Decision No. R24-0121-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0249E

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION'S RULES REGULATING ELECTRIC UTILITIES TO IMPLEMENT THE PROVISIONS OF SB21-072 REGARDING TRANSMISSION UTILITY PARTICIPATION IN ORGANIZED WHOLESALE MARKETS, 4 CODE OF COLORADO REGULATIONS 723-3.

INTERIM DECISION OF HEARING COMMISSIONER ERIC BLANK
SCHEDULING HEARING AND
PROPOSING ADDITIONAL RULE REVISIONS

Mailed Date: February 27, 2024

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I. STATEMENT

A. Procedural Background

1. This rulemaking was opened subsequent to the Commission's completion of its work under the requirements of the Colorado Transmission Coordination Act of 2019 (CTCA). The CTCA

directed the Commission to investigate the costs and benefits resulting from electric utility participation in an organized wholesale market (OWM).[1]

2. By Decision No. C21-0755 in Proceeding No. 19M-0495E, the Commission determined pursuant to its report to the Colorado General Assembly (CTCA Study) that utility participation in an Energy Imbalance Market (EIM), a Day-Ahead Market (DAM), a regional transmission organization (RTO), power pool, or joint tariff is generally in the public interest. The Commission clarified that this general determination on OWM participation did not extend to participation in a specific market and that any analysis of the costs, benefits, and public interest associated with participation in a specific OWM would have to occur through a separate proceeding.[2]

3. The Commission based its general determination that participation in an OWM is in the public interest in part on the results of available studies of the question, including the results of a particular study it commissioned to fulfill the statutory requirements of the CTCA. The CTCA Study demonstrated that markets can provide material savings through operational and investment efficiencies. In particular, the study results showed that savings from participating in an EIM represent about one percent of the total State revenue requirement including fuel, operational costs, and return of and on capital. The study results also indicated that expected savings from participating in a DAM or a full RTO with day-ahead unit commitment and reserve sharing could produce savings of as much as four to five percent of the total state revenue requirement.[3] The study results further showed that the footprint of the market had some impact on the total amount of benefits, but regardless of whether

[1] Section 40-2.3-102(1)-(4), C.R.S., refer to energy imbalance markets, regional transmission organizations, power pools and joint tariffs.

[2] *See* Decision No. C21-0755 issued December 1, 2021, in Proceeding No. 19M-0495E at ¶ 1, p. 22.

[3] *See* Decision No. C21-0755 in Proceeding No. 19M-0495E, Attachment 1 Colorado Transmission Coordination Act: Investigation of Wholesale Market Alternatives for the State of Colorado, §40-2.3-101 to 102, C.R.S. ("CTCA Study"), p. ii.

Colorado joined with other market participants in the east or the west, the benefits arose from enhanced regional coordination within a larger footprint, largely independent of the exact composition of that footprint.[4]

4. While the general benefits of participation in an OWM were recognized, the Commission identified certain other issues that required further examination. The Commission specifically listed the role of state Commissions in resource planning and acquisition activities, appropriate methods to account for greenhouse gas emissions, the processes surrounding transmission expansion, the management of generator interconnection, governance issues, and general rate concerns.[5]

5. While Proceeding No. 19M-0495E was ongoing, SB 21-0072 was signed into law on June 24, 2021, mandating that Colorado transmission utilities join an OWM by January 1, 2030. The bill lists ten specific characteristics of an OWM that must be satisfied for statutory compliance. At the same time, however, the Commission is authorized to grant a delay or waiver of the requirements on a utility to join an OWM under certain conditions.[6]

6. On June 28, 2022, by Decision No. C22-0386, the Commission issued a Notice of Proposed Rulemaking (NOPR) and opened this Proceeding to amend the Rules Regulating Electric Utilities (Electric Rules) contained in 4 *Code of Colorado Regulations* 723-3 to implement sections of Senate Bill (SB) 21-072 and to set forth provisions otherwise governing participation in an OWM. The NOPR further designated Chairman Eric Blank as the Hearing Commissioner pursuant to § 40-6-101(2)(a), C.R.S.

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[4] *Id*.

[5] *Id*. at p. i.

[6] Colorado SB 21-0072, signed June 24, 2021 (https://leg.colorado.gov/sites/default/files/2021a_072_signed.pdf)

7. During the course of this rulemaking, various proposals have been submitted by the stakeholders. In addition, public comment hearings were held on October 11, 2022, April 4, 2023, and September 12, 2023.

8. As a general matter, in both the written and public comments, it appears that two groups have organized around two competing approaches for implementing the requirements and goals of SB 21-072. One group consists of the non-utility rulemaking participants, called the Joint Commenters,[7] who have developed a "Process Framework" to guide the Commission's rules for the investigation and the analysis of organized market options. The Process Framework entails three sequential steps that lead to a Commission decision regarding: (1) whether a utility's application to join an organized wholesale market complies with the statutory requirements; (2) whether joining such a market would result in just and reasonable rates and electric service for ratepayers; and (3) whether joining the market would be in the public interest. The first step would include Commission Information Meetings, stakeholder meetings, technical conferences, and other types of informal processes. The second step would involve declaratory order proceedings in which the Commission would evaluate whether specific markets satisfy SB 21-072 criteria. And the third step would entail the filing of an application by each Colorado utility for authorization to join a particular market previously addressed by a declaratory order from the second step. The application filing would lead to a full adjudicatory proceeding with a final Commission determination on the public interest.

9. In a response to this Process Framework, the three Colorado transmission utilities—specifically, Public Service Company of Colorado (Public Service); Black Hills Colorado

[7] The Joint Commenters include Advanced Energy United, Clean Energy Buyers Association, Climax Molybdenum Company, Colorado Energy Consumers, Colorado Energy Office, Colorado Solar and Storage Association, Interwest Energy Alliance, the Colorado Office of the Utility Consumer Advocate, Signal Tech Coalition, Solar Energy Industries Association, The Sustainable FERC Project, Western Grid Group, and Western Resource Advocates.

Electric, LLC.(Black Hills); and Tri-State Generation and Transmission Association, Inc. (Tri-State)—collectively conclude that the Joint Commenters' proposal is lengthy and unduly burdensome.[8] At the same time, however, the utilities state that the proposed rules included with the Commission's NOPR would also require substantial revisions to enable, and not impede, the achievement of Colorado's public policy goals and the efficient delivery of customer benefits.

10. At the hearing conducted on September 12, 2023, the utilities presented an outline of an alternative process where a utility would request a declaratory order from the Commission on whether a particular market the utility potentially seeks to join meets the ten statutory criteria. If the declaratory order approving a market is issued by the Commission, a rate-regulated utility such as Public Service or Black Hills would later file either an application for cost recovery and shared savings to join that "Commission-approved market" or instead would file for a request for a waiver or delay related to joining that market. These investor-owned utilities (IOUs) would also file status reports going forward. A non-rate-regulated utility such as Tri-State would, after the declaratory order, either seek a waiver or delay, as needed, or file an "informational notice of participation." And Tri-State, too, would then submit status reports.

11. The Joint Commenters also responded to the utilities' proposal at the September 12, 2023 hearing, and again stressed the need for public participation and transparency as well as adjudications in which the Commission would decide whether joining an OWM is in the public interest and results in just and reasonable rates. Under these circumstances, a very significant gap appears to remain between the utilities and the non-utilities participating in the rulemaking regarding process, approach, timing, and other key elements of a potential Commission process.

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[8] *See* Joint Transmission Utilities Reply to Supplemental Comments of Joint Commenters in Proceeding No. 19M-0495E, p. 1.

B. Regional Market Background

12. As this rulemaking proceeds, there are two energy imbalance markets currently operating in the Western Interconnection, one operated by the California Independent System Operator (CAISO) called the Western Energy Imbalance Market (WEIM) and another sponsored by the Southwest Power Pool (SPP) called the Western Energy Imbalance Services market (WEIS).[9] Tri-State is a founding member of SPP's WEIS having joined in February 2021.[10] When Public Service joined the WEIS in April 2023, the remaining 20 percent of Tri-State's system-wide load located within Public Service's balancing area in Colorado also entered the WEIS.[11] Tri-State is also participating in the CAISO-administered WEIM for some of its footprint, mostly in Wyoming and New Mexico.[12]

13. Initial results from the participation of the Colorado utilities in the WEIS (consistent with the findings of the CTCA Study) suggest that optimizing dispatch on a real-time basis has already reduced curtailment and lowered production costs in Colorado, although these findings have not yet been fully quantified and published.[13] Furthermore, as a natural progression from the CTCA Study revealing that only a fraction of the benefits of enhanced regional coordination results from these EIMs and real-time dispatch, there are now at least three regional efforts underway to create greater benefit by developing and implementing more OWMs in the Western Interconnection each of which will likely be available to Colorado electric utilities.[14]

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[9] CTCA Study, p. iii – iv.

[10] *See* Tri-State's Initial Comments on Proposed Rules in Proceeding No. 19M-0495E, p. 12.

[11] *Id.* p. 13.

[12] *Id.* P. 12.

[13] *See, e.g.*, Presentations by Travis Deal, CEO, Colorado Springs Utilities and Melie Vincent, COO, Generation and Transmission, PRPA, Western Power Players Conference, Devil's Thumb Ranch, February 1, 2024. (talking about how the WEIS is optimizing unit dispatch across the two Colorado balancing authority in ways that appear to be significantly reducing wind and solar curtailment in Colorado).

[14] Decision No. C21-0755 issued December 1, 2021, in Proceeding No. 19M-0495E at ¶ 1, p. 6.

14. One such effort is the Extended Day Ahead Market (EDAM) sponsored by CAISO. The EDAM tariff was filed at FERC in August of 2023 and was just approved by FERC in December 2023.[15] The EDAM filing seeks to build off the success of the WEIM that CAISO currently runs. Although both PacifiCorp and the Balancing Authority of Northern California have announced their intent to join the EDAM, no other utilities, including any Colorado utilities, have committed to joining EDAM as of the end of January 2024.[16]

15. The second market opportunity involves a full RTO effort called SPP RTO West, which was announced in July 2021 and seeks to extend the reach of SPP's services currently offered in the Eastern Interconnection. To date, seven utilities are evaluating placing some or all of their western facilities under the terms of the SPP Open Access Tariff, including Colorado utilities such as Tri-State, Platte River Power Authority, Colorado Springs Utilities, and the Western Area Power Administration.[17]

16. In regard to SPP RTO West, Tri-State intends to transition its footprint in the Western Area Colorado Missouri balancing area, which includes portions of Colorado, Wyoming, Western Nebraska, New Mexico, and Arizona, into the SPP RTO West in April 2026. In its report filed in June 2023 in Proceeding No. 23M-0195E, Tri-State explains that it is already engaged in initial market expansion and start-up activities including detailed market design assessment, software design specifications, and requirements development—all in preparation of and support for development of SPP's Open Access Transmission Tariff filing and necessary modifications to the SPP Integrated Marketplace Protocols. Tri-State estimates that SPP will file with FERC tariff modifications

[15] *See* Order No. 185 FERC ¶ 61,210 in Docket No. ER23-2686-000.

[16] https://www.caiso.com/Documents/ferc-accepts-iso-tariff-changes-for-a-western-day-ahead-electricity-market.pdf

[17] *See* Tri-State's Report Addressing Near-Term Organized Market Activities in Proceeding No. 23M-0195E, p. 3.

supporting the SPP RTO West in mid-2024, subsequent to approval by SPP's Market and Operations Policy Committee in spring of 2024.[18]

17. Consistent with these plans, Tri-State is now working with SPP and interested stakeholders to develop a proposal for enhancing the market design to include an emissions-informed dispatch to be integrated into the SPP tariff for the SPP RTO West before Tri-State's market entry in 2026.[19] Tri-State further explains that SPP's governance structure includes a Regional State Committee (RSC) which is composed of state regulators. SPP's RSC has responsibility for: (1) cost allocation for transmission upgrades; (2) regional resource adequacy; and (3) the allocation of transmission rights in SPP's markets. The RSC membership is open to representatives of state regulatory commissions from each state where SPP provides services as an RTO.[20]

18. The third regional market option available to Colorado utilities is the Markets+ DAM offered by SPP and described as a bundle of proposed services that seeks to centralize day-ahead and real-time unit commitment and dispatch across a large footprint in the Western Interconnection. Right now, the Markets+ concept is in what is called a "Phase I process" to develop a day-ahead market tariff filing for submission to FERC. Phase I participants in Markets+ involve over two dozen entities including Public Service, Black Hills, and Tri-State.[21]

19. The Markets+ development process currently consists of four working groups involving: market design; seams; transmission; and operations and reliability. There are also certain task forces the working groups focusing on such issues as greenhouse gas emissions, congestion rent,

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[18] *Id.* p. 6.

[19] *Id.* p. 33.

[20] *See* Tri-State's Report Addressing Near-Term Organized Market Activities Attachment E in Proceeding No. 23M-0195E, p. 19.

[21] https://www.spp.org/western-services/marketsplus/

resource adequacy, and rates. SPP's expectation is that the Phase I process may result in a tariff filing at FERC for the day-ahead market sometime in the first or second quarter of 2024.

20. The Markets+ proposal currently in development also includes provisions for a Markets+ State Committee (MSC) for state regulators and other state officials that have market participants with generation or load participating in the Markets+ footprint to organize and participate in the Markets+ process. The MSC—modelled after similar committees in PJM, MISO, SPP East, and CAISO—currently has 14 states that have collectively drafted and approved a governance charter, designated individual voting members, raised funds, hired consultants, and are active participants in the entire Markets+ process and dialogue.[22]

21. Some significant portion of the analytical and modelling work that evaluates the comparative benefits and costs of these three market options is occurring through an affiliation of western utilities called the Western Market Exploratory Group (Western MEG).[23] Although the study results appear to be available to regulators in Nevada and New Mexico,[24] the Western MEG modelling results are not currently available to this Commission, so in this Decision, the Hearing Commissioner asks Public Service to file the results of these studies into the record of this rulemaking under appropriate confidentiality.

22. The process to obtain FERC approval of these new market structures is governed by the Federal Power Act (16 U.S.C. §§ 791-825r) and federal regulations (18 CFR § 35.12). As such, a new market must file with FERC its initial rate schedules and tariffs, as well as any governing documents.

[22] Chair Blank is the initial chair of the MSC and Commissioner Tawney from the Oregon PUC is the vice chair.

[23] https://www.bpa.gov/-/media/Aep/projects/day-ahead-market/e3-wmeg-benefits-study.pdf

[24] *See* Western Markets Exploratory Group: Western Day Ahead Market Production Cost Impact Study, https://www.oasis.oati.com/woa/docs/NEVP/NEVPdocs/3._E3_WMEG_Western_Day_Ahead_Market_Production_Cost_Impact_Study_-_Final.pdf, and Public Service Company of New Mexico's Initial Order Opening Docket, Scheduling Workshop, And Requiring Filing Of Responses To Inquiries Exhibit B.

This FERC process can take many months for final approval and is largely outside the control of Colorado utilities, regulators, and other stakeholders. Once a market is FERC-approved, the internal process to change a market's rules and tariff depends on the governance structure, the market's stakeholder process, and the type of change requested.[25] Given these timing and other challenges surrounding the FERC approval and modification process, the best opportunity for Colorado utilities, regulators, customers, IPPs, clean energy advocates and others to shape the key aspects and structure of the regional market options may be prior to the FERC filings. Once a tariff is filed at FERC additional changes can be challenging and time-consuming to get approved and implement.

C. Analysis and Discussion

23. The Hearing Commissioner has struggled to find a path forward on the promulgation of OWM rules given the large gap between the two sets of comments in terms of starting assumptions, approach, process, timing, and stakeholder participation. This struggle has been exacerbated by the fact that both of the day-ahead markets (EDAM and Markets+) as well as SPP RTO West are still evolving in real time.

24. Although each of the two sets of commenters brought a very different perspective and recommended solutions to the proposed rules, both sets of comments treat the IOUs and Tri-State largely the same despite significant differences.[26] These differences were explicitly recognized when this Commission opened Proceeding No. 23M-0195E to better understand the unique issues

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[25] *See* MarketsPlus Draft Tariff 20240214, https://www.spp.org/spp-documents-filings/?id=436870

[26] Unlike the IOUs, Tri-State is a cooperative entity with wholesale rates approved by its member board, not by the Commission. It also operates in four different states, with generation and load on both sides of the asynchronous divide. In addition, Tri-State is contemplating participation in the SPP RTO West market with early funding commitments likely required, while Public Service is exploring the SPP day-ahead market, which is on a different time frame and a separate process.

surrounding Tri-State.[27] Under these circumstances, it seems as though these OWM rules should treat the IOUs and Tri-State separately based on these differences.

25. As previously discussed, the slowness and the difficulty of implementing subsequent changes through the regional market and FERC tariff approval process also create significant timing issues for the appropriate functioning of these rules. For example, the best time to influence the market protocols and design may be in the regional market development processes that occur prior to the tariff filing at FERC. Again, once a tariff is filed at FERC, or approved by FERC, it may be difficult to modify the tariff. This timing and approval reality may create significant problems with the proposal of the Joint Commenters, which recommends a fully litigated process with public interest findings after the tariff filing at FERC. As such, the outcome of this after-the-fact litigated proceeding in Colorado would likely be limited in its impact on a FERC-approved market design and tariff. It could also create substantial risk, as the participation of the Colorado utilities in the broader market footprint would be uncertain for an extended period of time while the litigation was resolved.

26. At the same time, the recommendation of the utilities—to basically limit Commission review to determining whether the market structure complied with the ten Statutory OWM criteria—seems inadequate and provides little incentive for the utilities to address the concerns raised by the Commission in the CTCA Study, particularly around maintaining functional interconnection queue processes, ensuring adequate mechanisms regarding the tracking and accounting of GHG emissions, and any potential impacts on IOU customer rates and transmission expansion.

27. In terms of a path forward, the revised proposed rules attached to this Decision seek to find a middle ground between the utilities' approach and the Joint Commenters' approach based on the organizational structure of the transmission utility, the type of regional market the transmission utility

[27] *See* Decision No. C23-0268 issued April 24, 2023, opening Proceeding No. 23M-0195E.

seeks to join, the Commission findings needed to support a public interest determination, and the process required to make that determination. The revised proposed rules in legislative (*i.e.*, strikeout/underline) format (Attachment A) and final format (Attachment B) are available through the Commission's Electronic Filings (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0249E

28. Regarding filing requirements, proposed Rule 3753(c) requires each utility to submit a request for an order from the Commission that contains certain findings related to the utility's planned participation in a specific OWM (*i.e.*, to join a "Regional Market" as defined in proposed Rule 3752(j)). This "Market Participation" filing is due no later than June 1, 2028, and at least twelve months prior to when a utility is expected to commence operations in any regional market.

29. Proposed Rule 3753(b) sets out an initial decision point for a Market Participation filing to determine whether or not the OWM that a utility is seeking to join complies with the ten OWM statutory criteria as based on a series of filing requirements laid out in proposed Rule 3754.[28] If the Commission finds that the market has not satisfied the statutory OWM requirements, or, in other words, the market is not a "Statutory OWM" as defined by Rule 3751(n), then the utility must file an application for waiver or delay in accordance with the requirements of both the underlying statute and proposed Rule 3753(f).

30. If a regional market does comply with the ten Statutory OWM requirements, partially in line with the requests of the Joint Commenters, proposed Rule 5753(a) requires consideration of a

[28] These proposed Rule 3754 filing requirements include (a) a detailed market overview; (b) FERC approval status; (c) a description of how generator and transmission facility control are separated; (d) an outline of transmission rates and how transmission rate pancaking is minimized; (e) a summary of reliability and resource adequacy issues; (f) an assessment of net economic benefits; (g) a discussion of market governance, (h) a demonstration of emission reduction improvements; (i) a further demonstration of an inclusive and open stakeholder process; (j) an assessment of the market's impact on transmission, planning, cost allocation, and expansion; and (k) an evaluation of the market's impact on interconnection request processes and queue management and its potential impact on the Transmission Utilities state-based resource planning processes. Proposed Rule 3755 further specifies ongoing cost and progress reporting requirements.

broader set of criteria from this Commission based on additional concerns beyond just the ten Statutory OWM criteria before a transmission utility can join a regional market. Consideration of this broader set of criteria —particularly involving interconnection, emissions tracking, IOU customer rate impacts, and IOU transmission expansion—seems appropriate given the concerns identified in this Commission's CTCA Study, the Commission's comments to FERC on interconnection, and other state statutory requirements involving GHG emission reductions and resource planning as discussed below in more detail.

31. At the same time, however, partially in line with the utility's comments, the additional criteria to be considered required by proposed Rules 3753(a)(I) through (III) are relatively narrow. This narrowing also seems appropriate given the language of SB 21-0072 where the General Assembly "finds, determines, and declares that the participation of Transmission Utilities in OWMs…will assist Transmission Utilities in ensuring the resilience of the electric grid and its resistance to both natural disasters and initial attacks." As such, the gravitational pull of the statute—as buttressed by the economic findings about the benefits of enhanced regional coordination in the Commission's CTCA Study[29] and the initial benefits arising from the WEIS energy imbalance market—all suggest that a more abbreviated and narrower public process and set of criteria to be considered may be appropriate.

32. Taking all these factors into consideration, proposed Rule 5753(a)(II) suggests an alternative approach for Tri-State that is different from the one for the IOUs in recognition of the differences in how Tri-State operates and is regulated. The updated proposed rules would essentially allow a generation and transmission cooperative association's participation in a regional market to be deemed in the public interest as long as it satisfied two additional criteria, beyond the Statutory OWM requirements, as outlined in proposed Rules 3753(b)(II) and (III).

[29] *See* https://puc.colorado.gov/CTCA for the responsive PUC decision and report.

33. The first additional criteria for Tri-State, outlined in proposed Rule 3753(b)(II) requires a Commission finding that the OWM that the utility seeks to join has a GHG Tracking and Accounting System that enables the fair and timely tracking, reporting, and accounting of GHG emissions to determine whether or not any individual utility is complying with the statutory emission reduction requirements of §§ 25-7-102 and 40-2-125.5, C.R.S. As of January 2024, SPP has not meaningfully discussed, let alone addressed, how states like Colorado that have emission reduction requirements will track and account for emissions, as between in-state versus out-of-state resources and as among the various market participants, for either Markets+ or SPP RTO West.[30] If the Colorado transmission utilities were to join these markets without such tracking and accounting to properly allocate emissions among different market participants, it may be impossible to determine whether or not the Colorado utilities are complying with the statutory emission reduction requirements. Perhaps even more problematic, it is not entirely clear at the current time how and when the emissions tracking and accounting approaches being adopted in the SPP Markets+ DAM (that the Colorado IOUs seem likely to join) will be harmonized with the approaches being used in SPP RTO West (that Tri-State seems likely to join). The end result of this lack of coordination could be that different GHG tracking and accounting rules and approaches could apply to the Colorado utilities. As such, proposed Rule 3753(b)(II) ensures that no Colorado utility will join a regional market without addressing these issues and developing a consistent, transparent, integrated, and comprehensive approach to accounting for GHG emissions across markets.

[30] *See* https://www.spp.org/Documents/70878/20240108%20MGHGTF%20Additional%20Materials%20-%20Non%20Pricing%20Programs.pptx for a presentation from the Markets+ Greenhouse Gas Task Force on | January 8, 2024 identifying the objectives to begin discussing the needs of states with non-priced GHG reduction requirements.

34. The second additional criteria to be considered for Tri-State, outlined in proposed Rule 3753(b)(III), is that the utility must secure a Commission finding that the OWM it seeks to enter has an interconnection queue process that will enable Tri-State to meet the affordability, reliability, and environmental goals of the Colorado's Electric Resource Planning (ERP) process by being able to timely and cost effectively interconnect the winning projects from that process.[31] The Commission has expressed concerns—in its CTCA Study, comments on the FERC interconnection rules, and in Proceeding No. 23M-0195E—that the current SPP proposed approach to interconnection may undermine the Colorado ERP process for Tri-State, even if a new interconnection queue is established in the Western Interconnection. In the last Tri-State ERP, the number of projects seeking interconnection to Tri-State exceeded coincident peak demand in the balancing authority by something like a factor of eight.[32] Under the FERC interconnection rules, as they are implemented in the current bilateral market structure, Tri-State can still effectively provide interconnection to the winning bidders in our ERP process even under those conditions of scarcity. In contrast, under the existing SPP RTO approach in the Eastern Interconnection, and really all RTOs, including as SPP proposes for SPP RTO West, Tri-State may not be able to prioritize for interconnection the winning bids in the ERP process.[33] As such, proposed Rule 3753(b)(III) seeks to ensure that the existing Tri-State approach to interconnection queue management is either grandfathered in as Tri-State enters SPP RTO West or a modified approach is developed that clearly enables Tri-State to provide timely interconnection for the winning projects in the ERP process.

[31] *See,* 4 *Code of Colorado Regulations* (CCR) 723-3-3600

[32] *See*, Colorado PUC Docket No. 20A-0528E, Tri-State Generation And Transmission – 2020 ERP, 2022 All-Source Solicitation 30-Day Report, at p. 3.

[33] *See*, Initial Comments of the Colorado Public Utilities Commission, Docket No. RM22-14-000, filed on Oct. 13, 2022.

35. For Public Service and Black Hills, if the OWM satisfies the two additional criteria described above for Tri-State as well as three additional criteria beyond the Statutory OWM requirements, the updated proposed rules enable the IOUs to secure a Commission order with findings that their participation in a OWM is deemed to be in the public interest. Proposed Rules 3753(a)(IV) through (VI) would consider a broader set of criteria for the Commission to deem an IOUs participation in a Statutory OWM to be in the public interest. This broader consideration seems appropriate as the IOUs are for-profit entities, subject to Commission rate-making authority, operating solely within Colorado, and only on the western side of the asynchronous divide.

36. The first additional criteria for an IOU described in proposed Rule 3753(b)(IV) would require the utility to demonstrate that the market it seeks to join will have cost allocation, price formation, and market design approaches that will ensure just and reasonable rates for the utility's end-use customers. As discussed in the NOPR, the Commission has broad statutory authority over IOUs, including the authority to ensure just and reasonable rates[34] while this Commission's finding in the CTCA Study found that there could be real concerns with how a full RTO could potentially adversely impact customers.

37. Likewise, proposed Rule 3753(b)(V) identifies a second additional criteria to be considered where an IOU must show that there is a timely path available for planning and building new transmission as part of the regional market process. In the Commission's recently completed Colorado Power Pathway process in Proceeding No. 21A-0096E, Public Service was able to submit a detailed filing on its transmission expansion plans, go through an entire Commission approval process, construct, and appears on track to place into service the new transmission lines within a roughly five

[34] *See*, § 40-3-101, C.R.S., and § 40-3-102, C.R.S (rate regulatory authority).

year period.[35] Proposed Rule 3753(b)(V) is designed to ensure that transferring the transmission planning, cost allocation, and construction decisions to a FERC-jurisdictional regional market doesn't somehow delay Colorado's ability to continue to build new transmission in a timely, affordable, and equitable manner.

38. Under proposed Rule 3753(b)(VI), the third additional criteria, an IOU would also have to provide sufficient modelling and other analytical support demonstrating that the expected benefits of joining that market—including dispatch, ancillary services, production cost reductions, and reliability—are expected to exceed the expected costs.

39. Regarding a transmission utilities decision to join a DAM well before the June 2028 Market Participation filing deadline, proposed Rule 3753(a)(I) creates a process and a set of criteria to be considered. In this situation, exactly like the requirement for joining a Statutory OWM, the transmission utility would be required to comply with proposed Rule 3753(b)(II) showing that the regional DAM had an emissions tracking and accounting system sufficient to ensure compliance with Colorado's statutory GHG emission reduction requirements. In addition, under proposed Rule 3753(b)(VI), an IOU would also have to provide sufficient initial modelling and other analytical support demonstrating that the expected benefits of joining the DAM are likely to exceed the expected costs. However, this would be a lower bar than the requirement for a full Statutory OWM as outlined in Rule 3753(b)(IV) as the concerns identified by the CTCA report for a DAM were less than those associated with a full Statutory OWM.

40. Proposed Rule 3753(d) states that upon receipt of a utility's Market Participation filing pursuant to Rule 3753(b), the Commission will provide notice to interested persons and specify procedures for the proceeding. Given the timing and uncertainty concerns associated with imposing

[35] *See* Decision No. C22-0270 and IE Review of Xcel Energy Pathway Project in Proceeding 21A-0096E.

substantial Commission process right before or soon after a market tariff approval request has been submitted to FERC, the expectation that the initial Market Participation filings submitted by each utility will involve some form of a notice and comment process, not an adjudicated application proceeding. This seems particularly appropriate for any IOU filing to join Markets+ and for Tri-State's proposal to participate in SPP RTO West, given that the utility's efforts to join these respective markets are in advanced stages of development with FERC market tariff filings pending. In contrast, with all the uncertainty surrounding future IOU participation in a full Statutory OWM—especially given the broader criteria to be considered by these rules—proposed Rule 3753(d) leaves the exact choice of process (full adjudication or some more limited notice and comment filing) to the parties and the Commission to specify the exact procedures once a Market Participation filing has been submitted. This optionality, combined with the broader required criteria to be considered, should help provide an incentive for the IOUs to work with the Commission and key stakeholders to address relevant concerns well before the actual Market Participation filing.

41. Consistent with the proposed rules attached to the NOPR, Proposed Rule 3755 contains ongoing reporting requirements for the transmission utilities starting June 1, 2025. Proposed Rules 3756 contains cost recovery provisions, and 3757 provides some structure to guide cost savings sharing consistent with the statutory requirements of § 40-5-108(3), C.R.S.

42. Overall, the proposed rules attached to this Decision are based on a multi-year set of Commission public processes and analyses as supported by a diverse range of stakeholder participation as well as multiple state statutory requirements. More specifically, this body of work includes the Commission's CTCA Study and modelling, the Commission's comments to FERC on interconnection and other issues, the emission reduction requirements embedded in state statute, the diverse statutory and Commission goals of the Colorado ERP process, the speed with which Colorado transmission

utilities can currently get approval for and build new transmission under Commission approaches, the initial results associated with the Colorado utilities participation in the SPP WEIS process, and the Commission's involvement and leadership in helping to create the regional DAM and RTO designs. As such, the proposed rules attached to this Decision have been developed to identify a handful of additional required criteria for consideration that go beyond the ten Statutory OWM requirements in a narrow and focused manner, depending on the organization of the transmission utility, the nature of the market, and the type of concern that the rules seek to address. Under these circumstances, if there are other additional criteria that should be identified for consideration—generally supported in the record of prior Commission decisions, the regional market design efforts, or grounded in state statutory efforts—the Hearing Commissioner requests guidance from the stakeholders in identifying such issues.

43. Both the Joint Commenters and the utilities presented useful approaches for having structured conversations among the parties during an interim period perhaps well before any FERC tariff filing (at least for the IOUs to join a full OWM) is made through technical conferences, Commissioners' Information Meetings, and other informal discussions. So, in this Decision, the parties are requested to work together to propose rule language that puts some structure on those proposals for a structured dialogue.

D. Public Comment Hearings

44. A brief public comment hearing shall be scheduled on March 5, 2024, for the purpose of tolling the 180-day statutory period for the promulgation of rules in this proceeding. The March 5, 2024 hearing will also be continued to allow for this rulemaking proceeding to carry on with an additional hearing to be scheduled at a later date.

45. Rulemaking participants will also have additional opportunity to provide written and oral comments.

46. The date and time for the continued comment hearing and a schedule for the filing of written comments will be established through a separate decision and noticed further to the public.

47. Accordingly, members of the public do not need to provide oral comments at the March 5, 2024 public comment hearing.

48. The Hearing Commissioner will nevertheless convene the public comment hearing on March 5, 2024, as scheduled by video conference using Zoom. Those interested in offering oral comment at the public comment hearing must register in advance using the link posted on the Commission's calendar of events for the date and time of the hearing at: https://puc.colorado.gov/puccalendar. Registrants will receive an email with the link, meeting ID code, passcode, and call-in information to join the Zoom session.

49. The hearing will begin at 1:00 p.m. on March 5, 2024, and will conclude when continued to a future date.

50. Consistent with Commission practice, the public comment hearing will be webcast on the Commission's website. Persons wishing to observe, but not participate in the public comment hearing may do so by observing the webcast on the PUC YouTube Channel at puc.colorado.gov/webcasts. The Hearing Commissioner encourages interested persons who do not wish to provide comments during the hearing to observe the hearing through the webcast because this will help minimize background noise during the hearing and may assist in the orderly progression of the hearing.

II. ORDER

A. It Is Ordered That:

1. A continued public comment hearing in this matter shall be held as follows:

DATE: March 5, 2024

TIME: 1:00 p.m., continuing until concluded, but no later than 2:00 p.m.

PLACE: By video conference or telephone using the Zoom web conferencing platform at a link emailed to all those who register to participate in the workshop.

2. The public comment hearing scheduled to be held on March 5, 2024, shall be conducted in accordance with the procedures set forth in this Decision.

3. The Hearing Commissioner will establish a schedule for the filing of written comments and a date for a continued public comment hearing by separate decision.

4. All those who wish to participate in the March 5, 2024 public comment hearing must register by clicking on the link available on the Commission's calendar of events on its website for the date and time(s) of the hearing at puc.colorado.gov/puccalendar.

5. Those wishing to observe but not participate in the above March 5, 2024 public comment hearing may do so by observing the Commission's webcast of the workshop on the PUC YouTube Channel at: puc.colorado.gov/webcasts.

6. The Hearing Commissioner may schedule additional hearings if necessary.

7. Public Service Company of Colorado is requested to file into the record of this Proceeding the results for Colorado of the Western Market Exploratory Group as well as any available initial results quantifying the benefits of the WEIS market under appropriate confidentiality within three weeks of the mailed date of this decision.

8. This Decision is effective upon its Mailed Date.

(S E A L)

ATTEST: A TRUE COPY

Rebecca E White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Hearing Commissioner