expect to re-examine this issue in the future, perhaps in a future DSM or ERP.



53. We will, however, adopt the proposed changes to Rule 3607 Evaluation of Existing Resources that relate to the utility's evaluation of its existing resources as described in the NOPR. We will also accept WRA's recommendation for a new subparagraph 3607(a)(IX), which will require the utility to describe the demand-side resources it expects to be in place during the resource acquisition period pursuant to utility-administered DSM programs in past years and utility-administered DSM programs in Commission-approved DSM plans.<sup>1</sup>

54. Finally, we reiterate our findings in Docket No. 07A-447E that, because resource plans provide the best and most comprehensive context in which to assess the value proposition offered by demand-side resources, the Commission will continue to explore in ERP proceedings whether electric utilities should procure demand-side resources at levels beyond the goals set forth in § 40-3.2-104, C.R.S.

### **13. Coordination with RES compliance plan filings**

55. Public Service argued that the "best way to achieve greater understanding of the utility's resource acquisition[s] and to create administrative efficiencies" would be to consolidate the utility's ERP filings with its compliance plan filings filed pursuant to the Renewable Energy Standard (RES) Rules. In other words, all renewable resource acquisitions, both large and small, would be addressed in a quadrennial ERP proceeding.

56. Public Service contended that annual RES compliance plans have evolved into forums where parties have re-litigated issues that had already been decided in an ERP docket. Public Service also implied that certain parties have been frustrated that, given the two percent cap on the retail rate impact, the acquisition of large renewable resources pursuant to an ERP has

---

<sup>1</sup> Given this change to Rule 3607, we shall strike subparagraph II under paragraph 3606(c) concerning reductions to the utility's energy and coincident peak demand forecasts as a result of DSM programs, as that requirement will now be redundant.

tended to limit the funds available to acquire small renewable resources that are typically at issue in annual RES compliance plan proceedings. Public Service further noted that § 40-2-124, C.R.S., would still require annual RES compliance reports and that the proceedings that address such annual reports could also address RES-related issues that arise between the quadrennial ERP filings.

57. Black Hills did not object to the Public Service proposal. However, Black Hills stated that it would like an option under the RES rules to file a RES compliance plan between ERP dockets if the need arises.

58. CF&I and Climax also agreed with Public Service that ERP and RES compliance dockets are interrelated. Nonetheless, CF&I and Climax argued that a RES compliance docket is the correct proceeding to determine the issues related to compliance with the RES Rules and that results from these RES dockets should be exported to the ERP dockets. Generally, CF&I and Climax expressed support for “feeder dockets” in which inputs to the ERP are fixed, not the other way around.

59. Interwest supported combining the ERP and RES compliance plan procedures in its comments. However, Interwest raised concerns related to the impact of new community solar gardens on RES compliance plans and a potential reduction in the focus on renewable energy in ERP dockets because of their size and complexity.

60. CIEA expressed support for integrating the ERP process with the RES compliance plan process. CIEA pointed out that such a combination would administratively help parties who are interested in both areas and would also help the Commission to ensure that “everything is working together” in a harmonized, single process. WRA also supported combining the ERP and RES processes.

61. We find that the requisite changes to accomplish the integration of ERP filings and RES compliance plans can be accomplished via changes to the Commission's RES Rules. We will therefore address the issue of whether to allow for quadrennial RES compliance plan filings coordinated with ERPs in the ongoing rulemaking proceeding concerning our RES rules, Docket No. 10R-243E.

#### **14. Exemptions and exclusions**

62. Consistent with the changes described above concerning alternative approaches to competitive all-source bidding for acquisition of new utility resources, the NOPR proposed to remove certain exemptions from an ERP, such as demand-side resources and renewable energy resources that a utility would develop and own outside of competitive bidding pursuant to § 40-2-124(1)(f)(I), C.R.S.

63. The NOPR also proposed new Rule 3614(b), which specified three topics that the Commission would not normally explore in an ERP filing: (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 in a Commission-approved demand-side management plan; and (3) details of interruptible service provided to the utility's electric customers. The intent of the proposed new rules was to allow the Commission to remove the issues from the already complex and lengthy ERP proceedings if the Commission was satisfied that those matters could be appropriately addressed in separate dockets.

64. Based on the comments received, we decline to adopt proposed Rule 3614(b). Many stakeholders opined that this proposed rule was too ambiguous and subject to misunderstanding. We will instead manage the scope of ERP dockets on a case-by-case basis, as appropriate, without a rule that sets forth potential exclusions from an ERP proceeding.

65. Consistent with our discussion above concerning demand-side resources, we will restore the exemption in the existing rules for utility investments in demand-side programs in accordance with § 40-3.2-104, C.R.S., and for interruptible service programs. However, as discussed above, these exclusions do not preclude the Commission from evaluating in an ERP proceeding whether a cost-effective resource plan should include additional demand-side resources.

66. We will adopt the change set forth in the NOPR so that utility investments in renewable energy resources pursued under § 40-2-124(1)(f)(I), C.R.S., would no longer be exempt from an ERP. We find that an ERP filing must indeed address the acquisition of utility-owned new renewable energy resources greater than 30 MW, even if the utility intends to acquire that resource without competitive bidding. Although we understand the concerns expressed by Black Hills that this change might prevent or slow down the acquisition of additional utility-owned renewable resources between ERP filings, we note that the RES Rules nonetheless require the utility to file an application whenever it seeks to develop such assets absent competitive bidding.

67. Finally, consistent with our determination to address coordination between ERP and RES compliance plan filings in Docket No. 10R-243E, we will not include an exemption Rule 3614 for renewable distributed generation, or renewable energy resources with nameplate capacity ratings of 30 MW or less.

## **15. Confidentiality**

68. Interested persons presented opposing viewpoints on the confidentiality issue in their written and oral comments. On one hand, Public Service and Black Hills argued that certain commercially sensitive information must be kept secure and “close to the vest.”

On the other hand, intervenors such as WRA wished to have the maximum possible access to the information.

69. In essence, the Commission must strike the right balance between (1) keeping certain commercially sensitive information secure, thus preserving integrity of the competitive bidding process, and (2) protecting due process rights of the intervenors.

70. Regarding the process by which the Commission will resolve the issues related to access to commercially sensitive information, the NOPR proposed a requirement that the utility propose, in Phase I, its plan to address the confidentiality matters in Phase II. The Commission would then determine how highly confidential materials will be addressed in Phase II before the commencement of Phase II. The Commission found that it would be best to address these issues in the context of an actual resource plan filing. NOPR, at ¶ 17. In their comments, the interested persons generally agreed it would be beneficial to resolve the confidentiality issue upfront and that a constant flurry of motions is time-consuming and burdensome, since the timelines in Phase II are already compressed.

71. We agree and therefore adopt the approach proposed in the NOPR. Under this approach, the utility will propose, in Phase I, its plan to address highly confidential information in Phase II, the intervenors will file responses, and the Commission will determine how highly confidential information will be treated in Phase II, before that phase commences.

72. Next, we agree with the OCC that the Rules should explicitly state that Staff and the OCC will have access to all highly confidential information filed in both Phase I and Phase II ERP proceedings. We therefore will retain the sentence in existing Rule 3610(h) (proposed Rule 3613(b) in the NOPR), which states “[c]onfidential versions of these [IE’s and utility’s] reports will be provided to Staff of the Commission and the OCC.”

73. Regarding access to highly confidential information by intervenors other than Staff and the OCC, we generally agree with the concept presented by some interested persons, for example CF&I and Climax. CF&I and Climax generally recommended that attorneys and experts for certain parties be permitted to review highly confidential information. We find this result would enable intervenors other than Staff and the OCC to more fully participate in Phase II and minimize the risk of inadvertent disclosure of commercially sensitive information.

74. Similar to Docket Nos. 07A-447E and 08A-346E, attorneys and experts granted access will need to sign the non-disclosure agreements drafted by the utility. These agreements will generally state that attorneys and experts will not disclose the information to other persons, including their clients; do not represent any bidder who responded to the RFP at issue; and will not represent a bidder in a subsequent RFP for a period of time proposed by the utility and approved by the Commission.

75. We do not agree with WRA that the information related to bids and utility self-build proposals, including prices, location of projects, or other proprietary information, should not be designated as highly confidential. Instead, we find that such information will generally warrant highly confidential treatment because it is critical to protecting the integrity of competitive resource acquisition process. However, we do agree with WRA that the following factors, among others, will be useful in determining whether an intervenor should be granted access to highly confidential information through its attorney(s) and expert(s): (1) whether the intervenor is a market participant that can benefit from access to the information; (2) whether the intervenor is able to maintain the information secure; and (3) whether the intervenor violated a confidentiality agreement in the past.

76. Finally, the introduction of the IE was intended to enhance the parties' confidence in the Commission's review of highly confidential information set forth in the bids and utility proposals during Phase II. We recognize that the IE cannot completely represent every interest of every intervenor. Because the Commission will strive to provide the parties with the maximum due process possible given the circumstances, we may be convinced that the appropriate course of action in a particular Phase II proceeding would be to allow certain attorneys and experts access to such highly confidential bid information.

77. In sum, we decline to make significant modifications to the Rules addressing the treatment of highly confidential information. Instead, the Commission will determine what, if any, information is highly confidential, and which representatives of intervenors other than Staff and the OCC will receive access to highly confidential information. We will do this on a case by case basis, once particular facts and circumstances are before the Commission and before the compressed Phase II begins. The Commission will resolve the issues of highly confidential information with the guidelines discussed above. We believe this approach will result in appropriate attorneys and experts for certain intervenors being permitted to review highly confidential information, subject to non-disclosure agreements.

## **16. Independent Evaluator (IE)**

### **a. IE modeling**

78. As we discussed in the NOPR, modeling by the IE presented significant concerns in Docket No. 07A-447E.<sup>2</sup> Requiring the IE to model the Public Service system in parallel with Public Service's modeling efforts proved to be expensive and time-consuming. Even though the

---

<sup>2</sup> Docket No. 08A-346E did not have a Phase II, so the IE did not perform independent modeling.

IE provided a high quality analysis in its report, we find it is not essential for the IE to duplicate fully the modeling effort performed by the utility. We therefore remove the requirement that the IE perform its own modeling and instead focus the IE's efforts on initial screening and oversight of the utility modeling. We add the requirement that the utility perform some limited modeling runs at the request of the IE. See Rule 3612(c).

**b. IE in Phase I**

79. We modify proposed Rule 3612(a) so that the selection process for the IE begins before to the utility files its plan. This change would accommodate the other change we proposed to Rule 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.

**c. The Role of the IE**

80. During the hearing and in the written comments, several interested persons addressed the proper role of the IE: whether the IE should focus on ensuring that the utility fairly administers the bid evaluation process and act as a "watchdog" or whether the IE should focus on being an advisor to the Commission. In turn, the role of the IE has implications on whether the IE should be subject to discovery and/or cross-examination. Interested persons presented diverse viewpoints on these issues. These issues are intertwined with procedural due process, similar to treatment of highly confidential information.

81. In their comments, CIEA and WRA argued that the IE brings value to the ERP process by performing both advisor and watchdog roles but, if the Commission decides that the IE can perform only one of these roles, it should be the watchdog role. CF&I and Climax argued



that the IE should play an independent role or be a party in the ERP proceedings rather than merely serve as an advisor to the Commission.

82. We agree with CIEA and WRA that the IE brings value to the ERP process both as a “watchdog” and as a Commission advisor. We find that the IE’s activities should be a hybrid between these roles. We note that, to some extent, the IE also played such a hybrid role in Docket No. 07A-447E. In that docket, Concentric generally monitored the resource selection process, including initial screening and modeling to ensure the bid process was fair and complied with Commission Rules and Phase I directives, *and* advised the Commission. In establishing the requirement for the IE, the Commission envisioned that the IE would act mainly as a watchdog and, to a lesser extent, as an advisor to the Commission. However, the exact balance between the watchdog and the advisory roles that the IE will perform will depends on the circumstances of the particular ERP proceeding.

83. In monitoring the resource selection process, including screening and modeling, and in ensuring fairness and compliance with Commission Rules and Phase I directives, the IE is acting as a watchdog or monitor. In this case, discovery on the IE is appropriate. On the other hand, discovery related to the IE’s advisory functions will not be allowed, for the same reasons that Commission Advisory Staff is not subject to discovery. However, since the IE will not be represented by counsel (except in very limited circumstances discussed below) and to ensure discovery is related to the IE’s watchdog role rather than the IE’s advisory role, the Commission will “filter” discovery to the IE, as we did in Docket No. 07A-447E. In that docket, the Commission invited the parties to submit comments to the Commission regarding proposed areas of inquiry for the IE. The Commission then ruled on which of these proposed areas of inquiry should be forwarded to the IE, together with areas of inquiry prepared by the Commission.

84. The issue of contacts between the intervenors and the IE was also discussed in the comments. Public Service argued that such contacts should not be permitted. Public Service stated that, in Docket 07A-447E, the IE Liaison oversaw the contacts between Public Service and Concentric and that additional assurance of the IE's independence is not necessary. In contrast, parties such as WCI argued that the ability of the IE to interact with intervenors will ensure that appropriate boundaries exist.

85. We find that the issue of whether the IE should communicate with the intervenors generally should be left to the IE's discretion, to the extent, such communications would assist the IE in performing its duties. We amend Rule 3612(d) to reflect this finding. We also note that the Commission will have an opportunity to address such issues as they arise in an ERP proceeding. We will weigh the facts and circumstances in providing further guidance to the IE. If the IE communicates with intervenor(s), such communications will be subject to the same protections as the communications between the IE and the utility. Finally, the IE will not be facilitating, mediating, or arbitrating negotiations between the parties.

## **17. Phase II comments and potential hearings**

86. Interested persons in this rulemaking presented a variety of viewpoints on this issue. The Commission presented four options in the NOPR, ranging from a full-blown Phase II evidentiary hearing to elimination of Phase II proceedings. This issue is also intertwined with procedural due process and, in setting forth the parameters of the Phase II process, the Commission must balance the due process rights of all parties with the fact that bids become stale with the passage of time.

87. We find that generally option (c) proposed in the NOPR (continue with Phase II comments rather than an evidentiary hearing but allow more parties access to highly confidential

information) balances the competing interests in the optimal manner. In addition, if intervenors other than Staff and the OCC are able to more fully participate in Phase II (since their attorney(s) and expert(s) will be able to review the highly confidential information pursuant to the approach discussed above), their Phase II comments should be more meaningful. This, in turn, will reduce the need for a hearing.

88. The interested persons appear to agree that all parties should have an opportunity to comment on the IE report in Phase II. We agree as well and therefore modify the timelines set forth in proposed Rule 3613 to accommodate such comments.

89. The Commission finds that holding Phase II hearings is not possible given the facts and circumstances of Phase II and the fact that bids get stale with the passage of time. Therefore, the Commission generally will not hold Phase II hearings. However, if the IE or an intervenor establishes that the utility did not comply with the Commission Rules or Phase I orders, limited Phase II hearing, including cross-examination of the IE by the parties and the Commission, may be necessary. Such limited Phase II hearing would provide an opportunity for the utility to present its position, for intervenors to weigh in, and for the Commission to rule on the matter.

## **18. Other rule changes**

90. As discussed in detail in the NOPR, we adopt small language changes to better reflect current statutes and policies and to clarify the recent changes from the LCP rules.

## **II. ORDER**

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

1. The Commission adopts permanent rules attached to this Order as Attachment A, consistent with the above discussion.

2. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

3. The 20-day time-period provided by § 40-6-114(1), C.R.S. to file an application for rehearing, reargument or reconsideration shall begin on the first day after the effective date of this Order.

4. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING  
July 29, 2010.**

(S E A L)



ATTEST: A TRUE COPY

*Doug Dean*

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners

## **COLORADO DEPARTMENT OF REGULATORY AGENCIES**

### **Public Utilities Commission**

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

#### **PART 3**

#### **RULES REGULATING ELECTRIC UTILITIES**

BASIS, PURPOSE, AND STATUTORY AUTHORITY. ....	2
GENERAL PROVISIONS.....	2
3000.    Scope and Applicability. ....	2
3006.    Reports. ....	4
ELECTRIC RESOURCE PLANNING .....	5
3600.    Applicability.....	5
3601.    Overview and Purpose. ....	5
3602.    Definitions.....	6
3603.    Resource Plan Filing Requirements.....	7
3604.    Contents of the Resource Plan. ....	7
3605.    Cooperative Electric Generation and Transmission Association Reporting Requirements. ....	9
3606.    Electric Energy and Demand Forecasts.....	9
3607.    Evaluation of Existing Resources.....	10
3608.    Transmission Resources.....	11
3609.    Planning Reserve Margins and Contingency Plans.....	12
3610.    Assessment of Need for Additional Resources.....	13
3611.    Utility Plan for Meeting the Resource Need. ....	13
3612.    Independent Evaluator. ....	15

3613.	Bid Evaluation and Selection.....	16
3614.	Exemptions and Exclusions. ....	17
3615.	Request(s) For Proposals. ....	18
3616.	Commission Review and Approval of Resource Plans.....	19
3617.	Reports.....	20
3618.	Amendment of an Approved Plan. ....	21
3619. – 3649.	[Reserved].....	21

## **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.~~
- (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 and energy requirements. 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~~a description of the projected emissions, in terms of pounds per MWh and short-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 annual water withdrawals and consumption for each of these resources, and the water intensity (in gallons per MWh) of the generating system as a whole, if these resources were included.
- (hi) The proposed RFP(s) the utility intends to use to solicit bids for energy and capacity~~the~~ resources to be acquired from the utility, other utilities and non-utilities through a competitive acquisition process, including model contracts, pursuant to rule ~~3612~~3615.
- (ij) 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.
- (jk) Descriptions of at least three alternate ~~scenarios~~plans 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, or Section 123 resources potentially included in a cost-effective resource plan. One of the ~~three scenarios~~alternate plans 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~~alternate plans 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, or Section 123 resources. The utility shall propose a range of possible future scenarios and input sensitivities for the purpose of testing the robustness of the alternate plans under various parameters.
- (kl) 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.

**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 Certificate of Public Convenience and Necessity (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 resource acquisition~~planning~~ period.
- (IV) Estimated in-service dates for utility-owned generation facilities for which a CPCN has been granted but which are not in service at the time the plan under consideration is filed.
- (V) Estimated remaining useful lives of existing generation facilities without significant new investment or maintenance expense.

- (VI) The amount of capacity ~~and/or~~ energy 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 short-tons per year, of sulfur dioxide, nitrogen oxides, particulate matter, mercury and carbon dioxide for the resources identified under this paragraph 3607(a).
- (IX) The expected demand-side resources during the resource planning period from (1) existing measures installed through utility-administered programs, and (2) from measures expected to be installed in the future through utility-administered programs in accordance with a Commission-approved plan.
- (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.**

- (~~ea~~) ~~Existing transmission capabilities and future needs.~~
- (~~4~~) 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.
- (~~b~~) With respect to future needs, the utility shall submit a description of all transmission lines and facilities appearing in its most recent report filed with the Commission pursuant to § 40-2-126, C.R.S., that, as identified in that report, could reasonably be placed into service during the resource acquisition period. ~~explain the need for facilities based upon future load projections (including reserves). To the extent reasonably available, the utility shall include a description of~~
- (~~c~~) For each transmission line or facility identified in paragraph (b), the utility shall include the following information detailing assumptions to be used for resource planning and bid evaluation purposes:
  - (I) the L-length and location. ~~of any additional facilities needed, their~~
  - (II) Estimated in-service date.



(III) Injection capacity.

(IV) Estimated costs.

(V) Terminal points.

(VI) Voltage and megawatt rating, alternatives considered or under consideration, and other relevant information.

(II) The utility shall report its plans for compliance with the requirements of SB 07-100, including how such plans may affect the acquisition of eligible energy resources that comply with the Renewable Energy Standard, 4 CCR 723-3-3650 et seq., and the acquisition of Section 123 resources.

(III) (d) 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.

(e) 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 over~~ the planning period ~~outside of beyond~~ 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 proposed contingency plans for the acquisition of (1) additional resources if actual circumstances deviate from the most likely estimate of future resource needs developed pursuant to rule 36093610, or (2) replacement resources in the event that resources are not developed in accordance with a Commission-approved plan under rule 3616. The utility will identify the estimated costs it will incur in developing the contingency plan for addressing the acquisition of these resources (e.g., purchasing equipment options, establishing sites, engineering). 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.

**36093610. 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 renewable energy resources (e.g., retail distributed generation (DG), wholesale DG, non-DG) resources, if any, the utility will need to 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.
- (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.

**36103611. 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 plan (i.e., an all-source solicitation).
- (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 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~~ 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 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.~~
- (d) Although the utility may propose a method for acquiring new utility resources other than all-source competitive bidding, as a prerequisite, 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 3610 exclusively through all-source competitive bidding.
- (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 Procedure, 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.
- (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. In the event a utility proposes a rate base investment, the utility shall also propose how it intends to compare the utility rate based proposal(s) with non-utility 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) In the event that the utility proposes to acquire specific resources through 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 provide the Commission with the following best value employment metric information regarding each resource:

(I) The availability of training programs, including training 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.**

(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. In the event that the IE notes a problem or a deficiency in the bid evaluation process, the IE should notify the utility.~~

- (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. All parties in the resource plan proceeding other than the utility are restricted from initiating contacts with the independent evaluator. The IE may initiate contact with the utility and other parties. 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.
- (f) The IE shall generally serve as an advisor to the Commission and shall generally 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 range of scenarios for assessing the costs and benefits from the potential acquisition of increasing amounts of renewable energy resources, demand-side resources, or 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 Commission-specified scenarios, the utility's report shall also set forth the utility's preferred plan. The utility's plan shall also provide the Commission with the best value employment metrics information provided by bidders under rule 3615 and by the utility pursuant to rule 3611.~~

- (b) ~~Within 4530 days after the filing of the utility's 120-day report under paragraph 3613(a), The independent evaluator's the IE shall separately file a report that will contains the evaluator's IE's views on analysis of whether the utility conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported. The IE shall provide confidential versions of these reports to Staff of the Commission and the OCC. Confidential versions of these reports will be provided to Staff of the Commission and the OCC. Non-confidential versions of the same reports will be provided to the other parties in the resource planning proceeding.~~
- (ic) ~~Within 45 days after the filing of the independent evaluator's and the utility's 120-day reports under paragraph 3613(a), the parties in the resource plan proceeding, including the utility, shall be given the opportunity to may file comments on the utility's reports and the IE's report. The Commission shall convene a procedural conference to establish the scope and a schedule for discovery concerning the reports, balancing the parties' needs for timely information with the expedited timeline for establishing a cost-effective resource plan. The independent evaluator shall be available to testify before the Commission as an expert witness.~~
- (d) ~~Within 60 days after the filing of the utility's 120-day report under paragraph 3613(a), the utility may file comments responding to the IE's report and the parties' comments.~~
- (je) ~~Within 45-90 days after the receipt of the parties' comments on the utility's and independent evaluator's 120-day reports under paragraph 3613(a), the Commission shall issue a written decision approving, conditioning, modifying, or rejecting the utility's report submitted under paragraph 3610(h), which establishes the utility's final preferred cost-effective resource plan, which decision shall establish the final cost-effective resource plan. The utility shall pursue the final cost-effective resource plan either with a due diligence review and contract negotiations, or with applications for certificates of public convenience and necessity CPCNs (other than those CPCN's provided in paragraph 3611(e)), as necessary. In rendering the decision on the approving, conditioning, modifying, or rejecting the utility's final cost-effective resource plan, the Commission shall weigh the public interest benefits of competitively bid resources provided by other utilities and non-utilities as well as the public interest benefits of resources owned by the utility as rate base investments. In accordance with §§ 40-2-123, 40-2-124, 40-2-129, and 40-3.2-104, C.R.S., the Commission shall also consider renewable energy resources; resources that produce minimal emissions or minimal environmental impact; energy-efficient technologies; and resources that affect employment and the long-term economic viability of Colorado communities. The Commission shall further consider resources that provide beneficial contributions to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases in accordance with §§ 40-2-123, 40-2-124, and 40-3.2-104, C.R.S..~~

**36143614. Exemptions and Exclusions from Competitive Acquisition.**

- (a) ~~The following resources need not be acquired through a competitive acquisition process and~~ need not be included in an approved resource plan prior to acquisition:
- (aI) Emergency maintenance or repairs made to utility-owned generation facilities.
- (bII) Capacity and/or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of not more than 30 megawatts.

(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.

(V) Interruptible service provided to the utility's electric customers.

~~(e) Interruptible service provided to the utility's electric customers.~~

(fVI) 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.

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

(VIII) Utility administered demand-side programs implemented in accordance with § 40-3.2-104, C.R.S.

~~(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..~~

**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, or Section 123 resources as required by the approved resource plan. ~~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 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.



(c) Employment metrics. The utility shall request from bidders the following information relating to best value employment metrics for each bid resource:

(I) The availability of training programs, including training 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.

**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, or Section 123 resources. A Commission decision pursuant to paragraph ~~3610(f)~~3613(e) shall become part of the decision approving or modifying a utility's plan developed under rule 3604.
- (d) Effect of the Commission decision. A Commission decision specifically approving the components of a utility's plan creates a presumption that utility actions consistent with that approval are prudent.
- (I) In a proceeding concerning the utility's request to recover the investments or expenses associated with new resources:

- (A) The utility must present prima facie evidence that its actions were consistent with Commission decisions specifically approving or modifying components of the plan.
  - (B) To support a Commission decision to disallow investments or expenses associated with new resources on the grounds that the utility's actions were not consistent with a Commission approved plan, an intervenor must present evidence to overcome the utility's prima facie evidence that its actions were consistent with Commission decisions approving or modifying components of the plan. Alternatively, an intervenor may present evidence that, due to changed circumstances timely known to the utility or that should have been known to a prudent person, the utility's actions were not proper.
- (II) In a proceeding concerning the utility's request for a 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 and the emerging resource needs and potential utility proposals that may be part of the utility's next electric resource plan filing. Annual progress reports shall ~~also~~ contain the following for a running ten-year period beginning at the report date:
- (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]**

\* \* \*

[indicates omission of unaffected rules]