

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0559EG

IN THE MATTER OF MODIFICATIONS TO THE COMMISSION’S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, AND ITS RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4, TO IMPLEMENT CERTAIN PROVISIONS FROM SENATE BILL 23-292 REGARDING BEST VALUE EMPLOYMENT METRICS AND ENERGY SECTOR PUBLIC WORKS PROJECTS.

**INTERIM DECISION PROPOSING FURTHER REVISIONS
AND REQUESTING COMMENTS**

Issued Date: July 22, 2025

I. STATEMENT

A. Background

1. On December 24, 2024, the Colorado Public Utilities Commission initiated this proceeding by issuing a Notice of Proposed Rulemaking (“NOPR”) to amend the Rules Regulating Electric Utilities consistent with Senate Bill 23-292.¹ The NOPR referred the proceeding to an Administrative Law Judge (“ALJ”). The proceeding was subsequently assigned to the undersigned ALJ.

2. Atmos Energy Corporation (“Atmos”), Colorado Natural Gas, Inc. (“CNG”), Interwest Energy Alliance (“Interwest”), Public Service Company of Colorado (“Public Service”), The Rocky Mountain Environmental Labor Coalition, the Colorado Building and Construction Trades Council, and AFL-CIO (“the Labor Coalition”), Tri-State Generation and Transmission, Inc. (“Tri-State”) filed initial comments. Black Hills Colorado Electric, Inc. and

¹ Decision No. C24-0940.

Black Hills Colorado Gas, Inc., collectively doing business as Black Hills Energy, the Colorado Solar and Storage Association and the Solar Energy Industries Association, the Labor Coalition, Public Service, and Tri-State filed reply comments.

3. On March 4, 2025, at 11:00 a.m., the ALJ held the public comment hearing noticed in the NOPR. During the remote public comment hearing, the ALJ discussed the proposed rules and the initial and response comments with the participants at the hearing. In addition, Public Service and the Labor Coalition committed to work collaboratively to reach consensus and/or identify areas of disagreement regarding the proposed rules. Public Service and the Labor Coalition welcomed any other participant to participate in this stakeholder process. At the conclusion of the remote public comment hearing, the ALJ continued the remote public comment hearing to May 20, 2025 at 11:00 a.m. and established a deadline of April 4, 2025 for Public Service and the Labor Coalition to file a Report of their efforts with a blue-lined version of the rules showing their proposed changes to the proposed rules, and deadlines of April 23, 2025 and May 7, 2025 for participants to file initial and reply comments, respectively, regarding the additional proposed changes in the Report.

4. On March 5, 2025, the ALJ issued Decision No. R25-0157-I that memorialized the continued schedule established at the March 4, 2025 remote public comment hearing.

5. On April 1, 2025 and April 18, 2025, Public Service filed Reports stating that the participants were working through the process of building consensus regarding changes to the proposed rules.

6. On April 21, 2025, Public Service filed a Third Status Report including its proposed blue-lined changes to the proposed electric and gas rules. As to the electric rules, the Third Status Report stated that Atmos and CNG take no position on the proposed changes,

COSSA and SEIA provided no indication about whether they support, oppose, or take no position on those changes, and the rest of the participants support the proposed changes. As to the blue-lined proposed changes to the gas rules, the Third Status Report stated that Interwest and Tri-State take no position on the proposed changes, COSSA and SEIA provided no indication about whether they support, oppose, or take no position with respect to those proposed changes, and the remainder of the participants support the proposed changes.

7. On May 20, 2025, at 11:00 a.m., the ALJ held the continued public comment hearing. During the remote public comment hearing, the ALJ discussed the proposed blue-lined changes to the rules submitted with the Third Status Report. The parties informed the ALJ that the parties who support the blue-lined rules would withdraw their earlier filed proposed changes if the blue-lined changes are adopted by the Commission. At the conclusion of the remote public comment hearing, the ALJ continued the remote public comment hearing to August 19, 2025, at 11:00 a.m. The ALJ also informed the participants that an interim decision would issue including newly red-lined rules drafted in light of the comments to date, followed by another round of initial and response comments.

8. On June 10, 2025, the ALJ issued Decision No. R25-0443-I that memorialized the decision to continue the remote public comment hearing to August 19, 2025 at 11:00 a.m.

B. Further Rule Changes

9. The ALJ has incorporated the blue-lined changes attached to the Third Status Report into the attached proposed rule changes. The ALJ has made further changes that are highlighted and are designed to simplify and increase the clarity of the rules. The ALJ requests comments on the blue-lined changes included with the Third Status Report, the ALJ's highlighted modifications of those blue-lined changes, and the following issues.

1. Rule 3001(p)

10. In Rule 3001(p), the blue-lined changes replace the “presumption of prudence” with “funding” as one of the criteria that establishes whether a project qualifies as a “Energy Sector Public Works Project.” The Commission can (and has) approved CPCNs without approving a presumption of prudence as to the costs to build the project,² which shifts the burden of proof from the utility to any party disputing whether the costs were prudently incurred and should be placed into rate base.³ The proposed change thus appears to clarify that a project is an ESPW project, to which all of the obligations associated therewith attach, if the utility plans to recover at least \$500,000 of the costs of the project from ratepayers, regardless of whether a presumption of prudence regarding those costs has been granted by the Commission. The ALJ requests comment regarding the foregoing analysis and the reason(s) the participants eliminated the presumption of prudence from Rule 3001(p).

11. The Third Status Report also added a subsection defining ESPW projects for “cooperative electric generation and transmission associations.” However, the Commission’s jurisdiction over such coops is limited.⁴ The ALJ requests comments on the extent of the Commission’s jurisdiction to enforce proposed Rule 3001(p)(II). Is the Commission’s jurisdiction to enforce the proposed rule limited solely to Tri-State?

12. Section 24-92-303(5)(a)(I)(B), C.R.S. requires an ESPW project to be “approved in any proceeding conducted by the public utilities commission as part of an electric resource acquisition or requests for certificates of convenience and necessity for construction or expansion

² See, e.g., Decision No. C20-0648 issued in Proceeding Nos. 19A-0728E & 20A-0063E on September 10, 2020 at pp. 21, 22-23 (¶¶ 49, 52). *Contra* Rule 3617(d) (“Effect of the Commission decision. A Commission decision specifically approving the components of a utility’s [electric resource] plan creates a presumption that utility actions consistent with that approval are prudent.”).

³ *Id.* at __ n. 98 (“a presumption of prudence is a burden-shifting exercise”).

⁴ See §§ 40-2-124, 40-9.5-101 *et seq.*, C.R.S.

of a project.” Rule 3102 states that a utility “need not apply to the Commission for approval of [a CPCN for] construction and operation of a facility or an extension of a facility which is in the ordinary course of business.” Rule 3102 does not specify the cost above which a project is not in the ordinary course of business that requires a CPCN. Are all projects that cost \$1 million or more not in the ordinary course of business, thus requiring the utility pursuing the project to seek a CPCN from the Commission (unless previously approved in an ERP?) Are there historical examples of such projects that were not approved in an ERP proceeding, and for which the utility did not obtain a CPCN? If so, and if there is no requirement for a utility to request a CPCN for such projects in the future, do the requirements of § 24-92-301 *et seq.* not apply to such projects if they have not been approved in an ERP?

13. Section 24-92-303(5)(b)(II), C.R.S. requires a project to cost at least \$1 million in order to qualify as a ESPW project. Cost estimates for the types of projects covered by § 24-92-301 *et seq.* can vary significantly from the final, actual cost of the project, with estimates typically gaining certainty (and potential variances diminishing) as the project progresses. With that in mind, how certain should project cost estimates be to determine whether the \$1,000,000 threshold has been met? Should a project that is initially estimated to be less than \$1,000,000, but that subsequently exceeds \$1,000,000, be treated as an ESPW Project, and vice-versa? Should potential variances from a cost estimate factor into whether a project should be treated as an ESPW project?

14. Finally, the ALJ has made changes to proposed rules 3001(p)(I)(C) & (D) designed to eliminate ambiguity about whether an ESPW Project requires a Commission decision that ratepayers will fund \$500,000 of a project that will cost at least \$1 million overall before it will be considered and treated as an ESPW Project. The ultimate decision about whether

ratepayers will pay the costs of a project is made in a rate case after the project is used and useful, or at least close to being completed.⁵ The ALJ's interpretation of the Colorado Energy Sector Public Works Project Craft Labor Requirements Act is that the requirements therein attach to an ESPW project early in the project life, and not at the end when the utility is seeking to place the project's costs into rate base. The ALJ's changes are intended to make clear that the requirements of the Act apply to a project from its outset if the utility intends to seek ratepayer funding of at least \$500,000 of its costs. The ALJ requests comments on these proposed changes and the reasons therefor.

2. Rule 3102(e)

15. The Third Status Report adds the following language shown in blue-line to the proposed rule:

Within 30 days of final Commission approval of an application pursuant to this rule, or after the last contract has been entered into, that includes one or more ESPW projects, the applicant or its contractor(s) shall notify the Division of Labor Standards and Statistics within the Colorado Department of Labor and Employment (CDLE) about the project to facilitate the collection of craft labor certification(s).

The ALJ requests comment on the purpose of the addition of "or after the last contract has been entered into." The change potentially delays the notification of the Division of Labor Standards and Statistics regarding a project that includes one or more ESPW projects. The ALJ seeks understanding of why such a potential delay is necessary, and whether a definitive deadline is necessary to accomplish the goals of the statutory change.

⁵ See Decision No. C24-0778 issued on October 25, 2025 in Proceeding No. 24AL-0049G at p. 28 (¶ 69).

3. Rules 3211 and 4211

16. In the NOPR, the Commission requested comments regarding what information can and should be required of bidders in the ERP process to demonstrate compliance with BVE Metrics.⁶ The NOPR also requested comments regarding whether there are contract terms in addition to those listed in Proposed Rules 3211(b) and 4211(b) that should be included.⁷ As no comments on these issues have been received to date, the ALJ reiterates the request for comments.

4. Rule 3211(c)(III)

17. The blue-lined changes submitted with the Third Status Report propose to add the following subsection to Rule 3211(c):

(III) A project that is exempt under 3211(f)(II), may certify compliance with the material contract terms pursuant to paragraph 3211(b) in lieu of submitting documentation for certain BVE metrics as otherwise required by subparagraphs 3211(a)(I) and (VI), by meeting the applicable requirements of the Inflation Reduction Act pursuant to § 24-92-304(1)(c)(III), C.R.S.

The ALJ requests comment regarding why this provision should be adopted for projects that, by the proposed rule's express terms, are exempt from the requirements Rule 3211. In other words, if a project is exempt from Rule 3211 and its requirement that the project's material contract terms comply with Rule 3211, what is the purpose of promulgating a rule that the project nevertheless may be certified as complying with Rule 3211? How is the proposed rule enforceable by the Commission?

⁶ NOPR at p. 28 (¶ 64).

⁷ *Id.*

5. Rule 3618(a)

18. Rule 3618 addresses the annual progress reports that utilities are required to file addressing their progress in implementing their approved ERPs. In the NOPR, the Commission added Rule 3618(a)(VI)-(VII) addressing inclusion in the report of information concerning the utility's implementation of BVE metrics and submission of craft labor certifications to the Division of Labor Standards and Statistics ("DLSS") of the Colorado Department of Labor and Employment, and the Third Status Report made minor modifications to the Commission's proposed language. The Commission also requested comments regarding the following related issues: (a) what information should be provided by utilities in annual progress reports and should the information parallel the information that bidders were required to provide based on bid documents; and (b) should a standard data template be developed to be used by all entities that are required to submit craft labor certification data to DLSS and, if so, what should it include? The ALJ requests comments on those topics.

II. ORDER

A. It Is Ordered That:

1. The Administrative Law Judge requests that initial written comments regarding the changes proposed in this interim decision be submitted no later than August 6, 2025, and any written comments responsive to the initial comments be submitted no later than August 14, 2025. The Commission will consider all submissions, whether written or oral.

2. Interested persons may submit written comments in this matter by filing them directly in this proceeding using the Commission's e-filing system, including them in an email sent to the Commission, or by entering them through the Commission's website by clicking on the "FILE A COMMENT OR COMPLAINT" link on the Commission's home page and then

following the prompts. The Commission's e-filing system, email address, and "FILE A COMMENT OR COMPLAINT" link can be found at <https://puc.colorado.gov/>.

3. Interested persons may also submit oral comments in this matter, either in English or in Spanish, by calling (303) 869-3490 and leaving a voicemail containing the comments.

4. Regardless of which of the above methods is used for submitting comments in this proceeding, the number of this proceeding (24R-0559EG) should be identified in submitted comments to aid the Commission's administrative staff in placing the comments in this proceeding.

5. The Commission will equally consider all comments submitted, whether oral or written.

6. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

Rebecca E. White,
Director