

Decision No. C02-793

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

DOCKET NO. 02R-137E

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

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**DECISION ADOPTING RULES**

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**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of proposed amendments to the Commission's Integrated Resource Planning Rules, 4 *Code of Colorado Regulations* (CCR) 723-21. The Commission gave formal notice of proposed rulemaking (NOPR) through Decision No. C02-179, mailed February 26, 2002.

2. The intent of the NOPR is to revise the existing Integrated Resource Planning (IRP) process for electric public utilities subject to the Commission's jurisdiction. The Commission issued its February 26 NOPR after completing an IRP investigation under Docket No. 01M-250E. Numerous parties commented in the investigation, with recommendations ranging from a wholesale repeal of the current rules, to expanding the detail and scope of issues addressed in the current rules. As a result of this investigation, and from experience gained in the most recent Public Service Company IRP proceeding, the

Commission issued the February 26 NOPR with the intent to adopt a more streamlined and flexible resource acquisition process. As stated in the NOPR, the Commission recognizes that the current IRP rules are too prescriptive, and the lengthy nature of the process outweighs its benefits in some areas. The Commission initiated this docket to consider whether the IRP process, as set forth in the existing rules, should be repealed or revised.

3. The Commission requested interested persons to submit initial written comments on or before March 29, 2002 and reply comments on or before April 19, 2002. Initial comments and/or reply comments were received from:

Aquila, Inc. (Aquila),  
Arkansas River Power Authority (ARPA),  
Calpine Corporation (Calpine),  
City of Boulder (Boulder),  
City and County of Denver (Denver),  
Colorado Association of Municipal Utilities (CAMU),  
Colorado Independent Energy Association (CIEA),  
Colorado Mining Association (CMA),  
Colorado Office of Consumer Counsel (OCC),  
Colorado Office of Energy Management and Conservation (OEMC),  
Colorado Renewable Energy Society (CRES),  
Land & Water Fund of the Rockies (LAW Fund),  
PG&E National Energy Group, Inc. (PG&E), and  
Tri-State Generation & Transmission Association, Inc. (Tri-State).

4. Public Service Company of Colorado, d/b/a Xcel Energy (Public Service), submitted written comments on April 29, 2002.

5. The Commission convened rulemaking hearings on April 30, 2002 and May 1, 2002. Representatives of Commission Staff, Public Service, Tri-State, Aquila, OCC, CIEA, AES, PG&E, Boulder, OEMC, CMA, Calpine, LAW Fund, Ron Lehr and Robert Hix testified at the hearing.

6. At the hearing, several parties requested that the Commission allow additional written reply comments especially to respond to Public Service's comments, which were filed only one day before the hearing. The Commission allowed further comments, and the following parties submitted such comments:

Boulder, CAMU, CIEA, CRES, LAW Fund, OCC, Denver,  
Public Service, Tri-State,  
CMS Viron Energy Services (CMS),  
Colorado Energy Assistance Foundation (CEAF),  
Financial Energy Management, Inc. (Financial Energy),  
and  
Southwest Energy Efficiency Project (SWEEP).

7. The Commission has received extensive comments addressing the various options presented by the Commission and other parties. We need not discuss each commenter's position in detail in this order. Rather, we address comments as they are

relevant to the choices between options and other significant issues raised in this case.

8. We now adopt, subject to requests for reconsideration, Least-Cost Resource Planning (LCP) Rules. The new rules use a different numbering system than that used in the current IRP Rules, Rule 4 CCR 723-21. This new numbering system is consistent with current efforts to recodify all Commission rules. The new LCP Rule will fit within the 3000 series electric rules, as proposed in the Notice Of Proposed Rulemaking in Docket No. 02R-279E. See Decision No. C02-575. The LCP reporting requirements are included as part of Rule 3006, which summarizes reporting requirements for the new 3000 series electric rules. The new LCP Rules replace the existing IRP Rules found at 4 CCR 723-21. The existing IRP Rules are repealed.

9. The statutory authority for the proposed rules is found at §§ 40-2-108, 40-2-123, 40-3-102, 40-3-111, and 40-4-101, C.R.S. Now being duly advised in the premises, we adopt the rules appended to this decision as Attachment A. Attachment B reflects the repeal of the existing IRP Rules.

## **B. Discussion**

### **1. Basis and Purpose**

a. As stated in rule 3601, Overview, the purpose of the rules is to establish a process to determine the

need for additional electric resources by Commission jurisdictional electric utilities, pursuant to the power to regulate public utilities delegated to the Commission by Article XXV of the Colorado Constitution and by §§ 40-2-123, 40-3-102, 40-3-111, and 40-4-101, C.R.S. The rules specify the Commission's policy that utilities will normally use a competitive acquisition process to acquire new resources. This process is intended to result in least-cost resource portfolios, and is intended to be neutral with respect to fuel-type or resource technology.

## **2. Options 1, 2, 3, 2 Plus, and 3 Modified**

a. We first discuss the overall structure of the rules, and the various options presented to the Commission, including Options 1, 2, and 3 proposed in the NOPR, "Option 2 plus" presented by Public Service, and "Option 3 Modified" presented by Aquila. We then address specific issues related to the implementation of new resource planning rules, especially in light of the option chosen here.

b. In the February 26 NOPR, we discussed three conceptual regulatory structures that could be used to replace the current IRP Rules. "Option 1" is repeal of the rules in their entirety, without replacement. Under Option 2, the Commission would make a decision regarding the utility's forecast and needs assessment only. The utility would then

proceed to acquire resources without any other pre-approval from the Commission. Under Option 3 the Commission would approve the utility's forecast and needs assessment, and the acquisition of specific resources, after bids were solicited and received by the utility. This third option reduces the timeline for Commission review of a utility's resource acquisitions; it is also less prescriptive of utility actions than the current rules. It represents the most comprehensive planning process of the three options. The Commission developed proposed rules only for the third option, because options 1 and 2 could be adopted by eliminating certain sections of the proposed option 3 rules.

c. Only Tri-State supported Option 1. Tri-State commented that the current rules serve no useful purpose with respect to Tri-State and that joint planning among utilities is best encouraged by eliminating the IRP Rules.

d. Only CMA supported the original Option 2. In its comments, CMA described the IRP process as "broken," and too lengthy. CMA argued that the present process, discourages joint planning, impedes effective reaction to market conditions, and precludes the deployment of anything other than gas turbines. However, CMA sees value in the review of the demand forecast, and therefore, supports Option 2.

e. In their initial filings, all other parties supported some version of rules that contained provisions beyond

the narrowly-defined Option 2. Parties supporting Option 3 generally assert that in Options 1 and 2 the Commission would not approve specific resources, and, therefore, would not provide adequate planning guidance to the utility and other parties. They further state that Option 3 allows input from all parties based on actual bid data, before the utility commits to any specific resource, thus ensuring that the utility chooses the best resources. Lastly, parties argue that Option 3 eliminates most issues from problematic after-the-fact prudence reviews.

f. Aquila proposed rules based on a streamlined Option 3 (Option 3 Modified). Aquila proposes that the utility only file a least-cost resource plan with the Commission at its option, without a requirement to file. The Aquila proposal mandates the utility to report its forecast and needs assessment.

g. In its initial comments, Public Service proposed what it referred to as "Option 2 Plus". This proposal is similar to Option 2 in that the Commission would approve the utility's forecast and needs assessment, but would also approve of further planning proposals. The additional provisions to be approved by the Commission include the utility's proposals to meet the identified need, including: the types of resources the utility should acquire; the amount of resources to be acquired



by a competitive procurement process and the amount to be acquired outside of that process; the contract terms to be offered; and the timing of the acquisitions.

### 3. Commission Decision on Options

a. At the outset, we continue to endorse competitive bidding as the normal procedure for utilities to acquire electric resources. As we stated in the NOPR, one of our primary objectives is to adopt a more streamlined and flexible resource acquisition process. However, we remain committed to a policy of competitive resource acquisition. The comments from parties generally support competitive resource acquisition, though some parties indicate that large joint-venture projects should be exempt from such requirements. We discuss this issue in detail *infra*. We believe that a policy based on competitive resource acquisition will benefit electric ratepayers in Colorado. These benefits include reducing the cost of electric capacity and energy, and requiring bidders, rather than ratepayers, to bear construction-cost risk, operational risk, reliability risk, and, potentially, fuel price risk<sup>1</sup>. The question before the Commission is how best to

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<sup>1</sup> In power purchase agreements resulting from its most recent Integrated Resource Plan, Public Service used tolling arrangements which removed the fuel price risk from bidders.

encourage competitive bidding while reasonably streamlining the resource acquisition process.

b. We concur with the majority of comments that urge the Commission to approve certain aspects of utility resource planning. We find that, at a minimum, the Commission's resource planning rules must require investor-owned utilities to file an application to approve its forecast and needs assessment (*i.e.* Option 2). For this reason, we decline to adopt the Option 3 Modified concept proposed by Aquila, in which the filing of a utility's plan for approval is optional.

c. Electric generation and transmission associations, and cooperative electric associations engaged in the distribution of electricity, have different incentives and regulatory structures. Because we exercise no ratemaking authority over these entities, we exempt them from the requirement to file their resource plan for approval, as discussed later.

d. We adopt rules most closely reflecting the elements of Option 2 Plus. We adopt this framework for the following reasons. First, this framework most effectively assists in the streamlining of the rule, while preserving Commission review of the most important elements of the resource acquisition process. We are mindful that, as a practical matter and due to time constraints, we can conduct only a single review

of the utility's resource planning and acquisition process. Therefore, we must choose between an up-front review of the planning process and an after-the-fact review of the bidding process, such as is contained in our current rules. We find that an up-front review of the resource planning process most appropriately achieves the Commission's objectives. An up-front review will allow the Commission to review a utility's resource planning, but will turn over many of the resource acquisition details to the utility.

e. Several parties pointed out an important shortcoming of Option 3 as the Commission had originally proposed it. The problem is that the utility would conduct and finish bidding before it files the plan with the Commission. In its initial filing, CIEA suggested that this is imprudent. Before the bidding occurs, CIEA suggests, the utility must, at a minimum, file with the Commission its request for proposals (RFP). Similarly, the LAW Fund expressed concern that, in order for the competitive process to function properly, it is crucial that all resource alternatives be allowed to compete on equal terms in the RFP process. The LAW Fund expressed the concern that, to the extent the RFP is skewed to favor particular types of resources, some bidders would be unfairly disadvantaged, or would choose not to participate. Several other parties also recommended that a utility file the RFP before submitting the

plan. CRES, for example, recommended that utilities maintain on file a Commission-approved RFP, to be used as a part of Option 3. However, as stated earlier, we find that timing constraints do not allow two steps of Commission review in the resource planning and acquisition process.

f. The current rules do not contain provisions for explicit Commission review of the RFP. However, the current rules provide for the filing of a draft IRP, which contains the proposed RFP(s), and a specified public participation process, which allows interested persons to comment on the RFP. Experience from past IRP proceedings indicates that parties to the IRP proceedings and not the general public attend the public participation meetings. Therefore, our current process includes an up-front draft RFP filing with the Commission and review by parties. An up-front Commission hearing and approval are not included. However, even without any Commission review, the current process for a draft plan and public participation can add up to nine months to the overall IRP process. In an effort to streamline these rules, we find it reasonable to eliminate the public participation process.

#### **4. Least-Cost Resource Acquisition Policy**

a. In the February 26 NOPR, the proposed rules direct utilities to select resources based on least-cost criteria. This directive reflects a change from the current IRP

rules, which direct utilities to select resources based on eight criteria set forth in the basis and purpose of the rules.

b. Several parties stated that the Commission's emphasis is too narrow, and that we should adopt criteria similar to the eight existing criteria. We disagree. Though cost considerations are listed within the existing criteria, the utility is given no direction as to how to weigh cost against other criteria in selecting resources. We find that this vagueness has resulted in unnecessary contentiousness in past IRP proceedings, and has failed to provide adequate regulatory certainty to utilities and other interested parties. We therefore adopt rules based on least-cost criteria alone.

c. We direct utilities to evaluate resource bids based on least-cost Net Present Value Revenue Requirement (NPVRR) to achieve the lowest overall costs to consumers. We disagree with Public Service's recommendation to consider lowest rates rather than least-cost NPVRR because this approach could create incentives to acquire resources with a low up-front cost but a higher overall cost in the long-term.

## **5. Resource Acquisition and Planning Periods**

a. Several parties pointed out that our existing rules may have inadvertently discouraged the acquisition of longer-lived resources. The existing IRP Rules require electric utilities to obtain Commission approval of

those resources the utility will acquire in the "Resource Acquisition Period." The existing rules define that period as the six-year period following the filing of the integrated resource plan. These provisions may constrain the particular resources proposed and selected by the filing utility. Specifically, longer-lived resources that require longer lead times for planning and implementation may be disadvantaged by limiting the resource acquisition period in the IRP process to six years.

b. As stated above, it is the Commission's resource acquisition policy to purchase the lowest cost resources that reliably meet the future needs of electric customers in Colorado. It is our intent that these rules be neutral with respect to fuel type or resource technology, and that the utility solicit and acquire those resources which minimize the net present value of revenue requirement. In order to increase flexibility in resource acquisition, we redefine the resource acquisition period as a six to ten year period. The ultimate period is left to the discretion of the filing utility. For similar reasons, the proposed rules redefine the "Planning Period" from a 20-year to a 20- to 40-year period. This will allow the utility to choose the resource acquisition and planning periods to better reflect the type and timing of the resources that the utility desires to acquire.

## 6. Timing of LCP Filings

a. The current IRP rules require utilities to file a new plan every three years. It has been the Commission's experience that, with a three-year cycle, utilities may not fully implement one plan before the next plan is due, leaving little time to prepare the next plan or react to changes caused by implementing the first plan. Therefore, the NOPR proposed to extend this plan filing cycle to four years. Commenters suggested that four years could be too long, and proposed language requiring filings at least every four years. We agree that utilities should be allowed to file a plan sooner than four years from the last filing. However, we will consider such a filing as an interim one, not one that meets the regular four-year filing requirement. Therefore, utilities must still file plans on the regular cycle to keep all utility filings in the same period, and to help provide planning certainty to bidders and other interested parties. The OCC raised the issue that in a four-year filing cycle, a 5-year resource acquisition period could be problematic. We agree, and extend the resource acquisition period range to 6-10 years. Consistent with this discussion, we also maintain the requirement that utilities coordinate the information for their individual plans, when filing on the regular four-year cycle.

## **7. Risk, Reserve Margin, and Contingency Plans**

a. For the reasons discussed above, the Commission will review the resource acquisition plan before, rather than after, the utility acquires resources. This change in emphasis from the current rule leads us to adopt several new provisions that will enhance and supplement this new planning approach. We raised these suggestions in the NOPR. Several parties commented that the new provisions are not consistent with the Commission's goal of streamlining the rules, and are unwarranted. Though we recognize that we are increasing our regulatory oversight in these areas, we find that the new provisions are necessary, particularly in light of the shift from resource approval rules to planning rules.

b. We agree with Public Service and CIEA that some risk analysis provisions contained in the forecasting section and other areas of the proposed rules did not fit well in those sections. To address these concerns, we create a separate reserve margin section, as discussed below. Consistent with this discussion, we adopt the following new planning provisions.

c. First, we adopt the requirement in Rule 3604(a) that requires the utility to include a detailed explanation linking the resource acquisition and planning periods to the specific types of resources the utility wishes to



acquire. As discussed earlier, this increased flexibility will allow utilities to tailor the chosen resource acquisition period to their planning processes. For example, if a utility's resource planning process indicates that the utility needs baseload resources, it will be free to select a relatively longer resource acquisition and planning period to accommodate longer lead-time resources. On the other hand, if the planning process indicates that the utility should add peaking resources to its system, it may choose shorter periods. The utility can also tailor its RFP and evaluation criteria to match its system needs. Because we require utilities to specify and consistently apply appropriate period lengths, we decline to adopt the OCC recommendation to require analysis using both a 20- and 40-year planning period.

d. In addition, we adopt enhanced provisions in the area of reserve margin determination. Rule 3608 (b) requires utilities to develop alternative reserve margins for each year of its chosen resource acquisition period to reflect the following risks: 1) the development of generation, 2) losses of generation capacity, 3) purchased power, 4) losses of transmission capability, 5) resource costs likely changing in the future due to environmental regulatory requirements, and 6) other risks. The consideration of these risks is appropriate in

the planning context and will allow the development of contingency plans to address specifically identified risks.

e. Rule 3608(c) recognizes that, due to the various risks discussed above, the future may be different from the most likely estimate of future resource needs. The utility must develop contingency plans to address the various identified risks. The Commission does not intend to explicitly approve the contingency plans, nor is there a "burden shift" under Rule 3613(d) for any resources that may be identified in the contingency plan. However, we believe that the information developed as a part of the contingency plan will assist the utility in responding to future changes in resource needs, and will assist the Commission in assessing the utility's plans.

## **8. Request For Proposals**

a. As discussed earlier, we view the RFP as an important part of the competitive resource acquisition process. We also see the RFP as a key link between a utility's plan to acquire resources and its actual implementation of that plan. Therefore, we will explicitly approve the utility's RFP. This will allow bidders to be fully-informed about the type and characteristics of resources the utility intends to acquire including: desired resource type, such as base-load, intermediate, and or peaking; desired fuel type; and the degree to which the desired resources should be dispatchable. In

addition, the RFP will inform potential bidders about estimated transmission costs for resources located in specific areas. Finally, the RFP must inform bidders about the utility's proposed standard contract, contract length, discount rate, and general planning assumptions.

b. By approving the RFP, the Commission will ensure that the utility's RFP is consistent with the resource acquisition policy and that potential bidders, the utilities themselves, and other parties have a clear understanding of the type of resources to be acquired, the evaluation criteria, and other terms and conditions applicable to the acquisition of new resources. Finally, with explicit Commission approval of the RFP, potential bidders can expect the utility to evaluate bids in accordance with the approved RFP.

## **9. Joint-Venture Projects**

a. A number of comments concerned whether large joint-venture projects should be exempt from bidding. Some commenters argued that the complex nature and lengthy timelines of a large-scale joint-venture project are not compatible with competitive bidding. These commenters claimed that utilities have realized economic and reliability benefits through numerous joint-venture projects in the past, and such future projects may not be viable under strict bidding requirements. Other commenters advocated bidding for all resources. They claimed

that large joint-venture projects can be bid, and that size and timeline requirements do not present a valid reason to forego the benefits of competitive bidding. CAMU proposed a rule requiring utilities to state specific actions taken with respect to joint projects. In their combined comments, Public Service and CIEA presented a compromise on the issue in which they advocated a rule to exempt specific resources up to 250 MW from bidding, if the utility demonstrates that the exemption of a specific resource is in the public interest.

b. We note that utilities do bid resources similar to large joint-venture projects. Regardless of the owner, electric generation plants are typically constructed through contract bidding, and we see no practical limitations to bidding large or joint-venture projects. We also find that the discipline of competitive bidding may provide economic benefits in such cases. However, we recognize that circumstances may exist where the public interest is best served by allowing the utility to pursue projects outside of the competitive bidding process. Therefore, we adopt rules that uphold resource bidding as the standard, but allow a utility to request an exemption for up to 250 MWs, if it demonstrates that the proposal is in the public interest. In addition to the criteria proposed by Public Service and CIEA, we limit the exemption to a total of 250 MWs in a four-year LCP cycle. We decline to adopt the language

proposed by CAMU, as that language would serve to endorse joint participation and would not be consistent with upholding resource bidding as the standard. We also believe that the 250 MW exemption helps to address CAMU's issue.

#### **10. Renewable Portfolio**

a. Public Service and CIEA also advocate that the Commission establish rules requiring a renewable portfolio separate from the primary resource portfolio for bid solicitation and evaluation purposes. This suggestion for a separate renewable portfolio is consistent with arguments made by several commenters that the rules proposed in the NOPR did not adequately fulfill the requirements of §40-2-123, C.R.S. The NOPR required that renewables be granted a preference if cost and reliability considerations are equal. Several commenters stated that this proposal did not meet the requirements of §40-2-123, which requires the Commission to give "*fullest possible* consideration" (emphasis added) to renewables, and argued for a separate renewable portfolio. We disagree. We find that a separate renewable portfolio is not required by § 40-2-123. That statute directs the Commission to temper its "*fullest possible consideration*" of renewables with a requirement that they be "cost-effective." The rules do give appropriate consideration to cost-effective renewables by allowing such resources to be bid in the same process applicable

to other resources, and by granting a preference to such resources where cost and reliability considerations are equal to those of other resources. Section 40-2-123 requires nothing more.<sup>2</sup> Therefore, we find that granting a preference to renewable resources, when cost and reliability considerations are equal, meets the directives established in § 40-2-123. We do not require a separate renewable portfolio, and instead direct utilities to grant a preference to cost-effective renewable resources bid within the primary portfolio. We refuse to endorse a mandated demand-side-management program. Such programs are of dubious legality and benefit.

b. We do here allow a utility to propose resources separate from the common portfolio for optional tariff services. Public Service's "Windsource" program is an example. In this program, customers choose to pay a higher price than standard tariff service for wind-generated electricity. Resource acquisition for such programs should be included within the utility's plan as a separate portfolio. To the extent consumers desire such optional tariff programs, and the body of

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<sup>2</sup> Notably, in 2002, the Colorado Legislature considered, but did not enact, legislation which would have required utilities to achieve a specific percentage of renewable generated electricity, without consideration whether the resources were "cost effective" when compared to conventional resources. See SB02-180. The Legislature's refusal to pass this proposal indicates that it did not intend for us to grant preferences to renewables regardless of cost considerations.

ratepayers is not affected, we have no problem with such offerings.

#### **11. Other Exemptions from Bidding**

a. As stated earlier, we intend to give utilities added flexibility to manage their own resources to meet customers' electric needs. Rule 3611 specifies the resources that the utility need not acquire through competitive bidding. As discussed below, we increase the exemption thresholds from the levels established in the current rules. We also note that emergency maintenance and repairs to utility-owned generating facilities, and interruptible service provided to the utility's electric customers are exempt from competitive bidding under the current rules. We maintain these exemptions in Rule 3611.

b. In their joint comments, Public Service and CIEA propose that exemptions now limited to 10MWS in the current rules be increased to 30MWS. The exemption applies to the following resources: capacity from newly-constructed, utility-owned, supply-side resources; purchases from the generation facilities of other utilities or from non-utility generators; improvements or modifications to existing utility generation facilities; or modifications to, or amendments of, existing power purchase agreements.

c. The joint comments of Public Service and CIEA propose an additional dollar-based exemption that allows for improvements or modifications to existing facilities so long as the expenditure has an estimated cost of less than \$30 million, in addition to meeting the MW-based limitation. This dollar exemption is specified at \$10 million in the current rules. In addition, Public Service and CIEA propose that the exemption for capacity and energy purchased from other entities be increased from the one-year term specified in the current rules to a two-year term (including renewal terms). Finally, Public Service and CIEA propose that modifications to existing power agreements may not extend the contract by more than four years.

d. In its Post-Hearing comments, the OCC agreed that some flexibility in granting exemptions from competitive bidding is appropriate. The OCC stated that, because bringing a new power plant on line typically would take at least two years, the OCC supports allowing a utility to purchase power outside of the resource plan. However, the OCC states, this purchase power exemption must be limited to a contract duration of less than two years, or a contract capacity of 10 percent of the utilities peak demand or 50MW, whichever is less. The OCC would also allow plant upgrades with the same capacity exemption.



e. We adopt the 30 MW exemption suggested by Public Service and CIEA. This will prove more limiting for Public Service, as compared to the OCC's suggested limit, and will result in a similar limit as the 10 percent exemption for utilities peak demand, in the case of WestPlains. In addition, the Commission will adopt the \$30 million constraint as an addition to the quantity limit in the case of plant upgrades, so that the utility must meet both the quantity and dollar limitation in order to qualify for the exemption. Similarly, we adopt the two-year term limitation (including renewals) in the case of purchases of capacity and energy from other entities, in addition to the 30 MW quantity limitation discussed above. Finally, the Commission requires that, in addition to meeting the dollar and quantity constraints, the utility must show that modifications to existing contracts are cost-effective in order to qualify for the exemption.

## **12. Third-Party Evaluator**

a. The current IRP rule contains a requirement that a utility nominate and pay the costs of a third-party overseer, if the utility or one of its affiliates desires to submit bids. The Commission approved the use of a third-party overseer to mitigate the possibility of self dealing by utilities that choose to submit bids in response to an RFP, either directly or through an affiliate. Public Service and

CIEA submitted joint comments addressing this issue. The joint comments suggest the filing of a written separation policy and the naming of an independent auditor. The joint comments specify the minimum experience level of the auditor, independence of the auditor from the utility, and access of the auditor to utility data, documents, models, and personnel. At the conclusion of the review, the auditor would file a report with the Commission containing the auditor's views on whether the utility conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported. After the filing of the independent auditor's report, the utility, other bidders in the resource acquisition process, and other interested parties would have the opportunity to review and comment on the auditor's report. Other parties suggested that a third party evaluator should be employed in all cases, regardless of whether the utility or its affiliate submit bids.

b. We find the joint comments to be reasonable and adopt the language, with the following modification. The joint comments suggest that the independent auditor would not begin an investigation until after the bid evaluation process is complete and the utility selects itself or its affiliate as a winning bidder. This is problematic, because critical information may be difficult to reconstruct after the bid review process is complete. Therefore, we require the utility to hire

the independent auditor as soon as possible after the utility or an affiliate decides to bid, and will require that the auditor have immediate access to the information concerning the bid evaluation process. We find that a third-party evaluator is only necessary to oversee utility actions when its incentives may be skewed by its own bidding interests. We do not require a third party evaluator in all cases.

### **13. CPCNs and Effect of Commission Decisions on Least Cost Plans**

The current IRP Rules, and the Option 3 in the NOPR contain provisions for issuing a Certificate of Public Convenience and Necessity (CPCN) as part of resource approval. Since we are now implementing a variation of Option 2, in which the Commission will not approve specific resources, CPCN approval is not appropriate. Public Service and CIEA propose a variation of Option 2 in their combined comments, yet maintain CPCN approval in their proposed rules. They also propose language allowing utilities or suppliers to apply to the Commission for approval of a specific resource or contract. Public Service and CIEA argue that these provisions should be adopted to avoid duplicative proceedings and unnecessary delay, and to limit regulatory uncertainty. We reject these suggestions. Because we are not reviewing specific resources in the plan, it is inappropriate to grant CPCNs, approve of specific projects, or

approve of specific contracts. Therefore, we do not include such provisions in the rules. The adopted rules do specify the effect of Commission decisions on filed least cost plans. In particular Rule 3613(c) provides for Commission review and approval of specific components of the least cost plan, such as the assessment of need and the utility's proposed evaluation criteria for bids. Rule 3613(d) then provides that a Commission decision specifically approving components of the plan will, in future proceedings, create a presumption that utility actions consistent with that decision are prudent. Specifically, that presumption will apply in proceedings in which the utility requests cost recovery for new resources, and in which the utility requests a CPCN for construction of such resources.

#### **14. Cooperative Associations**

a. The current rule requires cooperative electric associations engaged in the distribution of electricity to file with the Commission copies of any IRPs developed for other jurisdictional authorities. As stated above, we are attempting to streamline and add flexibility to the resource planning process. The loads and resources for electric distribution cooperatives are generally included in the plans of other utilities that are required to submit this information under the rules. Therefore, we conclude that the benefits of a reporting requirement applicable to the cooperatives do not

justify their costs, and we delete all reporting requirements for cooperative electric associations engaged in the distribution of electricity.

b. The current rules also require electric generation and transmission associations to file for Commission approval of loads and resources information, and information concerning resource needs. Such entities are not required to comply with the competitive bidding requirements in the existing rules, but must show compliance with applicable federal requirements governing the competitive solicitation and acquisition of resources.

c. In this docket, CIEA argued that, as a practical matter, no federal entity requires Tri-State to undertake a competitive bidding process. According to CIEA, the Western Area Power Administration has certain IRP requirements but does not require competitive bidding. In addition, CIEA states, the Rural Utilities Service (RUS) rules give RUS discretion to require borrowers to conduct competitive bidding, but RUS has not yet required Tri-State to undertake a bidding process.

d. In its response, Tri-State points out the limited jurisdiction the Commission exerts over Tri-State. Most pertinently, the Commission lacks rate jurisdiction over Tri-State. We note that bidding is primarily a process aimed at

acquiring resources at the lowest cost. Without rate authority, we conclude, it is inappropriate to subject Tri-State to the competitive resource acquisition requirements specified in the rules. Still, the Commission does exercise facilities jurisdiction over Tri-State through the CPCN requirement. Therefore, we require Tri-State to comply with certain reporting requirements regarding loads and resources information, and the assessment of need for additional resources. Because of the incentive structure of member-owned associations such as Tri-State, it is unnecessary for the Commission to approve Tri-State's assessment of need. We require electric generation and transmission associations to file the information as a report, without application for approval.

#### **15. Requirement for Rate-Based Utility Bids**

a. Consistent with its arguments in Public Service's most recent IRP proceeding, the OCC proposes that utilities be required to bid a set of rate-based, utility-built resources in their least cost plans. The OCC argues that a utility self-build option may be cheaper because of capital costs and amortization period differences between the utility and competitive providers. The OCC asserts that a self-build comparison is necessary to provide consumers the lowest reasonable rates. Other parties argue that the self-build option will add unnecessary expense, and may threaten the

competitive bidding process. They state that risk differences between a utility plant and a power purchase contract result in an improper cost comparison.

b. We agree with Public Service that risk allocation differences between a utility plant and a power purchase contract are significant. Risks associated with cost over-runs, plant inefficiency, operating costs and technological obsolescence would likely be different between the two options. The cost differences associated with these risks would be difficult to quantify, and would, therefore, limit the usefulness of the resource cost comparison. We also agree that a utility self-build option would be expensive, as the utility must stand ready to build the plant if it has the winning bid. Further, we agree that a utility's securing of resources such as land and generating equipment would impact the competitive environment, because these resources are limited. Competitors may also view these utility sunk-costs as a disincentive to the utility to choose a competitor's resource over its own. Consequently, competitors may choose not to bid. We find that the costs of a requirement that utilities bid a set of rate-based, self-build, resources outweigh the benefits. While the rules do not prevent utilities from choosing to pursue such options, we do not require utilities to develop rate-based, self-build options with which to compare competitive proposals.

Furthermore, the underlying premise of the OCC's argument appears to us discredited. The premise of the OCC's argument would appear to be that generation remains a natural monopoly, thus making the least cost option inevitably the vertically integrated utility. That may have once been the case, but the general consensus now is that this is no longer so. We believe the best public policy is to affirm our dedication to a competitive wholesale generation market, without the regulatory overhang of forcing a comparison to rate-based, integrated-utility operated generation. A policy of competitively-procured generation will not only give ratepayers the least-cost alternative, but also encourages innovation and efficiency by generators, as well as shifts risks of "mistakes" to generators instead of ratepayers.

## **16. PURPA**

a. The Commission's current rules implementing the Public Utility Regulatory Policy Act (PURPA), 4 CCR 723-19, Rule 3.5021, state that electric utilities may use a bid or auction, or combination procedure that uses the factors in rule 3.600, to establish their avoided costs.<sup>3</sup> Public Service's tariff (page P2) states that Qualifying Facilities (QFs) with a

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<sup>3</sup> The replacement QF rules, Rules 3800 through 3854 as proposed in Decision No. C02-575, do not explicitly contain such requirements, however, we anticipate that utilities will continue to implement PURPA avoided cost requirements through a bidding procedure.



design capacity of greater than 100kw must be successful bidders through the Commission's Integrated Resource Planning Rules<sup>4</sup>.

b. Rule 3610(b) will allow a utility to propose a method, other than competitive bidding, to acquire resources. In order to use such an alternative, the utility must receive Commission approval of the alternative method. To justify such an alternative, the utility must provide a cost/benefit analysis, and, in addition, must explain how the alternative to bidding complies with PURPA. We believe that these provisions are consistent with PURPA requirements.

c. At this time, we do not believe that we must modify our PURPA rules, either in the current form or as proposed in the electric rulemaking proceeding, Docket No. 02R-279E, in order to accommodate the exemption contained in Rule 3610(b).<sup>5</sup>

## **17. Heat Rate**

a. Public Service and CIEA recommended removing the requirement to provide heat rate information for its existing generation resources. They state that utilities should

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<sup>4</sup> Public Service must, at a minimum, revise its tariff references to "the Commission's Integrated Planning Rules," and may need to make other changes to its tariffs.

<sup>5</sup> The parties should submit comment on this issue in applications for reconsideration, if they believe the rule is inconsistent with PURPA.

not provide the information because it is commercially sensitive. We disagree, and maintain the rule requirement to provide heat rate information. Utilities provide generation output and fuel information in annual reports currently filed with the Commission. Therefore, this type of information is already publicly available. If necessary, the utility can file information subject to confidentiality provisions, though we expect information that it files publicly in the annual report to be filed as public in the LCP filing. We find that the average heat rate information required by the rules provides necessary background information applicable to the case at hand, and assists in evaluating model inputs and assumptions.

## **18. Transmission**

a. In section 3505(d) of their proposed rules, Public Service and CIEA recommend deleting requirements to provide transmission information. We agree that paragraph (II), transmission planning coordination activities, is beyond the scope of providing information related to the transmission impacts of additional generation. However, paragraphs (I) and (III) are necessary to provide information relevant to analyzing the transmission costs of additional generation. The utility must include transmission costs attributable to each proposed new generation resource to accurately compare the costs of

different resources. We therefore maintain the language in paragraphs (I) and (III).

#### **19. Reporting**

a. As stated earlier, it is the policy of the Commission that utilities should generally acquire electric resources through a competitive resource acquisition process. However, in adopting the Option 2 Plus framework, we recognize that the Commission will not explicitly review the resources that the utility selects through the competitive acquisition process, as a part of this rule.

b. Therefore, in order to keep the Commission informed of the status and progress of the competitive resource acquisition process, Rule 3614 requires the utility to file certain reports with the Commission. Within 30 days after the utility receives bids in response to an RFP, it shall report specific information to the Commission concerning the bids received. In addition, within 45 days after selecting the winning bids, the utility shall report to the Commission specific information concerning the winning bids.

#### **20. Waiver Language**

a. Public Service commented that the Commission should allow for waivers or variances from the rules. The Commission is currently recodifying all of its rules. In the future, the Commission intends that the waiver and variance

provisions will be contained in the rules of practice and procedure, rather than being stated in each individual rule. Therefore, we do not adopt a waiver or variance provisions in this rule. In the interim period between the adoption of these rules and the implementation of the new rules of Practice and Procedure, we clarify that utilities may request a waiver of specific requirements of these rules by filing an appropriate pleading, even without a specific waiver provision in the rules.

#### **21. Adoption of Rules**

a. For the foregoing reasons, we adopt, subject to requests for reconsideration, the rules appended to this decision as Attachment A. As reflected in Attachment B, the existing Integrated Resource Planning Rules, 4 CCR 723-21, are repealed.

## **II. ORDER**

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

1. The rules appended to this decision as Attachment A are adopted. Existing rules found at 4 CCR 723-21 are repealed as reflected on Attachment B. This order adopting the attached rules shall become final 20 days following the mailed date of this decision in the absence of the filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or

reconsideration to this decision is timely filed, this order of adoption shall become final upon a Commission ruling on any such application, in the absence of further order of the Commission.

2. Within twenty days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of state for publication in the next issue of *The Colorado Register* along with the opinion of the Attorney General regarding the legality of the rules.

3. The finally adopted rules shall also be filed with the Office of Legislative Legal Services within twenty days following issuance of the above-referenced opinion by the Attorney General.

4. The twenty day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this decision.

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

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING  
May 29, 2002.**

( S E A L )

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO



RAYMOND L. GIFFORD

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POLLY PAGE

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ATTEST: A TRUE COPY

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Bruce N. Smith  
Director

JIM DYER

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Commissioners

THE  
PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF COLORADO

ELECTRIC LEAST-COST RESOURCE PLANNING RULES

**4 Code of Colorado Regulations 723-3<sup>1</sup>, Rules 3600 Through 3615**

**3006. Reports.** Each utility shall provide reports to the Commission as follows:<sup>2</sup>

- (e) Reports relating to least-cost resource planning as required by rules 3605, 3610(e), and 3614.

**LEAST-COST RESOURCE PLANNING**

**3600. Special Definitions.** The following definitions apply only to rules 3600 - 3615:

- (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) "End-use" means the light, heat, cooling, refrigeration, motor drive, or other useful work produced by equipment that uses electricity or its substitutes.
- (d) "Energy conservation" means the decrease in electricity requirements of specific customers during any selected time period, with end-use services of such customers held constant.
- (e) "Energy efficiency" means increases in energy conservation, reduced demand or improved load factors resulting from hardware, equipment, devices, or practices that are installed or instituted at a customer facility. Energy efficiency measures can include fuel switching.
- (f) "Heat Rate" means the ratio of energy inputs used by a generating facility expressed in BTUs (British Thermal Units), to the energy output of that facility expressed in kilowatt-hours.

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<sup>1</sup> These rules are intended to eventually become a part of the electric rules as proposed in the Commission's Notice of Proposed Rulemaking in Docket No. 02R-279E. See Decision No. C02-575. When the proposed electric rules are finalized, these Least Cost Planning rules will be incorporated therein.

<sup>2</sup> Material including 3006(a)-(d) is omitted, as it was published in the Commission's Notice of Proposed Rulemaking in Docket No. 02R-279E. See Decision No. C02-575.

- (g) "Least-cost resource plan" or "plan" means a utility plan consisting of the elements set forth in rule 3604.
- (h) "Net present value of revenue requirements" means the current worth of the expected stream of future revenue requirements associated with a particular resource portfolio, expressed in dollars in the year the plan is filed. The net present value of revenue requirements for a particular resource portfolio is obtained by applying a discount rate to the expected stream of future revenue requirements.
- (i) "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.
- (j) "Renewable resource" means any facility, technology, measure, plan or action utilizing a renewable "fuel" source such as wind; solar; biomass; geothermal; municipal, animal, waste-tire or other waste; or hydroelectric generation of twenty megawatts or less.
- (k) "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. The resource acquisition period begins from the date the utility files its plan with the Commission.
- (l) "Resources" means supply-side resources, energy efficiency, or renewable resources used to meet electric system requirements.
- (m) "Supply-side resource" means a resource that can provide electrical energy or capacity to the utility. Supply-side resources include utility-owned generating facilities, and energy or capacity purchased from other utilities and non-utilities.
- (n) "Typical day load pattern" means the electric demand placed on the utility's system for each hour of the day.

**3601. Overview.** The purpose of these rules is to establish a process to determine the need for additional electric resources by Commission jurisdictional electric utilities, pursuant to the power to regulate public utilities delegated to the Commission by Article XXV of the Colorado Constitution and by §§ 40-2-123, 40-3-102, 40-3-111, and 40-4-101, C.R.S. It is the Commission's policy that a competitive acquisition process will normally be used to acquire new utility resources. This process is intended to result in least-cost resource portfolios, taking into consideration projected system needs, reliability of proposed resources, expected generation loading characteristics, and various risk factors. The rules are intended to be neutral with respect to fuel type or resource technology.

**3602. 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.



**3603. Least-Cost Resource Plan Filing Requirements.** Jurisdictional electric utilities, as described in rule 3602, shall file a least-cost resource plan ("plan") pursuant to these rules on or before March 31, 2003, and every four years thereafter. In addition to the required four-year cycle, a utility may file an interim plan, pursuant to rule 3604. If a utility chooses to file an interim plan more frequently than the required four-year cycle, its application must state the reasons and changed circumstances that justify the interim filing. Each utility shall file an original and fifteen copies of the plan with the Commission.

**3604. Contents of the Least-Cost 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:

- (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 least-cost plan and resource acquisition process. The utility shall include a detailed explanation as to why the specific period lengths were chosen in light of the assessment of base-load, intermediate and peaking 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 assessment of planning reserve margins and contingency plans for the acquisition of additional resources developed pursuant to rule 3608;
- (e) An assessment of need for additional resources developed pursuant to rule 3609;
- (f) A description of the utility's plan for acquiring these resources pursuant to rule 3610;
- (g) The proposed RFP(s) the utility intends to use to solicit bids for the resources to be acquired through a competitive acquisition process, pursuant to rule 3612; and
- (h) An explanation stating whether current rate designs for each major customer class are consistent with the contents of its plan. The utility shall also explain whether possible future changes in rate design will facilitate its proposed resource planning and resource acquisition goals.

**3605. Cooperative Electric Generation and Transmission Association Reporting Requirements.** Pursuant to the schedule established in rule 3603, each cooperative electric generation and transmission association shall report its forecasts, existing resource assessment, planning reserves, and needs assessment, consistent with the requirements specified in rules 3606, 3607, 3608(a) and 3609.

**3606. Electric Energy and Demand Forecasts.**

- (a) Forecast Requirements. The utility shall prepare the following energy and demand forecasts for each year within the planning period:
  - (I) Annual sales of energy and coincident summer and winter peak demand in total and disaggregated among Commission jurisdictional sales, FERC jurisdictional sales, and sales subject to the jurisdiction of other states;
  - (II) Annual sales of energy and coincident summer and winter peak demand on a system-wide basis for each major customer class;
  - (III) Annual energy and capacity sales to other utilities; and capacity sales to other utilities at the time of coincident summer and winter peak demand;
  - (IV) Annual intra-utility energy and capacity use at the time of coincident summer and winter peak demand;
  - (V) Annual system losses and the allocation of such losses to the transmission and distribution components of the system. Coincident summer and winter peak system losses and the allocation of such losses to the transmission and distribution components of the systems; and
  - (VI) Typical day load patterns on a system-wide basis for each major customer class. This information shall be provided for peak-day, average-day, and representative off-peak days for each calendar month.
- (b) Range of forecasts. The utility shall develop and justify a range of forecasts of coincident summer and winter peak demand and energy sales that its system may reasonably be required to serve during the planning period. The range shall include base case, high, and low forecast scenarios of coincident summer and winter peak demand and energy sales, based on alternative assumptions about the determinants of coincident summer and winter peak demand and energy sales during the planning period.
- (c) Required Detail.
  - (I) In preparing forecasts, the utility shall develop forecasts of energy sales and coincident summer and winter peak demand for each major customer class. The utility shall use end-use, econometric or other supportable methodology as the basis for these forecasts. If the utility determines not to use end-use analysis, it shall explain the reason for its determination as well as the rationale for its chosen alternative methodology.
  - (II) The utility shall explain the effect on its energy and coincident peak demand forecast of all existing energy efficiency and energy conservation programs for each major customer class, as well as any such measures that have been approved by the Commission but are not included in the forecasts.

- (III) The utility shall maintain, as confidential, information reflecting historical and forecasted demand and energy use for individual customers in those cases when an individual customer is responsible for the majority of the demand and energy used by a particular rate class. However, when necessary in the least-cost resource plan proceedings, such information may be disclosed to parties who intervene in accordance with the terms of non-disclosure agreements approved by the Commission and executed by the parties seeking disclosure.
- (d) **Historical Data.** The utility shall compare the annual forecast of coincident summer and winter peak demand and energy sales made by the utility to the actual coincident peak demand and energy sales experienced by the utility for the five years preceding the year in which the plan under consideration is filed. In addition, the utility shall compare the annual forecasts in its most recently filed resource plan to the annual forecasts in the current resource plan.
- (e) **Description and Justification.** The utility shall fully explain, justify, and document the data, assumptions, methodologies, models, determinants, and any other inputs upon which it relied to develop its coincident peak demand and energy sales forecasts pursuant to this rule, as well as the forecasts themselves.
- (f) **Format and Graphical Presentation of Data.** The utility shall include graphical presentation of the data to make the data more understandable to the public, and shall make the data available to requesting parties in such electronic formats as the Commission shall reasonably require.

**3607. Evaluation of Existing Generation Resources.**

- (a) **Existing Generation Resource Assessment.** The utility shall describe its existing generation resources, all utility-owned generating facilities for which the utility has obtained a CPCN from the Commission pursuant to C.R.S. § 40-5-101 at the time the plan is filed, and existing or future purchases from other utilities or non-utilities pursuant to agreements effective at the time the plan is filed. The description shall include when applicable:
- (I) Name(s) and location(s) of utility-owned generation facilities;
- (II) Rated capacity and net dependable capacity of utility-owned generation facilities;
- (III) Fuel type, heat rates, annual capacity factors and availability factors projected for utility-owned generation facilities over the planning period;
- (IV) Estimated in-service dates for utility-owned generation facilities for which a CPCN has been granted but which are not in-service at the time the plan under consideration is filed;
- (V) Estimated remaining useful lives of existing generation facilities without significant new investment or maintenance expense;

- (VI) The amount of capacity and/or energy purchased from utilities and non-utilities, the duration of such purchase contracts and a description of any contract provisions that allow for modification of the amount of capacity and energy purchased pursuant to such contracts; and
  - (VII) The amount of capacity and energy provided pursuant to wheeling or coordination agreements, the duration of such wheeling or coordination agreements, and a description of any contract provisions that allow for modification of the amount of capacity and energy provided pursuant to such wheeling or coordination agreements.
- (b) Utilities required to comply with these rules shall coordinate their plan filings such that the amount of electricity purchases and sales between utilities during the planning period is reflected uniformly in their respective plans. Disputes regarding the amount, timing, price, or other terms and conditions of such purchases and sales shall be fully explained in each utility's plan. If a utility files an interim plan as specified in rule 3603, the utility is not required to coordinate that filing with other utilities.
- (c) Existing Transmission Capabilities and Future Needs.
- (I) The utility shall report its existing transmission capabilities, and future needs during the planning period, for facilities of 115 kilovolts and above, including associated substations and terminal facilities. The utility shall specifically identify the location and extent of transfer capability limitations on its transmission network that may affect the future siting of resources. With respect to future needs, the utility shall explain the need for facilities based upon future load projections (including reserves) and proposed generation additions during the resource acquisition period. To the extent reasonably available, the utility shall include a description of the length and location of any additional facilities needed, their estimated costs, terminal points, voltage and megawatt rating, alternatives considered or under consideration, and other relevant information.
  - (II) In order to equitably compare possible resource alternatives, the utility shall consider all transmission costs required by, or imposed on the system by, a particular resource as part of the bid evaluation criteria.

**3608. Planning Reserve Margins.**

- (a) The utility shall provide a description of, and justification for, the means by which it assesses the desired level of reliability on its system throughout the planning period (e.g., probabilistic or deterministic reliability indices).
- (b) The utility shall develop and justify planning reserve margins for each year of the resource acquisition period for the base case, high, and low forecast scenarios established under rule 3606, to include risks associated with: 1) the development of generation, 2) losses of generation capacity, 3) purchase of power, 4) losses of transmission capability, 5) resource costs

likely changing in the future due to environmental regulatory requirements, and 6) other risks. The utility shall develop planning reserve margins for its system for each year of the planning period outside of the resource acquisition period for the base case forecast scenario. The utility shall also quantify the recommended or required reliability performance criteria for reserve groups and power pools to which the utility is a party.

- (c) Since actual circumstances may differ from the most likely estimate of future resource needs, the utility shall develop contingency plans for each year of the resource acquisition period. The utility shall describe and justify its contingency plans for the acquisition of additional resources if actual circumstances deviate from the most likely estimate of future resource needs developed pursuant to rule 3609. The provisions of rule 3613(d), Effect of the Commission Decision, shall not apply to the contingency plans unless explicitly ordered by the Commission.

**3609. Assessment of Need for Additional Resources.** By comparing the electric energy and demand forecasts developed pursuant to rule 3606 with the existing level of resources developed pursuant to rule 3607, and planning reserve margins developed pursuant to rule 3608, the utility shall assess the need to acquire additional resources during the resource acquisition period.

**3610. Utility Plan for Meeting the Resource Need.**

- (a) The utility shall describe its least-cost resource plan for acquiring the resources to meet the need identified in rule 3609. The utility shall specify the portion of the resource need that it intends to meet as a part of a stand-alone voluntary tariff service, where all costs are separate from standard tariff services, if any. The utility shall specify the portion of the resource need that it intends to meet through a competitive acquisition process and the portion that it intends to meet through an alternative method of resource acquisition.
- (b) The utility shall meet the resource need identified in the plan through a competitive acquisition process, unless the Commission approves an alternative method of resource acquisition. If the utility proposes that a portion of the resource need be met through an alternative method of resource acquisition, the utility shall identify the specific resource(s) that it wishes to acquire, and the reason the specific resource(s) should not be acquired through a competitive acquisition process. In addition, the utility shall provide a cost-benefit analysis to demonstrate the reason why the public interest would be served by acquiring the specific resource(s) through an alternative method of resource acquisition. The least-cost resource plan shall describe and estimate the cost of all new transmission facilities associated with any specific resources proposed for acquisition other than through a competitive acquisition process. The utility shall also explain and justify how the alternative method of resource acquisition complies with the requirements of the Public Utility Regulatory Policy Act and Commission rules implementing such act. The utility may not acquire more than the lesser of 250 megawatts, or 10% of the highest base case forecast peak requirement identified for the

resource acquisition period, through such alternative method of resource acquisition.

- (c) The utility shall have the flexibility to propose multiple acquisitions at various times over the resource acquisition period. However, the limits specified in paragraph (b) of this rule shall apply to the total resources acquired through an alternative method during an entire four-year least cost planning cycle.
- (d) Each utility shall establish, and include as a part of its filing, a written bidding policy to ensure that bids are solicited and evaluated in a fair and reasonable manner. The utility shall specify such competitive acquisition procedures that it intends to use to obtain resources under the utility's plan.
- (e) If the utility intends to accept proposals from the utility or from an affiliate of the utility, the utility shall include as part of its filing a written separation policy and the naming of an independent auditor whom the utility proposes to hire to review and report to the Commission on the fairness of the competitive acquisition process. The independent auditor shall have at least five years' experience conducting and/or reviewing the conduct of competitive electric utility resource acquisition, including computerized portfolio costing analysis. The independent auditor shall be unaffiliated with the utility; and shall not, directly or indirectly, have benefited from employment or contracts with the utility in the preceding five years, except as an independent auditor under these rules. The independent auditor shall not participate in, or advise the utility with respect to, any decisions in the bid-solicitation or bid-evaluation process. The independent auditor shall conduct an audit of the utility's bid solicitation and evaluation process to determine whether it was conducted fairly. For purposes of such audit, the utility shall provide the independent auditor immediate and continuing access to all documents and data reviewed, used or produced by the utility in its bid solicitation and evaluation process. The utility shall make all its personnel, agents and contractors involved in the bid solicitation and evaluation available for interview by the auditor. The utility shall conduct any additional modeling requested by the independent auditor to test the assumptions and results of the bid evaluation analyses. Within sixty days of the utility's selection of final resources, the independent auditor shall file a report with the Commission containing the auditor's views on whether the utility conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported. After the filing of the independent auditor's report, the utility, other bidders in the resource acquisition process and other interested parties shall be given the opportunity to review and comment on the independent auditor's report.
- (f) In selecting its final resource plan, the utility shall minimize the net present value of revenue requirement. The utility shall consider renewable resources; resources that produce minimal emissions or minimal environmental impact; energy-efficient technologies; and resources that provide beneficial contributions to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases; as a part of its bid solicitation

and evaluation process. Further, the utility shall grant a preference to such resources where cost and reliability considerations are equal.

**3611. Exemptions from competitive acquisition.** The following resources need not be acquired through a competitive acquisition process and need not be included in an approved Least-Cost Plan prior to acquisition:

- (a) Emergency maintenance or repairs made to utility-owned generation facilities;
- (b) Capacity and/or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of not more than thirty megawatts;
- (c) 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 thirty megawatts of capacity;
- (d) Improvements or modifications to existing utility generation facilities that change the production capability of the generation facility site in question, by not more than thirty megawatts, based on the utility's share of the total generation facility site output, and that have an estimated cost of not more than \$30 million;
- (e) Interruptible service provided to the utility's electric customers;
- (f) Modifications to, or amendments of, existing power purchase agreements, which do not extend the agreement more than four years, that add not more than thirty MW of capacity to the utility's system, and that are cost effective in comparison to other supply-side alternatives available to the utility; and
- (g) Utility investments in emission control equipment at existing generation plants.

**3612. 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 3610.
- (b) Contents of the Request(s) for Proposals. The proposed RFP(s) shall include the bid evaluation criteria, including the weight to be assigned to each criterion the utility plans to use in ranking the bids received. The utility shall also include in its proposed RFP(s): 1) base-load, intermediate and/or peaking needs, and preferred fuel type; 2) reasonable estimates of transmission costs for resources located in different areas; 3) the extent and degree to which resources must be dispatchable, including the requirement, if any, that resources be able to operate under automatic dispatch control; 4) the utility's proposed standard contract(s) for the acquisition of resources; 5) proposed contract term lengths; 6) discount rate and 7) general planning assumptions, and any other information necessary to implement a fair and reasonable bidding program.

**3613. Commission Review and Approval of Least-Cost Resource Plans.**

- (a) Review on the Merits. The utility's plan, as developed pursuant to rule 3604 will be filed in the form of an application administered pursuant to the Commission's Rules of Practice and Procedure. The Commission may hold a hearing for the purpose of reviewing and rendering a decision regarding the contents of the utility's plan upon its filing.
- (b) Basis for Commission Decision. Based upon the evidence of record, the Commission shall issue a written decision approving, disapproving, or ordering modifications, in whole or in part to the utility's plan. If the Commission declines to approve a plan, either in whole or in part, the utility shall make changes to the plan in response to the Commission's decision. Within 60 days of the Commission's rejection of a plan, the utility shall file an amended plan with the Commission, and provide copies to all parties who participated in the application docket concerning the utility's plan. All such parties may participate in any hearings regarding the amended plan.
- (c) Contents of the Commission Decision. The Commission decision approving or denying the plan shall address the contents of the utility's plan filed in accordance with rule 3604. If the record contains sufficient evidence, the Commission shall specifically approve or modify: (1) the utility's assessment of need for additional resources in the resource acquisition period, (2) the utility's plans for acquiring additional resources through the competitive acquisition process, or through an alternative acquisition process, and (3) components of the utility's proposed RFP, such as the proposed evaluation criteria.
- (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. Because the Commission will not approve a utility's selection of specific resources, the Commission's approval of a plan creates no presumptions regarding those resources.
  - (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 circumstance 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 certificate of public convenience and necessity to meet customer need specifically approved by the Commission in its decision on the least-cost 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.

#### 3614. Reports

- (a) Annual Progress Reports. The utility shall file with the Commission, and provide copies to all parties to the most recent least-cost planning docket, annual progress reports after submission of its plan application. The annual progress reports will inform the Commission of the utility's efforts under the approved plan. Annual progress reports shall also contain:
  - (I) An updated annual electric demand and energy forecast developed pursuant to rule 3606;
  - (II) An updated evaluation of existing resources developed pursuant to rule 3607;
  - (III) An updated evaluation of planning reserve margins and contingency plans developed pursuant to rule 3608;
  - (IV) An updated assessment of need for additional resources developed pursuant to rule 3609;
  - (V) An updated report of the utility's plan to meet the resource need developed pursuant to rule 3610 and the resources the utility has acquired to date in implementation of the plan; and
  
- (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 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) Within 45 days after the utility has selected the winning bidders, the utility shall report: (1) the number of winning bids, (2) the quantity of MW offered by the winning bidders, (3) a breakdown of the number and MW of winning bids by resource type, name and location, and (4) a description of the prices of the winning bids.

**3615. Amendment of an Approved plan.** The utility may, at any time, file an application to amend the contents of a plan approved pursuant to rule 3613. Such an application shall be administered pursuant to the Commission's rules of Practice and Procedure.

~~THE  
PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF COLORADO  
(COPUC)~~

~~ELECTRIC INTEGRATED RESOURCE PLANNING RULES  
COPUC 4 CCR 723-21~~

**[REPEALED IN THEIR ENTIRETY]**

[Omitted Material: All the current ELECTRIC INTEGRATED RESOURCE PLANNING RULES, 4 CCR 723-21, are repealed and reenacted elsewhere. Therefore, all the remaining pages are omitted.]