



September 27, 2023

Status Report – Consideration of Best Value Employment Metrics in Electric Utility Resource Acquisitions Performance Audit

Members of the Legislative Audit Committee:

Attached is the status report from the Public Utilities Commission (Commission) on its implementation of the recommendations from the Office of the State Auditor's (OSA) *Consideration of Best Value Employment Metrics in Electric Utility Resource Acquisitions Performance Audit*.

OSA Review of Documentation

As a part of the status report process, we reviewed the Commission's supporting documentation for the recommendations that we made to the Commission; the Commission reported that it has partially implemented each of the three recommendations. We specifically reviewed the following:

- The Redline rules that Commission staff drafted to address the recommendations.
- The Commission's recent Phase II decision on the Electric Resource Plan for the Tri-State Generation and Transmission Association.

Based on our review, the supporting documentation substantiates the Commission's reported implementation status.



COLORADO

**Department of
Regulatory Agencies**

Public Utilities Commission

Eric Blank, Chairman
Megan M. Gilman, Commissioner
Tom Plant, Commissioner
Rebecca E. White, Director

Patty Salazar, Executive Director
Jared S. Polis, Governor

September 20, 2023

Kerri L. Hunter, CPA
State Auditor
Colorado Office of the State Auditor
1525 Sherman St., 7th Floor
Denver, CO 80203

Dear Auditor Hunter:

In response to your request, we have prepared the attached status report on the implementation status of audit recommendations contained in the Consideration of Best Value Employment Metrics in Electric Utility Resource Acquisitions Performance Audit. The report provides a brief explanation of the actions taken by the Public Utilities Commission (Commission) to implement each recommendation.

The attached report provides a summary of actions taken to date as well as actions planned for the near future. Progress has been made in implementing the recommendations provided in the Audit Report, but certain activities, such as the initiation of rulemaking, were paused as a result of the activities at the 2023 General Assembly; in particular the actions taken by the General Assembly regarding Senate Bills 23-062 and 23-292. That pause ended upon the expiration of the 90-day period after final adjournment of the General Assembly (which ends August 6, 2023) but the passed legislation adds significantly to the required rule changes.

If you have any questions about this status report and the Commission's efforts to implement the audit recommendations, please contact Erin O'Neill at erin.oneill@state.co.us.

Sincerely,

Rebecca White

Rebecca E White
Director

Cc: Derek Johnson, Performance Audit Manager



Audit Recommendation Status Report

Audit Name:	Consideration of Best Value Employment Metrics in Electric Utility Resource Acquisitions Performance Audit
Audit Number:	2250P
Agency:	Public Utilities Commission
Date of Status Report:	September 20, 2023

Section I: Summary				
Rec. Number	Response from Audit Report	Original Implementation Date	Current Implementation Status	Current Implementation Date
1A	Agree	June 2023	Partially Implemented	May 2024
1B	Agree	June 2023	Partially Implemented	May 2024
1C	Agree	June 2023	Partially Implemented	May 2024

Section II: Narrative Detail

Recommendation 1A

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.

Current Implementation Status	Partially Implemented
Current Implementation Date	May 2024
Status Update Narrative	<p>The staff of the Commission has developed redline rules incorporating the recommendation provided in the Audit Report during the fall of 2022. The draft redline rules propose the addition of a new rule (Rule 3620) titled “Best Value Employment Metrics.” This new rule specifies the best value employment metric (BVEM) information to be provided by utilities for proposed new utility resource acquisitions including detailed information regarding:</p> <ul style="list-style-type: none">• Availability of training programs• Employment of Colorado workers• Long-term employment opportunities• Industry-standard wages, health care, and pension benefits. <p>The rules provide that, when filing an application for a certificate of public convenience and necessity for construction or expansion of generation facilities, a utility application shall contain BVEM information as detailed in the new rule unless the utility seeks a waiver due to the use of a project labor agreement.</p> <p>These preliminary rules were put on hold as a result of the introduction of legislation. Senate Bill 23-292, was introduced on April 18, 2023, proposing to add apprentice program and prevailing wage requirements to what are defined as energy sector public works projects which include projects built for or by public utilities. Senate Bill 23-292 was signed by the Governor on May 23, 2023. The bill was subject to a referendum petition within the 90-day period after final adjournment of the general assembly (which period ends August 6, 2023). Senate Bill 23-292 adds significant complexity to the required rule changes addressing labor standards.</p>

	<p>It is the plan of the Commission to take up rulemaking by the end of 2023, to codify both the recommendations included in the Audit Report as well as the new requirements included in Senate Bill 23-292.</p> <p>Notwithstanding that current rules do not include requirements associated with the Audit Report recommendations, the Commission has taken those recommendations into consideration in its most recent decision in the Tri-State Generation and Transmission electric resource plan (ERP), which is the most recent ERP decision rendered by the Commission. The Commission determined that Tri-State obtained and provided best value employment metrics and taken certain other steps in its bid evaluation process. Tri-State’s bid evaluation process treated BVEM as a qualitative or non-price factor within the “community stewardship” category, which the Commission considered along with counterparty profile, project feasibility, and project capability. Tri-State also presented a ranking approach for reviewing non-price factors and submitted the documentation provided for bids advanced to modeling. Ultimately, the Commission found that Tri-State had complied with Commission Rule 3605(h)(II)(C), and in accordance with § 40-2-129, as Tri-State had provided BVEM and objective standards for how it evaluated BVEM between bids.</p>
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Recommendation 1B	
<p>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:</p>	
<p>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.</p>	
Current Implementation Status	Partially Implemented
Current Implementation Date	May 2024
Status Update Narrative	<p>As noted above, the staff of the Commission has developed redline rules incorporating the recommendation provided in the Audit Report during the fall of 2022. Those rules were put on hold awaiting the outcome of the legislative session. Senate Bill 23-292 addressing apprentice program and prevailing wage requirements was signed by the Governor in May 2023. It is the plan of the Commission to take up rulemaking by the end of 2023, to codify both the recommendations included in the Audit</p>

	<p>Report as well as the new requirements included in Senate Bill 23-292.</p> <p>Regarding electric resource plans, the proposed rules require utilities to request BVEM information from bidders as well as to set forth proposed criteria for the review and consideration of BVEM information. Further, the proposed rules include a requirement that the “Commission shall explain, in the Phase II written decision, how best value employment metrics were considered.” And finally, the proposed rules state that the utility shall require bidders to ERP requests for proposals (RFP) “to provide for each bid best value employment metrics information ... and the utility shall clearly indicate in the RFP that failure to provide [BVEM] information shall result in rejection of the bid.”</p>
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Recommendation 1C	
<p>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:</p>	
<p>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.</p>	
Current Implementation Status	Partially Implemented
Current Implementation Date	May 2024
Status Update Narrative	<p>The developed redline rules, noted above, incorporate the recommendation provided in the Audit Report during the fall of 2022. It is the plan of the Commission to take up rulemaking by the end of 2023, to codify both the recommendations included in the Audit Report as well as the new requirements included in Senate Bill 23-292. The Proposed Rules specify details regarding each of the categories of BVEM information that utilities should require from bidders and submit to the Commission.</p>