

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 11R-416E

IN THE MATTER OF THE PROPOSED REVISIONS TO THE COMMISSION’S ELECTRIC RESOURCE PLANNING RULES 4 CCR 723-3-3600 THROUGH 3618.

ORDER ADOPTING RULES

Mailed Date: July 27, 2011
Adopted Date: July 13, 2011

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I. BY THE COMMISSION

A. Statement

1. On May 13, 2011, the Commission issued a Notice of Proposed Rulemaking (NOPR) to revise its current Electric Resource Planning (ERP) Rules contained in

4 *Code of Colorado Regulations* (CCR) 723-3-3600, *et seq.*, in order to satisfy various requirements pursuant to the passage and signing of House Bill (HB) 11-1262. This new law amends

§ 40-6-107, C.R.S., and adds requirements related to the transparency and confidentiality of information associated with the planning and acquisition of electric generation resources. As explained in Decision No. C11-0521, we also issued the NOPR to revise the ERP Rules based on our experiences in recent dockets concerning the computer-based modeling of bids and other electric generation resources.

2. One main provision of HB 11-1262 specifically requires investor-owned electric utilities to provide computer-based modeling inputs and assumptions to the owners or developers of potential electric generation resources to ensure that the proper inputs and assumptions were used in the utility's evaluation of these bid facilities. The other main provision of the statute more generally addresses the designation and approval of highly confidential information in our electric resource planning-related proceedings.

3. We attached a copy of our proposed rule changes to the NOPR for comment from interested persons. We further set this matter for hearing before Commissioner James Tarpey, acting as the Hearing Commissioner. We also solicited two rounds of written comments on these proposed rule changes and scheduled a hearing on June 21, 2011.

4. Initial comments were received from Public Service Company of Colorado (Public Service); Black Hills/Colorado Electric Utility Company, L.P. (Black Hills); the Colorado Independent Energy Association (CIEA); Noble Energy, Inc., Chesapeake Energy Corporation, and EnCana Oil & Gas (USA) (collectively the Gas Intervenors);

Western Resource Advocates (WRA); Interwest Energy Alliance (Interwest); and the law firm of Dietze and Davis, P.C. (Dietze).

5. Reply comments were received from Public Service, CIEA, the Gas Intervenors, WRA, and Interwest.

6. Oral statements were made at the June 21, 2011 hearing before Hearing Commissioner Tarpey by representatives of Public Service, Black Hills, CIEA, the Gas Intervenors, Interwest, and Dietze.

7. Post-hearing statements of position were submitted by Public Service, Black Hills, CIEA, WRA, the Gas Intervenors, Interwest, and Dietze.

8. By Decision No. C11-0521, we found it was appropriate for us to issue an Initial Decision pursuant to the provisions of § 40-6-109(6), C.R.S., after the close of hearings and the receipt of statements of position. This Order is the expected Initial Decision and the rules we adopt are set forth in Attachment A.

B. Clarity in Utility Resource Evaluation and Selection

9. The treatment of highly confidential information in a resource planning context has been a topic of dispute at least since the initial implementation of the Commission's resource planning rules adopted in Docket No. 02R-137E. The determination of what information should be protected as highly confidential and who can gain access to this protected material has been debated in each of the subsequent resource planning rulemaking proceedings. The treatment of bids to competitive solicitations as well as the inputs and assumptions to computer-based modeling used to evaluate those bids have also been issues in nearly all of the resource-related adjudicated proceedings during the past five to six years. The Commission has therefore contemplated on numerous occasions whether our practices strike the right balance between the

competitive bidding process and the trade secrets of various industry stakeholders, all the while protecting the public interest.

10. Public Service is correct when it points out in its initial comments that the Commission has consistently limited access to actual bid documents and its resource planning computer models and databases to the Commissioners, the Independent Evaluator (IE), the Trial and Advisory Staff of the Commission, and the staff of Colorado Office of Consumer Counsel, as well as their respective attorneys. However, this consistency has masked the frustrations that parties to our generation resource-related proceedings have experienced. Their dissatisfaction with our procedures regarding the designation and approval of information as highly confidential appears to have come to the forefront with the passage of HB 11-1262.

11. We share the parties' concerns about the current practice of limiting access to highly confidential information to such a small group of individuals, as it is problematic for certain parties to adequately advocate their position without the full information that other parties can access. Further, Staff, OCC and the IE cannot be expected to advocate the specific interests of the diverse intervenors in a resource planning docket. Granting all parties (with the exception of *pro se* intervenors) reasonable access to highly confidential information should provide more transparency and higher quality evidentiary records in our generation-related proceedings. Finally, by adopting new rules to resolve confidentiality issues, we will allow parties to proceed quickly with an efficient investigation of the issues when time is critical.

12. The overall intent of HB 11-1262 requires the Commission to expand access to highly confidential information and computer-based modeling inputs and assumptions while keeping in mind the benefits of competitive bidding for the acquisition of potential resources. We therefore reject the notion that maintaining the status quo of our ERP Rules with respect to

the treatment of highly confidential information is an acceptable outcome from this Docket. Rather, our directive under HB 11-1262 is a non-discretionary duty to provide more transparency. This legislation requires the protection of the public interest through a rebalancing in the treatment of highly confidential information related to resource planning between the investor-owned electric utilities that develop, receive, or maintain such information; the independent bidders who participate in competitive bidding processes; the vendors who provide the computer-based models used for the evaluation of potential resources; and the parties who intervene to advocate their unique perspective.

C. Modeling Inputs and Assumptions Related to Potential Resources

1. Rule 3613. Bid Evaluation and Selection

13. In the NOPR, we proposed procedures for the utility to provide modeling information to the owner or developer of a bid, and for the resolution of any resulting disputes. We proposed a requirement for the utility to provide notice to the bidder stating whether its resource passed the initial screening process. We set procedures for the owner or bidder to access modeling inputs and assumptions. If the bidder and utility could not resolve a dispute regarding these modeling inputs and assumptions, the bidder could then raise the matter before the Commission by written pleading. Consistent with HB 11-1262 we proposed that the bidder needed to request modeling inputs and assumptions, but we requested comment on whether it would be more efficient for the utility to automatically provide the inputs and assumptions to the owner or developer of the bid.

14. Commenters generally responded favorably to our proposal or provided alternative suggestions. In its comments, Public Service recommends a shortened timeline, with fast-track procedures for the utility to provide information to bidders and for the bidder and

utility to resolve the dispute. If the dispute is not resolved, Public Service proposes a technical conference for the Commission to hear the issues. After an expedited Commission decision on the issue, the utility would then confirm that it has corrected the problem.

15. Black Hills asserts that bidders should only get information if they request such following the utility's initial assessment of bids. Black Hills proposes a longer timeline for the utility to review the bids and notify the owner or developer. Black Hills also advocates that the utility should charge the bidder requesting additional modeling results.

16. WRA responds to Public Service's proposal with the suggestion that the bidder, not the utility, should confirm that the modeling error or omission is corrected.

17. We agree with Public Service that the procedures for resolving modeling disputes must be expedited, as it becomes increasingly difficult for bidders to hold to their bid prices if the bid evaluation period becomes extended. We therefore adopt a modified schedule reflecting Public Service's proposal. Although the statute contemplates the owner or developer requesting the information as argued by Black Hills, we agree with Public Service that the expedited timing of the ERP process warrants the utility automatically providing the information to all owners or developers submitting bids into a generation resource selection process.

18. Public Service proposed an expedited technical conference before the Commission to address modeling disputes that cannot be resolved between the owner or developer and the utility. We agree that a technical conference provides a better forum than written pleadings for resolving potential disputes in an expedited manner. Given the difficulty of coordinating Commissioner schedules to accommodate a technical conference and then deliberations, an administrative law judge (ALJ) is in a better position to provide an expedited resolution. We therefore adopt rules referring the issue to an ALJ for an expedited ruling.

We also add a provision for an owner or developer to file a notice of intervention of right for the limited purpose of resolving the disputed modeling inputs and assumptions.

19. We also find it is necessary to clarify in paragraph 3613(a) that if the utility notifies the owner or developer that its bid is not advanced to computer-based modeling, then the utility must explain the reasons why the bid was not advanced, including all information that the utility used in its initial assessment of the bid. The reasons provided by the utility for not advancing a bid to computer-based modeling may include the same information as would be included if the bid were advanced, such as modeling inputs and assumption information, or the information may be different (*e.g.*, it is not feasible for the bidder to complete the facility by the required in-service date).

20. We agree with WRA that the owner or developer should have the opportunity to see that the utility corrected the modeling error, rather than the utility confirming that the error has been corrected as Public Service proposed. We therefore require the utility to provide corrected information to the owner or developer. We also require the utility to confirm in its 120-day report filed in Phase II that the potential resource is fairly and accurately modeled, by performing additional modeling as necessary, pursuant to the last sentence of § 40-6-107(2)(a), C.R.S.

21. In the NOPR, we specifically requested comment on whether the information provided to the owner or developer should include indirect parameters, such as the full modeling program with the heat rates and bid prices. We agree with commenters that HB 11-1262 requires only information that reasonably relates to the owner or developer's facility.

22. Finally, we disagree with Black Hills' proposal to require bidders to pay for additional modeling. These new rule provisions are intended to ensure that the facilities are

properly modeled, consistent with the requirements in HB 11-1262, and any costs are a part of the overall resource planning function.

2. Additional Rule Changes

23. **Rule 3602 – Definitions.** In the NOPR we proposed two new definitions, consistent with the directives contained in HB 11-1262. We proposed new definitions for “modeling error or omission” in paragraph 3602(i) and “potential resource” in paragraph 3602(l).

24. We adopt these two new definitions. For the definition of “modeling error or omission,” Black Hills proposed language to clarify that the utility could use an agent to perform computer-based modeling. We find that such additional rule language is not necessary because the utility is the jurisdictional entity that oversees such contractors or agents.

25. **Paragraph 3615(b) - Applicability outside of an ERP proceeding.** For facility evaluations outside of an ERP proceeding, proposed paragraph 3615(b) requires the utility to disclose modeling inputs and assumptions consistent with paragraphs (a) and (b) of rule 3613.

26. Black Hills recommends referring to the entirety of Commission rules, 3600 through 3649. We disagree. We find that reference to paragraphs 3613(a) and (b) adequately addresses the requirements in HB 11-1262.

27. **Paragraphs 3616(d) and (f) – RFP Notification to Bidders.** In the NOPR, we included additional provisions requiring the utility to notify potential bidders about the new nondisclosure agreement procedures and public disclosure of confidential bid information. We find that this rule language should be expanded to make sure potential bidders are aware of the new procedures to resolve modeling errors or omissions.

D. Treatment of Highly Confidential Information**1. Rule 3614. Confidential Information Regarding Electric Generation Facilities**

28. We proposed in the NOPR specific language for a standard Non-Disclosure Agreement (NDA), which allows attorneys and Subject Matter Experts (SMEs) access to all highly confidential information without an affirmative order from the Commission. The utility would file, as a part of its plan, motions to protect information as highly confidential, but attorneys and SMEs could automatically see any such information after signing the NDA.

29. Public Service proposes language to limit disclosure to Staff, OCC, and the IE, and require other parties to file motions to see such information. Public Service argues that the Commission has implemented such limitations in past resource planning proceedings and this provides the proper balance intended under HB 11- 1262. Black Hills opposes our proposed disclosure requirements, stating that disclosure of highly confidential information should not be automatic. Several commenters disagree with Public Service's and Black Hills' proposed limitations.

30. As discussed above, the overall intent of HB 11-1262 requires the Commission's ERP process to be more transparent. Our current procedures, based on time-consuming motions to allow parties other than Staff, OCC and the IE access to highly confidential information, are not adequate under the new statutory requirements, particularly in light of the expedited nature of the resource planning proceedings. Therefore our rules will be revised to provide reasonable and timely access to highly confidential information.

31. In the NOPR, we did not propose to limit the number of attorneys or SMEs that can sign such NDAs. Public Service had suggested limiting access to one attorney and one SME per party; however, in its Statement of Position, it recommends rule language limiting access to

“a reasonable number” of attorneys and SMEs. Black Hills also suggests the Commission consider rule language that reasonably limits the number of attorneys and SMEs that can access highly confidential information.

32. We find merit in Public Service’s and Black Hills’ arguments that the risk of inadvertent disclosure increases with the number of people accessing the information. Therefore we find it appropriate to add a restriction to paragraph 3614(b) that access to the highly confidential information is limited to a “reasonable” number of attorneys and SMEs, and we expect the parties to reach agreement on a case-by-case basis on the appropriate number of attorneys and SMEs who gain access to the protected material. . We also require SMEs to provide their curriculum vitae with the filed NDAs so that the utility and parties understand the experts’ backgrounds.

33. We reject Public Service’s request to include within subparagraph 3614(a)(I) part of existing paragraph 1100(f) of the Commission’s Rules of Practice and Procedure. Paragraph 3614(a) explicitly states “rules 1100 through 1104 of the Commission’s Rules of Practice and Procedure shall apply, in addition to this rule 3614” so it is not necessary to repeat the requirement in the ERP Rules.

34. Black Hills and Public Service also propose to add rule language to clarify that *pro se* intervenors are not allowed access to confidential or highly confidential information. We find this proposed language to be unnecessary. Rule 3614 requires an attorney to accompany a SME, so rule 3614 does not allow *pro se* intervenors access to confidential or highly confidential information.

35. The proposed NDA language in the NOPR included a “stay-out” requirement that prevents attorneys and SMEs from assisting in resource development for two years.

Numerous commenters oppose the stay-out requirement for attorneys and SMEs, advocating instead that both are held to a high standard of ethical conduct with respect to the treatment of confidential information and their licenses and/or careers are at stake for any misconduct. We agree with these comments and also find that the stay-out provisions could have a chilling effect on client representation. Therefore we remove the stay-out provision for both attorneys and SMEs.

36. Lastly, we find it appropriate to add language suggested by commenters to clarify that the person signing the NDA understands the information is to be used only in that proceeding and will not be disclosed to unauthorized persons.

2. Additional Rule Changes

37. **Filing confidentiality motions with application - Paragraphs 3603(b) and 3604(j).** In the NOPR, we proposed a requirement for the utility to file all motions for extraordinary protection of information listed as highly confidential when it makes its initial resource plan filing. We also proposed a requirement for the utility to provide a list of all confidential and highly confidential information and explain how it will treat such information throughout the proceeding. Public Service and Black Hills generally assert that the utility cannot anticipate all such requirements and propose to allow subsequent filings throughout the proceeding.

38. We disagree with the proposal to allow additional motions for extraordinary protection during the course of the proceeding. We expect the utility to anticipate with reasonable certainty the confidentiality provisions that will be required in the docket. To the degree that the utility could not have reasonably foreseen a need to classify certain information

as confidential, we modify paragraphs 3603(b) and 3604(j) to allow subsequent motions for good cause shown.

39. Among the provisions in paragraph 3603(b) is a requirement that the utility address the protections and non-disclosure requirements for modeling inputs and assumptions that relate to a resource being evaluated using computer-based modeling. We clarify that one purpose of this provision is to ensure the utility addresses any appropriate distinction between access to confidential and highly confidential bid information by the owner or developer of a particular potential resource and access to that same information by other bidders and parties to the resource plan proceeding.

40. In its comments, WRA recommends modifying paragraph 3613(e) to replace the requirement that “[t]he IE shall provide confidential versions of these reports to Staff of the Commission and the OCC” with a requirement to provide confidential reports to “all parties in the ERP proceeding which have signed highly confidential nondisclosure agreement[s] [sic].” We disagree with this proposed change, as paragraph 3604(j) requires the utility to propose specific treatment for all confidential information in the docket. It is at that stage where the parties can advocate the appropriate procedures to distribute such information. Therefore we deny WRA’s request to modify paragraph 3613(e).

41. **Public disclosure of bids at conclusion – Paragraphs 3613(i, j, k), and 3616(f).** In the NOPR, we proposed a requirement for the utility to release all bid and utility build information as public at the conclusion of the bidding process, defined as 12 months after the utility receives the bids.

42. CIEA encourages the public disclosure of bids, but suggests withholding bidder names. It also recommends clarifying that the public disclosure applies to utility proposals.

CIEA prefers a 12-month time period, but states that 18 months would be acceptable. Public Service objects to disclosing bid information publicly or, in the alternative, suggests a longer period such as 12 months from the issuance of the Commission's Phase II decision. Black Hills opposes releasing the information as public and asserts that the language is vague and undefined.

43. Consistent with the disclosure requirements in HB 11-1262, we find it appropriate to allow bidders at the conclusion of the competitive procurement process to see how their proposed facility compared with other bid and utility-proposed facilities. While such access during the bidding process is inappropriate and protections are necessary at that stage, we find it will be beneficial to the competitive process, and beneficial to ratepayers, for bidders to understand how their bid compared in the market after contract negotiations are complete. While some bidders may elect not to put forth a proposal because of fears of their bids being disclosed at the conclusion of the proceeding, we conclude that bidder concerns about a fair marketplace outweigh concerns over disclosing bids at the end of the process. We further agree with CIEA that lack of transparency presents a significant discouragement for bidders to participate and "sunshine is probably the best disinfectant."¹

44. Accordingly, paragraphs 3613(j) and 3613(k) will implement the release of confidential information as public at the end of the competitive acquisition process. Paragraph 3613(j) addresses the release of confidential and highly confidential information that was filed with the Commission in the resource planning docket, and paragraph 3613(k) requires the utility to publicly post on its website all bids and utility facility proposals.

¹ June 21, 2011 transcript, page 57, lines 1-10

45. With respect to paragraph 3613(j), we find it is necessary to set a procedure by which information filed with the Commission related to bids and utility proposals will be released to the public. Since this will require a detailed analysis of numerous redacted documents, we conclude that the utility is in the best position to propose the lifting of specific redactions. These procedures allow the utility and parties to propose for a Commission determination the disclosure or non-disclosure of certain items within filings in the resource plan proceeding. However, since the full disclosure of bid and utility proposals is established in paragraph 3613(k), the give-and-take in paragraph 3613(j) is intended to further enhance the transparency of the competitive acquisition process and not to undermine the firm requirements in paragraph 3613(k). Accordingly, we require the utility to put forth a proposal and allow parties to respond. Because the confidential information at issue largely belongs to the utility, we find that a utility reply to party responses is appropriate. The Commission will then issue an order specifying to the utility and parties the documents to be filed to unveil information that was previously protected as confidential and highly confidential.

46. Although we proposed in the NOPR a rule provision that requires the utility to file a report summarizing all bids and utility proposals, we find that the full disclosure of the bids and utility proposals is best accomplished in paragraph 3613(k) by the utility posting publicly on its website, without filing a separate report with the Commission, all bids and utility proposals. Parties and other interested persons can then access the information directly from the utility's website. Consistent with the discussion in section B of this Order, we also find it appropriate to require such full disclosure of bids and utility proposals after contract negotiations are completed rather than deferring to the resource plan proceeding the resolution of what information will be released. We therefore set paragraph 3613(k) as a firm requirement. While the Commission

can waive this or other rules pursuant to Rule 1003, rule waiver provisions set a high bar for a variance from the rule.

47. With regard to CIEA's suggestion to remove bidder names from the public disclosure, we feel it is important to list the bidder names with the bids to promote transparency. We therefore deny CIEA's request to keep the names confidential.

48. Finally, we find it necessary to specify when the competitive bidding process ends, after which the release of information related to bids and utility proposals will be required. We partially agree with Public Service's proposal to extend the deadline for completing the competitive bidding process, but we find the date should be set from the receipt of bids rather than the date of the Phase II decision as Public Service advocates. We conclude that it is beneficial for bidders to have the certainty of transparency based on the known bid date. Therefore we set the requirement at 18 months from the receipt of bids. We also add a provision for the utility to further extend this date for good cause shown, in case the utility encounters delays that are outside of its control. With regard to Black Hills' argument that the phrase "shall conclude the competitive acquisition process" in paragraph 3613(i) is vague and undefined, we modify the requirement to clarify that the execution of the contracts completes the competitive acquisition process.

49. **Other Rule Modifications and Comments.** We enact numerous minor rule changes to accommodate changes in rule numbering or other minor wording changes. We do not provide a discussion on each minor change. Further, this order addresses the major issues raised in comments. All recommendations raised in comments but not addressed by this Order are denied.

II. ORDER

A. The Commission Orders That:

1. The Commission adopts the 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 opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

4. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in the Colorado Register. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

5. 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.

6. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATION MEETING
July 13, 2011.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

MATT BAKER

Commissioners

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3 RULES REGULATING ELECTRIC UTILITIES

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, [40-6-107](#), 40-8.7-105(5), 40-9.5-107(5), and 40-9.5-118, C.R.S.

GENERAL PROVISIONS

3000. Scope and Applicability.

* * * * *

[indicates omission of unaffected rules]

- (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(j) concerning the filing of 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 3617~~8~~(a) concerning electric resource planning.
- (XII) Rules 3700 through 3707 concerning appeals of local governmental land use decisions actions.

* * * * *

[indicates omission of unaffected rules]

3002. Applications.

- (a) By filing an appropriate application, any utility may ask that the Commission take action regarding any of the following matters:
 - (I) For the issuance or extension of a certificate of public convenience and necessity for a franchise, as provided in rule 3100.
 - (II) For the issuance or extension of a certificate of public convenience and necessity for service territory, as provided in rule 3101.
 - (III) For the issuance of a certificate of public convenience and necessity for construction of facilities, as provided in rule 3102.
 - (IV) For the amendment of a certificate of public convenience and necessity in order to change, extend, curtail, abandon, or discontinue any service or facility, as provided in rule 3103.
 - (V) To transfer a certificate of public convenience and necessity, to obtain a controlling interest in any utility, to transfer assets within the jurisdiction of the Commission or stock, or to merge a utility with another entity, as provided in rule 3104.
 - (VI) For approval of the issuance, or assumption of any security or to create a lien pursuant to § 40-1-104, as provided in rule 3105.
 - (VII) For flexible regulatory treatment to provide service without reference to tariffs, as provided in rule 3106.

- (VIII) For approval of an air quality improvement program, as provided for in rule 3107.
- (IX) To amend a tariff on less than statutory notice, as provided in rule 3109.
- (X) For variance of voltage standards, as provided in rule 3202.
- (XI) For approval of meter and equipment testing practices, as provided in rule 3303.
- (XII) For approval of a meter sampling program, as provided in rule 3304.
- (XIII) For approval of a refund plan, as provided in rule 3410.
- (XIV) For approval of a Low-Income Energy Assistance Plan, as provided in rule 3411.
- (XV) For approval of a cost assignment and allocation manual, as provided in rule 3503.
- (XVI) For approval of or for amendment to a least-cost resource plan, as provided in rules 3603, 361~~38~~, and 361~~59~~.
- (XVII) For approval of a compliance plan, as provided in rule 3657.
- (XVIII) For appeal of local government land use decision, as provided in rule 3703.
- (XIX) For any other matter not specifically described in this rule, unless such matter is required to be submitted as a petition under rule 1304, as a motion, or as some other specific type of submittal.

* * * * *

[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 36178(a), a utility shall file with the Commission an annual progress report concerning the utility's electric resource plan.
- (j) Pursuant to rule 36178(b), a utility shall file with the Commission reports on competitive acquisition bidding of the utility's 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 electric utilities subject to the Commission's jurisdiction and to develop cost-effective resource portfolios to meet such need reliably. 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 3619~~8~~. 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.
- (d) "Demand-side 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 ~~R~~ate" 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) "Modeling error or omission" means any alleged incorrect, incomplete, or improper input to or output from computer-based modeling performed by the utility, for evaluating a proposed resource, of a magnitude that alters the model results.~~
- (~~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~~~~k~~) "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.
- ~~(l) "Potential resource" means an electric generation facility bid into a competitive acquisition process in accordance with an approved resource plan.~~
- (~~k~~~~m~~) "Renewable energy resources" means all renewable energy resources as defined in the Commission's Renewable Energy Standard Rules.

- (~~h~~) "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.
- (~~r~~) "Resources" means supply-side resources and demand-side resources used to meet electric system requirements.
- (~~e~~) "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 resources that 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.
- (~~e~~) "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.

- (~~a~~) Jurisdictional electric utilities shall file a resource plan pursuant to these rules on or before October 31, 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.
- (~~b~~) Each jurisdictional electric utility shall contemporaneously file with its resource plan submitted under paragraph 3603(a), a motion or motions seeking extraordinary protection of information listed as highly confidential pursuant to paragraph 3604(j) and consistent with rule 1100 of the Commission's Rules of Practice and Procedure. The utility shall specifically address appropriate confidentiality protections and nondisclosure requirements for modeling inputs and assumptions that may be used to evaluate a potential resource and that reasonably relate to that facility. The utility's motion or motions shall specify that response time shall run concurrently with the intervention deadline established in the resource plan proceeding. Finally, during the course of the resource plan proceeding, a utility may file additional motions seeking extraordinary protection of information for good cause shown.

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 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 3609.
- (f) An assessment of the need for additional resources developed pursuant to rule 3610.
- (g) The utility's plan for acquiring these resources pursuant to rule 3611, including 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 any resources proposed to be owned by the utility and for any new generic resources included in the utility's modeling for its resource plan.
- (h) The annual water consumption for each of the utility's existing generation resources, and the water intensity (in gallons per MWh) of the existing generating system as a whole, as well as the projected water consumption for any resources proposed to be owned by the utility and for any new generic resources included in the utility's modeling for its resource plan.
- (i) The proposed RFP(s) the utility intends to use to solicit bids for energy and capacity resources to be acquired through a competitive acquisition process, including model contracts, pursuant to rule 36165.
- (j) A list of the information related to the resource plan proceeding that the utility claims is confidential and a list of the information related to the resource plan proceeding that the utility claims is highly confidential. The utility shall also list the information that it will provide to owners or developers of a potential resource under paragraphs 3613(a) and (b). The utility shall further explicitly list the protections it proposes for bid prices, other bid details, information concerning a new resource that the utility proposes to build and own as a rate base investment, other modeling inputs and assumptions, and the results of bid evaluation and selection. The protections sought by the utility for these items shall be specified in the motion(s) submitted under paragraph 3603(b). For good cause shown the utility may seek to protect additional information as confidential or highly confidential by filing the appropriate motion under rule 1100 of the Commission's Rules of Practice and Procedure in a timely manner. ~~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.~~

- (k) Descriptions of at least three alternate plans that can be used to represent 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 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 and that complies with the Renewable Energy Standard, 4 CCR 723-3-3650 et seq., as well as with the demand-side resource requirements under § 40-3.2-104, C.R.S. The other 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.
- (l) 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, 3609(a) and 3610. Each cooperative generation and transmission association shall also file annual reports pursuant to subparagraphs (a)(I) through (a)(VI) of rule 3610~~7~~.

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[indicates omission of unaffected rules]

3609. 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 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 over the planning period 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 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 3610, or (2) replacement resources in the event that resources are not developed in accordance with a Commission-approved plan under rule 36176. 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 36187(b)(II). The provisions of paragraph 36176(d) shall not apply to the contingency plans unless explicitly ordered by the Commission.

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[indicates omission of unaffected rules]

3613. Bid Evaluation and Selection.

- (a) Upon the receipt of bids in its competitive acquisition process, the utility shall investigate whether each potential resource meets the requirements specified in the resource solicitation and shall perform an initial assessment of the bids. Within 45 days of the utility's receipt of bids, the utility shall provide notice in writing by electronic mail to the owner or developer of each potential resource stating whether its bid is advanced to computer-based modeling to evaluate the cost or the ranking of the potential resource, and, if not advanced, the reasons why the utility will not further evaluate the bid using computer-based modeling. If, after the utility issues notice to an owner or developer that the potential resource was not advanced to computer-based modeling, the utility subsequently advances that potential resource to computer-based modeling, the utility shall provide notice in writing by electronic mail to the owner or developer of that potential resource within three business days of the utility's decision to advance the potential resource to computer-based modeling.
- (b) For bids advanced to computer-based modeling, the utility shall, contemporaneously with the notification in paragraph 3613(a), also provide to the owner or developer the modeling inputs and assumptions that reasonably relate to that potential resource or to the transmission of electricity from that facility to the utility. The utility shall provide such information so that modeling errors or omissions may be corrected before the competitive acquisition process is completed. At a minimum, such information shall explain to the owner or developer how its facility will be represented in the computer-based modeling and what costs, in addition to the bid information, will be assumed with respect to the potential resource. In the event that this information contains confidential or highly confidential information, the owner or developer shall execute an appropriate nondisclosure agreement prior to receiving this information.
- (c) Within seven calendar days after receiving the modeling inputs and assumptions from the utility pursuant to paragraph 3613(b), the owner or developer of a potential resource shall notify the utility in writing by electronic mail the specific details of any potential dispute regarding these modeling inputs and assumptions. The owner or developer shall attempt to resolve this dispute with the utility. However, if the owner or developer and utility cannot resolve the dispute within three calendar days, the utility shall immediately notify the Commission with a filing in the resource plan proceeding. If the owner or developer is not already a party to the proceeding, the owner or developer shall file a notice of intervention as of right pursuant to paragraph 1401(b) of the Commission's Rules of Practice and Procedure, within one business day of the utility's filing of its notice of dispute to the Commission, for the limited purpose of resolving the disputed

modeling inputs and assumptions related to the potential resource. An Administrative Law Judge (ALJ) will expeditiously schedule a technical conference at which the utility and the owner or developer shall present their dispute for resolution. The ALJ will enter an interim order determining whether corrections to the modeling inputs and assumptions are necessary. If the ALJ determines that corrections to the modeling inputs and assumptions are necessary, the utility shall, within three business days of the issuance of the ALJ's interim decision, provide the corrected information to both the owner or developer and the IE. In its report submitted under paragraph 3613(d), the utility shall also confirm by performing additional modeling as necessary, that the potential resource is fairly and accurately represented.

- (ad) Within 120 days of the utility's receipt of bids in its competitive acquisition process, the utility shall file a report with the Commission describing the cost-effective resource plans that conform to the 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 the 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 361~~65~~ and by the utility pursuant to rule 3611.
- (be) Within 30 days after the filing of the utility's 120-day report under paragraph 3613(da), the IE shall separately file a report that contains the IE's 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.
- (ef) Within 45 days after the filing of the utility's 120-day report under paragraph 3613(da), the parties in the resource plan proceeding may file comments on the utility's report and the IE's report.
- (dg) Within 60 days after the filing of the utility's 120-day report under paragraph 3613(da), the utility may file comments responding to the IE's report and the parties' comments.
- (eh) Within 90 days after the receipt of the utility's 120-day report under paragraph 3613(da), the Commission shall issue a written decision approving, conditioning, modifying, or rejecting the utility's 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 CPCNs (other than those CPCN's provided in paragraph 3611(e)), as necessary. In rendering the decision on the 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.

- (i) The utility must complete the competitive acquisition process by executing contracts for potential resources within 18 months after the utility's receipt of bids in its competitive acquisition process. The utility may file a motion in the resource plan proceeding requesting to extend this deadline for good cause. The utility must execute final contracts for the potential resources prior to the completion of the competitive acquisition process to receive the presumption of prudence afforded by paragraph 3617(d).
- (j) Upon completion of the competitive acquisition process pursuant to paragraph 3613(i), and consistent with the subsequent requirement for website posting of bids and utility proposals as required in paragraph 3613(k), protected information that was filed in the resource plan proceeding will be refiled as non-confidential or public information as specified in the Commission order described below. To satisfy this requirement the utility shall file a proposal that addresses the public release of all confidential and highly confidential information related to bids for potential resources and resources the utility proposed to build and own as a rate base investment. At a minimum the utility shall address its 120-day report in paragraph 3613(d), the IE's report in paragraph 3613(e), and all documents related to these reports filed by the utility, parties, or the IE. The utility shall file its proposal in the resource plan proceeding within 14 months after the receipt of bids in its competitive acquisition process. Parties will have 30 calendar days after the utility files its proposal to file responses. The utility then may reply to any responses filed within ten calendar days. The Commission shall issue an order specifying to the utility and other parties the documents that shall be refiled as public information.
- (k) Upon completion of the competitive acquisition process under paragraph 3613(i), the utility shall post on its website all bids and utility proposals. The utility shall post for a minimum of 30 calendar days all bid information that bidders submitted and all information for resources the utility proposed to build and own as a rate base investment on its website as public information.

3614. Confidential Information Regarding Electric Generation Facilities

- (a) In any proceeding related to a resource plan filed under rule 3603, an amendment to an approved plan filed under rule 3619, or pursuant to a request for information made under paragraph 3615(b), the provisions regarding confidential information set forth in rules 1100 through 1104 of the Commission's Rules of Practice and Procedure shall apply, in addition to this rule 3614.
- (b) The utility shall provide information claimed to be highly confidential under subparagraph 1100(a)(III) to a reasonable number of attorneys representing a party in the resource plan proceeding, provided that those attorneys file appropriate non-disclosure agreements containing the terms listed in subparagraph 3614(b)(I). The utility shall also provide information claimed to be highly confidential under subparagraph 1100(a)(III) to a reasonable number of subject matter experts representing a party in the resource plan proceeding, provided that the attorney representing the party files the appropriate non-disclosure agreements for the subject matter experts containing the terms in subparagraph 3614(b)(II) and the subject matter experts' curriculum vitae.

(I) Attorney highly confidential nondisclosure agreement terms.

I [attorney name] state that I have read the protective provisions relating to confidential information contained in 4 Code of Colorado Regulations 723-1-1100 through 1104. With respect to all information claimed to be confidential and all information claimed to be highly confidential that is produced in, or arises in, the course of this proceeding in Docket No. [], I agree to be bound by the terms of the protective provisions contained in 4 Code of Colorado Regulations 723-1-1100. I hereby state that I will oversee the processes my client uses in order to assure that extraordinary confidentiality provisions are properly implemented and maintained. I further state that I will assure that extraordinary confidentiality provisions are properly implemented and maintained within my firm. I agree that all highly confidential information shall not be used or disclosed for purposes of business or competition, or for any other purpose other than for purposes of the proceeding in which the information is produced. I hereby state that I will not disclose or disseminate any highly confidential information in this Docket No. [] to any third party other than those specifically authorized to review such highly confidential information, including any third party who is or may become a bidder responding to future electric resource planning solicitations or otherwise relating to the acquisition of, contracting for, or retirement of electric generation facilities in Colorado.

(II) Subject Matter Expert highly confidential nondisclosure agreement terms.

I [subject matter expert's name] state that I have read the protective provisions relating to confidential information contained in 4 Code of Colorado Regulations 723-1-1100 through 1104. With respect to all information claimed to be confidential and all information claimed to be highly confidential that is produced in, or arises in the course of this proceeding in Docket No. [], I agree to be bound by the terms of the protective provisions contained in 4 Code of Colorado Regulations 723-1-1100. I hereby state that I will work with my attorney, [attorney name], to assure that extraordinary confidentiality provisions are properly implemented and maintained. I hereby state that I did not and will not develop or assist in the development of any power supply proposals associated with this proceeding. I agree that all highly confidential information shall not be used or disclosed for purposes of business or competition, or for any other purpose other than for purposes of the proceeding in which the information is produced. I hereby state that I will not disclose or disseminate any highly confidential information in this Docket No. [] to any third party other than those specifically authorized to review such highly confidential information, including any third party who is or may become a bidder responding to future electric resource planning solicitations or otherwise relating to the acquisition of, contracting for, or retirement of electric generation facilities in Colorado.

(c) Paragraph 3614(b) is only applicable to proceedings related to a resource plan filed pursuant to rule 3603, an amendment to an approved plan filed under rule 3619, or to a request for information made under paragraph 3615(b).

(d) In order to expedite access to confidential information at the beginning of the resource planning proceeding, an entity may file for intervention at any time during the 30-day notice period established in rule 1401(a) of the Commission's Rules of Practice and Procedure. If the entity requests an expedited decision on its motion it shall include in the title of its motion for intervention "REQUEST FOR EXPEDITED TREATMENT AND FOR SHORTENED RESPONSE TIME TO FIVE BUSINESS DAYS, PURSUANT TO RULE 3614(d)." The movant shall concurrently provide an electronic copy of the motion to the utility. Response time to any such motion is automatically shortened to five business days.

36143615. Exemptions and Exclusions.

- (a) The following resources need not be included in an approved resource plan prior to acquisition:
- (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 not more than 30 megawatts.
 - (III) 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.
 - (IV) 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.
 - (VI) 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.
 - (VII) 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.

(b) If the utility evaluates an existing or proposed electric generating facility offered in a competitive bidding process conducted outside of an approved resource plan, the utility shall provide the owner or developer of the electric generation facility in writing by electronic mail the modeling inputs and assumptions that reasonably relate to the facility or to the transmission of electricity from that facility to the utility within 14 calendar days of the utility's decision to advance the potential resource to computer-based modeling.

36153616. 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 3611. 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, including contracts for supply-side resources, renewable energy resources, or Section 123 resources as required by the approved resource plan.
- (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 resource needs; (2) reasonable estimates of transmission costs for resources located in different areas pursuant to rule 3608, including a detailed description of how the costs of future transmission will apply to bid resources; (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.
- (d) When issuing its RFP, the utility shall provide potential bidders with a copy of the Commission's order or orders specifying the form of nondisclosure agreement necessary to obtain access to confidential and highly confidential modeling inputs and assumptions provided by the utility pursuant to paragraph 3613(b). The utility shall also provide potential bidders with an explanation of the process by which disputes regarding inputs and assumptions to computer-based modeling will be addressed by the Commission pursuant to paragraph 3613(b).
- (e) The utility shall require bidders to provide the contact name of the owner or developer designated to receive notice pursuant to paragraph 3613(a).
- (f) The utility shall inform bidders that all bids submitted in response to the RFP will be made available to the public through the posting of the bids on the utility's website upon the completion of the competitive acquisition process pursuant to paragraph 3613(i).

36163617. 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 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 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 3613(eh) 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 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.

36173618. 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 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 3609.
 - (IV) An updated assessment of need for additional resources developed pursuant to rule 3610.
 - (V) An updated report of the utility's plan to meet the resource need developed pursuant to rule 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.

~~3618~~3619. 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 ~~3617~~3619. 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.

~~3619~~3620. – 3649. [Reserved]

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[indicates omission of unaffected rules]