

Public Utilities Commission

Consideration of Best Value Employment Metrics in Electric Utility Resource Acquisitions

Performance Audit

July 2022

2250P



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July 7, 2022

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Public Utilities Commission's consideration of best value employment metrics in electric resource acquisitions. The audit was conducted pursuant to Section 40-2-129, C.R.S., which requires the State Auditor to conduct a performance audit of the Public Utilities Commission's implementation of the statutory requirements related to best value employment metrics. The report presents our findings, conclusions, and recommendations, and the responses of the Public Utilities Commission.

Kerri L. Hunter



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Report Highlights

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Department of Regulatory Agencies, Public Utilities Commission
Performance Audit • July 2022 • 2250P



OFFICE OF THE STATE AUDITOR

C O L O R A D O

Key Concern

For electric utility resource acquisitions, the Public Utilities Commission (Commission) does not always receive sufficient information on best value employment metrics (employment metrics) from the utilities' potential project contractors, nor does the Commission consistently document its review and consideration of the metrics when deciding whether to approve acquisitions.

Key Findings

- In Calendar Years 2011 to 2021 (the audit review period), the Commission approved 15 electric resource acquisition proceedings that required its consideration of employment metrics—4 Resource Plans, 2 Plan amendments, and 9 certificates of public convenience and necessity (certificates). Bidders for these projects are to provide information on the employment metrics they will implement if they are awarded contracts.
- For 4 of the 9 certificate proceedings (44 percent), the Commission did not have evidence that it received information on employment metrics to consider, as required, but approved the four proceedings, indicating that metrics were not factors that affected Commission decisions.
- In total, for 11 of the 15 proceedings (73 percent), including the four certificates noted above, the Commission did not consistently document how employment metrics factored into its decisions. For example, for one Resource Plan, both amendments, and six certificates, there was no documentation that the Commission considered metrics at any point.
- 85 of the 90 bidders (94 percent) in the 15 proceedings provided little or no detail on metrics to demonstrate that the projects would comply with statute. For example, 38 bids did not provide any metric information for at least one metric, and 47 bids did not indicate how the bidders would fulfill the metrics.
- We identified a policy area that the General Assembly may want to consider, which relates to the role of the Commission in ensuring employment metrics are implemented.

Background

- The Commission regulates electric utilities, including investor-owned retail electric utilities, and the rates they charge to ensure that the utilities are safe, reliable, and serve the economic and environmental needs of the people of the state. Investor-owned retail electric utilities generate a portion of the power they sell to consumers and, through resource acquisition, acquire the remaining power from other utilities or from wholesalers that are independent power producers.
- The Commission's authority over utilities includes establishing rules to regulate the utilities and reviewing and approving the utilities' Resource Plans for resource acquisitions, which include construction, expansion, and decommissioning of electricity generating facilities.
- Since 2010, statute has required the Commission to consider employment metrics, such as the creation of long-term, well-paying, Colorado jobs, when evaluating and approving the utilities' electric resource acquisition projects.

Recommendations Made

3

Responses

Agree: 3
Partially Agree: 0
Disagree: 0



Best Value Employment Metrics in Electric Utility Resource Acquisitions

Background

The Public Utilities Commission (Commission) is tasked with regulating utilities and the rates they charge to ensure that the utilities are safe and reliable and serve the economic and environmental needs of the people of the state [Section 40-1-101, et. seq., C.R.S.]. The Commission regulates electric power generating and distributing facilities, water and sewer services, telecommunications, gas pipelines, and transportation carriers.

The Commission is a type-1 agency within the Department of Regulatory Agencies (Department). As a type-1 agency, while under the supervision of the Department and its Executive Director, the Commission exercises its powers and duties to regulate and promulgate rules, independent of the Department [Section 24-1-105, C.R.S.]. The Commission is governed by three Commissioners who are appointed by the Governor and approved by the Senate of the General Assembly. The Commissioners are full-time, appointed to 4-year terms, and no more than two of them may be from the same political party [Section 40-2-101, C.R.S.]. The Commission has about 115 full-time equivalent employees who are responsible for assisting in carrying out the Commission's responsibilities, and who are overseen by a Director.

Regulation of Electric Utilities

Statute grants the Commission authority to regulate investor-owned retail electric utilities and nonprofit generation and transmission electric associations (utilities) [Sections 40-1-103 and 40-9.5-101 through 40-9.5-103, C.R.S.]. The three utilities in Colorado are Xcel Energy (also known as Public Service Company of Colorado), Black Hills Colorado Electric (Black Hills), and the Tri-State Generation and Transmission Association (Tri-State). These utilities generate a portion of the power they sell to consumers, and through resource acquisition, acquire the remaining power from other utilities or from wholesalers that are independent power producers, such as Vestas (wind energy), Namaste (solar energy), and Basin Electric.

The Commission's authority over utilities includes: (1) establishing rules to regulate the utilities; (2) reviewing and approving the utilities' Electric Resource Plans (Resource Plans or Plans) for resource acquisitions, which include construction, expansion, and decommissioning of electricity generating facilities; (3) approving the electricity rates that investor-owned utilities charge customers; and (4) ensuring that investor-owned utilities inspect and calibrate electricity metering devices. Resource

Plans specify the amounts and likely types of electric resources (e.g., coal, wind, and solar) that will be acquired, how, and at what cost.

Electric Resource Acquisition Application Process

Statute requires utilities to present electric resource acquisitions to the Commission for its consideration and approval, to ensure that projects meet the energy needs of Coloradans [Sections 40-2-123(2)(b)(II) and 40-4-101, C.R.S.]. The Commission's process for reviewing and approving electric resource acquisitions is referred to as a "proceeding" and is divided into two phases, as discussed below, with a Commission decision issued toward the end of each phase.

Phase 1 – Resource Plan submission and review. Commission rules require each utility to file a Resource Plan with the Commission at least every 4 years [4 CCR 723-3, Sections 3600 - 3619]. The utility sends the Commission an application and initial Resource Plan, and the Commission facilitates the resource acquisition planning process, oversees the utilities' refinement of each Plan, and approves, denies, or modifies the Plan, as appropriate. After a utility sends the Commission its proposed Resource Plan, the Commission alerts stakeholders—including, but not limited to, the Utility Consumer Advocate (who advocates for the interests of Colorado residential, agriculture, and small business utility customers), the Colorado Energy Office, local governments, ratepayer interests, independent power developer interests, environmental interests, and labor interests—that the process has started. Stakeholders and their attorneys may file to be a party to the proceeding if they want to testify and must file non-disclosure agreements to access the utility's Resource Plan because much of it is proprietary and confidential. The Commission, its staff, and stakeholders provide input on areas of the Plan, such as the utility's projection of future electricity need, the strategy for generating electricity, and the sources of generation (e.g., wind or solar). The Commission holds hearings to review the merits of the Plan and hears testimony from involved parties. At the end of Phase 1, the Commission issues a decision to approve or deny the Plan. If the Commission approves the Plan, the utility issues a request for proposals (RFP) for any resource acquisitions in the approved Plan, and bidders submit bids to the utility, such as for the construction or expansion of electricity generating facilities. The utility uses computer modeling to assess bids, and provides the top bids to the Commission for review.

Phase 2 – Review of bids and final approval of Resource Plan. During this phase, the Commission assesses how the utility would implement the Resource Plan. Parties to the proceeding may submit comments in favor or opposition of elements of the bids, and the utility may respond to the comments. An independent evaluator, who is appointed by the utility and approved by the Commission, observes the utility's actions during Phase 2 and reports whether the utility's RFP, bidding, and bid evaluation process was fair. At the end of Phase 2, the Commission issues a final decision to approve or deny the Resource Plan. Once approved, the utility can execute contracts with bidders and acquire the approved resources.

Amendments and Certificates. Other proceedings in the resource acquisition process include amendments to Resource Plans and certificates of public convenience and necessity (certificates), as follows:

If a utility's need for resource acquisition changes significantly from the need specified in the Resource Plan approved by the Commission, the utility must submit an application to the Commission for a Plan amendment.

Statute also requires that any utility that intends to construct new facilities, including electricity generation facilities, first obtain from the Commission a certificate [Section 40-5-101, C.R.S.], which is a permit that grants a utility the authority to construct and operate a facility. The Commission typically orders the utility to file a certificate application as part of a Resource Plan. In rare instances, a utility may submit a standalone application for a project that was not part of the Plan, such as if there is an urgent and unexpected change that requires departure from the approved Plan but is not large enough for a Plan amendment. For example, if a successful bidder for the Resource Plan cannot fulfill its part of the project, another bidder would need to take over that part. For amendments and certificates, the Commission reviews the utility's application, stakeholders may testify, and the Commission issues a decision to grant or deny the application.

Role of Best Value Employment Metrics in Resource Acquisitions

Since 2010, statute has required the Commission to consider best value employment metrics (employment metrics or metrics) when evaluating electric resource acquisitions. Statute [Section 40-2-129(1)(a), C.R.S.] states that companies bidding on the projects must provide employment metrics information for the project related to the:

- (1) Availability of training programs for project labor, including apprenticeships;
- (2) Use of Colorado labor compared to out-of-state labor;
- (3) Prospects for long-term career opportunities; and
- (4) Provision of industry-standard wages, health care, and pension benefits.

Since 2014, the Commission has also been required to consider employment metrics when reviewing a request for a certificate for construction or expansion of an electricity generating facility [Section 40-2-129(1)(a), C.R.S.]. According to statute, "Any [Commission] electric resource acquisition decision must be based in part on review of the 'best value' employment metrics criteria set forth in any [utility proposal] document" [Section 40-2-129(1)(b), C.R.S.]. Therefore, utilities must submit the bidders' employment metrics to the Commission for each Resource Plan, Plan amendment, and certificate related to electric generation. However, statute [Section 40-2-129(1)(c), C.R.S.] allows the Commission to waive the employment metrics requirement if the utility or utility's contractor(s) agree to use a project labor agreement, which is an agreement between labor interests and the

project contractor(s) on conditions of employment that are similar to employment metrics (e.g., local labor, training, wages, and benefits).

In the 10 years since the Commission has been required to consider employment metrics when evaluating electric resource acquisition projects, Calendar Years 2011 through 2021 (the audit review period), the Commission has approved a total of 15 resource acquisitions requiring its consideration of employment metrics, as follows:

- Four Resource Plan applications—two from Xcel Energy and two from Black Hills.
- Two Plan amendment applications—one from each of the two utilities with Plans during the period (Xcel Energy and Black Hills).
- Nine certificate applications—seven from Xcel Energy and two from Black Hills. For three other certificates, the utilities agreed to use project labor agreements; therefore, by statute, the Commission did not need to review metrics and those three certificates were not applicable to our review.

Tri-State did not have any projects in Colorado during the period; however, as of the end of this audit, Tri-State had begun the process to have the Commission review a Resource Plan, which should be completed in late 2024 or early 2025.

Audit Purpose, Scope, and Methodology

We conducted this performance audit pursuant to statute, Section 40-2-129(4), C.R.S., which requires the State Auditor to conduct a performance audit of the Commission’s implementation of the employment metrics requirements. Specifically, the audit is required to review:

- “I. The projects subject to [this section] that have been approved in the previous 10 years;
- II. Whether the work done used contractors that met the criteria specified in this section;
- III. Any shortfalls in enforcement capacity or implementation by the Commission;
- IV. Current enforcement procedures for investor-owned utilities, independent power producers, and wholesale generation and transmission electric cooperatives; and
- V. Whether and how delayed rule-making proceedings have prevented the ‘best value’ employment metrics requirements of this section from being implemented.”

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objective of the audit was to determine if the Commission reviewed and considered employment metrics related to Colorado labor when making decisions on electric resource acquisitions and certificates. To accomplish our audit objective, we performed the following audit work:

- Reviewed relevant state and federal laws and rules.
- Researched the history of legislation in the General Assembly related to employment metrics and listened to testimony on the associated bills to understand the legislative intent of the Commission's role in considering employment metrics and their implementation.
- Interviewed the three Commissioners, Commission management and staff, representatives from Xcel Energy and Black Hills, and representatives from labor organizations.
- Reviewed and assessed Commission documentation of each of the 15 electric resource acquisition proceedings that were completed in Calendar Years 2011 through 2021 and were approved by the Commission, and all 90 bids that the utilities submitted to the Commission for these proceedings.
- Reviewed the Commission's rulemaking proceedings related to employment metrics from Calendar Years 2011 through 2019, for which we found that there were no rulemaking delays that affected the consideration of employment metrics in our review period.
- Reviewed the Commission's complaint proceedings to determine the extent to which any formal complaints related to employment metrics had been filed with the Commission, and identified no complaints related to employment metrics.
- Researched the use of employment metrics in resource acquisitions in other states, as well as literature on best practices for protection of labor when utilities transition to renewable resources.

As required by auditing standards, we planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Details about the audit work supporting our findings and conclusions, including any deficiencies in internal control that were significant to our audit objectives, are described in the remainder of this report.

A draft of this report was reviewed by the Commission. We have incorporated the Commission's comments into the report where relevant. The written responses to the recommendation and the related implementation dates are the sole responsibility of the Commission.

Finding—Public Utilities Commission’s Consideration of Best Value Employment Metrics

Once the Commission approves a utility’s initial Resource Plan, a Plan amendment, or a certificate application, the utility acquires needed electric generating resources and/or construction services through a competitive bidding process. Bids on these acquisitions typically contain extensive technical and economic information, such as how much energy will be generated, through what means, and at what cost. Following the passage of House Bill 10-1001, the General Assembly began requiring the utilities to provide the Commission information from each bidder on the employment metrics that the bidder would provide its employees on the project so that the Commission could consider them in its decision-making process. Employment metrics include the creation of long-term, well-paying, Colorado jobs. The utility evaluates the bids submitted, identifies those that it believes would best provide electricity at a reasonable cost and with other benefits to the State (e.g., environmentally friendly, reliable, and sustainable), and submits the utility’s preferred bids to the Commission. The Commission evaluates the preferred bids to determine if they will provide benefits to customers, utilities, and communities given the amount, means, and cost of energy generated. Once the Commission approves the portfolio of bids that will implement the Plan, the utility negotiates and executes contracts with the bidders, and begins building or improving the facilities needed to implement the Plan.

Between Calendar Years 2011 and 2021, the Commission approved 15 electric resource acquisition proceedings that required the consideration of employment metrics. The 15 Commission proceedings included four Resource Plans, two Plan amendments, and nine certificates, all of which the Commission approved.

How were the results of the audit work measured?

The Commission shall consider employment metrics when approving Resource Plans.

Statute [Section 40-2-129(1)(a), C.R.S.] states that, when “evaluating electric resource acquisitions and requests for a certificate of [public] convenience and necessity for construction or expansion of [electricity] generating facilities, ...the Commission shall consider, in all decisions involved in electric resource acquisition processes, best value regarding employment of Colorado labor [i.e., best value employment metrics].” Specifically, with respect to employment metrics, statute states that companies that bid on electric resource acquisition projects must provide information on the following:

1. Availability of training programs for project labor, including apprenticeships registered with the federal Department of Labor or with state apprenticeship councils recognized by that department;
2. A comparison of the use of Colorado labor versus out-of-state labor;

3. Opportunities for long-term careers; and
4. Provision of industry-standard wages, health care, and pension benefits.

To facilitate the Commission's review of the employment metrics, its rules [4 CCR 723-3605 and 3611] require utilities to request employment metrics from bidders and "provide the Commission with...best value employment metric information regarding each resource."

What audit work was performed and what was the purpose of the audit work?

To evaluate whether the Commission considers employment metrics when approving electric resource acquisitions, as statute requires, we reviewed the Commission's processes for the 15 proceedings with employment metrics completed between Calendar Years 2011 and 2021. As part of our review, we assessed the Commission's documentation for each proceeding to determine if the utilities submitted employment metric information for the bidders, as required, and if the Commission considered that information as part of its approval process. We also interviewed Commission staff and the stakeholders who were involved in the proceedings, which included the utilities and labor unions, to understand electric resource acquisitions and how employment metrics factor into the proceedings.

What problems did the audit work identify?

Overall, we could not determine if the Commission considered employment metrics in 12 of the 15 (80 percent) electric resource acquisition proceedings because the Commission either did not receive information on employment metrics from the utilities at all or in time to consider it, or it did not document its consideration of metrics when it did receive them. We found:

- **The Commission did not consistently receive information on employment metrics from the utilities related to certificates, or did not receive information in time to consider it.** For four of the nine certificate proceedings reviewed (44 percent), the Commission did not have evidence that it received information on employment metrics at all or in time to consider it during its decision-making. Specifically:
 - For three certificates, the Commission had no documentation showing that it had received any information on employment metrics from the utilities.
 - For one certificate, the Commission received information on the employment metrics after it had already approved the certificate and the utility had signed the contract with the project developer, so the Commission did not receive the information in time to consider it during the proceedings. Stakeholders informed us that for this certificate proceeding, they had

concerns with the employment metrics planned for the project, which had been submitted after the Commission's approval and after the contract with the project developer had been signed. The labor interests filed comments challenging the approval, but the Commission determined that there was no need to reopen the proceeding.

Each of the four certificates noted above were approved by the Commission, which indicated that employment metrics were not factors that had an effect on the Commission's decisions.

- **The Commission did not always document its consideration of employment metrics in its written decisions or elsewhere in the proceedings.** The Commission did not document how employment metrics factored into its decisions for 11 of the 15 proceedings in our review period (73 percent). Specifically:
 - For one Resource Plan, the Commission did not document that there was any consideration or discussion of employment metrics at any point in the proceedings.
 - For two other Resource Plans, the Commission did not document that it considered employment metrics in one of its two key decision phases. One proceeding was missing this documentation for the Phase 1 decision, and the other was missing this documentation for the Phase 2 decision.
 - For both of the amendments, the Commission did not document that there was consideration of employment metrics.
 - For six of the certificates, the Commission did not document that it considered employment metrics.

In addition, we found that some employment metric information that the Commission received during the proceedings lacked detail that the Commission would need to review and consider. Specifically, 85 of the 90 bidders (94 percent) in the 15 proceedings provided little or no detail for at least one of the metrics that the Commission needed to consider per statute, as follows:

- 38 bidders did not submit any information for some metrics, or for certain required elements of the metrics. For example:
 - Regarding the **training metric**, a winning bid did not provide information on the availability of training or apprenticeships. In contrast, other bids clearly stated training and apprenticeship details, such as the location, length of, and method of the programs that would be provided.
 - Regarding the **Colorado labor metric**, a winning bid did not include a comparison of the use of Colorado labor versus out-of-state labor, as required. In contrast, other bids stated the

number of employees at locations around the state, that they use local workforce agencies to recruit new staff when needed, and the percentage of in-state versus out-of-state employees.

- o Regarding the **wage and benefits metric**, a winning bidder's submission stated the project would offer industry competitive wages, but did not specify that benefits would be provided. In contrast, other bids stated the industry wages that would be paid, the pension packages available, and the employer's pension contribution rates.
- 47 bidders provided written statements that they would fulfill the employment metrics requirement, but did not provide sufficient information on how they would fulfill the metrics. For example:
 - o Regarding the **training metric**, some winning bids stated that training would be available but did not include any other information, such as information on the training content or whether the employer would provide the training.
 - o Regarding the **long-term career opportunities metric**, a winning bid stated: "[Bidder] offers long-term career opportunities for industry professionals as they are required to meet business demands." The submission did not specify that there would be long-term jobs related to the project.
 - o Regarding the **wage and benefits metric**, some winning bids stated that the bidder would provide industry standard wages and benefits, but did not include any other information, such as what the wages and benefits would be or how they would be determined.

Why did these problems occur?

- **Commission rule allows utilities to apply for certificates without providing information on employment metrics because utilities may not be able to provide the information as statute requires.** According to comments during the Commission's rulemaking proceedings in 2013, this rule is in place because utilities do not always have bidders for the project who would have provided employment metrics at the time the Commission considers and approves the certificate, as statute requires. This is because the utilities need to have the certificate approved before moving forward with the bidding process related to certificates. Rules state that if the utility has metric information when applying for a certificate, the utility should submit it to the Commission, but utilities have 45 days after awarding a construction contract to send the Commission a report containing the employment metrics of the contractor. In the four certificate proceedings for which the Commission did not receive any information on metrics, the metric information was not available when the utilities applied for the certificates, and therefore, had no bearing on the Commission's decision to approve the certificates. At the time the utilities issued their reports, 45 days after the contract, only one of the reports included

employment metrics, but the Commission had already approved the certificate and for construction to move forward. The other three utilities did not include employment metrics in their 45-day reports.

- **The Commission does not have rules or policies to indicate how much weight employment metrics should carry in its decisions on electric resource acquisition.** Statute does not indicate the weight that metrics should carry in the Commission's decisions, and the Commission has not adopted rules on how the metrics will affect its decisions. When assessing bids from potential contractors on projects to construct new or convert existing electric generating facilities, the utilities and the Commission consider a range of factors. According to Commission staff and the utilities, the key considerations of the Commission when making decisions to approve resource acquisitions are technical and economic factors, including: (1) the cost of the project and electricity generation since these costs can affect the future electricity rates that customers pay, (2) the ability of the bidder to provide quality services that will ensure the resulting facility will meet electricity demand, and (3) the extent to which renewable resources (e.g., wind and solar) will be used to generate electricity. Commission rules do not indicate the extent to which the Commission will consider employment metrics in its decisions. As a result, according to Commission staff and stakeholders, the Commission simply checks that the top bids include some type of information on employment metrics.
- **The Commission does not have rules, policies, or procedures for documenting its consideration of employment metrics.** According to Commission staff, unless a party to the proceeding raises concerns about employment metrics, there is likely no record of the Commission's review and consideration of employment metrics. If stakeholders do not raise concerns on employment metrics, the Commission checks to make sure the bidders provided the employment metric information, but otherwise, the Commission's evaluation of electric resource acquisitions is based strictly on other factors such as proposed cost and method of electricity generation. Therefore, the Commission does not have documentation to show that it complied with statute.
- **The Commission does not have rules or guidance for utilities on the type and amount of metric information that the utilities should obtain from bidders and submit to the Commission.** For example, there are no rules or guidance requiring bidders to indicate the training and apprenticeships they will provide, the number of jobs that will be sourced from Colorado, the expected length of time those jobs will remain in the state, or the pay and benefits they will provide to Colorado labor. In order to compare and consider the employment metrics from different bidders, the Commission would need to have consistent types of metric information across all bids.

Why do these problems matter?

Employment metrics may not be implemented to benefit Colorado labor and communities.

When the Commission does not receive complete information on employment metrics or demonstrate that it considers them before approving electric resource acquisitions, there is a risk that contractors will not hire Colorado labor or provide laborers sufficient training; long-term career opportunities; and industry-standard wages, health care, and benefits, as statute intended. According to the Governor's Energy Office, policy makers intended for House Bill 10-1001 to help ensure that when Colorado moved to cleaner sources of energy, quality jobs for former fossil fuel industry workers would be kept in Colorado. For example, labor interests raised concerns that the move from fossil fuels, such as coal, to more renewable resources could lead to the unemployment of fossil fuel industry workers who may not have training or skills to find jobs outside of their industry. Employment metrics in contracts for construction or expansion of electricity generating facilities are intended to protect those workers who might otherwise be displaced due to the new jobs produced by Resource Plans requiring different skill sets. For example, if training and apprenticeship programs are unavailable on electric resource acquisition projects, then fossil fuel industry workers may not have access to develop or improve their skills to continue working at facilities that are converted to generating energy using clean resources.

Additionally, if the employment metrics that statute requires are not reviewed and considered by the Commission when deciding whether to approve an electric Resource Acquisition Plan, the utilities have no incentive to ensure that the companies it contracts with provide quality, well-paying, Colorado-based jobs. This can have a negative economic impact on Colorado communities where fossil fuel industry workers reside. For example:

- If the labor used on electric resource acquisition projects is not based in Colorado, then the communities surrounding the projects could be affected when the workers leave the state and spend their wages elsewhere.
- If the jobs provided on projects are short-term, lasting only as long as it takes to build or convert energy generating resources, then the workers will be at risk of unemployment and their communities will lose the long-term economic benefit of having local labor spending money in their communities.
- If the new jobs created through projects do not provide wage, health care, and pension benefits in line with jobs that were lost due to the retirement or conversion of a generating facility, then the workers could face financial insecurity and leave Colorado communities.

Lastly, applications for certificates and the Commission's approval of them may come years after the resource planning process, and after turnover of Commissioners when their terms expire. If the employment metrics are not submitted for a certificate application, or the Commission does not

document that it considered the previously submitted employment metrics for a related Resource Plan, the Commission may not review and consider employment metrics for certificates, as required by statute.

Recommendation

The Public Utilities Commission (Commission) should ensure that it considers best value employment metrics (employment metrics) when approving electric resource acquisitions, as statute requires, by adopting rules and written guidance that:

- A. Require that utilities provide the Commission complete information on employment metrics in time for the Commission to consider it. If the process for approving certificates of public convenience and necessity (certificates) does not allow for the Commission's consideration of employment metrics prior to approval, the Commission should coordinate with the Executive Director's Office of the Department of Regulatory Agencies to work with the General Assembly to amend statute, as needed.
- B. Specify how the Commission will consider employment metrics, weight the metrics in relation to other factors considered in decisions, and document the consideration in written decisions prior to approvals for Resource Plans, Plan amendments, and certificates.
- C. Provide utilities direction on the level of detail on each employment metric that the utilities should require from bidders and submit to the Commission for its consideration.

Response

Public Utilities Commission

- A. Agree
Implementation Date: June 2023

The Commission agrees with Recommendation 1A and is fully committed to developing and promulgating rules designed to assure that Best Value Employment Metrics (BVEM) are available prior to the Commission making decisions regarding the approval of resource or certificates of public convenience and necessity (CPCN) for construction or expansion of generating facilities.

Currently, Commission Rule 3102(f) allows for the situation where BVEM information is not known at the time an application for a CPCN is filed, that the information can be provided to the Commission after the granting of a CPCN. This provision was based on language that was in the 2013 version of the BVEM statute enacted through House Bill 13-1292. The specific language relied on for this provision was "the commission shall consider, on a qualitative basis,

factors that affect employment and the long-term economic viability of Colorado communities.” The rule allowing provision of BVEM information after the granting of a CPCN was based on the legal interpretation of the meaning of the specific phrase “the commission shall consider, on a qualitative basis” (Commission Decision R15-1245, issued November 25, 2015). This phrase was later removed with the enactment of Senate Bill 19-236. Unfortunately, the Commission did not recognize at the time this was enacted that it eliminated the basis for the late submittal of the BVEM. The Commission commits to revisit this provision in a rulemaking, considering the changes enacted through Senate Bill 19-236.

Considering the Commission’s intended plan of action to resolve this issue, it is unclear whether it will be necessary to seek any amendment in statute from the General Assembly. Regardless, if an amendment is determined to be needed, the Commission will coordinate with the Executive Director’s Office of the Department of Regulatory Agencies to work with the General Assembly to amend the statute.

It is the Commission’s understanding that this report will be public on or about August 9, 2022. The Commission will soon thereafter take up rulemaking activities. Prior to the formal notice of proposed rulemaking (NOPR), the Commission is required, pursuant to C.R.S., 25-4-103(2), to solicit input from likely interested parties. This typically takes roughly 30-90 days. The Commission then may issue a NOPR formally opening the rulemaking proceeding. The NOPR process typically takes 7 to 8 months to complete with the outcome being the adoption of new or revised rules. It is because of these processes that the estimated date for completion of the rulemaking required to resolve this recommendation is set at June of 2023.

B. Agree

Implementation Date: June 2023

The Commission agrees with Recommendation 1B and is fully committed to developing and promulgating rules to assure that future written Commission decisions regarding the acquisition of generating resources fully document the Commission’s consideration of BVEM where electric resource acquisitions and CPCN for construction or expansion of generating facilities are approved.

Currently Commission Rule 3605(g)(II)(E) requires that utilities propose criteria for evaluating the benefits associated with BVEM and allows other parties to respond to the criteria proposed. In addition, Commission Rule 3605(h)(II)(C) requires that the Commission “determine: whether the utility has provided BVEM; whether the utility has certified compliance with the objective standards for the review of such BVEM as set forth in the RFP approved in the Phase I decision; and whether the utility has agreed to use a project labor agreement for the construction or expansion of a generating facility.” Notwithstanding this requirement, the Commission has not effectively documented findings related to these provisions.

The Commission commits to revisit these provisions in a rulemaking, considering the finding of this audit, and will revise the rules as soon as practicable to assure that future decisions involving new or expanded generating resources address how the Commission considered BVEM.

C. Agree

Implementation Date: June 2023

The Commission agrees with Recommendation 1C and is fully committed to developing and promulgating rules designed to assure that BVEM are fully documented in proceedings where electric resource acquisitions and CPCN for construction or expansion of generating facilities are at issue.

It should be noted that the Commission had formally proposed revisions to the rule that applies to Best Value Employment Metrics in Proceeding No. 19R-0096E. In that proceeding the Commission proposed to revise the BVEM rules to require very specific BVEM information. Unfortunately, because of the need to allow for the filing of Clean Energy Plans pursuant to Senate Bill 19-236, the Commission closed the rulemaking without adopting new rules.

The Commission commits to revisit the addition of detailed BVEM reporting requirements in rulemaking and will revise the rules accordingly to assure that future proceedings involving new or expanded generating resources include adequate BVEM information for consideration by the Commission in its resource acquisition decision making.

Policy Consideration on Best Value Employment Metrics for Electric Resource Acquisitions

Between 2010 and 2019, the General Assembly enacted several pieces of legislation requiring the Commission to consider employment metrics when reviewing and approving an electric utility's plans to acquire new electric resources or construct facilities for acquiring electric resources. The statutory changes over the years have made it clear that utilities should obtain employment metric information from their project bidders and provide it to the Commission, and that Commission decisions to approve a utility's electric resource acquisition should be made after the Commission's consideration of the employment metrics that will be provided to Colorado labor on the project.

According to supporters of the legislation, the Governor's Energy Office, and representatives of labor interests, the intent of these legislative changes has been to provide Colorado jobs and financial security for workers and their communities affected by changes in the energy industry when new electric generation resources are needed to meet growing demand or when generation methods are converted from one method to another (e.g., coal to solar or wind).

What policy issue did the audit identify?

Overall, we found that the General Assembly's intent to keep quality jobs in Colorado by requiring utilities to contract with firms that have established employment metrics may not be fully realized because it is not clear whether the metrics are actually implemented on projects.

Statute grants the Commission authority to establish rules for investor-owned retail electric utilities [Section 40-2-124, C.R.S.], but not authority related to construction companies and independent power producers that may be bidders on projects and that are supposed to implement employment metrics. Additionally, statute does not indicate that the Commission has a role or the responsibility to ensure that employment metrics are implemented for electric resource acquisitions, or that the Commission is required to monitor implementation, so there is no Commission process to check if the metrics are actually implemented by contractors. Specifically:

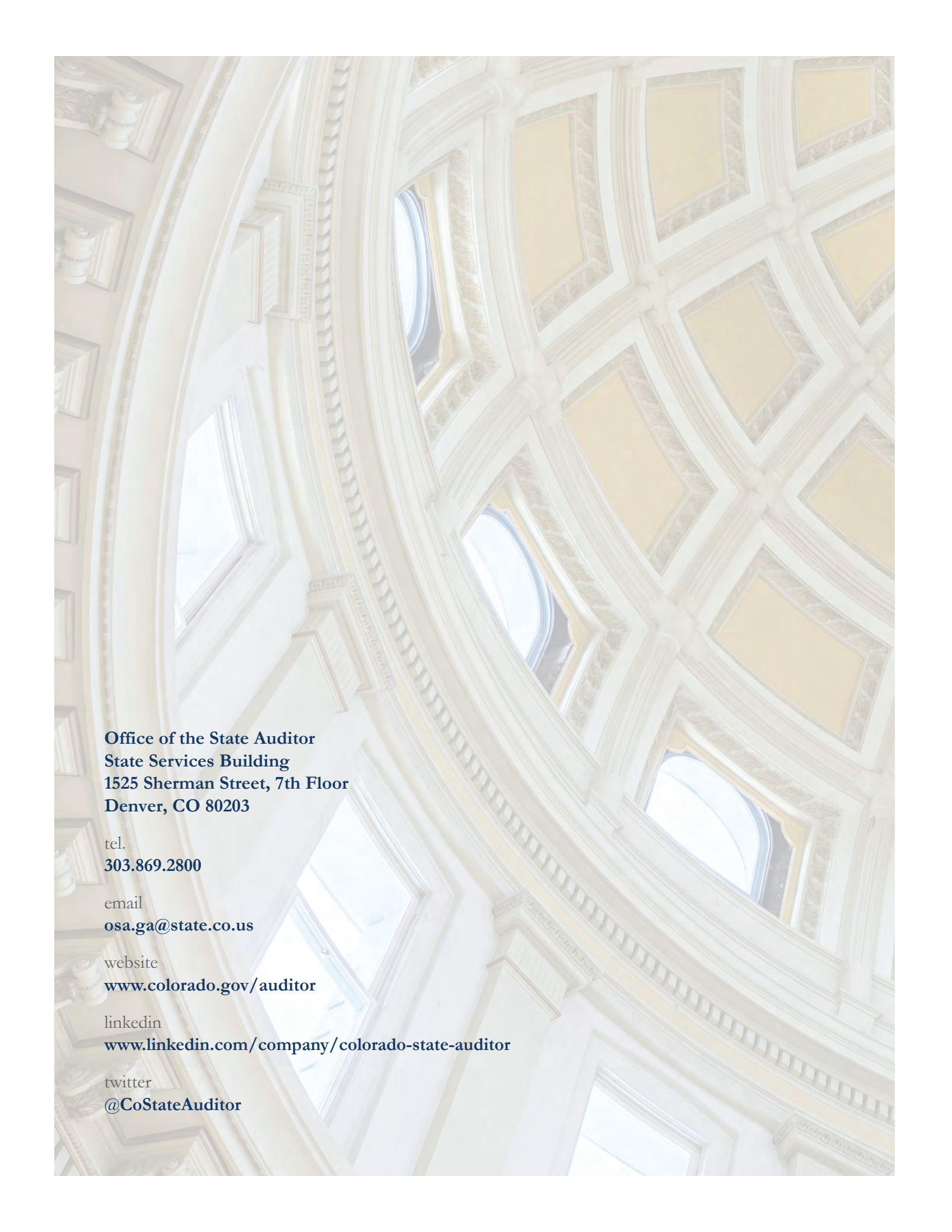
- **There is no process to determine whether the Commission-approved employment metrics are implemented on electric resource acquisition projects.** Statute does not indicate that the Commission is required to or has the authority to check if the utilities' contractors implement the metrics. Commission staff told us that this type of monitoring might not be feasible as they have regulatory authority over the utilities and not their contractors. Furthermore, representatives from the utilities told us that they do not have information on whether employment metrics have been implemented by contractors. Rule [4 CCR 723-3618] requires the utilities to file annual reports updating the Commission on the status of resource acquisition projects, but rules do not require the utilities' reports to include information on how their contractors have implemented employment metrics because the Commission does not have the statutory responsibility to monitor the implementation of the metrics, as noted below. When it is unclear whether employment metrics are implemented on approved resource acquisition projects, there is a risk that projects are not providing the benefits of employment metrics to workers and their communities, as statute intended and as approved by the Commission.
- **Statute does not indicate whether the Commission should have a role in ensuring that the employment metrics are implemented.** Statute [Section 40-2-129(4), C.R.S.] requires the State Auditor to, in part, audit "the Commission's implementation of the best value employment metric requirements [including] any shortfalls in enforcement capacity or implementation by the Commission [and] current enforcement procedures" [Section 40-2-129(4), C.R.S.]. However, statute only authorizes the Commission to consider the metrics when making decisions to approve resource acquisitions, and does not require the Commission to enforce implementation. Specifically, statute states that when the Commission is "evaluating electric resource acquisitions and requests for a certificate of convenience and necessity for construction or expansion of [electricity] generating facilities, ...the Commission shall consider, in all decisions involved in electric resource acquisition processes, best value regarding employment of Colorado labor" [Section 40-2-129(1)(a), C.R.S.]. Statute also states, "The Commission shall not approve any

electric resource plan or acquisition...that fails to either provide the best value employment metric documentation specified in the [RFP]; or in the alternative, certify compliance with objective [metric] performance standards set forth in the [RFP]" [Section 40-2-129(1)(b), C.R.S.]. Statute does not authorize or require the Commission to enforce implementation of employment metrics, or have enforcement procedures related to the metrics, so the intent of the requirement for an audit to review such enforcement is unclear.

When statute does not indicate that there should be a process, such as at the Commission, to ensure that employment metrics are implemented after an electric resource acquisition is approved, there is a risk that the utilities' contractors will not hire Colorado labor or provide them sufficient training; long-term career opportunities; and industry-standard wages, health care, and benefits, as statute intended.

According to Commission management and staff, if statute were to be amended to assign the Commission responsibility for ensuring that employment metrics are implemented by a utility's contractors, it would be beyond the traditional role of the Commission in regulating utilities. Additionally, Commission management and staff stated that the Commissioners do not currently have regulatory authority over independent power producers who bid on and develop these projects, so requiring the Commission to ensure implementation of the employment metrics would require changes to statute to establish that authority.

Policy Consideration. If the General Assembly determines that the Public Utilities Commission (Commission) should have the responsibility to ensure that best value employment metrics are implemented for electric resource acquisitions, then legislators should work with the Commission, in coordination with the Department, to amend statute to require the Commission to take on this role. Based on the outcome of potential legislation, the Commission would need to implement rules, as appropriate.



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