

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18R-0623E

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING
ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3 REGARDING
HOUSE BILL 18-1270 AND THE ENERGY STORAGE PROCUREMENT ACT.

DECISION AMENDING AND ADOPTING RULES

Mailed Date: December 12, 2018
Adopted Date: November 28, 2018

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B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING November 28, 2018.13

I. BY THE COMMISSION

A. Statement

1. On June 1, 2018, Governor Hickenlooper signed into law House Bill (HB) 18-1270. The short title of the act is the "Energy Storage Procurement Act" (Act). The Act took effect on August 8, 2018.

2. The Act, codified at § 40-2-203(1), C.R.S. 2018, requires that on or before February 1, 2019, the Commission establishes, by rule, as part of the planning process, mechanisms for the procurement of energy storage systems by electric utilities.

3. The Colorado Public Utilities Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) on September 13, 2018, initiating this proceeding.¹

4. Through the NOPR, the Commission proposed revisions to the Rules Regulating Electric Utilities contained in 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules).

B. Procedural Background

5. The Commission made the proposed rules, provided with Decision No. C18-0772 in legislative (*i.e.*, strikeout and underline) format and in final format, available to the public through the Commission's Electronic Filings (E-Filings) system.

6. The Commission scheduled a hearing for October 23, 2018.²

¹ See Decision No. C18-0772 (mailed September 13, 2018).

² *Id.*, Ordering ¶¶ II.A.2 and 3, p. 6.

7. The Commission invited interested participants to file initial comments no later than September 21, 2018, and to file responsive comments no later than October 5, 2018.³

8. Initial Comments were filed by: Interwest Energy Alliance (Interwest); Representative Chris Hansen, Senator Jack Tate and Representative Jon Becker; Colorado Solar Energy Industries Association and Solar Energy Industries Association (COSEIA & SEIA); Western Resource Advocates (WRA); Colorado Independent Energy Association (CIEA); Energy Storage Association (ESA); and Public Service Company of Colorado (Public Service).

9. Reply comments were filed by WRA, COSEIA & SEIA, and Public Service.

10. Black Hills Colorado Electric, Inc. (Black Hills) filed post hearing comments.

11. The public comment hearing was held by the Commission *en banc* on October 23, 2018 where the following provided oral testimony and responded to Commissioner questions: Cindy Schonhaut with the Office of Consumer Counsel; Chris Irby and Ken Scholl with Public Service; Jake Schlesinger on behalf of COSEIA & SEIA; Erin Overturf with WRA; Mark Detsky on behalf of CIEA; and Lisa Hickey on behalf of Interwest.

II. INTENT OF THE ACT

A. Commenter Positions

12. COSEIA & SEIA argued that the Act intended to effectuate consideration of energy storage systems beyond the electric resource plan (ERP) processes.⁴ COSEIA & SEIA

³ *Id.*, Ordering ¶ II.A.4, p. 6.

⁴ Hearing transcript, p. 44, l. 16 through p. 45, l. 7.

recommended that the Commission require consideration for energy storage systems in utilities' generation, transmission, and distribution facilities planning processes.⁵

13. WRA argued that the bill contemplated "systemic benefits" which are reasonably interpreted to suggest considering energy storage systems for supply-side utility-scale resources such as those considered in the ERP process, as well as considering energy storage systems in transmission and distribution planning processes.⁶

14. Representative Chris Hansen, Senator Jack Tate, and Representative Jon Becker filed joint comments encouraging the Commission to require utilities to consider storage in all of the utility's planning processes, including generation, transmission, and distribution.⁷

15. Public Service and Black Hills argued that the intent of the Act is to provide consideration for energy storage systems only in the Commission's ERP.^{8,9}

B. Discussion

16. The Commission finds that the language of the Act mandates consideration for energy storage systems not only in the ERP process, but in other planning processes as well. As some of the commenting parties recognized, the Act affects planning processes for acquisition of supply-side utility-scale resources, transmission facilities, and distribution facilities.

⁵ Initial Comments of the COSEIA & SEIA filed September 21, 2018, pp. 2, 9.

⁶ Hearing transcript, p. 70, l. 7 through p. 71, l. 9.

⁷ Email from Representative Chris Hansen, Senator Jack Tate and Representative Jon Becker to Commissioners regarding HB 18-1270, September 20, 2018.

⁸ Hearing transcript, p. 21, ll. 4-7.

⁹ Post Hearing Comments of Black Hills filed October 26, 2018, p. 2.

III. GENERATION, TRANSMISSION, AND DISTRIBUTION PLANNING RULES

A. Commenter Positions

17. WRA proposed additions to Rule 3200, which pertains to Construction, Installation, Maintenance, and Operation of plant, equipment, and facilities of an electric utility. WRA also proposed additions to Rule 3627 regarding transmission planning. The proposed additions would require that utilities evaluate energy storage as an alternative to other distribution or transmission investments.¹⁰

18. COSEIA & SEIA argued that “to properly implement HB-1270, the Commission should revise Rule 3102 concerning CPCN applications for facilities, Rules 3205 and 3206 concerning construction and expansion of generation and transmission facilities and Rules 3625 through 3627 concerning transmission planning.”¹¹

19. The ESA recommended that “additional specificity on how to evaluate energy storage as an alternative resource is needed throughout the planning process, including the transmission resources.”¹²

20. Interwest stated that “it is appropriate to require consideration in the distribution planning rule process in the form recommended by WRA. Further, it is appropriate to consider the extent to which energy storage was considered in the planning process and weighing of alternatives when a CPCN is presented to the Commission for adjudication.”¹³

21. Several commenters have recommended that the Commission require the utility to provide current costs for specific ancillary services such as frequency response, spinning reserve,

¹⁰ Initial Comments of Western Resource Advocates filed September 21, 2018, pp. 6-7.

¹¹ Initial Comments of COSEIA & SEIA filed September 21, 2018 p. 7.

¹² Comments of the Energy Storage Association filed September 21, 2018, p. 7.

¹³ Responsive comments of Interwest filed October 5, 2018, p. 5.

and black start capability and that the utility be required to seek bids for the provision of such services from energy storage systems.

22. Public Service responded stating that it does not advise embedding in Commission rules specific value streams related to ancillary or grid services that are to be applied only to a single resource type such as storage. Many, if not all, of the potential value streams that some entities want to claim solely for storage resources can be and are supplied by a variety of generation, storage, and demand response resources.

23. The remaining amendments offered by commenters were uncontested, minor and clarifying in nature, and were considered and incorporated where deemed appropriate.

B. Discussion

24. The Commission does not currently treat all electric facilities alike from the perspective of planning and procurement. In the case of electric distribution, the Commission in Rule 3207(a) established that the expansion of distribution facilities is deemed to be in the ordinary course of business. As a result, it has not established requirements for either planning or procurement activities. In the case of electric supply-side resources, the Commission has implemented Rules 3600 through 3619 for system resources, Rule 3656 for eligible energy resources, and Rule 3665 for community solar garden resources; together, these rules provide requirements for both planning and procurement processes. In the case of electric transmission, the Commission has implemented Rules 3625 through 3627 which provide reporting requirements for electric transmission planning, but no procurement requirements for transmission facilities.

25. Rule 3102, Certificate of Public Convenience and Necessity for Facilities, establishes the requirements for a utility to obtain a Certificate of Public Convenience and

Necessity (CPCN) to construct and operate a facility or extension of a facility which is not in the ordinary course of business. Rule 3102(b)(VIII) requires “[a]s applicable, information on alternatives studied, costs for those alternatives, and criteria used to rank or eliminate alternatives.” This rule contains elements of the planning process in that it provides requirements to obtain a CPCN for a facility that the utility will construct or operate.

26. Rule 3200(a) requires that “plant, equipment, and facilities of a utility shall be constructed, installed, inspected, maintained, and operated in accordance with accepted engineering practice in the electric industry to assure continuity of service, uniformity in the quality of service, and the safety of persons and property.” Rule 3200(b) establishes that “the minimum standard of accepted engineering practice is the edition of the National Electrical Safety Code [NESC] in effect at the time of commencing construction or installation of the electric plant.”¹⁴

27. In sum, Rule 3200 specifies the minimum safety standards that apply to the construction, installation, maintenance, and operation of electric utility plant, equipment, and facilities. The rule is not directed toward regulation of planning or procurement activities. As a result, it is not appropriate to amend Rule 3200 to include requirements for planning or procurement of utility plant, equipment, or facilities.

28. Rules 3205 through 3207 specify the basic requirements for the construction or expansion of generating capacity, transmission facilities, and distribution facilities. The purpose of these rules is to inform the Commission of the utility's proposed new construction or

¹⁴ The National Electric Safety Code (NESC) states that “[t]he purpose of the NESC is the practical safeguarding of persons, utility facilities, and affected property during the installation, operation, and maintenance of electric supply and communication facilities, under specified conditions.” *See* INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS, NATIONAL ELECTRICAL SAFETY CODE (2012 ed.) (endorsed by the American National Standards Institute).

expansion of generation and transmission for the next three calendar years and to provide sufficient information to determine whether a CPCN is required. As such, these rules address elements of the planning process.

29. Rules 3600 through 3619 clearly establish requirements for both planning and procurement or acquisition of supply-side system resources for meeting utility needs.

30. Rules 3625 through 3627 establish requirements for a coordinated electric planning process that is to be conducted on a comprehensive, transparent, statewide basis.¹⁵ Generally, Rules 3625 through 3627 are intended to provide transparency into the planning activities engaged in by the Colorado Coordinated Planning Group (CCPG) and an opportunity for the Commission to determine early when CPCNs are required for utilities regulated by the Commission.¹⁶ There is currently no language in these rules which refer to procurement or acquisition processes and it is inappropriate to locate new storage procurement and acquisition provisions within these rules since transmission owners beyond those regulated by the Commission are involved in the planning processes through CCPG.

31. Consistent with the discussion above, the Commission finds that Rules 3206 and 3207 are the appropriate rules for incorporation of requirements for utility consideration of energy storage systems in utility planning processes for electric distribution and transmission facilities.

¹⁵ 4 CCR 723-3-3626.

¹⁶ CCPG is a subregional planning group within the WestConnect. WestConnect is a regional planning group which serves to coordinate the planning activities of electric transmission in Colorado, New Mexico, Arizona, Nevada, and parts of Wyoming, Nebraska, Texas, and California.

32. To that end, a new rule, 3206(d)(I)(D), will be promulgated requiring that utilities consider energy storage systems alongside other alternatives in the transmission planning process.

33. Similarly, an additional requirement will be added to Rule 3207(a) requiring that where appropriate, utilities consider energy storage systems in their planning processes as an alternative to expansion of distribution facilities. To increase transparency and allow the Commission to better determine whether this mandate is properly implemented, each utility shall file with the Commission a report detailing how it has complied with Rule 3207 paragraph (b) for the preceding calendar year.

34. The title of Rule 3207 is also modified to correct an apparently errant inconsistency in terminology between the Rule and § 40-5-101, C.R.S.

35. Considering the comments filed in this proceeding and the rules governing the ERP process as a whole, the Commission finds that specific ancillary service costs and benefits are more appropriately addressed in Phase I of the ERP proceeding. As a result, the Commission will not adopt language related to specific ancillary services.

36. The changes to Rules 3600 through 3619 are promulgated generally as provided in Decision No. C18-0772 except where certain minor amendments recommended by commenters were adopted to provide additional clarity.

IV. CONFIDENTIAL INFORMATION PROVIDED TO THIRD PARTIES**A. Background**

37. The Act at § 40-2-203(3)(b), C.R.S. 2018, requires that the Commission adopt rules:

Requiring electric utilities to provide to the commission, and allowing electric utilities to provide to third parties as approved by the commission, appropriate data and analysis of potential storage acquisitions in their planning processes, including potential interconnection points. The commission shall treat information provided to the commission or to approved third parties under this subsection (3)(b) as confidential and ensure that the commission and any approved third party manages the information in accordance with all commission rules and federal and state laws concerning customer data and personally identifiable information.

B. Commenter Positions

38. Public Service in its initial comments argued that “a reasonable interpretation of Commission approved third parties in this context specifically means intervenors in the Company’s Electric Resource Plan, not simply any and all developers who submit a bid (legitimate or otherwise) in response to an RFP [request for proposal] in Phase II of an ERP.”¹⁷ COSEIA & SIEA argued that restricting access to information about ideal energy storage use cases and interconnection points only to bidders that intervene in an ERP makes little sense from a policy perspective.

39. COSEIA & SEIA in reply comments disagreed with Public Service’s interpretation and presented a proposal based on an understanding that the Act’s language regarding third parties that receive confidential information was directed toward developers or bidders responding to an RFP. COSEIA & SEIA proposed that utilities be required to make a

¹⁷ Public Service Initial Comments filed September 21, 2018, p. 6.

filing addressing the treatment of confidential information to be provided to bidders 60 days in advance of the issuance of an RFP.

C. Discussion

40. The Commission finds that as used in the Act, “third parties as approved by the [C]ommission” includes developers or bidders responding to an RFP, even if those parties have not intervened. If the Colorado Legislature had intended to limit these provisions to intervening third parties it could have easily done so.

41. The Commission adopts rules similar to those proposed by COSEIA & SEIA. But, instead of requiring a separate petition process subsequent to the Phase I decision, Rule 3614 will be amended to require utilities to include proposed treatment of confidential information that may be provided to bidders in its ERP application. This will allow the Commission the opportunity to decide on the treatment of such information earlier—in the Phase I decision—and avoids the additional time and expense of a separate process.

V. INELIGIBILITY TO BID IN SUBSEQUENT RFP

A. Background

42. The Act at § 40-2-203(3)(b), C.R.S. 2018, also defines a remedy that the Commission can impose when a third party has been found in violation of confidentiality requirements:

If the commission finds that a third party has failed to comply with any applicable rules, laws, or conditions of approval under this subsection (3)(b), the commission may deem that party ineligible to bid or develop storage systems in the subsequent electric resource plan.

B. Commenter Positions

43. CIEA argued that in order to provide due process of law, the rules need to provide for notice of claims that a developer or bidder violated the confidentiality requirements, and that the developer or bidder must be granted an opportunity to respond to such a claim.

44. CIEA also pointed out in its comments that the remedy the Act provides for a developer or bidder found to have violated the confidentiality provisions is limited to bidding ineligibility in the next or subsequent ERP, not in all subsequent ERPs.

C. Discussion

45. The Commission declines to add to the rule the language proposed by CIEA because it is unnecessary; the Commission is already obligated to provide due process in accordance with the law.

46. Instead, the Commission finds that the specific language in the Act at § 40-2-203(3)(b), C.R.S. 2018, adequately describes the provided remedy. Therefore, the Act's relevant language will be incorporated, with minor changes, into Rule 3614(e).

VI. ORDER**A. The Commission Orders That:**

1. Rule 4 *Code of Colorado Regulations* 723-3 contained in Attachment A to this Decision and shown in final format in Attachment B, is adopted consistent with the discussion above, and is available through the Commission's Electronic Filing (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=18R-0623E.

2. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules

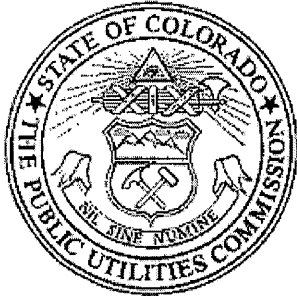
shall be filed with the Office of the Secretary of State. The rules adopted by this Decision shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

3. The 20-day time period provided by § 40-6-114, C.R.S. 2018, to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 28, 2018.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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Commissioners