

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

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**DOCKET NO. 07M-256E, REVISIONS TO LEAST COST PLANNING RULES
PROPOSED IN DECISION NO. EL C07-0567, 4 CODE OF COLORADO
REGULATIONS (CCR) 723-3 PART 3 RULES REGULATING ELECTRIC
UTILITIES, LEAST-COST PLANNING**

Introduction

The Interwest Energy Alliance commends the Commission for both the direction and the specific proposals in these rules. These proposed rules represent a big step forward. They start the process of putting commission rules in line with new legislative policies, they respond to needs made evident in the last bid cycle, and if they succeed in adding more diverse resources to the generation mix, they will help ratepayers respond to the increasing costs, risks and potential liabilities that characterize current over-reliance on fossil fuel for electric generation.

Formed in 2002, Interwest is a trade association that brings the nation's renewable energy industry together with the West's advocacy community. Our members support state-level public policies that harness the West's abundant – and inexhaustible– renewable energy and energy efficiency resources. It includes many of Colorado's renewable energy suppliers who together have generated over 1,000 construction jobs in the state in the last few years, as well as dozens of permanent, well-paying jobs in the state's local rural communities. Interwest works in Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming.

Interwest represents bidders. We can share the good news about these proposed rules with potential bidders to encourage them to participate in Colorado. Since the rules encourage more predictable outcomes for both utilities and bidders and involve the Commission in remedies to problems that are well understood from the last bid round, if the Commission adopts their proposed

rules, we can recommend the new rules to the bidder community as progress toward a more workable Colorado market for bidders. We think more bidder participation will result in consumer benefits.

We offer the following specific comments and proposed amendments:

1. **Purpose and Overview.** The Commission proposes to add the following language to Section 3601 Overview and Purpose:

“The competitive acquisition process is intended to be neutral with respect to fuel type or resource technology.”

Comment:

Is “neutrality” consistent with legislative policy? Recent legislation has made it clear that the voters and policy makers want more efficiency and renewable energy in the resource mix. Colorado electric generation is overwhelmingly reliant on fossil fuel. It is time to prefer resources that rebalance the system away from fossil.

2. **Clean Energy Benefits.** The Commission proposes to add to least cost, system needs, and reliability as purposes for its rules in Section 3601:

“ . . .the beneficial contributions of new clean energy and energy efficient technologies. . .”

This is a step away from pure focus on least cost and reliability toward more diverse, balanced portfolios of generation resources that can provide consumer relief from high, uncertain, and unexpectedly variable fossil generation costs, risks, and liabilities. We welcome this step.

3. **Section 123 Resource Definition.** In Section 3602, Definitions, the Commission proposes to add a new definition:

“Section 123 resource” means a new energy technology or demonstration project, including a new clean energy or energy-efficient technology under

§ 40-2-123 (1) C.R.S., and an Integrated Gasification Combined Cycle project under § 40-2-123 (2), C.R.S.

Comment:

We think the legislature intended in § 40-2-123 (1) C.R.S for the Commission to give fullest possible consideration to new clean energy technologies for the purposes of including them in generation portfolios where consideration of benefits beyond the Commission's mandated "least cost" analysis indicated that their benefits outweigh their costs. To give a clear signal that this expanded notion of benefits and cost is being implemented, Interwest suggests that the "Section 123 resource" definition be divided into its two constituent parts, so that new clean energy and energy-efficient technologies' beneficial contributions of "energy security, economic prosperity, environmental protection, and insulation from fuel price increases" can be analyzed for inclusion in generation resource portfolios.

With a separate definition, IGCC and other "demonstration projects" can be considered for their added technology demonstration values. These values can include demonstration that technology employed is ready for wide scale implementation by utilities, that it might, or might not benefit from scale manufacturing and implementation economies, that diversity in location, ownership, and resources add consumer value, that business organizations exist with capabilities to implement these technologies, that financial backing can be attracted at reasonable interest rates and return expectations relevant to utility deployment, that the technologies can, or cannot, be implemented in modular fashion, so that risks of failure can be minimized in demonstration projects, and that non-energy benefits of such projects can be developed and estimated, and then analyzed and reported before billions of dollars are sunk on potentially unreliable theories.

The resulting definitions Interwest suggests would read:

(m) “Section 123 resource” means new clean energy or energy-efficient technology with beneficial contributions to be acquired under § 40-2-123 (1) C.R.S

(n) “Section 123 demonstration project” means a new energy generation technology to demonstrate technology and other feasibility, including an Integrated Gasification Combined Cycle project under § 40-2-123 (2), C.R.S.

4. Consistency with SB 100 Transmission Plans

Section 3607(c) requires investor-owned utilities to submit certain information about transmission. SB 07-100 requires utilities to plan and file for approvals for transmission required to serve generation resources. Where transmission is constrained, utility plans to comply with SB 07-100 will determine whether the commission can give “. . .fullest possible consideration” to section 123 resources. An amendment to Section 3607(c) should be adopted by the Commission to require utilities to include their transmission plans so their plans support generation resources proposed for acquisition.

Interwest suggests that the Commission include the following in a new Section 3607 (c) (II):

The utility shall report its plans for compliance with requirements of SB 07-100, including how such plans affect acquisitions of Section 123 resources and resources acquired for purposes of compliance with HB 07-1281.

5. Compliance with Minimum Renewable Energy Standards. Under proposed language in Section 3609, utilities are to specify the portion of resources needed for each year of the resource acquisition period to comply with renewable energy standard.

Comment: Compliance with the standards is required in statute. The policy of the Commission should be to encourage utilities to exceed minimum requirements. Resource standards are specifically called out in statute as

minimum requirements. Interwest believes that some utilities have been treating these floors as ceilings. We urge the Commission to abide by the intent of these statutes to encourage expansion of renewable energy in Colorado beyond the minimum requirements, as benefits have been demonstrated by both respected researchers and analysts (Pater, J. and Binz, R. “Wind on the Public Service Company of Colorado System: Cost Comparison to Natural Gas” at www.interwest.org/backcast.htm) as well as in utility presentations (Grant, B. Xcel Energy, April 20, 2006. “Reserve Group and DCS Issues with Wind Generation.” In *ibid*, page 3, footnote 3.)

To this end, Interwest suggests that the Section 3609 language should read:

“The utility shall specify the portion of the resource need for each year of the resource acquisition period that must be satisfied with eligible energy resources to comply with **or exceed** the Renewable Energy Standard, 4 CCR 723-3-3650, *et. seq.* (emphasis added)

6. Utility Plans. Commission proposals for changes in Section 3610, Utility Plan for Meeting the Resource Need, include requirements in (d) that multiple resource acquisitions at various times be “detailed in the utility’s plan” and that “updating or refreshing bids” be done pursuant to an order modifying an approved plan.

Comment: These proposals appear to address concerns raised about the outcomes of the 2003 bid process. Interwest supports these proposals because a better supervised bid process will give utilities more certainty about both process and outcomes and will draw more bidders, resulting in better outcomes for consumers.

7. Benefit Criteria. Also in Section 3610 (d), utilities are also required to propose criteria for evaluating benefits for Section 123 resources or resource acquired through alternative forms of resource acquisition.

Comment: Interwest very much supports this proposal. Utilities have been treating these benefits as worth zero in evaluating resources. Any positive valuation, however crude or estimated, will lead to better economic results for Colorado and for utility ratepayers than continuing to ignore benefits related to more diverse generation resource portfolios. Over time, and with experience in analyzing, estimating, and applying these benefits to resource decisions, utilities will improve their estimates. We should not wait for some perfection to dawn before starting the process of wrestling with these issues. It will not be easy to accomplish these goals, but they are the ones that Colorado citizens and consumers want to have considered, as demonstrated in both the initiative and legislative processes. Consideration of these benefits is Colorado state policy. Any consideration of benefits beyond today's practice of attributing zero will be progress.

8. **Bid Evaluator.** Proposed rules in Section 3610 (e) include an independent bid evaluator, to review and evaluate bids and report to the Commission. In subsection (f) the evaluator will rank proposed resources according to least cost to minimize net present value of revenue requirements, reliability considerations and financial and development risks. The evaluator will also rank Section 123 resources based on the Commission's approval of the utility plan required to contain criteria for evaluating Section 123 benefits.

Comment: These proposals implement the legislative intent of § 40-2-123 (1) C.R.S which is to have broader consideration of clean energy resources' benefits actually influence decisions about what resources utilities are to acquire. Bringing clean energy benefits into consideration in resource acquisitions is also consistent with intentions of drafters and citizens who adopted Amendment 37, § 40-2-124 C.R.S. by statewide majority vote in the 2004 general election.

Rate base, rate of return regulation contains a powerful incentive for utilities to invest in their rate base: they earn a return on invested equity. This gives them

a bias toward “making” their own projects, rather than “buying” projects from third parties. Utilities have stated in public meetings, in the press, in filings before this Commission their intention to enter generation markets. They own wind projects at Ponnequin, Colorado (26.7 MW, see <http://www.interwest.org/projects/default.aspx>). And they are authorized to own generation projects that meet renewable energy standards:

“ . . .if the qualifying retail utility shows that its proposal would provide significant economic development, employment, energy security, or other benefits to the state of Colorado.” C.R.S. 40-2-124 (1)(f)(I)

In circumstances where utilities are called on to administer bidding procedures for new generation resources, and where they are likely to bid their own projects into the resource acquisition, the Commission’s proposal for an independent evaluator becomes an absolute necessity. No bidder of sound mind would want their bid evaluated by their competitor, particularly a competitor that is the only buyer in the market (“monopsony”) and that has an incentive (earnings on rate base) to favor their own project. To ensure fair treatment so bidders will be willing to take the risks and spend their time and money to construct and submit a bid into a Colorado utility bid process, the Commission must take the step of involving an independent bid evaluator. The evaluator should be involved at every step. If utility earnings incentives, sole control of the market for power sales, and competing utility-sponsored projects are allowed to characterize the Colorado utility market for new generation projects, bidders are likely to go elsewhere and Colorado consumers will not benefit from competitive resource acquisitions.

Colorado utilities are not accustomed to generating information to inform decisions about “ . . . significant economic development, employment, energy security, or other benefits to the state of Colorado.” They have not previously filed information about these issues in Commission proceedings. They have objected to the use of this information in planning and bid acquisitions. The models they use to determine generation project benefits do not contain

information about these benefits or methods for calculating costs or benefits beyond those minimally required in current Commission 'least cost' generation acquisition rules. A carefully chosen third party evaluator can address this deficiency by providing data, information, options, and recommendations for handling analysis of economic development, employment, and energy security benefits for proposed energy projects.

As to "other benefits," Interwest again proposes that benefits put before the state's voters in Amendment 37, and included in the Commission's Amendment 37 implementation rules (at 4 CCR 723-3, Section 3651) should be the "other benefits" considered:

Section 40-2-124 was enacted by the voters of the State of Colorado as 2004 Ballot Amendment 37 and was amended by the 2005 Colorado General Assembly by Senate Bill 05-143:

"Energy is critically important to Colorado's welfare and development, and its use has a profound impact on the economy and environment. Growth of the state's population and economic base will continue to create a need for new energy resources, and Colorado's renewable energy resources are currently underutilized.

Therefore, in order to save consumers and businesses money, attract new businesses and jobs, promote development of rural economies, minimize water use for electricity generation, diversify Colorado's energy resources, reduce the impact of volatile fuel prices, and improve the natural environment of the state, it is in the best interests of the citizens of Colorado to develop and utilize renewable energy resources to the maximum practicable extent.

It is the policy of this State to encourage local ownership of renewable energy generation facilities to improve the financial stability of rural economies."

By including reference to these benefits in the acquisition rules, by charging the independent evaluator to rank bids using these benefits as ranking criteria, and by requiring utilities to acquire such beneficial resources and to report on how the

benefits were achieved, or not, the Commission will close the loophole created when “least cost” acquisition rules were grafted onto Amendment 37 implementation rules. At that point, consideration of Amendment 37 benefits disappeared. “(S)ave consumers and businesses money” (“least cost”) became the only criterion for acquisition of Amendment 37 compliant resources. The result is a process that counts Amendment 37 policy goals as having **ZERO** impact on bids and acquisitions, when everyone will concede that these benefits are net positive. While the independent evaluator, the Commission, and all participants will be challenged to quantify and apply these benefits, any steps toward counting them as positive contributors toward more diverse utility generation portfolios, however rough or estimated or contentious, will reach better conclusions for Colorado consumers than continuing to ignore them, which counts them as **ZERO**.

9. Commission Resource Portfolio Approval. In Section 3610 (g), the Commission considers the evaluator’s recommended resource portfolio based on the evaluator’s report and comments from utilities, bidders and interested parties and issues an order approving, disapproving, or ordering modifications.

Comment: It would probably be good to make it clear that the resource portfolio is the subject of these actions, not just the evaluator’s report.

Both the Commission and the bid evaluator should pay close attention to risk allocations in bid negotiations since a single buyer in the market for electric production (utility) will have incentives to squeeze suppliers since suppliers have no other option for sale of their product. Interwest supports adding the Commission’s oversight when resource portfolios have been evaluated and ranked by the evaluator.

The Commission should make it clear in these rules that the evaluator should reveal fossil fuel price assumptions in the public version of the evaluator’s report:

while currently treated as extraordinarily confidential corporate secrets, these predictions are entirely fictional, particularly in the out years.

It is important to reveal them because they hurt consumers if too low, and protect consumers if higher estimates in a range of reasonable estimates are used.

Since utilities can typically pass fuel costs through to consumers, they have an incentive to low ball these predictions, and they have a track record of having done so, to the detriment of their consumers.

Risks to customers from being wrong about fuel price projections are asymmetrical. If fuel cost projections are wrong and too low, consumers have no efficiency or renewable energy options that they can mobilize in time to protect themselves from higher than anticipated fuel costs. By contrast, if fuel projections are wrong and too high, consumers benefit first from fuel being lower priced than anticipated. They also benefit from having the insurance or hedge value of these resources against future uncertainty. While consumers might have more efficiency and renewable energy in place than they need, lower than anticipated fuel prices will make the burden of these extra resources easier to bear and the extra efficiency and renewables will be available the next time fuel prices escalate unpredictably.

A simple addition to Section 3610 (f) would accomplish this important result:

“The bid evaluator shall provide a non-confidential version of the report to all parties in the docket, **which shall include all fuel cost assumptions made by utilities in their planning and bid evaluations.**”

10. **Model Contracts.** Section 3612 Requests for Proposals includes in (a) a requirement that utilities include a model contract for each need and fuel in proposed RFPs and for Section 123 resources.

Comment: Here Interwest suggests adding the distinction made above between Section 123 technologies with benefits and Section 123 demonstration resources.

11. Commission Decisions. In Section 3613 (c) and (d) commission decisions about utility plans include model contracts and become part of commission decisions approving utility plans. Under (d) utilities shall implement their approved plans.

Comment: Subsection (c) appears to be somewhat circular but subsection (d), while probably not necessary except for the purposefully obtuse reader of these rules, also seems to be necessary given the breakdown experienced in the last year of the previous bid cycle.

Conclusion

Interwest appreciates the opportunity to support the Commission's proposed rules. There is more to be done, but the proposed rules start the process of putting commission rules in line with new legislative policies. They respond to needs made evident in the last bid cycle. If they succeed in adding more diverse resources to the generation mix, they will help ratepayers respond to the increasing costs, risks and potential liabilities that characterize current over-reliance on fossil fuel.

Respectfully submitted this 19th day of July, 2007.

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