

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

PROCEEDING NO. 22R-0249E

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IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION'S RULES  
REGULATING ELECTRIC UTILITIES TO IMPLEMENT THE PROVISIONS OF SB 21-072  
REGARDING TRANSMISSION UTILITY PARTICIPATION IN ORGANIZED WHOLESALE  
MARKETS, 4 CODE OF COLORADO REGULATIONS 723-3.

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**COMMISSION DECISION GRANTING, IN PART, AND  
DENYING, IN PART, EXCEPTIONS TO RECOMMENDED  
DECISION NO. R24-0424 AND ADOPTING RULES**

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Issued Date: August 22, 2024

Adopted Date: August 7, 2024

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**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Colorado Public Utilities Commission (“Commission”) for consideration of exceptions filed to Recommended Decision No. R24-0424 (“Recommended Decision”), issued June 20, 2024, by Hearing Commissioner Eric Blank.

The Recommended Decision adopts rules regarding participation in regional wholesale electricity markets in the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3 (“Adopted Rules”).

2. The Commission grants, in part, and denies, in part, the Exceptions filed by Advanced Energy United, Clean Energy Buyers Association, Climax Molybdenum Company, Colorado Energy Consumers, Colorado Solar and Storage Association, Interwest Energy Alliance, Natural Resources Defense Council, Office of the Utility Consumer Advocate, Western Grid Group, and Western Resource Advocates (collectively, the “Joint Commenters”) on July 10, 2024. Consistent with the discussion below, we include a provision in the Rules to consider comparative analyses of available market alternatives for Investor-Owned Utilities seeking to participate in Regional Transmission Organizations (“RTO”) or Independent System Operators (“ISO”). We also correct a small number of errors in the Adopted Rules.

## **B. Background**

3. The statutory authority for the rules adopted through this Proceeding is found at §§ 24-4-101 *et seq.*, 40-1-103, 40-2-108, 40-2.3-102; 40-3-101, 102, 103, and 110; 40-4-101; and 40-5-108, C.R.S.

4. The Commission opened this Proceeding through its Notice of Proposed Rulemaking (“NOPR”) issued June 28, 2022, to: (1) address and implement the provisions of Senate Bill 21-072 (“SB 21-072”), which require Colorado Transmission Utilities to join an Organized Wholesale Market (“OWM”) by January 1, 2030; and (2) address filing requirements for utilities seeking to participate in wholesale electricity markets, in accordance with Decision No. C21-0755, issued December 1, 2021, in Proceeding No. 19M-0495E pursuant to § 40-2.3-102,

C.R.S. Through the NOPR, the Commission designated Chairman Eric Blank as the Hearing Commissioner for this proceeding pursuant to § 40-6-101(2)(a), C.R.S., and scheduled a public comment hearing to be held October 11, 2022.

5. After receiving initial and responsive comments from rulemaking participants, Hearing Commissioner Blank held the scheduled remote public comment hearing. Additional rounds of public comment were ordered to fully explore proposed rule structures and processes, and the Hearing Commissioner held continued public comment hearings on April 4, 2023, September 12, 2023, March 5, 2024, and April 30, 2024.

6. On June 20, 2024, Hearing Commissioner Blank issued his Recommended Decision adopting rules. The Adopted Rules include characteristics the Commission will consider in deciding a utility's application to participate a Day Ahead Market or an RTO or ISO, including an OWM, and the rules specify the information that must be included in a utility's market participation application filing. The Adopted Rules also include provisions relating to cost recovery, market participation reporting, stakeholder processes, and shared savings applications, and provisions allowing for Commission waiver of SB 21-072's requirement to join an OWM by 2030.

7. Specifically, as relevant to this Decision addressing exceptions, Adopted Rule 3753(a) sets forth characteristics for the Commission to evaluate when determining whether participation by an Investor-Owned Utility ("IOU") in a Day Ahead Market is in the public interest. These characteristics are that the market: (i) has in place protocols to implement a greenhouse gas emissions tracking and accounting system to ensure compliance with greenhouse gas emission reduction requirements in §§ 25-7-102 and 40-2-125.5, C.R.S.; (ii) has a plan to address seams

issues between the chosen market and adjacent markets; and (iii) has sufficient modelling and other analytical support showing that expected benefits of joining that market are likely to exceed expected costs. Adopted Rule 3753(c) sets forth characteristics for the Commission to evaluate when determining whether participation by a cooperative generation electric generation and transmission association in a Day Ahead Market is in the public interest. These characteristics are the first two characteristics applicable to IOUs – that the market: (i) has in place protocols to implement a greenhouse gas emissions tracking and accounting system to ensure compliance with greenhouse gas emission reduction requirements in §§ 25-7-102 and 40-2-125.5, C.R.S.; and (ii) has a plan to address seams issues between the market and adjacent markets.

8. Similarly, Adopted Rules 3754(a) and (b) set forth characteristics for the Commission to evaluate when determining whether participation by an IOU in an RTO or ISO is in the public interest. These characteristics include that the market: (i) has a greenhouse gas emissions tracking and accounting system to ensure compliance with greenhouse gas emission reduction requirements in §§ 25-7-102 and 40-2-125.5, C.R.S.; (ii) has generator interconnection procedures that enable timely implementation of electric resource planning processes and ensure resource adequacy; (iii) has a regional resource adequacy construct in place; (iv) results in just and reasonable rates for the utility's customers; (v) provides a timely path for new transmission; (vi) has policies to address seams issues between the market and adjacent markets; and (vii) has modelling and other analytical support showing that expected benefits of joining that market will materially exceed expected costs.

9. Just as Adopted Rule 3753(c) sets forth fewer characteristics for the participation of a cooperative electric generation and transmission association in a Day Ahead Market, Adopted

Rules 3754(d) and (e) apply a smaller subset of the above characteristics to a cooperative electric generation and transmission association's application to participate in an RTO or ISO. Under these rules, the Commission will consider a market's greenhouse gas tracking and accounting system, generator interconnection procedures, and its plan to address market seams issues when determining whether participation by a cooperative generation electric generation and transmission association in an RTO or ISO is in the public interest.

10. Providing support for the different sets of characteristics in these rules, the Recommended Decision explained that given the Commission's previously identified concerns with market participation, which were less significant for less integrated market types and more significant for highly integrated markets such as RTOs and ISOs, more characteristics should be evaluated for participation in RTOs and ISOs compared to participation in Day Ahead Markets. The Recommended Decision also explained that because generation and transmission cooperatives are regulated in a different manner than IOUs, and because these cooperatives do not present retail rate concerns, the Commission should evaluate fewer characteristics when considering a generation and transmission cooperative's application to participate in a market, compared to applications by IOUs.

11. Additionally, the Recommended Decision rejected a proposal from the Joint Commenters that utilities be required to present a comparative market analysis in applications seeking participation in a Day Ahead Market or an RTO or ISO. The Hearing Commissioner found that the requirements included in the Adopted Rules were thorough and sufficient to support the necessary Commission determination without a comparative market analysis, particularly in light

of utilities’ concerns about the efficiency and timeliness of Commission review of market participation applications.

### **C. Exceptions**

12. On July 10, 2024, the Joint Commenters timely filed their exceptions to the Recommended Decision. In their exceptions, Joint Commenters again urge the Commission to include a comparative analysis as a public interest consideration, this time for IOU applications for participation in a Day Ahead Market or RTO or ISO.<sup>1</sup> While prior rule revisions suggested by Joint Commenters included a comparative analysis for both IOUs and generation and transmission cooperatives, the request is now narrowed to include only applications filed by IOUs.<sup>2</sup> Joint Commenters contend this more limited approach is reasonable given that generation and transmission cooperatives are not subject to rate regulation by the Commission, and aligns with the abbreviated process for these cooperatives envisioned by the Hearing Commissioner throughout the rulemaking.

13. Specifically, Joint Commenters request that Rules 3753(a) and 3754(a) set forth an additional characteristic for the Commission to evaluate when determining if participation in a particular market is in the public interest. Joint Commenters’ proposed characteristic is whether the chosen market “has sufficient modelling and other analytical support demonstrating that the expected net benefits of participating in that particular [market] exceed the expected net benefits of any available alternative, based on a nodal mapping of the Western Interconnection and at least three years of simulated market operations[.]”

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<sup>1</sup> Joint Commenters’ Exceptions at p. 5.

<sup>2</sup> *Id.*

14. Joint Commenters argue the Commission has a duty require an assessment of available market alternatives.<sup>3</sup> Joint Commenters assert that in other proceedings such a requirement is often necessary to establish a presumption of prudence for utility action and that the Commission should maintain its practice of requiring a utility to sufficiently analyze alternatives.<sup>4</sup> Joint Commenters point to various proceedings, including: electric resource planning, where a utility must present several alternate and tested resource portfolios; transmission certificates of public convenience and necessity, where a utility is required to identify alternatives that were considered; and distribution system planning, where a utility must provide an analysis of non-wires alternatives and conduct a cost-benefits analysis of potential alternatives.<sup>5</sup> Joint Commenters also state that seams are likely to exist in Colorado regardless of the market chosen by transmission utilities, and a comparative analysis will aid in evaluating seams issues that may occur.

15. Additionally, Joint Commenters argue SB 21-072's language permitting a waiver or delay requires a determination that "there is no viable and available OWM" that can be joined by 2030, which Joint Commenters assert creates an expectation that the utility has evaluated all potentially viable and available OWMs as part of its determination of which market to join.<sup>6</sup> Since the benefits to individual utility participants depends heavily on the footprint of the market in terms of other utility participants, Joint Commenters continue, neither the IOUs nor the

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<sup>3</sup> *Id.* at p. 6.

<sup>4</sup> *Id.* at p.7.

<sup>5</sup> *Id.* at pp. 7-8.

<sup>6</sup> *Id.* (citing § 40-5-108(2)(a)(II)(A): " . . . the Commission may waive or delay the requirement [to join an OWM] if: The commission has determined that the transmission utility has made all reasonable efforts to comply with the requirement but there is no viable and available OWM that the transmission utility can join . . .").

Commission can fully understand the costs and benefits of market participation without a comparative analysis under different footprint scenarios.<sup>7</sup>

16. Finally, the Joint Commenters take issue with the Recommended Decision's discussion of a market benefits study performed by Energy + Environmental Economics (E3) for the Western Markets Exploratory Group. The Joint Commenters contend that the Commission should not rely on this study because it considered a limited set of benefits, it is a zonal study which is less accurate than a nodal study would have been, the highly confidential results have not been provided to the rulemaking participants, and the results have not been vetted through an adjudicatory proceeding. The Joint Commenters also state that determinations on benefits of specific markets should not be made in this rulemaking proceeding.

#### **D. Findings and Conclusions**

17. As discussed below, we adopt some modifications to the Adopted Rules. Where modifications are not made, we otherwise adopt the Recommended Decision and the Adopted Rules.

18. We agree with the Joint Commenters in part. Many of the Commission's processes require utilities to consider alternatives in order to protect ratepayers, and we agree that in the case of an IOU seeking to participate in an RTO or ISO, consideration of alternatives is an appropriate evaluation supported by the Commission's broad authority to regulate public utilities set forth in Article XXV of the Colorado Constitution and the Public Utilities Law. Participation in RTOs and ISOs will significantly impact the services provided by electric utilities, including rates, resource adequacy activities, efforts to reach emission reduction goals, and transmission planning and building. Additionally, to the extent multiple RTOs or ISOs operate or plan to operate in the state

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<sup>7</sup> *Id.* at p. 9.



of Colorado, we anticipate that utilities will likely perform comparative analyses as part of their business decision making processes considering market participation, even without a rule requirement. We are convinced that the addition of a comparative analysis characteristic in Rule 3754(a) will mitigate potential risks for ratepayers, the commission, and ultimately, the utilities themselves, while being only slightly more burdensome on the utilities seeking to join an RTO or ISO. While we add a comparative analysis provision to Rule 3754(a), we modify Joint Commenters' proposed language to allow more flexibility in the type of modelling or analytical support that may be used. We disagree with Joint Commenters that a nodal study will, in all cases, be more useful than a zonal study. We instead recognize that the accuracy and usefulness of a study or model is highly dependent on the inputs and structure of the particular study or model, and that these aspects may be appropriately considered in an adjudicated proceeding.

19. We also disagree with the Joint Commenters that a comparative analysis requirement is necessary for IOU applications seeking participation in a Day Ahead Market. In Proceeding No. 19M-0495E, the Commission found that utility participation in less integrated market types raised fewer concerns than participation in full RTOs or ISOs, which require utilities to relinquish control of their transmission assets and many utility decisions to a regional governance process. Given the potential benefits of regional markets and the evaluation characteristics in the Adopted Rules concerning net benefits of participation in Day Ahead Markets, coupled with the need for timely review of market participation applications and prior Commission findings that Day Ahead Markets raise fewer concerns, we decline to add a comparative analysis provision to Rule 3753(a).

20. Accordingly, we re-number existing Adopted Rule 3754(a)(VIII) as Rule 3754(a)(IX) and add a provision as Rule 3754(a)(VIII) stating that the Commission, when considering an IOU's application to participate in an RTO or ISO, will evaluate whether the market: "has sufficient modeling and other analytical support demonstrating that the expected net benefits of participating in that particular RTO or ISO are similar to or exceed the net benefits of other available alternatives."

21. Additionally, we respond to Joint Commenters' assertions regarding the Recommended Decision's discussion of the market benefits study performed by E3 for the Western Markets Exploratory Group. We agree with Joint Commenters' contention that market specific determinations must be made in separate, adjudicated proceedings. The Recommended Decision's discussion of initial results of market benefits studies merely illustrated that study results available so far demonstrate common-sense understandings of the impact of market footprints.

#### **E. Other Corrections to Adopted Rules**

22. Adopted Rule 3759(a) states: "Pursuant to § 40-5-108(3), C.R.S., the Commission shall allow a transmission IOU that commences operation with a Statutory OWM, as determined by the Commission in a market assessment, or approved in an application for waiver or delay, to collect and retain a specified percentage of the demonstrate net present value savings ...." This language was carried over from proposed rules with processes that were different than those set forth in the Adopted Rules. We correct the rule as follows, to reflect other processes in the Adopted Rules: "Pursuant to § 40-5-108(3), C.R.S., the Commission shall allow a transmission IOU that commences operation with a Statutory OWM, as determined by the Commission in

accordance with rule 3754, to collect and retain a specified percentage of the demonstrated net present value savings ....”

23. We also correct a typo in Rule 3755(h)(II).

## **II. ORDER**

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

1. The exceptions to Recommended Decision No. R24-0424, filed by Advanced Energy United, Clean Energy Buyers Association, Climax Molybdenum Company, Colorado Energy Consumers, Colorado Solar and Storage Association, Interwest Energy Alliance, Natural Resources Defense Council, Office of the Utility Consumer Advocate, Western Grid Group, and Western Resource Advocates on July 10, 2024, are granted in part, and denied in part, consistent with the discussion above.

2. The adopted rules are available through the Commission’s E-Filings system at:  
[https://www.dora.state.co.us/pls/efi/EFI.Show\\_Docket?p\\_session\\_id=&p\\_docket\\_id=22R-0249E](https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0249E)

3. The Commission adopts the rules on regional electricity market participation, recommended by the Hearing Commissioner in Recommended Decision No. R24-0424, in their entirety, except for the modifications identified in this Decision and shown in redline in Attachment A, and in final format in Attachment B to this Decision.

4. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

5. The 20-day time period provided by § 40-6-114, C.R.S., to file an Application for Rehearing, Reargument, or Reconsideration shall begin on the first day after the effective date of this Decision.

6. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
August 7, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ERIC BLANK

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MEGAN M. GILMAN

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TOM PLANT

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Commissioners