

Decision No. C02-179

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

DOCKET NO. 02R-137E

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IN THE MATTER OF PROPOSED AMENDMENTS TO THE ELECTRIC INTEGRATED  
RESOURCE PLANNING RULES, 4 CCR 723-21.

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**NOTICE OF PROPOSED RULEMAKING**

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Mailed Date: February 26, 2002

Adopted Date: January 30, 2002

**I. BY THE COMMISSION**

**A. Statement**

1. The Colorado Public Utilities Commission now gives notice of proposed rulemaking regarding amendments to the Electric Integrated Resource Planning Rules, 4 CCR 723-21. The intent of the proposed rules is to revise the existing Integrated Resource Planning ("IRP") process for electric public utilities subject to the Commission's jurisdiction. Under the existing IRP Rules, electric utilities are required to develop and submit for Commission approval detailed, comprehensive integrated resource plans. Additionally, the existing rules require electric utilities to conduct, subject to Commission review and approval, a detailed, comprehensive process for the competitive acquisition of supply-side resources and demand-side savings.

2. On June 6, 2001, the Commission initiated an IRP investigation under Docket No. 01M-250E. Numerous comments were received. These recommendations ranged from a wholesale repeal of the current rules, to expanding the detail and scope of issues addressed in the current rules. The Commission recognizes that the current IRP rules are too prescriptive, and the lengthy nature of the process outweighs its benefits in some areas. In this docket the Commission intends to consider whether the IRP process, as set forth in the existing rules, should be repealed or revised.

3. We raise three categories of potential rule modification for consideration: 1) wholesale repeal of the current rules; 2) Commission approval of the utility's forecast and needs assessment only; and 3) Commission approval of forecast and needs, and approval of proposed resources, with a reduction in the timeline and prescriptive nature of the current rules. This third option represents the most comprehensive planning process of the three options. Therefore the Commission has developed specific proposed rules for the third option. Options 1 and 2 could be adopted by eliminating certain sections of the proposed rules. Details of these three options are discussed in greater detail below.

4. A copy of the proposed rules is attached to this Notice of Proposed Rulemaking<sup>1</sup>. The statutory authority for the proposed rules is found at §§ 40-2-108, 40-3-102, and 40-4-101.

5. The Commission will conduct a hearing on the proposed rules and related issues at the below stated time and place. Interested persons may submit written comments on the rules and present these orally at hearing, unless the Commission deems oral presentations unnecessary. The Commission also encourages interested persons to submit written comments before the hearing scheduled in this matter. The Commission requests that initial comments be filed on or before March 29, 2002; reply comments should be filed on or before April 19, 2002. The Commission will consider all submissions.

6. The proposed rules attached to this order would substantially change the existing IRP Rules. For example: The existing rules require electric utilities to file a draft integrated resource plan with the Commission (Rule 3) along with a request that the Commission open a docket to enable public participation (Rule 4) at the draft plan stage. Together, these two rules require the filing utility to solicit and consider public comment concerning its resource planning even prior to the filing of a proposed integrated resource plan with the

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<sup>1</sup> Rule numbers have also been modified to be compatible with anticipated changes to the Commission's rules, as initiated in Docket No. 02R-041ALL.

Commission. Because the IRP Rules generally prohibit utilities from acquiring new resources before Commission review and approval of the final plan, Rules 3 and 4 can delay by several months a utility's efforts to acquire necessary resources. In order to expedite the planning and acquisition processes for electric utilities, the proposed rules eliminate the requirements to file a draft integrated resource plan and to conduct a public participation process prior to the filing of a proposed plan with the Commission.<sup>2</sup>

7. The existing IRP Rules require electric utilities to obtain Commission approval of those resources to be acquired in the "Resource Acquisition Period." That period, in turn, is defined as the six-year period following the filing of the integrated resource plan. These provisions may constrain the particular resources proposed and selected by the filing utility. Specifically, longer-lived resources that require longer lead times for planning and implementation may be disadvantaged by limiting the resource acquisition period in the IRP process to six years. Additionally, a utility's selection of the proper mix of base-load, intermediate-load, and

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<sup>2</sup> Because the proposed rules would require regulated electric utilities to file their proposed resource plans with the Commission and the Commission would then conduct formal public proceedings on those proposals, the public could still comment on a utility's proposed resource plans at this stage of the planning process.

peaking-load generation may be limited by shorter acquisition and planning periods. The proposed rules redefine the resource acquisition period as a five to ten year period (at the option of the filing utility). For similar reasons, the proposed rules redefine the "Planning Period", the entirety of the future period for which a utility develops its integrated resource plan and compares the costs of various portfolios, from a twenty-year to a twenty- to forty-year period (commencing from the filing of the IRP).

8. Under the current IRP Rules, a number of criteria may influence the selection of new resources for a utility. These include criteria such as costs, environmental quality and sustainability, diversification of resource portfolios, and the impacts of new resources on state and local economies. In contrast, the proposed rules place primary emphasis on least-cost planning. It is the intent of these proposed rules to be neutral regarding the fuel type and technology associated with the resource acquisition process.

9. The Commission invites interested persons to comment on these and other changes reflected in the proposed rules, as well as related issues. Additionally, the Commission also invites comment on other potential ways to revise the existing IRP process. For example, the proposed rules still require electric utilities to file comprehensive resource plans

for review and approval by the Commission. Proposed Rule 3052, in part, directs electric utilities to file a proposed resource plan that includes a forecast of electric demand and energy for the planning period, an assessment of existing resources; an assessment of need for additional resources for the specified resource acquisition period, the RFP used by the utility for the solicitation of competitive bids for new resources, a summary of bids received by the utility, and a proposed resource acquisition portfolio. Proposed Rule 3059 states that the utility's resource plan will be filed as an application with the Commission. According to that rule, the Commission will issue a written decision approving, disapproving, or modifying the plan. Rules 3054 through 3059 essentially embody the same process required in the existing rules, with some additional requirements regarding risks and contingency planning. The Commission invites comment as to whether the current IRP process should be substantially changed.

10. To illustrate, interested parties may address the question whether the IRP Rules in their entirety, and therefore the formal resource planning process itself, should simply be repealed and not replaced with any corresponding rules. Under this option, electric utilities would conduct their resource planning without a separate formal review by the Commission. Utility decisions to acquire new resources (e.g. construction of

new generating plants) could be reviewed by the Commission when the utility applies for a certificate of public convenience and necessity ("CPCN") pursuant to § 40-5-101, C.R.S. Resource acquisitions not requiring a CPCN could be reviewed by the Commission when the utility requests rate recovery for those acquisitions (e.g. in a rate case or other cost recovery proceeding). This option to repeal the proposed or existing IRP Rules would appear to streamline utility resource planning, and may eliminate timing constraints imposed on utilities, thereby helping ensure adequate electricity for end-users on a timely basis. The Commission invites comment on this option.

11. Alternatively, the Commission could formally review and approve only the needs assessment portion of the current IRP rules. Instead of reviewing and approving specific resource acquisitions for a filing utility, the Commission could limit itself to reviewing the demand and energy forecasts and the utility's assessment of need for the planning period. Commission review of specific resource acquisitions by the utility would take place in other proceedings such as CPCN or rate recovery proceedings. Again, such an alternative to a comprehensive IRP process could improve the timing and efficiency of acquiring new necessary resources. The Commission invites comment on such an alternative to the existing IRP

Rules, or any other alternative that may result in a better utility resource acquisition process.

**II. ORDER**

**A. The Commission Orders That:**

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the March 10, 2002 edition of The Colorado Register.

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

TIME: 9:00 AM

DATE: April 30, 2002 through May 2, 2002

PLACE: Commission Hearing Room A  
Office Level 2 (OL2)  
Logan Tower  
1580 Logan Street  
Denver, Colorado

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

3. Interested persons may file written comments in this matter before hearing. The Commission requests that initial prefiled comments be submitted on or before March 29, 2002; reply comments should be submitted on or before April 19, 2002. All submissions, whether oral or written, will be considered by the Commission.



4. This Order is effective immediately upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
January 30, 2002.**

(S E A L)

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO



RAYMOND L. GIFFORD

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POLLY PAGE

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ATTEST: A TRUE COPY

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Bruce N. Smith  
Director

JIM DYER

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Commissioners

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

**ELECTRIC LEAST-COST RESOURCE PLANNING RULES**

**4 Code of Colorado Regulations 723-3500 Through 3509**

**BASIS AND PURPOSE.** The purpose of these rules is 1) to establish a process to determine the need for additional electric resources, and 2) to establish a process for the competitive acquisition of least-cost resources by Commission jurisdictional electric utilities, pursuant to the power to regulate public utilities delegated to the Commission by Article XXV of the Colorado Constitution and by §§ 40-3-102, 40-3-111, and 40-5-103, C.R.S. This process is intended to result in least-cost resources, taking into consideration projected system needs, expected generation loading characteristics, and various risk factors. The rules allow utilities to solicit competitive resource bids and are intended to be neutral with respect to fuel type or resource technology.

**3500. APPLICABILITY.** This rule shall apply to all jurisdictional electric utilities in the state of Colorado that are subject to the Commission's regulatory authority over rates and charges pursuant to C.R.S. § 40-3-101. 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 3053.

**3501. 3501. DEFINITIONS.** The following definitions apply to Rules 3500 through 3509:

- (a) **Availability Factor.** 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) **Capacity Factor.** 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) **Commission.** Colorado Public Utilities Commission.
- (d) **End-Use.** The light, heat, cooling, refrigeration, motor drive, or other useful work produced by equipment that uses electricity or its substitutes.
- (e) **Energy Conservation.** The decrease in electricity requirements of participating customers during any selected time period, with end-use services held constant.

- (f) **Energy Efficiency.** Increases in energy conservation, reduced demand or improved load factors resulting from hardware, equipment, devices, or practices that are installed or instituted at a customer facility. Energy efficiency measures can include fuel switching.
- (g) **Heat Rate.** 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.
- (h) **Least-Cost Resource Plan or "plan".** A utility plan consists of an electric demand and energy forecast; an evaluation of existing resources that are available to meet electric system demand; an assessment of need for additional resources; and where applicable, the Request(s) for Proposals (RFP) used by the utility to solicit bids for the competitive acquisition of needed resources; the utility's proposed resource acquisition and planning period portfolios; and contingency plans, pursuant to Rule 3506.
- (i) **Net Present Value of Revenue Requirements.** The current worth of the expected stream of future revenue requirements associated with a particular resource portfolio, expressed in dollars in the year the plan is filed. The net present value of revenue requirements for a particular resource portfolio is obtained by applying a discount rate to the expected stream of future revenue requirements.
- (j) **Planning Period.** The future period for which a utility develops its plan, and the period, over which net present value of revenue requirements for proposed 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) **Planning Period Portfolio.** The specific combination of resources proposed by the utility to meet electric system demand during the planning period, used in computer models to compare long-term costs of resources contained in the resource acquisition portfolio.
- (l) **Rate Impact.** The impact on electric rates associated with a particular resource portfolio. Rate impact shall be expressed on an average system-wide basis and for each electric customer rate class.
- (m) **Renewable Resource.** Any facility, technology, measure, plan or action utilizing a renewable "fuel" source such as wind, solar, biomass, geothermal, waste, or small hydroelectric generator.
- (n) **Resource Acquisition Period.** The first five to ten years of the planning period, in which the utility acquires specific

resources to meet projected electric system demand. The resource acquisition period begins from the date the utility files its plan with the Commission.

- (o) **Resource Acquisition Portfolio.** The specific combination of resources the utility proposes to acquire during the resource acquisition period to meet projected electric system demand. The resource acquisition portfolio is a subset of the planning period portfolio.
- (p) **Resources.** Supply-side resources, energy efficiency, or renewable resources used to meet electric system requirements.
- (q) **Risk.** Potential changes in the net present value of revenue requirements and electric rates associated with a particular resource portfolio which result when the probability distribution associated with various planning assumptions is considered.
- (r) **Supply-Side Resource.** A resource that can provide electrical energy or capacity to the utility. Supply-side resources include utility-owned generating facilities, and energy or capacity purchased from other utilities and non-utilities.
- (s) **Typical Day Load Pattern.** The electric demand placed on the utility's system for each hour of the day.

#### **3502. FILING REQUIREMENTS.**

- (a) **Least-Cost Resource Plan Filing Requirements.** Jurisdictional electric utilities, as described in Rule 3500, shall file a least-cost resource plan ("plan") pursuant to these Rules on or before January 31, 2003, and every four years thereafter. Each utility shall file an original and fifteen copies of the plan with the Commission.
- (b) **Contents of the 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:
  - (I) A statement of the utility-specified resource acquisition period, and planning period. The utility shall include a detailed explanation as to why the specific period lengths were chosen, including an assessment of base-load, intermediate and peaking needs of the utility system;
  - (II) An annual electric demand and energy forecast developed pursuant to Rule 3504;
  - (III) An annual evaluation of existing resources developed

pursuant to Rule 3505;

- (IV) An assessment of need for additional resources developed pursuant to Rule 3506. If the utility determines that it has a need for additional resources within the resource acquisition period it shall also provide information required under (V) through (XI), below;
- (V) The RFP(s) used by the utility to solicit bids for the competitive acquisition of resources pursuant to the Rule 3507;
- (VI) A summary of the bids received;
- (VII) A description of the process used to model and evaluate bids;
- (VIII) Where the utility has elected to limit the number of bids subject to comprehensive modeling, it shall provide justification for this course of action;
- (IX) A detailed description of the utility's proposed resource acquisition and planning period portfolios. This description shall include: 1) the net present value of the revenue requirements for the planning period associated with the portfolios. In order to quantify risk, the utility shall include a calculation of the net present value of the revenue requirements for the portfolios for a range of potential outcomes associated with the scenarios identified in Rule 3504(b); and 2) an analysis of the electric rate impacts associated with the portfolios for each year of the planning period;
- (X) If the utility determines that it has a need for additional resources within the resource acquisition period pursuant to Rule 3506, it shall acquire such additional resources through a competitive bidding process. The utility shall evaluate resources based on least-cost net present value of revenue requirements, and shall include details of such evaluation in its plan. The utility shall consider renewable resources; resources that produce minimal emissions or minimal environmental impact; energy-efficient technologies; and resources that provide beneficial contributions to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases; as a part of its bid solicitation and evaluation process. Further, the utility shall grant a preference to such resources where cost and reliability considerations are equal. The utility, or any other party, can propose a resource portfolio other than least-cost if it provides justification for such proposal; and

- (XI) The utility shall explain 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.

**3503 Cooperative Electric Generation and Transmission Association Reporting Requirements.** Pursuant to the schedule established in Rule 3502(a), each cooperative electric generation and transmission association shall report its forecasts, existing resource assessment, and needs assessment, consistent with the requirements specified in Rules 3504, 3505, and 3506.

**3504. ELECTRIC ENERGY AND DEMAND FORECASTS and Risk Analysis.**

- (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 disaggregated between 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; and
  - (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) **Identification of Risks.** The utility shall develop 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. The utility shall also provide a range of risk assessments for other variables that may impact the continuous operation of its system, to include: 1) risks associated with the development of generation, 2) losses of generation capacity, 3) risks associated with the purchase of power, 4) risks associated with losses of transmission capability, and 5) risks associated with resource costs likely changing in the future due to environmental or other impacts. The utility shall develop a base case, high risk, and low risk scenario for each of these risk assessments.

(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 consider end-use, econometric or other supportable methodologies as the basis for these forecasts. If the utility determines not to use end-use analysis, it shall explain the reason for its determination as well as the rationale for its chosen alternative methodology.

(II) The utility shall explain the effect on its energy and coincident peak demand forecast of all existing energy efficiency and energy conservation programs for each major customer class, as well as any such measures that have been approved by the Commission but are not included in the forecasts.

(III) The utility shall maintain, as confidential, information reflecting historical and forecasted demand and energy use for individual customers in those cases when an individual customer is responsible for the majority of the demand and energy used by a particular rate class. However, when necessary in the least-cost resource plan proceedings, such information may be disclosed to parties who intervene in accordance with the terms of non-disclosure agreements approved by the Commission and executed by the parties seeking disclosure.

(d) **Historical Data.** The utility shall compare the annual forecast of coincident summer and winter peak demand and energy sales made by the utility to the actual coincident peak demand and energy sales experienced by the utility for the following three periods: 1) in the most recent plan filed prior to the year in which the plan under consideration is filed; 2) five years preceding the year in which the plan under consideration is filed; and, 3) ten years preceding the year in which the plan under consideration is filed.

(e) **Load Building and Load Shaping Programs.** The utility shall provide a detailed description of all existing or planned programs that increase load (including industrial-development

and other special rates, efforts to increase wholesale load, and other marketing efforts), including the costs of the programs and their actual or anticipated (in the case of planned programs) effects on energy sales and coincident summer and winter peak demand. This requirement includes programs that substitute the use of electricity for the use of gas, or programs created in response to federal open transmission access requirements.

- (f) **Load Retention Programs.** The utility shall provide a detailed description of all existing or planned programs for load retention, including those intended to prevent bypass through the procedure specified in C.R.S. § 40-3-104.3.
- (g) **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. The utility shall specifically discuss how, if at all, the potential impacts of increased electric industry competition and anticipated federal regulatory changes are reflected in its coincident peak demand and energy sales forecasts. If such considerations are not reflected in the utility's load forecast, the utility shall explain why it deems such consideration unnecessary.
- (h) **Format and Graphical Presentation of Data.** The utility shall include such graphical presentation of the data as shall 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.

#### **3505. EVALUATION OF EXISTING GENERATION RESOURCES.**

- (a) **Existing Generation Resource Assessment.** The utility shall compile a comprehensive description of its existing generation resources which includes: all utility-owned generating facilities for which the utility has obtained a CPCN from the Commission pursuant to C.R.S. § 40-5-101 at the time the draft plan is filed; existing or future purchases from other utilities or non-utilities pursuant to agreements effective at the time the plan under consideration is filed, regardless of the duration of such agreements; and existing or future generation resources to be obtained through pooling, wheeling and other coordination agreements effective at the time the plan under consideration is filed, regardless of the duration of such coordination agreements. Information provided concerning existing resources shall include, at a minimum:
  - (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, capacity factors and availability factors projected for utility-owned generation facilities over the planning period;
  - (IV) Estimated in-service dates for utility-owned generation facilities for which a CPCN has been granted but which are not in-service at the time the plan under consideration is filed;
  - (V) Estimated remaining useful lives of existing generation facilities;
  - (VI) The amount of capacity and/or energy purchased from utilities and non-utilities, the duration of such purchase contracts and a description of any contract provisions that allow for modification of the amount of capacity and energy purchased pursuant to such contracts; and
  - (VII) The amount of capacity and energy provided pursuant to wheeling or coordination agreements, the duration of such wheeling or coordination agreements, and a description of any contract provisions that allow for modification of the amount of capacity and energy provided pursuant to such wheeling or coordination agreements.
- (b) Utilities required to comply with these Rules shall coordinate their plan filings such that the amount of electricity purchases and sales between utilities during the planning period is reflected uniformly in their respective plans. Disputes regarding the amount, timing, price, or other terms and conditions of such purchases and sales shall be fully explained in each utility's plan.
- (c) **Reserve Margins.**
- (I) 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 as well as planning reserve margins). The description will also quantify the recommended or required reliability performance criteria for all groups specified in Rule 3505(d)(II), as well as power pools, to which the utility is a party. A comparison, to at least include estimated economic costs or savings due to system resource reserves, between these performance criteria and the means used by the utility to assess reliability shall also be part of this description.
  - (II) In developing its planning reserve margin, the utility

shall analyze the base case forecast scenario, and the most likely estimates of all risks identified in Rule 3504(b). The utility shall also develop and justify planning reserve margins that incorporate the base case, high, and low risk scenarios identified in Rule 3504(b), considering the likelihood of these risks simultaneously impacting system reliability.

(d) **Existing Transmission Capabilities and Future Needs.**

- (I) The utility shall report its existing transmission capabilities, and future needs during the planning period, for facilities of 115 kilovolts and above, including associated substations and terminal facilities. The utility shall specifically identify the location and extent of transfer capability limitations on its transmission network that may affect the future siting of resources. With respect to future needs, the utility shall explain the need for facilities based upon future load projections (including reserves) and proposed generation additions during the resource acquisition period. To the extent reasonably available, the utility shall include a description of the length and location of any additional facilities needed, their estimated costs, terminal points, voltage and megawatt rating, alternatives considered or under consideration, and other relevant information.
- (II) The utility shall describe all transmission planning or coordination activities to which it is a party, including activities with entities inside and outside of Colorado, including state and regional transmission groups, transmission companies, and coordinating councils with which the utility may be associated. The utility shall also describe all transmission additions required pursuant to §211 of the Federal Power Act, any pending actions pursuant to §211, and all transmission additions required pursuant to other federal open access transmission requirements.
- (III) In order to equitably compare possible resource alternatives, the utility shall consider all transmission costs required by, or imposed on the system by, a particular resource as part of the bid evaluation criteria.

**3506. ASSESSMENT OF NEED FOR ADDITIONAL RESOURCES.**

- (a) **Need Assessment Procedure.** By comparing the electric energy and demand forecasts developed pursuant to Rule 3504 with the existing level of resources developed pursuant to Rule 3505, the utility shall: 1) assess the need to acquire additional resources during the resource acquisition period; and 2) describe the additional resources required during the planning period. For purposes of this Rule, additional resources shall include both new resources and modifications to existing resources. The utility shall also develop contingency plans for the acquisition of additional resources, considering the range of planning reserve margins developed pursuant to Rule 3505(c).

**3507. REQUEST(S) FOR PROPOSALS.**

- (a) **Purpose of the Request(s) for Proposals.** The RFP(s) filed by the utility pursuant to Rule 3502(b)(V) shall be designed to solicit competitive bids to acquire additional resources pursuant to Rule 3508.
- (b) **Contents of the Requests(s) for Proposals.** The RFP(s) shall contain sufficient information to apprise potential bidders of the utility's proposed criteria for the evaluation of bids received as part of the competitive resource acquisition process specified in Rule 3508. This information shall include the bid evaluation criteria, including the weights to be assigned to each criterion, that the utility plans to use in ranking the bids received. The utility shall also include in its RFP: 1) Base-load, intermediate and/or peaking needs, and preferred fuel type; 2) Reasonable estimates of transmission costs for resources located in different areas; 3) The extent and degree to which resources must be dispatchable, including the requirement, if any, that resources be able to operate under automatic dispatch control; 4) The utility's proposed standard contract(s) for the acquisition of resources; and 5) General planning assumptions, and any other information necessary to implement a fair and reasonable bidding program.

**3508. THE COMPETITIVE RESOURCE ACQUISITION PROCESS.**

- (a) **Competitive Resource Acquisition Requirement.** The utility shall acquire all resources including improvements to the utility's existing generation facilities and changes to existing power purchase contracts, pursuant to the procedures specified in Rule 3502. However, the following resources need not be acquired using the competitive resource acquisition procedures specified in these Rules:

(I) Emergency maintenance or repairs made to utility-owned

generation facilities;

- (II) Capacity and/or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of less than ten megawatts;
- (III) Capacity and/or energy from the generation facilities of other utilities or from non-utility generators pursuant to agreements for less than a one year term (including renewal terms) or for less than ten megawatts of capacity;
- (IV) Improvements or modifications to existing utility generation facilities that change the production capability (capacity or energy) of the generation facility site in question, by less than 10 megawatts or 87,600 megawatt-hours per year, based on the utility's share of the total generation facility site output, and that have an estimated cost of less than \$10 million;
- (V) Interruptible service provided to the utility's electric customers; and
- (VI) Modifications to, or amendments of, existing power purchase agreements, excluding the extension of agreement duration, that add less than 10 MW of capacity to the utility's system and that reduce the system-wide net present value of revenue requirements as calculated over a twenty-year period. The utility shall carry the burden of proof associated with demonstrating that such modified or amended power purchase agreements comply with the requirements contained in this Rule.

(b) **Competitive Resource Acquisition Procedures.** Each utility shall establish a written bidding policy, before RFP's are issued, to ensure that bids are solicited and evaluated in a fair and reasonable manner.

(c) **Special Rules For Utility Bidding in the Competitive Resource Acquisition Process.** If the utility, one of its affiliates, or one of its subsidiaries, desires to submit bids for resources it will own and/or operate, the utility shall inform the Commission of this fact and nominate a third-party overseer. The third-party overseer shall monitor the evaluation and modeling of bids conducted by the utility as part of the competitive resource acquisition process specified in these Rules and shall report its findings to the Commission in an independent and unbiased manner. All bidders shall be required to submit their bids to the third-party overseer and all bids shall be opened publicly by the third-party overseer. The third-party overseer shall file a separate report with the Commission in conjunction with the utility plan. Upon the filing of this report with the Commission, the third-party overseer shall immediately provide copies to the utility and to all intervenors in the docket. The

report of the third-party overseer shall contain the following information:

- (I) A determination regarding whether the competitive resource acquisition process was conducted fairly, with any deficiencies specifically reported;
- (II) A description of the process used to model and evaluate bids; and
- (III) Where the utility has elected to limit the number of bids subject to comprehensive modeling, a discussion of whether the limitation(s) were justified.

### **3509. COMMISSION REVIEW AND APPROVAL OF LEAST-COST RESOURCE PLANS.**

- (a) **Review on the Merits.** The utility's plan, as developed pursuant to Rule 3502 will be filed in the form of an application administered pursuant to the Commission's Rules of 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 plan upon its filing.
- (b) **Basis for Commission Decision.** Based upon the evidence of record, the Commission shall issue a written decision approving, disapproving, or ordering modifications, in whole or in part to the utility's plan. If the Commission declines to approve a plan, either in whole or in part, the utility shall make changes to the plan in response to the Commission's decision. Within 30 days of the Commission's rejection of a plan, the utility shall file an amended plan application with the Commission, and provide copies to the parties. All parties may participate in any hearings ordered regarding the amended plan application.
- (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 3502. The Commission shall specifically render findings on the items described below. If the Commission declines to approve any of these elements, the utility shall re-file an amended plan pursuant to Rule 3509(h).
  - (I) The electric demand and energy forecast developed pursuant to Rule 3504;
  - (II) The evaluation of existing resources developed pursuant to Rule 3505;
  - (III) The assessment of need for additional resources developed pursuant to Rule 3506;
  - (IV) The adequacy of the contents of the RFP(s) used by the utility to solicit bids for the competitive acquisition of

the resources pursuant to Rules 3507; and

- (V) The utility's proposed resource acquisition and planning period portfolios provided pursuant to Rule 3502. The Commission may elect to approve an alternative to the utility's proposed resource acquisition and planning period portfolios based on: 1) the information contained in the utility plan, or information provided by other parties in response to the utility plan; 2) the information contained in the report submitted by the third-party overseer pursuant to Rule 3508(c) (if applicable); and 3) Any other resource evaluation based on least-cost net present value of revenue requirements. The Commission shall consider renewable resources; resources that produce minimal emissions; energy-efficient technologies; and resources that provide beneficial contributions to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases in its determination. Further, the Commission shall grant a preference to such resources where cost and reliability considerations are equal.
- (d) **Commission Approval of Utility-Owned Resources.** If the utility intends to construct and own resources proposed in its resource acquisition portfolio it may request CPCN authority as a part of its application for plan approval, pursuant to C.R.S. §40-5-101, if construction activity associated with such resources is scheduled to commence within two years from the filing of the utility plan. If the CPCN is approved, the utility may not recover from ratepayers any amounts in excess of those specified in the successful bid.
- (e) **Future Utility-Owned Resources.** Commission approval of the resource acquisition portfolio pursuant to Rule 3509(c)(V) shall have the following effect on Utility-owned resources contained in that portfolio for which construction activity is not scheduled to commence within two years:
- (I) At the time of a proceeding on a utility's request to the Commission for recovery of investment and expenses incurred or approval of certain actions taken pursuant to the conditions set forth in its resource acquisition portfolio, whether in an advice letter, application, or certificate proceeding, the utility has the burden of going forward to submit prima facie evidence that its actions are or were consistent with the resource acquisition portfolio approved by the Commission. There shall be a rebuttable presumption that the utility may recover from ratepayers the amount specified in its successful bid.
- (II) Upon the utility meeting its initial burden of presenting prima facie evidence of action consistent with the

approved resource acquisition portfolio, the burden of going forward shall shift to intervenors who wish to challenge the propriety of the utility's actions.

- (III) In order to overcome the utility prima facie evidence, an intervenor must present evidence that the utility's actions are not or were not consistent with the approved resource acquisition portfolio, or that due to changed circumstances or other factors, the utility's actions are or were improper, not in the public interest, or resulted or will result in the imposition of unjust or unreasonable rates.
- (IV) Upon a showing by an intervenor of the matters set forth in subparagraph (III) of this subsection, the utility shall have the ultimate burden of proof to show that its actions are or were in compliance with its last approved resource acquisition portfolio and are or were appropriate and in the public interest.
- (V) The utility proposing certain actions which are inconsistent with its approved resource acquisition portfolio shall have the burden of explaining the reasons for the inconsistency and shall demonstrate that its proposed action is in the public interest.
- (VI) The approval of the utility's resource acquisition portfolio pursuant to Rule 3509(c)(V) shall not preclude an independent finding by the Commission which differs from the utility's approved resource acquisition portfolio in a subsequent proceeding in which the utility seeks the recovery of revenue for actions taken consistent with its resource acquisition portfolio (e.g., rate case review, or application for cost recovery) pursuant to C.R.S. §40-3-101 et seq., or the granting of a certificate of public convenience and necessity as required by C.R.S. §40-5-101 et seq.
- (VII) In order to insure that the final contracts for capacity and energy provided by third-party suppliers contained in the Commission-approved resource acquisition portfolio are consistent with the resource portfolio approved by the Commission pursuant to Rule 3509(c)(V), the Commission, in its sole discretion, may require that such contracts be submitted for Commission approval by the utility in the form of an application to be administered pursuant to the Commission's Rules of Practice and Procedure.

- (f) **Commission Approval of Resources Outside the Competitive Resource Acquisition Process.** Utility expenditures made for the acquisition of additional resources exempt from Rule 3502 are subject to Commission prudence review.

- (g) **Annual Progress Reports.** The utility shall file with the Commission, and provide copies to all parties to the most recent least-cost planning docket, annual progress reports after submission of its plan application. The annual progress reports will inform the Commission of the utility's efforts to acquire the resources contained in the resource acquisition portfolio approved by the Commission pursuant to Rule 3509(c)(V). An annual progress report shall not constitute an amendment to an approved plan. Interested parties can file comments with the Commission in response to annual progress reports filed by the utility. The Commission may, in its sole discretion, initiate a proceeding or such other action it deems necessary in response to the information contained in an annual progress report. Annual progress reports shall also contain:
- (I) An annual electric demand and energy forecast developed pursuant to Rule 3504;
  - (II) An annual evaluation of existing resources developed pursuant to Rule 3505;
  - (III) An assessment of need for additional resources developed pursuant to Rule 3506; and
  - (IV) An itemization of resources acquired through the utilization of the competitive bidding exemptions pursuant to Rules 3508(a)(I)-(VI).
- (h) **Amendment of an Approved plan.** The utility may, at any time, file an application to amend the contents of a plan approved pursuant to Rule 3509. Such an application shall be administered pursuant to the Commission's Rules of Practice and Procedure. Any material deviation from the contents of a Commission approved plan will require the filing of an application to amend, consistent with Rules 3500 through 3509.