

Decision No. C11-0934

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 11R-416E

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

**ORDER ADDRESSING APPLICATIONS FOR
REHEARING, REARGUMENT OR RECONSIDERATION**

Mailed Date: August 29, 2011
Adopted Date: August 24, 2011

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I. BY THE COMMISSION

A. Statement

1. On July 27, 2011, the Commission issued Decision No. C11-0810 adopting revisions to its Electric Resource Planning (ERP) Rules contained in 4 *Code of Colorado Regulations* (CCR) 723-3-3600, *et seq.*, in order to satisfy various requirements resulting from the passage of House Bill (HB) 11-1262. This new law amends § 40-6-107, C.R.S., by adding requirements related to the transparency and confidentiality of information associated with the planning and acquisition of electric generation resources.

2. Applications for Rehearing, Reargument, or Reconsideration (RRR) concerning Decision No. C11-0810 were filed on August 16, 2011 by Public Service Company of Colorado (Public Service), Black Hills/Colorado Electric Utility Company, L.P. (Black Hills), and the Colorado Independent Energy Association (CIEA).

3. On August 22, 2011, Black Hills filed a Motion for Leave to File Response to the Applications for RRR filed by Public Service and CIEA. Black Hills also filed such response on the same day. Noble Energy, Inc., Chesapeake Energy Corporation, and EnCana Oil & Gas (USA) (collectively called the Gas Intervenors) also filed a response to Black Hills' motion on August 22, 2011.

4. We find good cause to grant Black Hills' Motion for Leave to File Response to the Applications for RRR.

5. Now being duly advised in the matter, we adopt the revised rules as set forth in Attachment A, consistent with the discussion below. We grant the application for RRR filed by CIEA, and grant, in part, and deny, in part, the applications for RRR filed by Public Service and Black Hills.

B. Discussion.**1. Paragraph 3613(i). Complete Competitive Acquisition Within 18 Months**

6. Public Service proposes to strike from paragraph 3613(i) the sentence: “The utility must execute final contracts for the potential resources prior to the completion of the competitive acquisition process to receive the presumption of prudence afforded by paragraph 3617(d).” Public Service argues that the provision is unnecessary and is unrelated to the purpose for which HB 11-1262 was adopted by the General Assembly.

7. We disagree. It is important that the utility complete contract negotiations within the 18-month time period and that there should be consequences if it fails to do so. Further, this rule explicitly provides for the filing of extensions to this 18-month deadline for good cause shown.

2. Paragraphs 3613(j) and (k) and 3616(f). Public Disclosure of Bid Information at the Conclusion of the Proceeding

8. Public Service and CIEA provide a joint proposal to modify paragraph 3613(k) as adopted in Decision No. C11-0810. Specifically, they request the adoption of the following language:

(k) Upon completion of the competitive acquisition process under paragraph 3613(i), the utility shall post on its website the following information from all bids and utility proposals: bidder name; bid price and utility cost, stated in terms that allow reasonable comparison of the bids with utility proposals; generation technology type; size of facility; contract duration or expected useful life of facility for utility proposals; and whether the proposed power purchase contract includes an option for the utility to purchase the facility during or at the end of the contract term.

9. Black Hills advocates a different approach. Black Hills proposes to delete paragraphs 3613(j) and (k) as well as paragraph 3616(f) to the extent that these provisions require public disclosure of bid information. As discussed above, Black Hills also filed a motion

for leave to reply to the Public Service and CIEA applications for RRR. Black Hills opposes the language proposed by Public Service and CIEA and reiterates its request to delete the requirement to make the bid information public at the conclusion of the proceeding. Alternatively, Black Hills requests rehearing on this issue. Gas Intervenors similarly requests rehearing on this issue.

10. We disagree with Black Hills' argument that the requirement to release bid information as public, either through the requirements as adopted in Decision No. C11-0810 or through the Public Service and CIEA proposal, will chill bidding. As we stated in Decision No. C11-0810, we conclude that consumer protection and bidder concerns about a fair marketplace outweigh concerns over disclosing bids at the end of the process.

11. We further disagree with Black Hills' argument that it specifically should not be subject to this requirement to disclose bid information because Black Hills is a smaller utility than Public Service. We find that as a smaller utility, Black Hills should be concerned about bidder participation, making bid transparency all the more important for Black Hills. Further, since Black Hills itself and its affiliate each emerged as winners from the Company's last ERP and its approved resource solicitation, we are concerned that bidders may be reluctant to participate in Black Hills' future competitive bidding processes, due to the possibility that continued utility and affiliate participation could prevent contracts being awarded to independent power producers. Such concerns about bidder participation lead us to conclude that it is more important for bidders to know that they will see bid details at the end of the competitive bidding process and be able to confirm that the bidding process was indeed fair.

12. We grant Public Service's and CIEA's proposed revision to paragraph 3613(k) for the reasons they set forth. In addition, we modify paragraph 3616(f) regarding the utility's

request for proposals (RFPs) to conform with those changes to paragraph 3613(k). We also find no need to change paragraph 3613(j).

13. We also deny Black Hills' and Gas Intervenors' request for rehearing on this issue, since the proposal offered by Public Service and CIEA in their Applications for RRR represents a modification to the requirement adopted in Decision No. C11-0810 within the spectrum of positions advanced in comments and at hearing in this proceeding. Furthermore, interested persons have the right to raise concerns in a subsequent application for RRR in light of the proposed rule change we adopt by this Decision.

3. Rule 3614. Confidential Information

14. Public Service objects to the requirements in rule 3614 to disclose highly confidential information to any party, without regard to the party's interest or nature of the highly confidential information. Public Service instead recommends adding a provision for a Commission ruling at the beginning of the ERP proceeding to establish which parties or groups of parties are eligible to gain access to specific highly confidential information.

15. Public Service first asserts that the treatment of highly confidential information in paragraph 3614(b) does not have any meaningful difference from the treatment of confidential information established in rule 1100. We disagree. The requirements in the non-disclosure agreement (NDA) for subject matter experts (SMEs) in the new rule 3614 contains specific limitations to permit SMEs access to the information only if the SME did not and will not assist in any power supply proposal associated with that proceeding, and further will not disseminate the information to unauthorized third parties or use it for competitive purposes. This NDA language applies both to outside consultants hired by a party or to non-attorney technical or policy experts within a party's organization. The SME must also have

attorney oversight to assure that confidentiality protections are properly maintained. These NDA provisions are distinct from the Commission's standard requirements for protecting confidential information under rule 1100, and they are intended to accomplish Public Service's stated objective to "never include persons who expect to participate as a bidder, represents [sic] a bidder, or consults [sic] with a bidder in the competitive procurement portion of the proceeding in which the highly confidential information is produced."

16. The NDA requirements for attorneys in rule 3614 also contain provisions to protect highly confidential information. Although this NDA language could allow the attorney to assist bidders in developing proposals, such assistance is limited by the prohibitions on the dissemination of the information to unauthorized third parties and using the information for competitive purposes. Attorneys would place their license and career in jeopardy if they improperly divulged or used highly confidential information. Further, the NDA language requires the attorney to oversee the confidentiality protections used by the associated SME as well as the protections used by attorney's firm.

17. Next, Public Service asserts that it is improper to promulgate a *per se* rule that allows counsel and SMEs for *any* party to access highly confidential information. As we discussed in Decision No. C11-0810,¹ HB 11-1262 requires the Commission to expand access to highly confidential information and computer-based modeling inputs and assumptions while keeping in mind the benefits of competitive bidding for the acquisition of potential resources. Consistent with this intent, we continue to reject the notion that maintaining the status quo of our ERP Rules with respect to the treatment of highly confidential information is an acceptable outcome from this Docket. We find that the NDA language, as modified below,

¹ See paragraph 15.

adequately protects the highly confidential information, and we deny Public Service's request for a requirement for the Commission to establish as a part of the resource plan proceeding which individual parties or groups of parties are eligible to see specific highly confidential information. Specifically, we deny the proposed insertion of "entitled to have access to the highly confidential information" in two places in paragraph 3614(b).

18. We will, however, grant the other two language changes Public Service proposes for subparagraph 3614(b)(I). These changes replace "my client" with "that any subject matter expert to whom I have authorized access to highly confidential information," and replace "further" with "hereby." We find both of these changes to be reasonable.

19. With respect to Public Service's argument that rule 3614 would improperly require the release of software information to parties in violation of the utility's license for such software, we clarify that the rule applies only to the extent that the utility is permitted to provide information in accordance with the terms of its license. However, if the utility proposes to use any licensed software and associated information in the resource plan proceeding, the utility must provide reasonable information to parties so that they can understand and critique the inputs and assumptions relied upon in the utility's case. It may be possible for parties to obtain a license for such software, or the utility may need to provide the information in a different format to avoid licensing restrictions. We therefore deny Public Service's proposal to add "other than computer software or code for which a license is required," in two places in paragraph 3614(b).

20. We also recognize that, in certain circumstances, a waiver from the provisions in rule 3614 may be appropriate. For example, if a utility receives a signed NDA pursuant to rule 3614 and it believes that particular NDA should not be honored, the utility should expeditiously file a rule waiver petition. Delay in filing such a petition would likely prejudice

the party seeking access to the highly confidential information and will therefore not be countenanced.

4. Paragraph 3615(b). Evaluation of Resources Outside of a Resource Plan

21. Public Service proposes to add the phrase “at the request of the bidder” to the requirement to provide information to bidders outside of a resource plan.

22. We disagree with this proposed language. Although we recognize that HB 11-1262 requires the provision of such information “at the request of a bidder,” we found that, for resources within a resource plan proceeding, it is more efficient for the utility to provide the information automatically so as to avoid delay. For resources acquired outside of a resource plan proceeding, the acquisition process will likely be expedited. The automatic provision of information is therefore likewise appropriate. Furthermore, we do not anticipate that such automatic provision of information will be a significant burden, as resource acquisitions conducted outside of our ERP process should be infrequent, targeted, and affecting few bidders.

5. Additional Rule Changes

23. We find good cause to grant the following minor rule changes. In paragraph 3602(i), we grant Public Service's request to strike the word “alleged” from the definition of “modeling errors and omissions.” Likewise, we grant Black Hills’ request to strike “or outputs from” from the same paragraph. Finally, we grant Public Service’s request to strike “at a minimum” from paragraph 3613(b).

24. All requests for RRR not addressed by this Decision are denied.

II. ORDER

A. The Commission Orders That:

1. The Motion for Leave to File Response to Applications for Rehearing, Reargument or Reconsideration (RRR) of Commission Decision C11-0810 filed by Black Hills/Colorado Electric Utility Company LP (Black Hills) on August 22, 2011 is granted.

2. Colorado Independent Energy Association's Application for RRR of Commission Decision C11-0810, filed on August 16, 2011, is granted.

3. Public Service Company of Colorado's Application for RRR of Commission Decision C11-0810, filed on August 16, 2011, is granted, in part, and denied, in part, consistent with the discussion above.

4. Black Hills' Application for RRR of Commission Decision C11-0810, filed on August 16, 2011, is granted, in part, and denied, in part, consistent with the discussion above.

5. The Commission adopts the rules attached to this Order as Attachment A, consistent with the discussion above.

6. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

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

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

9. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

10. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 24, 2011.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

MATT BAKER

Commissioners

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3 RULES REGULATING ELECTRIC UTILITIES

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to describe the electric service to be provided by jurisdictional utilities and master meter operators to their customers; to designate the manner of regulation over such utilities and master meter operators; and to describe the services these utilities and master meter operators shall provide. In addition, these rules identify the specific provisions applicable to public utilities or other persons over which the Commission has limited jurisdiction. These rules address a wide variety of subject areas including, but not limited to, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, master meter operations, flexible regulation, procedures for administering the Low-Income Energy Assistance Act, cost allocation between regulated and unregulated operations, recovery of costs, the acquisition of renewable energy, small power producers and cogeneration facilities, and appeals regarding local government land use decisions. The statutory authority for these rules can be found at §§ 29-20-108, 40-1-103.5, 40-2-108, 40-2-123, 40-2-124, 40-2-129, 40-3-102, 40-3-103, 40-3-104.3, 40-3-111, 40-3-114, 40-3.2-104, 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, [40-6-107](#), 40-8.7-105(5), 40-9.5-107(5), and 40-9.5-118, C.R.S.

GENERAL PROVISIONS

3000. Scope and Applicability.

* * * * *

[indicates omission of unaffected rules]

(c) The following rules in this Part 3 shall apply to **cooperative electric generation and transmission associations**:

- (I) Rules 3002 (a)(III), (a)(XVI), (b), and (c) concerning the filing of applications for certificates of public convenience and necessity for facilities or for appeals of local land use decisions.
- (II) Rule 3006(j) concerning the filing of electric resource planning reports.
- (III) Rule 3102 concerning applications for certificates of public convenience and necessity for facilities.
- (IV) Rule 3103 concerning amendments to certificates of public convenience and necessity for facilities.

- (V) Rule 3104 concerning application to transfer, to obtain a controlling interest, or to merger with another entity.
- (VI) Rule 3200 concerning construction, installation, maintenance, and operation of facilities.
- (VII) Rule 3204 concerning incidents occurring in connection with the operation of facilities.
- (VIII) Rule 3205 concerning construction or expansion of generating capacity.
- (IX) Rule 3206 concerning construction or extension of transmission facilities.
- (X) Rule 3253(a) concerning major event reporting.
- (XI) Rules 3602, 3605, and 361~~87~~ (a) concerning electric resource planning.
- (XII) Rules 3700 through 3707 concerning appeals of local governmental land use decisions actions.

* * * * *

[indicates omission of unaffected rules]

3002. Applications.

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

- (VIII) For approval of an air quality improvement program, as provided for in rule 3107.
- (IX) To amend a tariff on less than statutory notice, as provided in rule 3109.
- (X) For variance of voltage standards, as provided in rule 3202.
- (XI) For approval of meter and equipment testing practices, as provided in rule 3303.
- (XII) For approval of a meter sampling program, as provided in rule 3304.
- (XIII) For approval of a refund plan, as provided in rule 3410.
- (XIV) For approval of a Low-Income Energy Assistance Plan, as provided in rule 3411.
- (XV) For approval of a cost assignment and allocation manual, as provided in rule 3503.
- (XVI) For approval of or for amendment to a least-cost resource plan, as provided in rules 3603, 361~~83~~, and 361~~95~~.
- (XVII) For approval of a compliance plan, as provided in rule 3657.
- (XVIII) For appeal of local government land use decision, as provided in rule 3703.
- (XIX) For any other matter not specifically described in this rule, unless such matter is required to be submitted as a petition under rule 1304, as a motion, or as some other specific type of submittal.

* * * * *

[indicates omission of unaffected rules]

3006. Reports.

- (a) On or before April 30th of each year, each utility shall file with the Commission an annual report for the preceding calendar year. The utility shall submit the annual report on forms prescribed by the Commission; shall properly complete the forms; and shall ensure the forms are verified and signed by a person authorized to act on behalf of the utility; and shall file the required number of copies pursuant to rule 1204(a)(IV) of the Commission's Rules of Practice and Procedure. If the Commission grants the utility an extension of time to file the annual report, the utility nevertheless shall file with the Commission, on or before April 30, the utility's total gross operating revenue from intrastate utility business transacted in Colorado for the preceding calendar year.
- (b) If a certified public accountant prepares an annual report for a utility, the utility shall file two copies of the report with the Commission within 30 days after publication.
- (c) A cooperative electric association shall file with the Commission a report listing its designation of service.

- (d) A cooperative electric association shall file with the Commission a report of election to be governed by § 40-8.5-102, C.R.S., pertaining to unclaimed monies. This report shall be filed within 60 days of the election.
- (e) Pursuant to rule 3204, a utility shall file with the Commission a report concerning any incident which results in death, serious injury, or significant property damage.
- (f) Pursuant to rules 3252 and 3253, a utility shall file with the Commission a report concerning any major event.
- (g) Pursuant to rule 3411(e)(IV), a utility shall file with the Commission a report concerning its fund administration of the Low-Income Energy Assistance Act.
- (h) Pursuant to rules 3503(a), 3504(a), and 3503(i), a utility shall file with the Commission cost assignment and allocation manuals, fully-distributed cost studies, and required updates.
- (i) Pursuant to rule 361~~87~~(a), a utility shall file with the Commission an annual progress report concerning the utility's electric resource plan.
- (j) Pursuant to rule 361~~87~~(b), a utility shall file with the Commission reports on competitive acquisition bidding of the utility's electric resource plan.
- (k) Pursuant to rule 3662, a utility shall file with the Commission its annual compliance report.
- (l) A utility shall file with the Commission any report required by a rule in this 3000 series of rules.
- (m) A utility shall file with the Commission such special reports as the Commission may require.

* * * * *

[indicates omission of unaffected rules]

ELECTRIC RESOURCE PLANNING

3600. Applicability.

This rule shall apply to all jurisdictional electric utilities in the state of Colorado that are subject to the Commission's regulatory authority. Cooperative electric associations engaged in the distribution of electricity (i.e., rural electric associations) are exempt from these rules. Cooperative electric generation and transmission associations are subject only to reporting requirements as specified in rule 3605.

3601. Overview and Purpose.

The purpose of these rules is to establish a process to determine the need for additional electric resources by electric utilities subject to the Commission's jurisdiction and to develop cost-effective resource portfolios to meet such need reliably. It is the policy of the state of Colorado that a primary goal of electric utility resource planning is to minimize the net present value of revenue requirements. It is also the policy of the state of Colorado that the Commission gives the fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies.

3602. Definitions.

The following definitions apply to rules 3600 through 3619~~8~~. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) "Availability factor" means the ratio of the time a generating facility is available to produce energy at its rated capacity, to the total amount of time in the period being measured.
- (b) "Annual capacity factor" means the ratio of the net energy produced by a generating facility in a year, to the amount of energy that could have been produced if the facility operated continuously at full capacity year round.
- (c) "Cost-effective resource plan" means a designated combination of new resources that the Commission determines can be acquired at a reasonable cost and rate impact.
- (d) "Demand-side resources" means energy efficiency, energy conservation, load management, and demand response or any combination of these measures.
- (e) "End-use" means the light, heat, cooling, refrigeration, motor drive, or other useful work produced by equipment that uses electricity or its substitutes.
- (f) "Energy conservation" means the decrease in electricity requirements of specific customers during any selected time period, resulting in a reduction in end-use services.
- (g) "Energy efficiency" means the decrease in electricity requirements of specific customers during any selected period with end-use services of such customers held constant.
- (h) "Heat 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.
- ~~(i) "Modeling error or omission" means any incorrect, incomplete, or improper input to computer-based modeling performed by the utility, for evaluating a proposed resource, of a magnitude that alters the model results.~~
- (i) "Net present value of revenue requirements" means the current worth of the total expected future revenue requirements associated with a particular resource portfolio, expressed in dollars in the year the plan is filed as discounted by the appropriate discount rate.
- ~~(j) "Planning period" means the future period for which a utility develops its plan, and the period, over which net present value of revenue requirements for resources are calculated. For purposes of this rule, the planning period is twenty to forty years and begins from the date the utility files its plan with the Commission.~~
- ~~(l) "Potential resource" means an electric generation facility bid into a competitive acquisition process in accordance with an approved resource plan.~~
- (~~k~~m) "Renewable energy resources" means all renewable energy resources as defined in the Commission's Renewable Energy Standard Rules.

- (~~h~~) "Resource acquisition period" means the first six to ten years of the planning period, in which the utility acquires specific resources to meet projected electric system demand and energy requirements. The resource acquisition period begins from the date the utility files its plan with the Commission.
- (~~m~~) "Resource plan" or "plan" means a utility plan consisting of the elements set forth in rule 3604.
- (~~r~~) "Resources" means supply-side resources and demand-side resources used to meet electric system requirements.
- (~~e~~) "Section 123 resources" means new energy technology or demonstration projects, including new clean energy or energy-efficient technologies under § 40-2-123 (1), C.R.S., and Integrated Gasification Combined Cycle projects under § 40-2-123(2), C.R.S.
- (~~p~~) "Supply-side resources" means resources that provide electrical energy or capacity to the utility. Supply-side resources include utility owned generating facilities and energy or capacity purchased from other utilities and non-utilities.
- (~~e~~) "Typical day load pattern" means the electric demand placed on the utility's system for each hour of the day.

3603. Resource Plan Filing Requirements.

- (~~a~~) Jurisdictional electric utilities shall file a resource plan pursuant to these rules on or before October 31, 2011, and every four years thereafter. In addition to the required four-year cycle, a utility may file an interim plan, pursuant to rule 3604. If a utility chooses to file an interim plan more frequently than the required four-year cycle, its application must state the reasons and changed circumstances that justify the interim filing.
- (~~b~~) Each jurisdictional electric utility shall contemporaneously file with its resource plan submitted under paragraph 3603(a), a motion or motions seeking extraordinary protection of information listed as highly confidential pursuant to paragraph 3604(j) and consistent with rule 1100 of the Commission's Rules of Practice and Procedure. The utility shall specifically address appropriate confidentiality protections and nondisclosure requirements for modeling inputs and assumptions that may be used to evaluate a potential resource and that reasonably relate to that facility. The utility's motion or motions shall specify that response time shall run concurrently with the intervention deadline established in the resource plan proceeding. Finally, during the course of the resource plan proceeding, a utility may file additional motions seeking extraordinary protection of information for good cause shown.

3604. Contents of the Resource Plan.

The utility shall file a plan with the Commission that contains the information specified below. When required by the Commission, the utility shall provide work-papers to support the information contained in the plan. The plan shall include the following:

- (a) A statement of the utility-specified resource acquisition period and planning period. The utility shall consistently use the specified resource acquisition and planning periods throughout the entire resource plan and resource acquisition process. The utility shall include a detailed explanation as to why the specific period lengths were chosen in light of the assessment of the needs of the utility system.
- (b) An annual electric demand and energy forecast developed pursuant to rule 3606.
- (c) An evaluation of existing resources developed pursuant to rule 3607.
- (d) An evaluation of transmission resources pursuant to rule 3608.
- (e) An assessment of planning reserve margins and contingency plans for the acquisition of additional resources developed pursuant to rule 3609.
- (f) An assessment of the need for additional resources developed pursuant to rule 3610.
- (g) The utility's plan for acquiring these resources pursuant to rule 3611, including a description of the projected emissions, in terms of pounds per MWh and short-tons per year, of sulfur dioxide, nitrogen oxides, particulate matter, mercury and carbon dioxide for any resources proposed to be owned by the utility and for any new generic resources included in the utility's modeling for its resource plan.
- (h) The annual water consumption for each of the utility's existing generation resources, and the water intensity (in gallons per MWh) of the existing generating system as a whole, as well as the projected water consumption for any resources proposed to be owned by the utility and for any new generic resources included in the utility's modeling for its resource plan.
- (i) The proposed RFP(s) the utility intends to use to solicit bids for energy and capacity resources to be acquired through a competitive acquisition process, including model contracts, pursuant to rule 36165.
- (j) A list of the information related to the resource plan proceeding that the utility claims is confidential and a list of the information related to the resource plan proceeding that the utility claims is highly confidential. The utility shall also list the information that it will provide to owners or developers of a potential resource under paragraphs 3613(a) and (b). The utility shall further explicitly list the protections it proposes for bid prices, other bid details, information concerning a new resource that the utility proposes to build and own as a rate base investment, other modeling inputs and assumptions, and the results of bid evaluation and selection. The protections sought by the utility for these items shall be specified in the motion(s) submitted under paragraph 3603(b). For good cause shown the utility may seek to protect additional information as confidential or highly confidential by filing the appropriate motion under rule 1100 of the Commission's Rules of Practice and Procedure in a timely manner. ~~The proposed treatment of and possible future disclosure of bid prices, other bid details, costs of utility self-build proposals and details associated with such proposals, bid evaluation results, and any other information that the utility may seek to protect as highly confidential.~~

- (k) Descriptions of at least three alternate plans that can be used to represent the costs and benefits from increasing amounts of renewable energy resources, demand-side resources, or Section 123 resources potentially included in a cost-effective resource plan. One of the alternate plans shall represent a baseline case that describes the costs and benefits of the new utility resources required to meet the utility's needs during the planning period that minimize the net present value of revenue requirements and that complies with the Renewable Energy Standard, 4 CCR 723-3-3650 et seq., as well as with the demand-side resource requirements under § 40-3.2-104, C.R.S. The other alternate plans shall represent alternative combinations of resources that meet the same resource needs as the baseline case but that include proportionately more renewable energy resources, demand-side resources, or Section 123 resources. The utility shall propose a range of possible future scenarios and input sensitivities for the purpose of testing the robustness of the alternate plans under various parameters.
- (l) An assessment of the costs and benefits of the integration of intermittent renewable energy resources on the utility's system, including peer-reviewed studies, consistent with the amounts of renewable energy resources the utility proposes to acquire.

3605. Cooperative Electric Generation and Transmission Association Reporting Requirements.

Pursuant to the schedule established in rule 3603, each cooperative electric generation and transmission association shall report its forecasts, existing resource assessment, planning reserves, and needs assessment, consistent with the requirements specified in rules 3606, 3607, 3609(a) and 3610. Each cooperative generation and transmission association shall also file annual reports pursuant to subparagraphs (a)(I) through (a)(VI) of rule 3610~~7~~.

* * * * *

[indicates omission of unaffected rules]

3609. Planning Reserve Margins and Contingency Plans.

- (a) The utility shall provide a description of, and justification for, the means by which it assesses the desired level of reliability on its system throughout the planning period (e.g., probabilistic or deterministic reliability indices).
- (b) The utility shall develop and justify planning reserve margins for the resource acquisition period for the base case, high, and low forecast scenarios established under rule 3606, to include risks associated with: (1) the development of generation, (2) losses of generation capacity, (3) purchase of power, (4) losses of transmission capability, (5) risks due to known or reasonably expected changes in environmental regulatory requirements, and (6) other risks. The utility shall develop planning reserve margins for its system over the planning period beyond the resource acquisition period for the base case forecast scenario. The utility shall also quantify the recommended or required reliability performance criteria for reserve groups and power pools to which the utility is a party.
- (c) Since actual circumstances may differ from the most likely estimate of future resource needs, the utility shall develop contingency plans for the resource acquisition period. As a part of its plan, the utility shall provide, under seal, a description of its proposed contingency plans for the acquisition of (1) additional resources if actual circumstances deviate from the most likely

estimate of future resource needs developed pursuant to rule 3610, or (2) replacement resources in the event that resources are not developed in accordance with a Commission-approved plan under rule 36176. The utility will identify the estimated costs it will incur in developing the contingency plan for addressing the acquisition of these resources (e.g., purchasing equipment options, establishing sites, engineering). The Commission will consider approval of contingency plans only after the utility receives bids, as described in subparagraph 36187(b)(II). The provisions of paragraph 36176(d) shall not apply to the contingency plans unless explicitly ordered by the Commission.

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[indicates omission of unaffected rules]

3613. Bid Evaluation and Selection.

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

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

- (ad) Within 120 days of the utility's receipt of bids in its competitive acquisition process, the utility shall file a report with the Commission describing the cost-effective resource plans that conform to the range of scenarios for assessing the costs and benefits from the potential acquisition of increasing amounts of renewable energy resources, demand-side resources, or Section 123 resources as specified in the Commission's decision approving or rejecting the utility plan developed under rule 3604. In the event that the utility's preferred cost-effective resource plan differs from the Commission-specified scenarios, the utility's report shall also set forth the utility's preferred plan. The utility's plan shall also provide the Commission with the best value employment metrics information provided by bidders under rule 361~~65~~ and by the utility pursuant to rule 3611.
- (be) Within 30 days after the filing of the utility's 120-day report under paragraph 3613(da), the IE shall separately file a report that contains the IE's analysis of whether the utility conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported. The IE shall provide confidential versions of these reports to Staff of the Commission and the OCC.
- (ef) Within 45 days after the filing of the utility's 120-day report under paragraph 3613(da), the parties in the resource plan proceeding may file comments on the utility's report and the IE's report.
- (dg) Within 60 days after the filing of the utility's 120-day report under paragraph 3613(da), the utility may file comments responding to the IE's report and the parties' comments.
- (eh) Within 90 days after the receipt of the utility's 120-day report under paragraph 3613(da), the Commission shall issue a written decision approving, conditioning, modifying, or rejecting the utility's preferred cost-effective resource plan, which decision shall establish the final cost-effective resource plan. The utility shall pursue the final cost-effective resource plan either with a due diligence review and contract negotiations, or with applications for CPCNs (other than those CPCN's provided in paragraph 3611(e)), as necessary. In rendering the decision on the final cost-effective resource plan, the Commission shall weigh the public interest benefits of competitively bid resources provided by other utilities and non-utilities as well as the public interest benefits of resources owned by the utility as rate base investments. In accordance with §§ 40-2-123, 40-2-124, 40-2-129, and 40-3.2-104, C.R.S, the Commission shall also consider renewable energy resources; resources that produce minimal emissions or minimal environmental impact; energy-efficient technologies; and resources that affect employment and the long-term economic viability of Colorado communities. The Commission shall further consider resources that provide beneficial contributions to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases.

- (i) The utility must complete the competitive acquisition process by executing contracts for potential resources within 18 months after the utility's receipt of bids in its competitive acquisition process. The utility may file a motion in the resource plan proceeding requesting to extend this deadline for good cause. The utility must execute final contracts for the potential resources prior to the completion of the competitive acquisition process to receive the presumption of prudence afforded by paragraph 3617(d).
- (j) Upon completion of the competitive acquisition process pursuant to paragraph 3613(i), and consistent with the subsequent requirement for website posting of bids and utility proposals as required in paragraph 3613(k), protected information that was filed in the resource plan proceeding will be refiled as non-confidential or public information as specified in the Commission order described below. To satisfy this requirement the utility shall file a proposal that addresses the public release of all confidential and highly confidential information related to bids for potential resources and resources the utility proposed to build and own as a rate base investment. At a minimum the utility shall address its 120-day report in paragraph 3613(d), the IE's report in paragraph 3613(e), and all documents related to these reports filed by the utility, parties, or the IE. The utility shall file its proposal in the resource plan proceeding within 14 months after the receipt of bids in its competitive acquisition process. Parties will have 30 calendar days after the utility files its proposal to file responses. The utility then may reply to any responses filed within ten calendar days. The Commission shall issue an order specifying to the utility and other parties the documents that shall be refiled as public information.
- (k) Upon completion of the competitive acquisition process under paragraph 3613(i), the utility shall post on its website the following information from all bids and utility proposals: bidder name; bid price and utility cost, stated in terms that allow reasonable comparison of the bids with utility proposals; generation technology type; size of facility; contract duration or expected useful life of facility for utility proposals; and whether the proposed power purchase contract includes an option for the utility to purchase the facility during or at the end of the contract term.

3614. Confidential Information Regarding Electric Generation Facilities

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

(I) Attorney highly confidential nondisclosure agreement terms.

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

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

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

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

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

36143615. Exemptions and Exclusions.

- (a) The following resources need not be included in an approved resource plan prior to acquisition:
- (I) Emergency maintenance or repairs made to utility-owned generation facilities.
 - (II) Capacity and/or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of not more than 30 megawatts.
 - (III) Capacity and/or energy from the generation facilities of other utilities or from non-utility generators pursuant to agreements for not more than a two year term (including renewal terms) or for not more than 30 megawatts of capacity.
 - (IV) Improvements or modifications to existing utility generation facilities that change the production capability of the generation facility site in question, by not more than 30 megawatts, based on the utility's share of the total power generation at the facility site and that have an estimated cost of not more than \$30 million.
 - (V) Interruptible service provided to the utility's electric customers.
 - (VI) Modification to, or amendment of, existing power purchase agreements provided the modification or amendment does not extend the agreement more than four years, does not add more than 30 MW of capacity to the utility's system, and is cost effective in comparison to other supply-side alternatives available to the utility.
 - (VII) Utility investments in emission control equipment at existing generation plants.
 - (VIII) Utility administered demand-side programs implemented in accordance with § 40-3.2-104, C.R.S.

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

36153616. Request(s) For Proposals.

- (a) Purpose of the request(s) for proposals. The proposed RFP(s) filed by the utility shall be designed to solicit competitive bids to acquire additional resources pursuant to rule 3611. To minimize bidder exceptions and to enhance bid comparability, the utility shall include in its proposed RFP(s) a model contract to match each type of resource need, including contracts for supply-side resources, renewable energy resources, or Section 123 resources as required by the approved resource plan.
- (b) Contents of the request(s) for proposals. The proposed RFP(s) shall include the bid evaluation criteria the utility plans to use in ranking the bids received. The utility shall also include in its proposed RFP(s): (1) details concerning its resource needs; (2) reasonable estimates of transmission costs for resources located in different areas pursuant to rule 3608, including a detailed description of how the costs of future transmission will apply to bid resources; (3) the extent and degree to which resources must be dispatchable, including the requirement, if any, that resources be able to operate under automatic dispatch control; (4) the utility's proposed model contract(s) for the acquisition of resources; (5) proposed contract term lengths; (6) discount rate; (7) general planning assumptions; and (8) any other information necessary to implement a fair and reasonable bidding program.
- (c) Employment metrics. The utility shall request from bidders the following information relating to best value employment metrics for each bid resource:
 - (I) The availability of training programs, including training through apprenticeship programs registered with the United States Department of Labor, Office of Apprenticeship and Training;
 - (II) The employment of Colorado workers as compared to importation of out-of-state workers;
 - (III) Long-term career opportunities; and
 - (IV) Industry-standard wages, health care, and pension benefits.
- (d) When issuing its RFP, the utility shall provide potential bidders with a copy of the Commission's order or orders specifying the form of nondisclosure agreement necessary to obtain access to confidential and highly confidential modeling inputs and assumptions provided by the utility pursuant to paragraph 3613(b). The utility shall also provide potential bidders with an explanation of the process by which disputes regarding inputs and assumptions to computer-based modeling will be addressed by the Commission pursuant to paragraph 3613(b).
- (e) The utility shall require bidders to provide the contact name of the owner or developer designated to receive notice pursuant to paragraph 3613(a).
- (f) The utility shall inform bidders that certain bid information submitted in response to the RFP will be made available to the public through the posting of certain bid information on the utility's website upon the completion of the competitive acquisition process pursuant to paragraph 3613(k).

36163617. Commission Review and Approval of Resource Plans.

- (a) Review on the merits. The utility's plan, as developed pursuant to rule 3604, shall be filed as an application; shall meet the requirements of paragraphs 3002(b) and 3002(c); and shall be administered pursuant to the Commission's Rules Regulating Practice and Procedure. The Commission may hold a hearing for the purpose of reviewing, and rendering a decision regarding, the contents of the utility's filed resource plan.
- (b) Basis for Commission decision. Based upon the evidence of record, the Commission shall issue a written decision approving, disapproving, or ordering modifications, in whole or in part, to the utility's plan filed in accordance with rule 3604. If the Commission declines to approve a plan, either in whole or in part, the utility shall make changes to the plan in response to the Commission's decision. Within 60 days of the Commission's rejection of a plan, the utility shall file an amended plan with the Commission and shall provide copies to all parties who participated in the application docket concerning the utility's plan. All such parties may participate in any hearings regarding the amended plan.
- (c) Contents of the Commission decision. The Commission decision approving or denying the plan shall address the contents of the utility's plan filed in accordance with rule 3604. If the record contains sufficient evidence, the Commission shall specifically approve or modify: (1) the utility's assessment of need for additional resources in the resource acquisition period; (2) the utility's plans for acquiring additional resources through an all-source competitive acquisition process or through an alternative acquisition process; (3) components of the utility's proposed RFP, such as the model contracts and the proposed evaluation criteria; and (4) the alternate scenarios for assessing the costs and benefits from the potential acquisition of increasing amounts of renewable energy resources, demand-side resources, or Section 123 resources. A Commission decision pursuant to paragraph 3613(eh) shall become part of the decision approving or modifying a utility's plan developed under rule 3604.
- (d) Effect of the Commission decision. A Commission decision specifically approving the components of a utility's plan creates a presumption that utility actions consistent with that approval are prudent.
 - (I) In a proceeding concerning the utility's request to recover the investments or expenses associated with new resources:
 - (A) The utility must present prima facie evidence that its actions were consistent with Commission decisions specifically approving or modifying components of the plan.
 - (B) To support a Commission decision to disallow investments or expenses associated with new resources on the grounds that the utility's actions were not consistent with a Commission approved plan, an intervenor must present evidence to overcome the utility's prima facie evidence that its actions were consistent with Commission decisions approving or modifying components of the plan. Alternatively, an intervenor may present evidence that, due to changed circumstances timely known to the utility or that should have been known to a prudent person, the utility's actions were not proper.

- (II) In a proceeding concerning the utility's request for a CPCN to meet customer need specifically approved by the Commission in its decision on the final cost-effective resource plan, the Commission shall take administrative notice of its decision on the plan. Any party challenging the Commission's decision regarding need for additional resources has the burden of proving that, due to a change in circumstances, the Commission's decision on need is no longer valid.

36173618. Reports.

- (a) Annual progress reports. The utility shall file with the Commission, and shall provide to all parties to the most recent resource planning docket, annual progress reports after submission of its plan application. The annual progress reports will inform the Commission of the utility's efforts under the approved plan and the emerging resource needs and potential utility proposals that may be part of the utility's next electric resource plan filing. Annual progress reports shall contain the following, for a running ten-year period beginning at the report date:
 - (I) An updated annual electric demand and energy forecast developed pursuant to rule 3606.
 - (II) An updated evaluation of existing resources developed pursuant to rule 3607.
 - (III) An updated evaluation of planning reserve margins and contingency plans developed pursuant to rule 3609.
 - (IV) An updated assessment of need for additional resources developed pursuant to rule 3610.
 - (V) An updated report of the utility's plan to meet the resource need developed pursuant to rule 3611 and the resources the utility has acquired to date in implementation of the plan.
 - (VI) In addition to the items required in subparagraphs(a)(I) through (a)(V), a cooperative electric generation and transmission association shall include in its annual report a full explanation of how its future resource acquisition plans will give fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies in its consideration of generation acquisitions for electric utilities, bearing in mind the beneficial contributions such technologies make to Colorado's energy security, economic prosperity, environmental protection, and insulation from fuel price increases.
- (b) Reports of the competitive acquisition process. The utility shall provide reports to the Commission concerning the progress and results of the competitive acquisition of resources. The following reports shall be filed:
 - (I) Within 30 days after bids are received in response to the RFP(s), the utility shall report: (1) the identity of the bidders and the number of bids received, (2) the quantity of MW offered by bidders, (3) a breakdown of the number of bids and MW received by resource type, and (4) a description of the prices of the resources offered.

- (II) If, upon examination of the bids, the utility determines that the proposed resources may not meet the utility's expected resource needs, the utility shall file, within 30 days after bids are received, an application for approval of a contingency plan. The application shall include the information required by rules 3002(b) and 3002(c), the justification for need of the contingency plan, the proposed action by the utility, the expected costs, and the expected timeframe for implementation.

36183619. Amendment of an Approved Plan.

The utility may file, at any time, an application to amend the contents of a plan approved pursuant to rule 36176. Such an application shall meet the requirements of paragraphs 3002(b) and 3002(c), shall identify each proposed amendment, shall state the reason for each proposed amendment, and shall be administered pursuant to the Commission's Rules Regulating Practice and Procedure.

36193620. – 3649. [Reserved]

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[indicates omission of unaffected rules]