Decision No. C10-0958

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-214E

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

ORDER ADOPTING RULES

Mailed Date: August 31, 2010
Adopted Date: July 29, 2010

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I. BY THE COMMISSION

A. Statement

1. The Commission issued a Notice Of Proposed Rulemaking (NOPR) to revise the Electric Resource Planning (ERP) rules contained in 4 *Code of Colorado Regulations* (CCR) 723-3-3600, *et seq.* Decision No. C10-0347, mailed April 15, 2010. The NOPR commenced this rulemaking proceeding. A copy of the proposed rules was attached to the NOPR.

2. The intent of this limited rulemaking is to revise and to clarify the existing ERP rules to better match the outcomes of the recent ERP application dockets, and to better match the current statutory requirements. The proposed rules accompanying the NOPR were published in the April 25, 2010 edition of *The Colorado Register*.

3. The Commission invited interested persons to file written comments on or before May 6, 2010 and post-hearing reply comments on or before June 21, 2010. The Commission conducted an *en banc* hearing on May 27, 2010.

4. The following interested persons provided written and/or oral comments: Colorado Independent Energy Association (CIEA), Black Hills/Colorado Electric Utility Company, LP (Black Hills), the Colorado Office of Consumer Counsel (OCC), Colorado Building and Construction Trades Council (CBCTC), Public Service Company of Colorado (Public Service), Western Resource Advocates (WRA), Federal Executive Agencies (FEA), Interwest Energy Alliance (Interwest), Wyoming-Colorado Intertie, LLC (WCI),

Tradewind Energy and Horizon Wind Energy, LLC (Tradewind and Horizon), and Climax Molybdenum Company and CF&I Steel, L.P. (CF&I and Climax).

5. Being fully advised in the matter and consistent with the discussion below, we adopt the changes shown in Attachment A to this Order. To the extent specific recommendations made by interested persons are not discussed below, we decline to adopt such recommendations.

B. Background

6. The Commission adopted emergency electric resource planning rules by Decision No. C07-0829, issued September 28, 2007 in Docket No. 07R-368E (Emergency Rules). These emergency rules amended the Least Cost Planning (LCP) rules that governed electric utility resource planning prior to that time, in order to implement certain legislative changes. The Commission adopted the same rules on a permanent basis by Decision No. C07-1101, issued in Docket No. 07R-419E.

7. The most significant changes that the Commission implemented in the emergency rules involved a separate expedited "Phase II" proceeding. The Phase II proceeding begins after the utility receives bids for new resources. It allows the Commission to weigh public interest factors in reaching a decision on the final resource selections by jurisdictional electric utilities. The emergency rules also introduced the concept of an Independent Evaluator (IE) to assist the Commission in analyzing the bids and proposals in Phase II, because of the complexity and expedited nature of the Phase II process.

8. Public Service Company of Colorado (Public Service) filed an application under these new rules in Docket No. 07A-447E, and Black Hills/Colorado Electric Utility Company (Black Hills) filed an application under the new rules in Docket No. 08A-346E. The purpose of

the instant rulemaking is to revise and to clarify the existing ERP rules to incorporate the lessons learned in these two application dockets.

9. As stated in the NOPR, the Commission is aware the General Assembly enacted House Bill (HB) 10-1365, which requires jurisdictional utilities to make expedited filings with the Commission regarding certain existing electric resources. We do not expect the rule changes promulgated in the instant rulemaking to materially impact these filings, as utilities can follow the guidelines in the new legislation. Public Service and Black Hills each filed an emissions reduction plan under HB 10-1365 on August 13, 2010, in Docket Nos. 10M-245E and 10M-254E, respectively.

C. Discussion

1. Early stakeholder involvement process

10. In its initial comments, WRA recommended adding a rule that would require electric utilities to initiate a pre-filing stakeholder process. In response, Public Service indicated a willingness to hold a pre-filing workshop four months before filing a "Phase I" plan. However, Public Service stated it would not have its plan prepared to share with parties at that time. The workshop would instead provide a forum for interested parties to provide insights on the relevant issues. In its reply comments, WRA opined that Public Service's proposal amounted to a one-way exchange of ideas and generally argued that the utility must provide more information regarding its upcoming plans so that stakeholders can provide meaningful input.

11. We find that pre-filing discussions between the utility and interested parties might be helpful, but we agree with Public Service that the timelines of the ERP rules do not permit a utility to prepare a draft plan before the filing due date. The position of Black Hills that a pre-filing requirement could convert a two-phase process into a three-phase process is also

well-taken. Given the lengthy timeline of the ERP rules, we find that a pre-filing requirement is not practical.

12. We nonetheless agree with WRA that it could be helpful for utilities to hold pre-filing discussions with stakeholders on the general policy proposals. We also agree with Black Hills that it may be possible to use the pre-filing process to reduce or define the issues that will be litigated in Phase I.

13. Instead of adopting a pre-filing requirement, we find it would be more appropriate to enhance the post-case reporting rules. The current rules require the utility to file an annual progress report to its approved plan, which includes an update of its forecast and needs assessment. We therefore add provisions to Rule 3617 Reports, which will require the utility to provide more information beyond the resource acquisition period used in the previously approved plan, covering the period extending at least ten years from the date of the report. We will also require the utility to discuss the types of resources that may be acquired in the next ERP filing, and the utility's anticipated actions to fulfill that need. The Commission may also request the utility to make a public presentation regarding this enhanced annual report.

2. Utility rate base resource ownership

14. In the NOPR, we proposed rule changes to accommodate the two approaches utilized in Docket Nos. 07A-447E and 08A-346E regarding proposals to develop new resources that the utility would own and whose costs would be recovered through the utility's rates. We also summarized the current ERP rules, explained the rule waivers related to utility ownership granted in the latest two ERP proceedings, and discussed the relative benefits in the utility resource ownership and in contracting for resources owned by independent power producers (IPPs).

15. The first set of proposed rule change reflects the approach used in Docket No. 07A-447E, where the utility would propose a plan in Phase I for comparing rate based proposals with IPP bids in Phase II. The second set of proposed rule changes is a variation on the decision reached in Docket No. 08A-346E, where the utility would propose in Phase I a carve-out for specific rate based resources, and the utility would need to justify such a carve-out. In order to exercise this Phase I option, we proposed a rule requirement for the utility to put forth a full Certificate of Public Convenience and Necessity (CPCN) filing concurrently with its ERP application. As discussed below, if the utility proposes such a carve-out, it may be necessary for the IE to oversee the modeling in Phase I rather than only in Phase II.

16. CIEA opposes these changes, asserting that the proposed exemption language will "swallow the rule" without any specific requirements to (1) study market alternatives, (2) place a ceiling on the carve-out amount, and (3) establish strict criteria the utility must meet to justify the carve-out. In response, Public Service and Black Hills argued that the rule revisions provide a more balanced approach.

17. Interwest also opposes the utility ownership options presented in the NOPR and generally advocates an alternative approach that focuses on incentives associated with resource contracting. However, Interwest does not provide a specific proposal or rule language.

18. First, we reaffirm that competitive resource acquisition is an essential element to our ERP Rules. As such, we will amend proposed Rule 3611(d) to clarify that the utility must comply with certain bidding requirements as a prerequisite to proposing a method other than all-source competitive bidding.

19. Second, we agree with Public Service and Black Hills that utility ownership issues were fully vetted in the recent ERP dockets and that our ERP Rules should now be

modified to accommodate proposals for utility ownership. We find that the language in the NOPR pertaining to utility resource ownership properly allows the utility to present its plan, the parties to offer alternatives, and the Commission to find a reasonable balance of IPP contracting and utility ownership.

20. Finally, although we are sympathetic to the general policy proposals put forth by Interwest, these proposals go beyond the intent of this NOPR.

3. Transmission issues

21. In the NOPR, we proposed to move the transmission-related provisions in our ERP Rules into a separate transmission section, Rule 3608 Transmission Resources. We also noted that the Commission was undertaking separate rulemakings and miscellaneous dockets related to CPCNs for electric transmission facilities and transmission planning, and thus we did not propose substantive changes in the instant rulemaking. In response to the comments filed by interested persons, however, we address certain transmission-related rule changes here.

a. New Transmission Resources

22. Several interested persons commented on the link between electric transmission and generation planning. In its reply comments, Tradewind/Horizon lists the information that it believes the utility should be required to provide in its ERP filings regarding new transmission lines. We agree that some of these proposed changes to Rules 3608 (b) and (c) will be helpful in integrating the transmission planning information into the ERP process. However, we find that proposed changes to Rules (e) and (f) will be more appropriately addressed in Docket No. 10R-526E.

b. Evaluation of Existing Transmission

23. Black Hills objected to proposed Rule 3604(d), which restates the requirement under the existing ERP Rules that the utility include an evaluation of existing transmission resources in its ERP filing. Black Hills questions how it can provide this information without knowing the location of the resources that will be bid, especially if these resources will be located outside of its service territory.

24. We recognize that the utility cannot be certain with respect to the location of the resources that will be bid. However, bidders need to understand the utility's transmission system, including information on availability and constraints, so that they can optimize their bids. The Commission must also evaluate transmission availability in Phase I to reach an optimal Phase I Decision. Moreover, the proposed rule does not require the utility to evaluate transmission resources of neighboring utilities. We therefore adopt the language as proposed in the NOPR.

c. Transmission Benefits

25. Public Service opposed proposed Rule 3608(c), which would require the utility to address the transmission benefits associated with a proposed generation resource, in addition to transmission costs. Public Service argued that such an analysis is complicated and cannot be accomplished within the 120-day Phase II process. On the other hand, CIEA asserted that if transmission costs are considered, then benefits should be considered as well. In the alternative, CIEA suggested that the Commission address these issues in a separate docket, similarly to the manner in which the Commission addressed demand-side management (DSM) issues for Public Service before addressing Public Services ERP filing in Docket No. 07A-447E.

26. We agree with CIEA that the rules should require an assessment of transmission benefits associated with a proposed generation resource, in addition to costs. We understand that this analysis may be complex and that the timelines involved in Phase II process may limit the level of detail that is presented. Nevertheless, the utility should use reasonable efforts to provide the best available information. We thus adopt the language as proposed in the NOPR.

4. Scenario planning and risk analysis

27. Rule 3604(j) currently requires the utility to propose for modeling a base scenario and two other scenarios with increasing levels of new clean energy resources under "Section 123." In Docket No. 07A-447E, the Section 123 concept was generally used to represent only new clean energy resources that have not yet been commercially proven. The Phase II process, however, is intended to consider a wider range of new clean energy resources. In the NOPR, we therefore proposed certain changes to further that intent.

28. In its comments, WRA proposes additional language changes in several parts of the ERP rules related to risk analysis. Public Service opposed these additions as redundant of other provisions of the rules.

29. We agree with WRA that a wide range of input variability should be considered. However, we also agree with Public Service that the general risk analysis language proposed by WRA is not necessary and vague. We modify proposed Rules 3604(j) and 3613(a) to clarify the utility should propose a broad range of circumstances and scenarios for consideration in the resource evaluation.

30. In accordance with these rule changes, we envision utilities would analyze at least three resource plans that include varying amounts of traditional fossil-fueled resources, renewable energy resources, and demand-side resources. If the utility makes use of sophisticated

modeling programs, these plans would be optimized under Commission-approved future scenarios that are represented by differing model inputs, such as load forecasts, fuel costs, carbon costs, and other alternative inputs. For example, future trends in plug-in hybrid vehicles, carbon reduction policies or natural gas availability could significantly impact the future viability of certain resources, warranting an analysis of such cases. As a part of this scenario analysis the utility may propose, and the Commission may require, that changes in model inputs be analyzed as sensitivities if the re-optimization of the plans is either impractical or unnecessary. The Commission will consider these analyses when assessing the robustness of the plans across the multiple scenarios.

5. Segmented bidding

31. In the NOPR, we proposed rule changes to accommodate proposals made in Phase I for segmented acquisitions of resources in Phase II. This represented a departure from the current ERP rules, which require all-source bidding. All-source bidding contemplates that the Commission will generally decide an appropriate level of specific resources in Phase II, after bids are received and cost modeling is preformed for these resources. The only exceptions are resource acquisitions needed to meet specific statutory requirements, such as certain components of Colorado's Renewable Energy Standard.

32. If the utility proposes segmented bidding in Phase I, the Commission will not yet know the costs of actual resources before ruling on the merits of such a proposal. Therefore, the NOPR would require the utility to provide adequate justification for any proposed Phase I segmentation. We find this approach to be reasonable and will adopt these provisions, as shown in the rules in Attachment A.

33. In the event that a utility proposes in Phase I to employ segmented bidding, the Commission may also retain an IE in Phase I to assist the Commission in ruling on the issue. We therefore modify current rules to allow the use of an IE in Phase I and we require such IE to be selected at the beginning of the Phase I process. See Rule 3612(e).

6. Renewable integration studies

34. In their comments, several interested persons recommended changes to proposed rules that would require the utility to include intermittent renewable integration studies. Black Hills raised concerns with the term "peer reviewed" and argued that the utility should be able to use existing studies if new studies are not needed. CF&I and Climax argued that the Commission should define the term "peer reviewed" but did not suggest a definition. Public Service suggested striking the requirement that such integration studies be consistent with the amount of renewable energy resources the utility proposes to acquire, because the utility may not know the precise amount of renewable resources that it will acquire when it will initiate the study.

35. We disagree with Black Hills and CF&I and Climax and find that the term "peer reviewed" is susceptible to a reasonable interpretation and does not need to be defined further. We also find that it is important for the integration studies to be consistent with the level of intermittent renewable resources proposed. We therefore adopt the language proposed in the NOPR.

7. Emissions information for existing generation facilities

36. In the NOPR, we proposed a requirement that the utility provide information on emissions associated with its existing generation facilities. We find that this is appropriate

because of the increasing interplay between new renewable resources and existing fossil-fueled resources.

8. Water usage

37. WRA proposed to add a proposed Rule 3604(h) requiring the utility to file water usage information for existing and proposed generation resources. Black Hills objected to this proposal, arguing that the water rights for existing resources are already in place, and water rights for new resources are governed by the Colorado Division of Water Resources.

38. We agree that it may be helpful to understand the water consumption associated with existing and proposed generation resources when considering the overall resource selection. It is also true that the Commission has no jurisdiction over water rights. However, implementation or retirement of generation resources will affect the utility's total water use and it may be one of the factors in resource selection. We therefore adopt the language proposed by WRA.

9. Comparison between utility-built proposals and IPP bids

39. In its comments, the OCC argued that the Commission should require the utility to put forth a "CPCN quality" utility generation proposal. The OCC contended that an IPP bid must be compared to a utility self-built proposal to determine whether such bid is in the public interest. For the reasons stated in Docket No. 07A-447E, we continue to disagree with the OCC that comparison to a "CPCN quality" utility generation proposal is required for the Commission to determine whether acquisition of an IPP bid is in the public interest or that such a comparison is likely to produce meaningful results. We decline to adopt the changes proposed by the OCC with respect to this issue.

10. Minimization of NPV of revenue requirements

40. In its comments, WRA argued that minimization of net present value of revenue requirements in Rule 3601 should not be a primary goal of resource planning when compared to other goals. In response, Public Service stated this language merely implements statutory requirements.

41. We agree with Public Service on this matter. Section 40-3.2-104, C.R.S., states "[i]t is the policy of the state of Colorado that a primary goal of electric utility least-cost resource planning is to minimize the net present value of revenue requirements." We therefore find it is appropriate to maintain this language in our ERP Rules and to not adopt WRA's recommendation.

11. Best-value employment metrics

42. In the NOPR, we noted that the intent of proposed Rule 3611(h) was to implement § 40-2-129, C.R.S. The newly enacted statute requires the Commission to consider "best value" employment metrics in connection with electric utility resource acquisition. The Commission also proposed modifications to Rule 3613(e) to ensure resources that "affect employment and the long-term economic viability of Colorado communities" will be considered in the future ERP proceedings, pursuant to the statute.

43. Public Service and Black Hills generally argued against the placement of the "best value" employment metrics language in Rule 3611. The utilities argued that, for competitively bid resources provided by third-parties, the utility would not have the requisite information until after the bidders submit their proposals. Black Hills suggested modifications to proposed rules that would address "best value" employment metrics in both Phase I and Phase II proceedings. Specifically, Black Hills proposed to add language clarifying that the utility shall request the

statutorily-mandated information from bidders prior to Phase II and that the utility would provide the same information for utility-owned resources in Phase I. Public Service generally suggested moving the NOPR language concerning bid evaluation and selection from Rule 3611 to Rule 3613.

44. The CBCTC expressed general support for the new language proposed in Rule 3611(h). In its initial comments, the CBCTC suggested minor changes to the proposed language, arguing these changes more closely tracked with the requirements of § 40-2-129, C.R.S. In its reply comments, the CBCTC suggested several additional changes. While some of its proposed changes would ensure that best value metrics are considered in both Phase I and Phase II, other proposals would elevate the consideration of "best value" employment metrics as a primary factor in the Commission's review of utility resource acquisition plans. Notably, the CBCTC argued that Requests For Proposals (RFPs) should include a listing of major subcontractors and that the bidders certify their best value employment metrics under penalty of perjury, bid disqualification, and disqualification from future resource solicitations.

45. We agree with Black Hills and Public Service that Rule 3611(h) is problematic as proposed in the NOPR and that additional rule changes are necessary to ensure that "best value" employment metrics are provided to the Commission in Phase I or Phase II. We therefore modify the rules based, in part, upon the comments of Black Hills and Public Service. Specifically, we modify Rule 3611(h) to require utilities to report on these metrics in Phase I filings for utility-owned assets proposed to be acquired outside of competitive bidding. We will also modify Rule 3615(c) to require bidders to provide the best value employment metrics information with their bids, so that the utility can provide that information to the Commission in its Phase II reports. We decline to adopt the additional changes proposed by CBCTC.

12. Bidding of demand-side resources

46. The Commission proposed several rule changes in the NOPR to acknowledge that demand-side resources may play a significant role in meeting the utility's need for new resources. For example, the NOPR proposed that certain demand-side resources be considered as part of the utility's portfolio of existing resources under Rule 3607 Evaluation of Existing Resources. Similarly, in the NOPR we proposed elimination of the exemption of demand side resources from the ERP. Consistent with the recent ERP proceedings, we expect utilities to explore costs and benefits of including increasing amounts of demand-side resources as part of the ERP resource planning process.

47. We also intended to establish an opportunity for bids for demand-side resources to compete in competitive all-source solicitations with the rule changes proposed in the NOPR. In particular, the NOPR included a provision in proposed Rule 3610(b)(II) that would explicitly allow for non-utilities to bid demand response resources in the utility's competitive acquisitions to meet future capacity needs. Even though the NOPR contemplated competitive bidding to acquire some demand-side resource, other rule changes proposed in the NOPR recognized that utility investments in demand-side resources do not need to be competitively bid under § 40-3.2-104, C.R.S.

48. In its written comments, Public Service expressed opposition to "all new rule language that suggests that DSM must be acquired through a competitive acquisition process or through all-source bidding." Public Service argued that the Commission has already charged the Company with acquiring as much cost effective demand side resources as can reasonably be acquired in its Colorado service territory from 2009 to 2020. Public Service also expressed concerns that the acquisition of additional demand-side resources through all-source bidding

would result in the duplication of the Company's energy efficiency and demand response programs. Public Service further described the difficulties it had with bids for demand-side resources in a previous all-source competitive acquisition process.

49. During the hearing, the OCC opined that bidding for demand-side resources in an all-source process is not necessarily problematic. This is because a cost-effective demand-side resource bid by a third party could displace a less desirable supply-side resource to the benefit of ratepayers. In reply comments, Public Service countered that the downside to bidding for demand-side resources in all-source solicitations is that the work needed to prepare the RFPs and to implement the bid solicitation and evaluation processes could outweigh any benefits.

50. For its part, WRA supported for competitive bidding of demand-side resources. WRA concluded that competitive bidding would give customers the benefit of some market competition on certain DSM programs.

51. We find the question of whether demand-side resources should be acquired through a competitive acquisition process, in conjunction with the utility-administered DSM programs, to be particularly challenging. We would have preferred more discussion concerning this issue among the stakeholders participating in this proceeding. There may be solutions that address Public Service's concerns regarding potential impacts of competitively bid demand-side resources on its ability to meet its energy savings and demand reduction goals and on its demand response programs like the Interruptible Service Option Credit (ISOC) program.

52. Because this issue has not been sufficiently vetted in this proceeding, we will not adopt the proposed rule changes relating to competitively bid demand-side resources at this time. However, we expect to re-examine this issue in the future, perhaps in a future DSM or ERP.

53. We will, however, adopt the proposed changes to Rule 3607 Evaluation of Existing Resources that relate to the utility's evaluation of its existing resources as described in the NOPR. We will also accept WRA's recommendation for a new subparagraph 3607(a)(IX), which will require the utility to describe the demand-side resources it expects to be in place during the resource acquisition period pursuant to utility-administered DSM programs in past years and utility-administered DSM programs in Commission-approved DSM plans.[1]

54. Finally, we reiterate our findings in Docket No. 07A-447E that, because resource plans provide the best and most comprehensive context in which to assess the value proposition offered by demand-side resources, the Commission will continue to explore in ERP proceedings whether electric utilities should procure demand-side resources at levels beyond the goals set forth in § 40-3.2-104, C.R.S.

13. Coordination with RES compliance plan filings

55. Public Service argued that the "best way to achieve greater understanding of the utility's resource acquisition[s] and to create administrative efficiencies" would be to consolidate the utility's ERP filings with its compliance plan filings filed pursuant to the Renewable Energy Standard (RES) Rules. In other words, all renewable resource acquisitions, both large and small, would be addressed in a quadrennial ERP proceeding.

56. Public Service contended that annual RES compliance plans have evolved into forums where parties have re-litigated issues that had already been decided in an ERP docket. Public Service also implied that certain parties have been frustrated that, given the two percent cap on the retail rate impact, the acquisition of large renewable resources pursuant to an ERP has

[1] Given this change to Rule 3607, we shall strike subparagraph II under paragraph 3606(c) concerning reductions to the utility's energy and coincident peak demand forecasts as a result of DSM programs, as that requirement will now be redundant.

tended to limit the funds available to acquire small renewable resources that are typically at issue in annual RES compliance plan proceedings. Public Service further noted that § 40-2-124, C.R.S., would still require annual RES compliance reports and that the proceedings that address such annual reports could also address RES-related issues that arise between the quadrennial ERP filings.

57. Black Hills did not object to the Public Service proposal. However, Black Hills stated that it would like an option under the RES rules to file a RES compliance plan between ERP dockets if the need arises.

58. CF&I and Climax also agreed with Public Service that ERP and RES compliance dockets are interrelated. Nonetheless, CF&I and Climax argued that a RES compliance docket is the correct proceeding to determine the issues related to compliance with the RES Rules and that results from these RES dockets should be exported to the ERP dockets. Generally, CF&I and Climax expressed support for "feeder dockets" in which inputs to the ERP are fixed, not the other way around.

59. Interwest supported combining the ERP and RES compliance plan procedures in its comments. However, Interwest raised concerns related to the impact of new community solar gardens on RES compliance plans and a potential reduction in the focus on renewable energy in ERP dockets because of their size and complexity.

60. CIEA expressed support for integrating the ERP process with the RES compliance plan process. CIEA pointed out that such a combination would administratively help parties the who are interested in both areas and would also help the Commission to ensure that "everything is working together" in a harmonized, single process. WRA also supported combining the ERP and RES processes.

61. We find that the requisite changes to accomplish the integration of ERP filings and RES compliance plans can be accomplished via changes to the Commission's RES Rules. We will therefore address the issue of whether to allow for quadrennial RES compliance plan filings coordinated with ERPs in the ongoing rulemaking proceeding concerning our RES rules, Docket No. 10R-243E.

14. Exemptions and exclusions

62. Consistent with the changes described above concerning alternative approaches to competitive all-source bidding for acquisition of new utility resources, the NOPR proposed to remove certain exemptions from an ERP, such as demand-side resources and renewable energy resources that a utility would develop and own outside of competitive bidding pursuant to § 40-2-124(1)(f)(I), C.R.S.

63. The NOPR also proposed new Rule 3614(b), which specified three topics that the Commission would not normally explore in an ERP filing: (1) renewable distributed generation (*i.e.*, renewable generation resources located "on-site" at customer homes and business or that are less than 30 MW); (2) demand-side resources already addressed in a Commission-approved demand-side management plan; and (3) details of interruptible service provided to the utility's electric customers. The intent of the proposed new rules was to allow the Commission to remove the issues from the already complex and lengthy ERP proceedings if the Commission was satisfied that those matters could be appropriately addressed in separate dockets.

64. Based on the comments received, we decline to adopt proposed Rule 3614(b). Many stakeholders opined that this proposed rule was too ambiguous and subject to misunderstanding. We will instead manage the scope of ERP dockets on a case-by-case basis, as appropriate, without a rule that sets forth potential exclusions from an ERP proceeding.

65. Consistent with our discussion above concerning demand-side resources, we will restore the exemption in the existing rules for utility investments in demand-side programs in accordance with § 40-3.2-104, C.R.S., and for interruptible service programs. However, as discussed above, these exclusions do not preclude the Commission from evaluating in an ERP proceeding whether a cost-effective resource plan should include additional demand-side resources.

66. We will adopt the change set forth in the NOPR so that utility investments in renewable energy resources pursued under § 40-2-124(1)(f)(I), C.R.S., would no longer be exempt from an ERP. We find that an ERP filing must indeed address the acquisition of utility-owned new renewable energy resources greater than 30 MW, even if the utility intends to acquire that resource without competitive bidding. Although we understand the concerns expressed by Black Hills that this change might prevent or slow down the acquisition of additional utility-owned renewable resources between ERP filings, we note that the RES Rules nonetheless require the utility to file an application whenever it seeks to develop such assets absent competitive bidding.

67. Finally, consistent with our determination to address coordination between ERP and RES compliance plan filings in Docket No. 10R-243E, we will not include an exemption Rule 3614 for renewable distributed generation, or renewable energy resources with nameplate capacity ratings of 30 MW or less.

15. Confidentiality

68. Interested persons presented opposing viewpoints on the confidentiality issue in their written and oral comments. On one hand, Public Service and Black Hills argued that certain commercially sensitive information must be kept secure and "close to the vest."

On the other hand, intervenors such as WRA wished to have the maximum possible access to the information.

69. In essence, the Commission must strike the right balance between (1) keeping certain commercially sensitive information secure, thus preserving integrity of the competitive bidding process, and (2) protecting due process rights of the intervenors.

70. Regarding the process by which the Commission will resolve the issues related to access to commercially sensitive information, the NOPR proposed a requirement that the utility propose, in Phase I, its plan to address the confidentiality matters in Phase II. The Commission would then determine how highly confidential materials will be addressed in Phase II before the commencement of Phase II. The Commission found that it would be best to address these issues in the context of an actual resource plan filing. NOPR, at ¶ 17. In their comments, the interested persons generally agreed it would be beneficial to resolve the confidentiality issue upfront and that a constant flurry of motions is time-consuming and burdensome, since the timelines in Phase II are already compressed.

71. We agree and therefore adopt the approach proposed in the NOPR. Under this approach, the utility will propose, in Phase I, its plan to address highly confidential information in Phase II, the intervenors will file responses, and the Commission will determine how highly confidential information will be treated in Phase II, before that phase commences.

72. Next, we agree with the OCC that the Rules should explicitly state that Staff and the OCC will have access to all highly confidential information filed in both Phase I and Phase II ERP proceedings. We therefore will retain the sentence in existing Rule 3610(h) (proposed Rule 3613(b) in the NOPR), which states "[c]onfidential versions of these [IE's and utility's] reports will be provided to Staff of the Commission and the OCC."

73. Regarding access to highly confidential information by intervenors other than Staff and the OCC, we generally agree with the concept presented by some interested persons, for example CF&I and Climax. CF&I and Climax generally recommended that attorneys and experts for certain parties be permitted to review highly confidential information. We find this result would enable intervenors other than Staff and the OCC to more fully participate in Phase II and minimize the risk of inadvertent disclosure of commercially sensitive information.

74. Similar to Docket Nos. 07A-447E and 08A-346E, attorneys and experts granted access will need to sign the non-disclosure agreements drafted by the utility. These agreements will generally state that attorneys and experts will not disclose the information to other persons, including their clients; do not represent any bidder who responded to the RFP at issue; and will not represent a bidder in a subsequent RFP for a period of time proposed by the utility and approved by the Commission.

75. We do not agree with WRA that the information related to bids and utility self-build proposals, including prices, location of projects, or other proprietary information, should not be designated as highly confidential. Instead, we find that such information will generally warrant highly confidential treatment because it is critical to protecting the integrity of competitive resource acquisition process. However, we do agree with WRA that the following factors, among others, will be useful in determining whether an intervenor should be granted access to highly confidential information through its attorney(s) and expert(s): (1) whether the intervenor is a market participant that can benefit from access to the information; (2) whether the intervenor is able to maintain the information secure; and (3) whether the intervenor violated a confidentiality agreement in the past.

76. Finally, the introduction of the IE was intended to enhance the parties' confidence in the Commission's review of highly confidential information set forth in the bids and utility proposals during Phase II. We recognize that the IE cannot completely represent every interest of every intervenor. Because the Commission will strive to provide the parties with the maximum due process possible given the circumstances, we may be convinced that the appropriate course of action in a particular Phase II proceeding would be to allow certain attorneys and experts access to such highly confidential bid information.

77. In sum, we decline to make significant modifications to the Rules addressing the treatment of highly confidential information. Instead, the Commission will determine what, if any, information is highly confidential, and which representatives of intervenors other than Staff and the OCC will receive access to highly confidential information. We will do this on a case by case basis, once particular facts and circumstances are before the Commission and before the compressed Phase II begins. The Commission will resolve the issues of highly confidential information with the guidelines discussed above. We believe this approach will result in appropriate attorneys and experts for certain intervenors being permitted to review highly confidential information, subject to non-disclosure agreements.

16. Independent Evaluator (IE)

a. IE modeling

78. As we discussed in the NOPR, modeling by the IE presented significant concerns in Docket No. 07A-447E.[2] Requiring the IE to model the Public Service system in parallel with Public Service's modeling efforts proved to be expensive and time-consuming. Even though the

[2] Docket No. 08A-346E did not have a Phase II, so the IE did not perform independent modeling.

IE provided a high quality analysis in its report, we find it is not essential for the IE to duplicate fully the modeling effort performed by the utility. We therefore remove the requirement that the IE perform its own modeling and instead focus the IE's efforts on initial screening and oversight of the utility modeling. We add the requirement that the utility perform some limited modeling runs at the request of the IE. See Rule 3612(c).

b. IE in Phase I

79. We modify proposed Rule 3612(a) so that the selection process for the IE begins before to the utility files its plan. This change would accommodate the other change we proposed to Rule 3612(e), permitting the Commission to engage the services of the IE in Phase I if the utility seeks to implement segmented bidding or proposes to acquire resources that it will own and operate as a rate base investment.

c. The Role of the IE

80. During the hearing and in the written comments, several interested persons addressed the proper role of the IE: whether the IE should focus on ensuring that the utility fairly administers the bid evaluation process and act as a "watchdog" or whether the IE should focus on being an advisor to the Commission. In turn, the role of the IE has implications on whether the IE should be subject to discovery and/or cross-examination. Interested persons presented diverse viewpoints on these issues. These issues are intertwined with procedural due process, similar to treatment of highly confidential information.

81. In their comments, CIEA and WRA argued that the IE brings value to the ERP process by performing both advisor and watchdog roles but, if the Commission decides that the IE can perform only one of these roles, it should be the watchdog role. CF&I and Climax argued

that the IE should play an independent role or be a party in the ERP proceedings rather than merely serve as an advisor to the Commission.

82. We agree with CIEA and WRA that the IE brings value to the ERP process both as a "watchdog" and as a Commission advisor. We find that the IE's activities should be a hybrid between these roles. We note that, to some extent, the IE also played such a hybrid role in Docket No. 07A-447E. In that docket, Concentric generally monitored the resource selection process, including initial screening and modeling to ensure the bid process was fair and complied with Commission Rules and Phase I directives, *and* advised the Commission. In establishing the requirement for the IE, the Commission envisioned that the IE would act mainly as a watchdog and, to a lesser extent, as an advisor to the Commission. However, the exact balance between the watchdog and the advisory roles that the IE will perform will depends on the circumstances of the particular ERP proceeding.

83. In monitoring the resource selection process, including screening and modeling, and in ensuring fairness and compliance with Commission Rules and Phase I directives, the IE is acting as a watchdog or monitor. In this case, discovery on the IE is appropriate. On the other hand, discovery related to the IE's advisory functions will not be allowed, for the same reasons that Commission Advisory Staff is not subject to discovery. However, since the IE will not be represented by counsel (except in very limited circumstances discussed below) and to ensure discovery is related to the IE's watchdog role rather than the IE's advisory role, the Commission will "filter" discovery to the IE, as we did in Docket No. 07A-447E. In that docket, the Commission invited the parties to submit comments to the Commission regarding proposed areas of inquiry for the IE. The Commission then ruled on which of these proposed areas of inquiry should be forwarded to the IE, together with areas of inquiry prepared by the Commission.

84. The issue of contacts between the intervenors and the IE was also discussed in the comments. Public Service argued that such contacts should not be permitted. Public Service stated that, in Docket 07A-447E, the IE Liaison oversaw the contacts between Public Service and Concentric and that additional assurance of the IE's independence is not necessary. In contrast, parties such as WCI argued that the ability of the IE to interact with intervenors will ensure that appropriate boundaries exist.

85. We find that the issue of whether the IE should communicate with the intervenors generally should be left to the IE's discretion, to the extent, such communications would assist the IE in performing its duties. We amend Rule 3612(d) to reflect this finding. We also note that the Commission will have an opportunity to address such issues as they arise in an ERP proceeding. We will weigh the facts and circumstances in providing further guidance to the IE. If the IE communicates with intervenor(s), such communications will be subject to the same protections as the communications between the IE and the utility. Finally, the IE will not be facilitating, mediating, or arbitrating negotiations between the parties.

17. Phase II comments and potential hearings

86. Interested persons in this rulemaking presented a variety of viewpoints on this issue. The Commission presented four options in the NOPR, ranging from a full-blown Phase II evidentiary hearing to elimination of Phase II proceedings. This issue is also intertwined with procedural due process and, in setting forth the parameters of the Phase II process, the Commission must balance the due process rights of all parties with the fact that bids become stale with the passage of time.

87. We find that generally option (c) proposed in the NOPR (continue with Phase II comments rather than an evidentiary hearing but allow more parties access to highly confidential

information) balances the competing interests in the optimal manner. In addition, if intervenors other than Staff and the OCC are able to more fully participate in Phase II (since their attorney(s) and expert(s) will be able to review the highly confidential information pursuant to the approach discussed above), their Phase II comments should be more meaningful. This, in turn, will reduce the need for a hearing.

88. The interested persons appear to agree that all parties should have an opportunity to comment on the IE report in Phase II. We agree as well and therefore modify the timelines set forth in proposed Rule 3613 to accommodate such comments.

89. The Commission finds that holding Phase II hearings is not possible given the facts and circumstances of Phase II and the fact that bids get stale with the passage of time. Therefore, the Commission generally will not hold Phase II hearings. However, if the IE or an intervenor establishes that the utility did not comply with the Commission Rules or Phase I orders, limited Phase II hearing, including cross-examination of the IE by the parties and the Commission, may be necessary. Such limited Phase II hearing would provide an opportunity for the utility to present its position, for intervenors to weigh in, and for the Commission to rule on the matter.

18. Other rule changes

90. As discussed in detail in the NOPR, we adopt small language changes to better reflect current statutes and policies and to clarify the recent changes from the LCP rules.

II. ORDER

A. The Commission Orders That:

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

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

3. The 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.

4. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING July 29, 2010.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners

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Decision No. C10-1111

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-214E

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

ORDER ADDRESSING APPLICATIONS FOR REHEARING, REARGUMENT OR RECONSIDERATION

Mailed Date: October 14, 2010
Adopted Date: October 6, 2010

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of applications for rehearing, reargument, or reconsideration (RRR) to Decision No. C10-0958 filed by Tradewind Energy and Horizon Wind Energy, LLC (Wind Developers) and Black Hills/Colorado Electric Utility Company, LP (Black Hills) on September 20, 2010. By Decision No. C10-0958, mailed August 31, 2010, the Commission adopted revisions to the Electric Resource Planning (ERP) Rules contained in 4 *Code of Colorado Regulations* (CCR) 723-3-3600, *et seq*. Now, being fully advised in the matter, we grant, in part, and deny, in part, the RRR.

B. Wind Developers

2. In their RRR, Wind Developers state that they are pleased with the transmission-related language adopted by the Commission in Decision No. C10-0958, but also request that the Commission add paragraph (f) to Rule 3608 to provide additional certainty to bidders regarding bid evaluation criteria the utilities will use. Wind Developers argue that the Commission should clarify that bidders may utilize inputs provided by to the Commission pursuant to Rule 3608.

3. We agree that bidder certainty is important, but disagree with the approach offered by Wind Developers. The ERP rules contemplate that the utility will propose a plan to which the parties will comment through testimony and hearings. The Commission will then issue a Phase I decision on the issues, including the transmission-related issues. The utility will then issue RFPs based on the entire Phase I decision. The Commission will select a portfolio of resources based on the received bids.

4. In response to Wind Developers, we will modify Rule 3615 as follows:

> (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 <u>pursuant to rule 3608, including a detailed description of how the costs of future transmission will apply to bid resources</u>; (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.

5. This amendment will provide certainty to bidders, since the utility will address transmission issues, including transmission and utility-self build proposals, if applicable, in its plan. Parties can provide testimony and the Commission will make a ruling on such contested issues in the Phase I decision, prior to bidding.

C. Black Hills

6. In its RRR, Black Hills requests that the Commission clarify that paragraphs (g) and (h) of Rule 3604 will require the utility resource plan to include only the projected emissions as well as water withdrawals and consumption information for both new utility self-

build proposals and generic resources. We agree with Black Hills, grant this request for clarification, and amend the rules accordingly.

7. Black Hills requests the Commission clarify that Rule 3604(i), which pertains to proposed RFPs and model contracts, will not apply to the utility. This is because the utility does not solicit bids to acquire resources from itself. We generally agree with Black Hills[1] and strike the phrase "from the utility, other utilities and non-utilities" from Rule 3604(i).

8. Black Hills also objects to the sentence in Rule 3604(k), which states that "[t]he 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." Black Hills argues that it is unclear at what point would the robustness of the alternate plans be tested. We clarify that this analysis can be performed either in Phase I or Phase II, depending on where the utility proposes to evaluate the resources.

9. Black Hills objects to Rule 3617(a), which requires that annual progress reports contain certain specified information for a running ten-year period beginning at the report date. Black Hills asserts that reporting beyond the timeframe of the previous ERP will turn the report into a full-blown ERP filing, adding significant expenses. We find that the expanded reporting is an important step in requiring the utility to keep the Commission and interested parties informed about its current views on how to meet future needs. The utility should be analyzing its future resource needs whether this rule is in place or not, so we disagree that it will add a "significant expense." We deny the RRR based on this argument.

[1] However, we note that in the history of the IRP/LCP/ERP rules, the competitive bidding process has anticipated bids from the utility for utility-owned resources. Further, the RES rules and § 40-2-124(1)(f)(I), C.R.S., contemplate bids from the utility "…nothing in this paragraph (I) shall preclude the qualifying retail utility from bidding to own a greater percentage of new eligible energy resources…"

10. Finally, Black Hills recommends that Rule 3612(d) be amended to prohibit the Independent Evaluator (IE) from contacting parties other than the utility. Black Hills argues that the IE is an advisor and thus should not be in contact with parties. However, the IE is not only an advisor to the Commission as Black Hills asserts, but is also a "watchdog" as discussed in detail in Decision No. C10-0958. We find that it is best to leave the issue of whether the IE should communicate with the intervenors to the discretion of the IE. We also note that the Commission will have an opportunity to address such issue as they arise in a specific ERP docket and we will weigh the facts and circumstances of each case in providing further guidance to the IE.

II. ORDER

A. The Commission Orders That:

1. The application for rehearing, reargument, or reconsideration (RRR) to Decision No. C10-0958 filed on September 20, 2010 by Tradewind Energy and Horizon Wind Energy, LLC, is granted in part, consistent with the above discussion.

2. The RRR to Decision No. C10-0958 filed by Black Hills/Colorado Electric Utility Company, LP, on September 20, 2010 is granted in part, consistent with the above discussion.

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

4. 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.This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING October 6, 2010.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners

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