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Energy and Telecommunications Interim Committee

63rd Montana Legislature

October 25, 2013

TO: Energy and Telecommunications Interim Committee (ETIC) members
FR: ETIC staff
RE: Summary of Montana Resource Planning and Procurement Options report

In 2011 the National Association of Regulatory Utility Commissioners invited state utility regulatory agencies to apply for "capacity" assistance. Under the "capacity" umbrella, the Montana Public Service Commission (PSC) submitted a request for assistance with electricity planning research and rule revisions. The request was accepted, and in 2012 Graceful Systems, LLC and Bench Mark Heuristics, LLC presented research and facilitated a number of workshops in Montana to assist the PSC in a review and discussion of best planning practices in Montana and other states. Attached is a copy of the final report, *Recommendations and a Draft Rule for Electric Resource Planning and Procurement in Montana*, delivered to the PSC by consultants Pamela Morgan and Marty Howard.

Because the final report was issued in September 2012, after the close of the 2011-2012 interim, the Energy and Telecommunications Interim Committee (ETIC) received copies of the report, but did not discuss the report. At the September 2013 meeting, the 2013-2014 ETIC asked for a brief summary of the report from staff and requested a panel discussion about procurement and competitive solicitations be included on the November 2013 meeting agenda.

In Montana 69-8-419 and 420, MCA outline the requirements for NorthWestern Energy to follow in planning and procuring electricity supply to meet its customers needs. The related administrative rules are included in 38.5.8201 et seq. Similarly, Montana-Dakota Utilities submits an integrated least-cost resource plan to the PSC, as outlined in 69-3-1201. The focus of the consultant's work was on the planning and procurement process utilized by restructured utilities, like NorthWestern Energy. To-date, the PSC has not pursued changes in its administrative rules in response to the consultant's report.

The review of the planning and procurement process found that in Montana overall current planning and decision-making practices around utility resources works well for stakeholders and doesn't need to be changed. The consultants did make recommendations for improving the process and broke that into four general categories:

- Planning Content
- Planning Process
- Procurement Process
- Tools

ETIC members have indicated that the November discussion should focus on the procurement process and competitive solicitations in Montana. Pages 45-48 of the report outline the consultant's suggestions for amending the administrative rules related specifically to resource procurement. Overall the consultants note, "Procurement processes need the same robust stakeholder involvement as planning processes to raise important questions; this is most critical for decisions that involve long-lived resources, for which uncertainty causes a significant rise in the likelihood that things will not go as planned sooner or later in the life of the resource. Providing for this stakeholder involvement is challenging in the competitive solicitation setting."

In light of the on-going discussions at both the ETIC and the PSC, it is also noteworthy that the consultant specifically addressed Qualifying Facilities (QF's). They noted that "those with robust competitive solicitation rules rarely offer standard contracts at administratively set avoided cost rates to QFs larger than a minimum threshold. QFs over this minimum size must participate in the competitive solicitation process." They go on to note that if a "robust" competitive solicitation process is in place, the threshold for the availability of administratively set avoided cost rates for QFs should be lowered to 1 MW and smaller in capacity.

There were two themes in the related recommendations as briefly discussed below.

- Competitive Bidding Guidance: Explicit parameters should be developed outlining the PSC's expectations for statutory requirements that an open, fair, and competitive procurement process is used when possible. This also may include tightening the connections between a utility's planning and procurement processes, so planning is more useful for procurement and redundancies are eliminated.

- "Long-lived" Procurement Process: A process is needed so stakeholders, including potential bidders and the PSC, can comment on draft requests for proposals (RFPs) and obtain answers critical to bid preparation. A neutral expert, also known as an independent monitor, could observe and report on the processes of a competitive solicitation. This expert assures stakeholders and regulators that RFP processes support a finding of prudence. An independent monitor's duties could include:
    - review of the draft RFP
    - oversight of the RFP process
    - management of requests for confidential treatment of bid information
    - updating the PSC on the process
    - checking the reasonableness of a utility's bid scoring and selection of a short-list
    - preparation of a closing report for the PSC and bidders concerning the process, reasonableness of the selection, and review of utility ownership options.

The panel discussion on November 8 will provide the ETIC with a more in-depth look at the issues of resource planning and procurement, specifically the competitive solicitation process used by NorthWestern Energy. Stakeholders will also have an opportunity to share their thoughts on the current process and the suggestions provided by the consultants to the PSC.
Cl0429 3295slxd.

Final Report

For the Montana Public Service Commission

Recommendations and a Draft Rule for Electric Utility Resource Planning and Procurement in Montana

Pamela Morgan and B. Martin Howard

9/21/2012

Introduction

The involvement of state public utility commissions in utility resource planning and procurement, prior to a utility's request to include the cost of a newly acquired resource in its rates, dates back about thirty years; the Montana Public Service Commission adopted its first rules on these matters in the early 1990s. This regulatory involvement in matters that previously concerned only the utility serves to protect utility customers in several ways. First, the formal and informal processes help ensure that utilities make their resource decisions in consideration of the broadest possible set of foreseeable outcomes, protecting utility customers from resource costs that were avoidable in light of what was knowable at the time of the decision. Even though a commission can always exclude from rates costs that it finds imprudently incurred given what was knowable at the time of decision, this choice can indirectly harm utility customers by raising the cost of capital the utility requires to make needed investments. Utilities, their customers, and their stakeholders are far better off simply avoiding such errors. Second, much about the future costs of resources is not knowable at the time of decision, given long resource lives and sometimes lengthy construction before a resource is placed in service. Through their involvement in resource planning and procurement, commissions have enabled a robust exploration of utility risk. Moreover, the information and insights revealed through effective resource planning and procurement practices have spurred utility investment in cost-effective energy efficient technologies that considerably mitigate household and business customer risk stemming from uncertainty about the future costs of resources.

Much in Montana's current practice of regulatory utility resource planning and procurement works to serve these purposes. To continue to serve its purposes, however, a practice must evolve as conditions change. Some changes have occurred (and continue to occur) since Montana stakeholders began work in 2001 to put in place a resource planning and procurement process through which a utility with no electric generating assets and only a small portfolio of contractual resources was to supply all of the electricity needs of its customers. In the following year, the restructured utility acquired ownership of some electric generating assets and significantly widened the set of contractual and market resources it used to meet customer needs. Since that time, the accelerating effects of technological change and globalization of economic and political forces have been exerting increasing influence on utility resource planning, adding uncertainty to resource decisions. An expanding variety of resource possibilities is an ongoing source of increasing decision complexity. The distribution system has assumed a growing role in receiving electricity, in addition to delivering it, as customers have added electric generation to their buildings and offered it to the utility under net metering. The possibility of economic electricity storage technologies in the future could provide unprecedented flexibility for system operations, but also challenge some existing planning and operational assumptions.

In this environment of changed and changing conditions, the Commission requested "capacity assistance" from the National Association of Regulatory Utility Commissioners (NARUC) to help the Commission and stakeholders review the resource planning and procurement practice and

determine whether the Commission's rules were providing an effective framework for that practice to achieve its purpose in the years ahead.[1] The review that occurred included many conversations with interested parties in Montana, and a thorough review of the planning and procurement practices in states that are similar to or nearby Montana. From this work emerged the following suggestions for revisions and additions to the current rules in ARM 38.5.8201 et seq.

Summary of Recommendations

Reorganize the current planning rules to align more closely with the work and appearance of current resource plans and add certain areas of planning content. Current resource plans tend to assess the future need for services; examine how existing resources can meet those needs; identify options to accommodate anticipated gaps between future needs and future resources; and then assess what outcomes might occur when combining existing resources with various resource options and accounting for uncertainty. We recommend restructuring the rules to match this flow. We also recommend that the restructuring incorporate appropriate best practices, drawn from other jurisdictions and our own experience, which will enhance the power of the rules' framework to produce a robust process. Among these additions is a consideration of the uses and capabilities of existing transmission and distribution facilities and possibilities for beneficial changes in those facilities.

Update the concept of "resources." The current rules – and the statutes they implement – extensively use the term "electricity supply resource," which also (somewhat awkwardly) includes "demand-side management." Demand- and distribution-side resources do fill resource needs, but in salient respects they are unlike classical energy supply resources. Accordingly, our recommendations include an enlarged definition of "resources" that includes within it three categories of resource types:

- The familiar "Power Resources" that are the market, contractual, and physical power production resources;
- "Demand-Side Resources" covering the full range of technologies that reduce the total need for electricity or allow customers to shape that need away from times of peak use of electricity; and
- "Distribution-Side Resources" that include distributed generation and storage technologies that may be located on a given customer's premise or somewhere on the utility side of the meter but within the distribution system. While the actual number of these installed is small today, the next decade could see significant growth.

[1] For more information about the Commission's request and the consultants working on this project, please see Docket No. N2012.5.26, Inquiry by the Montana Public Service Commission, Graceful Systems LLC and Bench Mark Heuristics LLC into Best Practices for Electricity Resource Planning http://psc.mt.gov/Docs/ElectronicDocuments/getDocumentsInfo.asp?docketId=10129&do=false

Make "Services" an explicit consideration in Planning. The current rules resemble most other jurisdictions in orienting planning toward the provision of kilowatt-hours (energy) or kilowatts (capacity). It is implicitly assumed that these are the only services the utility provides. Utilities have long provided other services, however, and there is a significant possibility for growth in this area through new pricing plans, new services to support Distribution-Side Resources, and new information-based services, such as energy management. To ensure that the planning conversations and analyses consider the range and types of services before embarking on a periodic review of needed resources, we recommend bringing consideration of the "Services," as defined, into the practice. This encompasses provision in the existing rules for consideration of cost allocation and rate designs.

Reaffirm the necessity of stakeholder involvement for a successful resource planning and procurement practice and improve how the rules support stakeholder involvement. The current rules acknowledge the importance of stakeholder and public involvement for the success of the resource planning and procurement processes but currently provide little framework for this to happen other than through a technical advisory committee (TAC) that the utility may assemble to assist its internal work. In recent years, the invitation-only TAC has come to bear most of the weight of stakeholder involvement in planning preparation, with Commission (other than a single Staff member included in the TAC), public, and other stakeholder involvement occurring only after the fact. While the TAC provides good support to the utility and should continue, the practice is weakening the ability of the processes to achieve their purpose, and needlessly creates uncertainty.

We recommend several additions to the rules framework to provide the opportunity for more conversation during the preparation of resource plans. A key piece of these recommendations is moving from a two-year to a three-year planning cycle. The current two-year time frame allows little opportunity for additional stakeholder or public involvement, and results in a work product that is less robust and specific than it should be. With this expanded time, we recommend:

- Beginning a planning cycle with a "plan for the plan" that allows broad input on the key issues of the day and sets expectations around the timing of various important planning steps;
- Periodic open briefings by the utility as it completes major chunks of the planning work, so all interested persons can track the progress and offer questions and comments;
- Making a draft plan available for stakeholder comment, providing the utility an opportunity to address lingering questions and concerns before finalizing its plan; and
- A Commission-hosted informal annual review of current industry and market conditions that provides an opportunity for all stakeholders to stay current on the specific resource actions – including procurement – that the utility plans to take and the context within which it will be taking those actions.

While we do not expect public involvement ever to be overwhelming, the utility's planning process should be as much of an open book as possible—especially to the several parties,

including the Commission, who are interested in the utility's work, but currently have no way to participate until the planning process has concluded with a final plan.

Reaffirm the statutory and regulatory preference for using competitive solicitations for resource procurement – particularly long-lived high profile resources – and improve how the rules support successful resource planning and procurement processes in the special setting of competitive solicitation. In current practice, a significant amount of resource procurement is occurring through competitive solicitation. Utilities understand that the framework of competitive solicitation provides a solid base for subsequent regulatory findings, providing a record that the utility adequately identified and analyzed the most relevant options and made its selection using a well-developed and applied methodology; in short, it shows that the utility followed the behavior of a prudent business organization. Procurement processes need the same robust stakeholder involvement as planning processes to raise important questions; this is most critical for decisions that involve long-lived resources, for which uncertainty causes a significant rise in the likelihood that things will not go as planned sooner or later in the life of the resource. Providing for this stakeholder involvement is challenging in the competitive solicitation setting. To address this challenge we recommend:

- Tightening the linkage between resource planning and procurement, so that the work of planning is as useful as possible for procurement, reducing and eliminating any redundant work;
- Making more explicit the qualities of a competitive solicitation that the Commission believes are most necessary to a finding that the ensuing resource decision(s) is prudent; and
- For procurements involving long-lived resources:
    - Providing a process by which stakeholders, including potential bidders and the Commission, can comment on a draft request for proposals and obtain answers to questions critical to their preparation of responsive bids; and
    - Providing for the involvement of a neutral expert to observe and report on the processes of a competitive solicitation that by their very nature cannot be subject to stakeholder involvement, assuring stakeholders and the Commission that those processes support a finding of prudence.[2]

Propose adjustments to Montana's treatment of Qualifying Facilities in recognition of the improvements to the competitive landscape that the proposed changes to the resource procurement rules would support. Among the state resource planning and procurement practices we reviewed, those with robust competitive solicitation rules rarely offer standard contracts at administratively set avoided cost rates to Qualifying Facilities larger than a minimum threshold (e.g., 100 kW). QFs over this minimum size must to participate in the competitive solicitation processes. Considering our proposed changes, we recommend that the

[2] It is anticipated that the Commission's contracts with independent observers would include provisions under which the person or persons involved would be available as witnesses in subsequent preapproval or ratemaking proceedings.

commission consider lowering the threshold for the availability of administratively set avoided cost rates to QFs from 10 MW to 1 MW and smaller in capacity.

Suggest some minor housekeeping changes to tighten language and eliminate redundancies. The passage of time always raises questions of different ways in which to say or organize things. This project is no exception. During our work with the current rules, we found sentences we thought were less clear or more awkward than they could be. The content of some sections seemed to repeat other sections. We offer suggestions that seemed, to us, to be improvements.

Report Organization

What follows is language for each of the following new or revised rules within ARM 38.5.8201 et seq.:

38.5.8201	Introduction and Applicability (revised)
38.5.8202	Definitions (revised)
38.5.8203	Goals (revised)
38.5.8204	Objectives (revised)
38.5.8205	Assessment of Assumptions, Forecasting, and Resource Plan Comments (new)
38.5.8206	Services and Needs Assessment (new, incorporating language from current rules, current practice and adding new ideas)
38.5.8207	Resource Alternatives Assessment (new, incorporating language from current rules, current practice and adding new ideas)
38.5.8208	Services and Resources Integration and Modeling (new, incorporating language of current rules, reflecting current practice, and adding new ideas)
38.5.8209	Transmission and Distribution Assessment (new, expanding on current language in ARM 38.5.8226)
38.5.8210	Action Plans (new, expanding on current language in ARM 38.5.8226)
38.5.8211	Planning Process (new, incorporating and adding to language in current rules)
38.5.8212	Resource Procurement (revised)
38.5.8219	Risk Management and Mitigation (revised)
38.5.8220	Transparency and Documentation (revised)
38.5.8221	Affiliate Transactions (revised)
38.5.8226	Electricity Supply Resource Tracking Filings (revised)
38.5.8227	Reward for Superior Performance (revised)
38.5.8228	Minimum Filing Requirements for Utility Applications for Approval of Resources (revised)

The language and/or concepts of current ARM 38.5.8213, 38.5.8218 and 38.5.8225 were incorporated in other proposed rules and, thus, are not included in the above list. We propose no revisions for ARM 38.5.8229 and so it does not appear either.

For each proposed new or revised ARM section, we provide:

- A brief introduction, if needed;
- The current rule;
- Our proposed rule;
- Either a redline version showing our specific changes to the current rule or, where the primary thrust of our recommendations is a restructuring of current rules, highlights on the current rule(s) we propose to restructure into the proposed rule; and
- An explanation of the proposed changes.

We encourage reviewers to not be alarmed at the number of changes we have proposed to the current rules. Small clarifying changes and the rearrangement of text make the actual number of changes appear to be much larger than it actually is. In keeping with the general stakeholder opinion with which we agree – that much of the current resource planning and procurement practice is serving its purposes well – most of our proposed changes do not alter the meaning and substance of the current rules but instead align the rules more closely with current practice and improve their readability. Of our substantive edits, we have tried to select carefully from the large pool of topics we examined, keeping only the few that we thought most likely to lead to generally improved results and value for all stakeholders.

Introduction and Applicability, Proposed Revisions to ARM 38.5.8201

Current Rule

38.5.8201 INTRODUCTION AND APPLICABILITY

(1) These guidelines apply to electric utilities subject to the provisions of 69-8-419 through 69-8-421, MCA.

(2) These guidelines provide policy guidance on long-term electricity supply resource planning and procurement. With the exception of ARM 38.5.8301, the guidelines do not impose specific resource procurement processes or mandate particular resource acquisitions. Instead, the guidelines describe a process framework for considering resource needs and suggest optimal ways of meeting those needs. Electricity supply resource decisions affect the public interest. A utility can better fulfill its obligations, mitigate risks, and achieve resource procurement goals if it includes the public in the electricity supply resource portfolio planning process. An independent advisory committee of respected technical and public policy experts may offer the utility an excellent source of up-front, substantive input that would help mitigate risk and improve resource procurement outcomes in a manner consistent with these guidelines. Consistent with these guidelines, and after an opportunity for public input, the utility must ultimately make electricity supply resource acquisition decisions based on economics, reliability, management expertise, and sound judgment.

(3) A utility should thoroughly document its portfolio planning processes, resource procurement processes, and management decision-making so that it can fully demonstrate to the commission and stakeholders the prudence of supply-related costs and/or justify requests for approval of electricity supply resources. A utility should routinely communicate with the commission and stakeholders regarding portfolio planning and resource procurement activities.

(4) These guidelines provide the basis for commission review and consideration of the prudence of a utility's electricity supply resource planning and procurement actions, and are the standards against which the commission will evaluate electricity supply resources for which a utility requests approval under 69-8-421, MCA. As such, the guidelines should assist utilities in making prudent decisions and in fully recovering supply-related costs. Successful application of the guidelines will require a commitment from the commission, utilities, and stakeholders to honor the spirit and intent of the guidelines.

(5) These guidelines supersede the commission's electric least cost planning rules (ARM38.5.2001 through 38.5.2012) solely with respect to electricity supply resource planning and procurement functions.

Proposed Rule

38.5.8201 INTRODUCTION AND APPLICABILITY

(1) These rules apply to electric utilities subject to the provisions of 69-8-419 through 69-8-421, MCA and provide the basis for commission review and consideration of the prudence of a utility's Resource planning and procurement actions, and are the standards against which the commission will evaluate Resources for which a utility requests approval under 69-8-421, MCA or in a general rate case. It is the commission's expectation that the rules will assist utilities in making prudent decisions and in fully recovering the Resource costs they incur in providing Services.

(2) These rules supersede the commission's electric least cost planning rules (ARM 38.5.2001 through 38.5.2012) solely with respect to Resource planning and procurement.

Redline

38.5.8201 INTRODUCTION AND APPLICABILITY

(1) These guidelines apply to electric utilities subject to the provisions of 69-8-419 through 69-8-421, MCA and provide the basis for commission review and consideration of the prudence of a utility's Resource planning and procurement actions, and are the standards against which the commission will evaluate Resources for which a utility requests approval under 69-8-421, MCA or in a general rate case. It is the commission's expectation that the rules will assist utilities in making prudent decisions and in fully recovering the Resource costs they incur in providing Services.

~~(2) These guidelines provide policy guidance on long-term electricity supply resource planning and procurement. With the exception of ARM 38.5.8301, the guidelines do not impose specific resource procurement processes or mandate particular resource acquisitions. Instead, the guidelines describe a process framework for considering resource needs and suggest optimal ways of meeting those needs. Electricity supply resource decisions affect the public interest. A utility can better fulfill its obligations, mitigate risks, and achieve resource procurement goals if it includes the public in the electricity supply resource portfolio planning process. An independent advisory committee of respected technical and public policy experts may offer the utility an excellent source of up-front, substantive input that would help mitigate risk and improve resource procurement outcomes in a manner consistent with these guidelines. Consistent with these guidelines, and after an opportunity for public input, the utility must~~

~~ultimately make electricity supply resource acquisition decisions based on economics, reliability, management expertise, and sound judgment.~~

~~(3) A utility should thoroughly document its portfolio planning processes, resource procurement processes, and management decision-making so that it can fully demonstrate to the commission and stakeholders the prudence of supply-related costs and/or justify requests for approval of electricity supply resources. A utility should routinely communicate with the commission and stakeholders regarding portfolio planning and resource procurement activities.~~

~~(4) These guidelines provide the basis for commission review and consideration of the prudence of a utility's electricity supply resource planning and procurement actions, and are the standards against which the commission will evaluate electricity supply resources for which a utility requests approval under 69-8-421, MCA. As such, the guidelines should assist utilities in making prudent decisions and in fully recovering supply-related costs. Successful application of the guidelines will require a commitment from the commission, utilities, and stakeholders to honor the spirit and intent of the guidelines.~~

(2~~5~~) These guidelines supersede the commission's electric least cost planning rules (ARM38.5.2001 through 38.5.2012) solely with respect to ~~electricity supply r~~Resource planning and procurement ~~functions~~.

Explanation

This section is shortened to cover solely the purpose of the rules and identify the electric utilities to which they apply. The guidelines in sub-sections 2 and 3, related to an independent advisory committee, public involvement and communication, are addressed in new ARM 38.5.8211 regarding the resource planning process and revisions to sub-section ARM 38.5.8212 regarding the resource procurement process. ARM 38.5.8220 addresses documentation.

Definitions, Proposed Revisions to ARM 38.5.8202

Current Rule

38.5.8202 DEFINITIONS

For the purpose of this subchapter, the following definitions are applicable:

(1) "Carbon offset provider" means a third party entity that:

(a) arranges for projects or actions that either reduce carbon dioxide emissions or that increase the absorption of carbon dioxide; and

(b) has been determined to be qualified by the commission in an order addressing a utility's application for approval of an acquisition of an equity interest or lease in a facility or equipment constructed after January 1, 2007 that generates electricity primarily by combusting natural or synthetic gas.

(2) "Cost-effective carbon offsets" means actions taken by a utility or a carbon offset provider on behalf of a utility or both which reduce carbon dioxide emissions or increase the absorption of carbon dioxide and which collectively do not increase the annual cost of producing electricity from a facility or equipment that generates electricity primarily by combusting natural or synthetic gas by more than 2.5%.

(3) "Electricity supply costs" means the actual costs incurred in providing electricity supply service through power purchase agreements, demand-side management, and energy efficiency programs, including but not limited to: capacity costs, energy costs, fuel costs, ancillary service costs, transmission costs (including congestion and losses), planning and administrative costs, and any other costs directly related to the purchase of electricity and the management and provision of power purchase agreements.

(4) "Electricity supply resource" means:

(a) a wholesale power transaction, including bilateral contracts, however structured, and spot energy purchases;

(b) a plant or equipment owned or leased, in whole or in part, by a utility for purposes of generating electricity and used to serve the utility's native load;

(c) a demand-side management activity, including energy efficiency and conservation programs, load control programs, and pricing mechanisms; or

(d) a combination of (4)(a), (b), and (c).

(5) "Environmentally responsible" means explicitly recognizing and incorporating into electricity supply resource portfolio planning, management, and procurement processes and decision-making the policy of the state of Montana to encourage utilities to acquire resources in a manner that will help ensure a clean, healthful, safe, and economically productive environment.

(6) "External costs" means costs incurred by society but not incorporated directly into electricity production and delivery activities, or retail prices for electricity services directly paid by consumers.

(7) "Long-term" means a time period at least as long as a utility's electricity supply resource planning horizon.

(8) "Planning horizon" means the longer of:

(a) the longest remaining contract term in a utility's electricity supply resource portfolio;

(b) the period of the longest lived electricity supply resource being considered for acquisition; or

(c) ten years.

(9) "Pre-filing communication" means, with respect to an application by a utility for approval of a electricity supply resource, informal information exchange, including oral dialogue and written discovery, between the utility and members of its stakeholder advisory committee, the Montana Consumer Counsel, other stakeholders, and commission staff that occurs after the utility files a notice of intent to request approval of a new electricity supply resource pursuant to ARM 38.5.8228 up to the date the utility files the application.

(10) "Rate stability" means minimal price variation, both month-to-month and year-to-year, and minimal price inflation over time.

(11) "Stakeholder" means a member of the public (individual, corporation, organization, group, etc.) who may have a special interest in, or may be especially affected by, these rules.

Proposed Rule

38.5.8202 DEFINITIONS

For the purpose of this subchapter, the following definitions are applicable:

(1) “Action Plan Period” means the five-year period beginning with the calendar year after the filing of a Resource Plan.

(2) “Assessment” means clear statements of the decision or decisions under consideration, the question or questions most relevant to that decision, the quantitative data from which one can obtain insights on the question(s), including modeling results, and the qualitative considerations which one finds relevant to the question(s) along with any weighting, ranking or other methodology used to compare or combine quantitative and/or qualitative data to support answering questions involving Resources or Services.

(3) "Carbon offset provider" means a third party entity that:

(a) arranges for projects or actions that either reduce carbon dioxide emissions or that increase the absorption of carbon dioxide; and

(b) has been determined to be qualified by the commission in an order addressing a utility's application for approval of an acquisition of an equity interest or lease in a facility or equipment constructed after January 1, 2007 that generates electricity primarily by combusting natural or synthetic gas.

(4) "Cost-effective carbon offsets" means actions taken by a utility or a carbon offset provider on behalf of a utility or both which reduce carbon dioxide emissions or increase the absorption of carbon dioxide and which collectively do not increase the annual cost of producing electricity from a facility or equipment that generates electricity primarily by combusting natural or synthetic gas by more than 2.5%.

(5) “Demand-Side Resources” means any material, device, technology, educational program, pricing option, practice, or facility alteration designed to result in reduced peak demand, increased energy efficiency, or shifting of electricity consumption to off-peak periods and includes combined heat and power used to displace space heating, water heating, or another load.

(6) “Distribution-Side Resources” means electrical generation or storage equipment located within a utility’s distribution system or on non-utility property within a utility’s service territory, including real and personal property owned and controlled by utility customers.

(7) "Environmentally responsible" means explicitly recognizing and incorporating into Resource planning, management, and procurement processes and decision-making the policy of the state of Montana to encourage utilities to acquire Resources in a manner that will help ensure a clean, healthful, safe, and economically productive environment.

(8) "External costs" means costs incurred by society but not incorporated directly into electricity production and delivery activities, or retail prices for electricity services directly paid by consumers.

(9) "Long-term" means a time period at least as long as the Planning Period.

(10) “Major Power Resource” means a generating plant or the output from a specific generating plant or set of generating plants, including Qualifying Facilities of one MW size or larger, for a period of ten or more years or any length of period if the Resource is owned in whole or in part by a affiliate of the utility, regardless whether the generating plant is the result of construction performed on behalf of the utility, transfer of an existing or new generating plant to a utility, or a tolling or output contract based on a specific generating plant or set of generating plants.

(11) "Planning Period" means the twenty-year period beginning with the calendar year after the filing of a Resource Plan.

(12) “Power Resources” means wholesale power transactions, including bilateral contracts, however structured, and spot purchases or plants or equipment owned or leased, in whole or in part, by a utility for purposes of generating electricity, used in providing electricity, or options related to any of these.

(13) "Pre-filing communication" means, with respect to an application by a utility for approval of a electricity supply resource, informal information exchange, including oral dialogue and written discovery, between the utility and members of its stakeholder advisory committee, the Montana Consumer Counsel, other stakeholders, and commission staff that occurs after the utility files a notice of intent to request approval of a new electricity supply resource pursuant to ARM 38.5.8228 through the date the utility files the application.

(14) "Rate stability" means minimal price variation, both month-to-month and year-to-year, and minimal price inflation over time.

(15) “Resource” or “Resources” means Distribution-Side Resources, Demand-Side Resources and Power Resources and has the same meaning as electricity supply resources in 69-8-419, -420, and -421, MCA.

(16) “Resource Plan” means a document with at least the content specified below that meets the statutory requirement for an electricity supply resource procurement plan as specified by 69-8-420, MCA, and an Integrated least-cost plan as specified by 69-3-1204, MCA, and satisfies other Commission needs with respect to evaluating the prudence of utility investments and expenditures brought into the ratemaking process.

(17) “Services” means electricity services and electricity service price alternatives, including renewable-energy-sourced offerings, time-of-day rates, critical peak rates, and rate designs, such as those that include demand charges or blocked or tiered energy charges; information-based services, including energy management and/or bill management; transmission and ancillary services; net metering; street-lighting services; and any other services for which a utility has filed or would be required to file a tariff.

(18) "Stakeholder" means a member of the public (individual, corporation, organization, group, etc.) who may have a special interest in, or may be especially affected by, these rules.

Redline

38.5.8202 DEFINITIONS

For the purpose of this subchapter, the following definitions are applicable:

(1) “Action Plan Period” means the five-year period beginning with the calendar year after the filing of a Resource Plan.

(2) “Assessment” means clear statements of the decision or decisions under consideration, the question or questions most relevant to that decision, the quantitative data from which one can obtain insights on the question(s), including modeling results, and the qualitative considerations which one finds relevant to the question(s) along with any weighting, ranking or other methodology used to compare or combine quantitative and/or qualitative data to support answering questions involving Resources or Services.

(3) "Carbon offset provider" means a third party entity that:

(a) arranges for projects or actions that either reduce carbon dioxide emissions or that increase the absorption of carbon dioxide; and

(b) has been determined to be qualified by the commission in an order addressing a utility's application for approval of an acquisition of an equity interest or lease in a facility or equipment constructed after January 1, 2007 that generates electricity primarily by combusting natural or synthetic gas.

(4) "Cost-effective carbon offsets" means actions taken by a utility or a carbon offset provider on behalf of a utility or both which reduce carbon dioxide emissions or increase the absorption of carbon dioxide and which collectively do not increase the annual cost of producing electricity from a facility or equipment that generates electricity primarily by combusting natural or synthetic gas by more than 2.5%.

(5) “Demand-Side Resources” means any material, device, technology, educational program, pricing option, practice, or facility alteration designed to result in reduced peak demand, increased energy efficiency, or shifting of electricity consumption to off-peak periods and includes combined heat and power used to displace space heating, water heating, or another load.

(6) “Distribution-Side Resources” means electrical generation or storage equipment located within a utility’s distribution system or on non-utility property within a utility’s service territory, including real and personal property owned and controlled by utility customers.

~~(3) "Electricity supply costs" means the actual costs incurred in providing electricity supply service through power purchase agreements, demand-side management, and energy efficiency programs, including but not limited to: capacity costs, energy costs, fuel costs, ancillary service costs, transmission costs (including congestion and losses), planning and administrative costs, and any other costs directly related to the purchase of electricity and the management and provision of power purchase agreements.~~

~~(4) "Electricity supply resource" means:~~

~~(a) a wholesale power transaction, including bilateral contracts, however structured, and spot energy purchases;~~

~~(b) a plant or equipment owned or leased, in whole or in part, by a utility for purposes of generating electricity and used to serve the utility's native load;~~

~~(c) a demand-side management activity, including energy efficiency and conservation programs, load control programs, and pricing mechanisms; or~~

~~(d) a combination of (4)(a), (b), and (c).~~

(7~~5~~) "Environmentally responsible" means explicitly recognizing and incorporating into electricity supply resource portfolio planning, management, and procurement processes and decision-making the policy of the state of Montana to encourage utilities to acquire resources in a manner that will help ensure a clean, healthful, safe, and economically productive environment.

(8~~6~~) "External costs" means costs incurred by society but not incorporated directly into electricity production and delivery activities, or retail prices for electricity services directly paid by consumers.

(9~~7~~) "Long-term" means a time period at least as long as a utility's electricity supply resource planning horizon.

(10) “Major Power Resource” means a generating plant or the output from a specific generating plant or set of generating plants, including Qualifying Facilities of one MW size or larger, for a period of ten or more years or any length of period if the Resource is owned or controlled in whole or in part by a affiliate of the utility, regardless whether the generating plant is the result of construction performed on behalf of the utility, transfer of an existing or new generating plant to a utility, or a tolling (the plant runs when dispatched by the utility) or output contract based on a specific generating plant or set of generating plants.

(~~8~~11) "Planning ~~horizon~~Period" means the ~~longer of:~~twenty-year period beginning with the calendar year after the filing of a Resource Plan.

~~(a) the longest remaining contract term in a utility's electricity supply resource portfolio;~~

~~(b) the period of the longest lived electricity supply resource being considered for acquisition; or~~

~~(c) ten years.~~

(12) “Power Resources” means wholesale power transactions, including bilateral contracts, however structured, and spot purchases or plants or equipment owned or leased, in whole or in part, by a utility for purposes of generating electricity, used in providing electricity, or options related to any of these.

(13~~9~~) "Pre-filing communication" means, with respect to an application by a utility for approval of a electricity supply resource, informal information exchange, including oral dialogue and written discovery, between the utility and members of its stakeholder advisory committee, the Montana Consumer Counsel, other stakeholders, and commission staff that occurs after the utility files a notice of intent to request approval of a new electricity supply resource pursuant to ARM 38.5.8228 ~~up to~~through the date the utility files the application.

(14~~0~~) "Rate stability" means minimal price variation, both month-to-month and year-to-year, and minimal price inflation over time.

(15) “Resource” or “Resources” means Distribution-Side Resources, Demand-Side Resources and Power Resources and has the same meaning as electricity supply resources in 69-8-419, -420, and -421, MCA.

(16) “Resource Plan” means a document with at least the content specified below that meets the statutory requirement for an electricity supply resource procurement plan as specified by 69-8-420, MCA, and an Integrated least-cost plan as specified by 69-3-1204, MCA, and satisfies other Commission needs with respect to evaluating the prudence of utility investments and expenditures brought into the ratemaking process.

(17) “Services” means electricity services and electricity service price alternatives, including renewable-energy-sourced offerings, time-of-day rates, critical peak rates, and rate designs, such as those that include demand charges or blocked or tiered energy charges; information-based services, including energy management and/or bill management; transmission and ancillary services; net metering; street-lighting services; and any other services for which a utility has filed or would be required to file a tariff.

(18~~1~~) "Stakeholder" means a member of the public (individual, corporation, organization, group, etc.) who may have a special interest in, or may be especially affected by, these rules.

Explanation

The revisions here add some new defined terms for use in later sub-sections and revise others. New terms added are:

- Action Plan Period: certain provisions in later sub-sections apply only to the Action Plan period, which is here defined as five years, rather than the entire Planning Period.
- Assessment: the current rules use this term frequently, as do the suggested revisions. This definition adds some content to the term to provide both utilities and reviewers greater clarity about the nature of the planning work requested.
- Resources, Demand-Side Resources, Distribution-Side Resources and Power Resources: these new defined terms replace the prior phrase "electricity supply resource," which 69-8-419 through 69-8-421, MCA, use. Although the statute includes language about demand-side management, consideration of it as a means of meeting customer needs is an awkward fit with the term electricity supply resource. Moreover, distributed generation, on either side of the customer meter, is likely to become more significant in coming years and should enter into consideration as well. The term Resource or Resources more easily includes the full range of options the statute contemplates and allows for some appropriate differentiation among the various types of resources in the various sub-sections of this rule.
- Major Power Resource: this new defined term identifies the only Power Resources for which the commission has an expectation that utilities will procure the resource through a competitive solicitation unless an exception applies. These include Power Resources owned or controlled by utility affiliates.
- Resource Plan: this new defined term simply operates as a simplification tool throughout the ensuing sub-sections that address Resource Planning or regulatory action based on Resource Planning.
- Services: this new defined term broadens the scope of what a utility is planning Resources for to include more than simply kilowatts or kilowatt-hours (load) delivered under a small set of broadly applicable and standardized rate schedules. Utilities already provide more options and services than just power delivery, and service diversity will likely increase in the future. The defined term and its use in subsequent sub-sections ensure that the Resource Planning process considers all relevant Services offered by a utility. It also enables significant reduction in the language of the current Rules that address rate design and cost allocation, bringing these requirements into an assessment of current and future Services.

Terms eliminated are:

- Electricity supply costs: because this term appeared only in ARM 38.5.8226, these suggested revisions move the definition there.

Other changes include:

- Fixing the Planning Period at twenty years, for standardization across Resource Plans. This is a common planning period used among most jurisdictions.
- Minor conforming changes.

Goals, Proposed Revisions to ARM 38.5.8203

Current Rule

38.5.8203 GOALS

(1) The goals of these electricity supply resource planning and procurement guidelines are:

(a) to facilitate a utility's provision of adequate and reliable electricity supply services, stably and reasonably priced, at the lowest long-term total cost;

(b) to promote economic efficiency and environmental responsibility;

(c) to facilitate a utility's financial health;

(d) to facilitate a process through which a utility identifies and cost-effectively manages and mitigates risks related to its obligation to provide electricity supply service; and

(e) to build on the fundamental rate making relationship between the commission and the utility to advance these goals.

Proposed Rule

38.5.8203 GOALS

(1) The goals of these electricity supply resource planning and procurement guidelines are:

(a) to facilitate a utility's provision of adequate and reliable electricity supply services, stably and reasonably priced, at the lowest long-term total cost;

(b) to promote economic efficiency and environmental responsibility;

(c) to facilitate a utility's financial health;

(d) to facilitate a process through which a utility identifies and cost-effectively manages and mitigates risks related to its obligation to provide Services and procure Resources; and

(e) to build on the fundamental rate making relationship between the commission and the utility to advance these goals.

Redline

38.5.8203 GOALS

(1) The goals of these electricity supply resource planning and procurement guidelines are:

(a) to facilitate a utility's provision of adequate and reliable electricity supply services, stably and reasonably priced, at the lowest long-term total cost;

(b) to promote economic efficiency and environmental responsibility;

(c)to facilitate a utility's financial health;

(d) to facilitate a process through which a utility identifies and cost-effectively manages and mitigates risks related to its obligation to provide ~~electricity supply~~ ~~s~~Services and procure Resources; and

(e) to build on the fundamental rate making relationship between the commission and the utility to advance these goals.

Explanation

The minor revisions separate the notion of the service from the resources and uses the defined terms.

Objectives, Proposed Revisions to ARM 38.5.8204

Current Rule

38.5.8204 OBJECTIVES

(1) In order to satisfy its electricity supply service responsibilities, a utility should pursue the following objectives in assembling and managing an electricity supply resource portfolio:

(a) provide customers adequate and reliable electricity supply services, stably and reasonably priced, at the lowest long-term total cost;

(b) design rates that are equitable and promote rational, economically efficient consumption decisions;

(c) assemble and maintain a balanced, environmentally responsible portfolio of electricity supply resources coordinated with economically efficient cost allocation and rate design that most efficiently provides electricity supply services to customers over the planning horizon;

(d) maintain an optimal mix of electricity supply resources with respect to underlying fuels, technologies, and associated environmental impacts, and a diverse mix of long, medium, and short duration power supply contracts with staggered start and expiration dates; and

(e) maximize the dissemination of information to customers regarding the mix of resources and the corresponding level of emissions and other environmental impacts associated with electricity supply service through itemized labeling and reporting of the portfolio's energy products.

(2) These objectives are listed in order of importance, but no single objective should be pursued such that others are ignored. Simultaneously achieving these multiple objectives will require a balanced approach. A utility should apply the recommendations in ARM 38.5.8209 through38.5.8213, 38.5.8218 through 38.5.8221, 38.5.8225, and 38.5.8226, in addition to relevant commission orders, to achieve these goals and objectives.

Proposed Rule

38.5.8204 OBJECTIVES

(1) In order to satisfy its electricity supply service responsibilities, a utility should pursue the following objectives in planning for, procuring and managing Resources:

(a) provide customers adequate and reliable electricity , stably and reasonably priced, at the lowest long-term total cost;

(b) design Services and rates that are equitable and promote rational, economically efficient consumption decisions;

(c) identify, procure, and maintain a balanced, Environmentally Responsible set of Resources that is diverse with respect to duration, size and underlying fuels, technologies, and associated environmental impacts, for Services that provide customers economically efficient choices; and

(e) maximize the dissemination of information to customers regarding the Services it offers and the mix of Resources that support them, including the level of emissions and other environmental impacts associated with such Services , using itemized labeling and reporting of its Resources as appropriate.

(2) These objectives are listed in order of importance, but no single objective should be pursued such that others are ignored. Simultaneously achieving these multiple objectives will require a balanced approach. A utility should apply the recommendations in ARM 38.5.8205 through38.5.8212, 38.5.8219 through 38.5.8221, and 38.5.8226, in addition to relevant commission orders, to achieve these goals and objectives.

(3) A Resource Plan shall identify the outcomes and associated quantitative data and qualitative measurements a utility proposes to track over time to support Assessment whether its Resource Plan content and process and Resources procurement is meeting the objectives above and any additional objectives it identifies.

Redline

38.5.8204 OBJECTIVES

(1) In order to satisfy its electricity supply service responsibilities, a utility should pursue the following objectives in planning for, procuring and managing Resources~~assembling and managing an electricity supply resource portfolio~~:

(a) provide customers adequate and reliable electricity ~~supply services~~, stably and reasonably priced, at the lowest long-term total cost;

(b) design Services and rates that are equitable and promote rational, economically efficient consumption decisions;

(c) ~~assemble~~ identify, procure, and maintain a balanced, Eenvironmentally R~~r~~esponsible ~~portfolio~~ set of ~~electricity supply r~~Resources that is diverse with respect to duration, size and ~~coordinated with economically efficient cost allocation and rate design that most efficiently provides electricity supply services to customers over the planning horizon;~~

~~(d) maintain an optimal mix of electricity supply resources with respect to~~ underlying fuels, technologies, and associated environmental impacts, for Services that provide customers economically efficient choices~~, and a diverse mix of long, medium, and short duration power supply contracts with staggered start and expiration dates~~; and

(e) maximize the dissemination of information to customers regarding the Services it offers and the mix of R~~r~~esources that support them, including ~~and~~ the ~~corresponding~~ level of emissions and other environmental impacts associated with such Services~~electricity supply service~~, using ~~through~~ itemized labeling and reporting of its Resources as appropriate~~the portfolio's energy products~~.

(2) These objectives are listed in order of importance, but no single objective should be pursued such that others are ignored. Simultaneously achieving these multiple objectives will require a balanced approach. A utility should apply the recommendations in ARM 38.5.8205~~9~~ through38.5.8212~~3~~, 38.5.8218~~9~~ through 38.5.8221, ~~38.5.8225,~~ and 38.5.8226, in addition to relevant commission orders, to achieve these goals and objectives.

(3) A Resource Plan shall identify the outcomes and associated quantitative data and qualitative measurements a utility proposes to track over time to support Assessment whether its Resource Plan content and process and Resources procurement is meeting the objectives above and any additional objectives it identifies.

Explanation

The most significant change of suggested revisions for this section is the addition of a requirement for a utility to identify the data that it will track over time to indicate whether objectives are being achieved, and data that will be used to evaluate changing objectives. For example, data that would assist in an evaluation whether electricity is reasonably priced might include electricity bills as a percentage of household income across several tiers of income levels and electricity bills as a percentage of revenues across several types of commercial businesses (such as hospitality, retail and office) and institutions(such as schools and hospitals). To determine whether the rates promote economically efficient consumption decisions, one might gather data on the penetration of certain highly cost-effective energy efficient technologies. The relevant data is most likely to concern outcomes to which the utility's decisions and actions and Commission's decisions only partially contribute. Because of this, the tracking is not meant to indicate either success or failure of the planning and procurement efforts. Rather, these indicators will provide useful context for the next set of decisions that must be made.

Other suggested changes simply bring the defined terms in to the objectives and simplify the language somewhat.

Assessment of Assumptions, Forecasting, and Resource Plan Comments, Proposed New ARM 38.5.8205

Current Rule

There is no current rule.

Proposed Rule

38.5.8205 ASSESSMENT OF ASSUMPTIONS, FORECASTING, AND RESOURCE PLAN COMMENTS

(1) A Resource Plan shall clearly state the source(s) and methodology for each of the major assumptions used in forecasting use of Services, costs, and operational parameters of Resources, in modeling, and in making Assessments.

(2) A Resource Plan shall include an Assessment of differences between the past ten years' actual values and three prior Resource Plans' forecasted values for major assumptions identified in ARM 38.5.8205(1)(a), including but not limited to annual energy sales, system peak load, system load shapes, and wholesale power and fuel prices, including identification of any bias in the forecasts for a given input.

(3) A Resource Plan shall include a section describing each change a utility has made to its Resource Plan content or process in response to the Commission's comments on its last Resource Plan, identifying how the changes affect the current Resource Plan and including cross-references to all such changes in the current Resource Plan.

Explanation

Resource planning concerns the future and, because we do not know the future, we can engage in planning and produce plans only by making many assumptions. The first part of this new

sub-section simply expresses the current practice, which is to identify the major assumptions used in planning and their source. The expectation is that Resource Plans may simply devote a section of the Plan to presenting all of this in one place.

Among the most vulnerable parts of resource planning are the medium- to long-term forecasts of these major assumptions that the analytical tools and process require. Practitioners readily admit that such forecasts are almost always wrong to some degree and can be off significantly and that even the best experts cannot overcome this. A best practice for resource planning is to look back over time at the sequence of forecasts one has made and compare those forecasts to each other and to what actually transpired. Through this, one might identify biases that routinely appear or obtain other insights that improve the usefulness of the forecasts. The Energy Information Administration has done this now for a number of years, as has NorthWestern in a recent Qualifying Facilities docket with respect to natural gas prices, although this kind of work has not typically been incorporated into its resource plans.

Services and Needs Assessment, Proposed New ARM 38.5.8206

Introduction

The following section is "new" but includes in substantial part pieces of existing rules and largely reflects existing practice. As the Explanation states in more detail, the suggestion is to combine them so that all of the requirements relating to a utility assessing the future use of its services and the resources it will need to provide for that use are in one place. Below are the current rules (or sections thereof) related to this topic, followed by the new rule. Because a redline does not make sense for this particular section, the explanation will cover both the prior language brought in to the rule and existing language moved elsewhere, as well as new concepts added. We have highlighted language in the current rules that we used as is or included the concepts of in designing this proposed rule.

Current Rules

38.5.8210 RESOURCE NEEDS ASSESSMENT

(1) Before acquiring multi-year electricity supply resources, a utility should evaluate its existing resources and analyze future resource needs in the context of the goals and objectives of these guidelines. A utility should use a planning horizon as defined in these rules.

(2) A utility's resource needs assessment should include:

(a) analyses of customer loads including base load, intermediate load, peak load and ancillary service requirements, seasonal and daily load shapes and variability, the number and type of customers, load growth, trends in customer choice and retail markets, technology that may lead to substitutes for grid-based electricity service, impacts of demand-side management, and price elasticity of demand;

(b) an assessment of the types of resources that are available and could contribute to meeting portfolio needs, including demand-side resources, supply-side resources, distributed resources, and rate design improvements;

(c) an assessment of the types of wholesale electricity products that could effectively and efficiently contribute to meeting portfolio needs including base load, heavy load, peak, dispatchable, curtailable, assignable, firm, full requirements, load following, unit contingent, slice of the system (fixed percentage of hourly system load requirements), and others;

(d) an assessment of resource diversity within the existing portfolio with respect to generation fuel and generation technology (e.g., conventional coal, clean coal, hydro, natural gas combined cycle, natural gas simple cycle, wind, fuel cell, etc.); and

(e) an assessment of the flexibility of the existing portfolio with respect to generation resources, suppliers, demand-side management resources, electricity products, contract lengths, contract terms and conditions, and market conditions.

(3) A utility's resource needs assessment should include analyses of how cost allocation and rate design decisions might impact future loads and resource needs. A utility's cost allocation and rate design practices should support and complement the goals and objectives of these guidelines.

38.5.8211 COST ALLOCATION AND RATE DESIGN

(1) A utility's cost allocation and rate design practices and rate case proposals should support and complement the goals and objectives of these guidelines. Different approaches to allocating costs and designing rates have different advantages and disadvantages. A utility should consider these advantages and disadvantages in the context of the goals and objectives of these guidelines when proposing particular cost allocations and rate designs. A utility should evaluate and consider the following items when allocating costs and designing rates:

(a) the ability of opportunity cost-based prices to increase economic efficiency;

(b) cost allocation among customer segments and services based on cost causation and equity considerations;

(c) customer desire for long-term rate stability and understandable price structures;

(d) costs and benefits of implementing various rate types/structures consistent with recognized rate design principles, including:

(i) time-of-use;

(ii) seasonal;

(iii) blocked;

(iv) tiered;

(v) commitment-based; and

(vi) other structures as may be reasonable and consistent with the goals and objectives of these guidelines;

(e) the potential for retail demand-response to cost-effectively enhance economic efficiency and promote the other goals and objectives of these guidelines; and

(f) the potential for direct load control to cost-effectively contribute to retail demand response.

Proposed Rule

38.5.8206 SERVICES AND NEEDS ASSESSMENT

(1) A Resource Plan shall identify, for Services presently offered or that a utility intends to offer during the Action Plan Period:

(a) The characteristics, terms and conditions of such Services; and

(b) Forecasted use of such Services including base load, intermediate load, peak load and ancillary service requirements, seasonal and daily load shapes and variability, and the number and type of customers for each Service. Forecasts spanning the Planning Period should quantify and evaluate probable load characteristics, potential effects of changes in rate design and growth in Demand-Side and Distribution-Side Resources, and price elasticity effects. Forecasts should also consider trends in customer choice and retail markets, demographic shifts, technology that may lead to substitutes for grid-based electricity service, price elasticity of demand, and impacts of Demand-Side and Distribution-Side Resources including current and future potential numbers of major electrical applications and Distribution-Side Resources.

(2) A Resource Plan shall provide an Assessment of the ability of a utility's existing Resources to support the forecasted Services needs, including:

(a) For a utility's existing Power Resources:

(i) The type and amounts of Power Resources used to provide Services during each of the last ten years;

(ii) For owned or unit contingent generation Power Resources, up to ten years' data, as available, regarding the availability factor, capacity factor, and heat rate of the unit, its annual fuel costs, if relevant, and fixed and variable operation and maintenance costs;

(iii) For wholesale power market transactions, up to ten years' data, as available, regarding delivery times, quantity and price;

(iv) Any major capital additions planned or likely during the Action Plan Period;

(v) The risks associated with the existing Resources, using the types of risk identified in ARM 38.5.820(7)(b);

(vi) Diversity with respect to generation fuel and generation technology (e.g., conventional coal, clean coal, hydro, natural gas combined cycle, natural gas simple cycle, wind, fuel cell, etc.); and

(vii) Flexibility with respect to generation resources, suppliers, demand-side management resources, electricity products, contract lengths, contract terms and conditions, and market conditions.

(b) For a utility's existing Demand-Side and Distribution-Side Resources:

(i) The type and amount of Demand-Side Resources acquired by the utility through utility programs or otherwise installed or adopted, to the extent known, over the prior ten years; and

(ii) The number, technology-type, size and output of Distribution-Side Resources installed, to the extent known, over the prior ten years.

Explanation

The purpose of this rule is to combine in one place, for resource planning:

- The Services that the utility is presently offering and that it plans to offer, for which it will need Resources;

and

- The capabilities of its existing Resources to meet these needs.

This is the classic "gap" analysis, between existing Resources and Services, and future Resources and Services to fill an identified need. ARM 38.5.8207 will serve as its counterpart, providing the combining place for all of the requirements relating to identifying and assessing Resource options for filling the gap, including ways in which Services might change.

As noted previously, Services are the foundation for a Resource Plan – the reason the Plan exists. It makes sense, therefore, to consider up front the Services the utility is presently offering or plans to offer during the next five years, including the characteristics, terms and conditions of those Services that affect forecasting their use. Because of the definition of Services, this covers cost allocation and rate design, including all of the variations listed in current ARM 38.5.8211. How a utility allocates costs will affect the per-customer class rates it expects ensue from its Resource procurement and operation and, thus, its assessment of price elasticity and other demand effects. Similarly, its rate designs may affect the rate at which customers adopt energy efficient technologies or make other decisions that affect their level of electricity use. Sub-section (1) brings aspects of current ARM 38.5.8211 into this, along with sub-section ARM 38.5.8210(2)(a) relating to load forecasting.

The other important half of the "gap" is the utility's existing Resources. The current rules touch on this, in ARM 38.5.8210(d) and (e), but the practice is to detail all of a utility's current resources in identifying the gap on which the bulk of the planning effort will focus. Because a utility's Power Resources may include some component of relatively short-term purchases, this look at "what is" needs to include information on the changing content of the existing resources over some period of past years, pegged at ten years in the proposed rule. It also should include expected changes in an existing resource that is continuing to provide service into the future and the risks associated with these existing resources. For example, an existing generating plant resource may be due for a major capital project within a few years that has the potential to increase its capacity or it may face risk of capital investment needs triggered by new environmental requirements.

Existing Resources also include savings from Demand-Side Resource programs the utility has operated for some time that continue into the Planning Period and, over time, may include the contribution or effects of a number of Distribution-Side Resources.

Resource Alternatives Assessment, Proposed New ARM 38.5.8207

Introduction

The proposed rule discussed below is the counterpart to the proposed rule numbered ARM 38.5.8206. This proposed rule – ARM 38.5.8207 – combines pieces of current rules addressing Resource alternatives, whether rate design and cost allocation, Demand-Side or Distribution-Side, or Power Resources. It also incorporates the concept of resource attributes that appears now in the rule relating to modeling and analysis. As with the proposed rule just discussed – ARM 38.5.8206 – it does not make sense here to do a redline version. The explanation will

cover both the prior language brought in to the rule and existing language moved elsewhere, as well as new concepts added. We have highlighted language in the current rules that we used as is or included the concepts of in designing this proposed rule. Other portions of these current rules are used in the next proposed new rule on integration and modeling.

Current Rules

38.5.8210 RESOURCE NEEDS ASSESSMENT

(1) Before acquiring multi-year electricity supply resources, a utility should evaluate its existing resources and analyze future resource needs in the context of the goals and objectives of these guidelines. A utility should use a planning horizon as defined in these rules.

(2) A utility's resource needs assessment should include:

(a) analyses of customer loads including base load, intermediate load, peak load and ancillary service requirements, seasonal and daily load shapes and variability, the number and type of customers, load growth, trends in customer choice and retail markets, technology that may lead to substitutes for grid-based electricity service, impacts of demand-side management, and price elasticity of demand;

(b) an assessment of the types of resources that are available and could contribute to meeting portfolio needs, including demand-side resources, supply-side resources, distributed resources, and rate design improvements;

(c) an assessment of the types of wholesale electricity products that could effectively and efficiently contribute to meeting portfolio needs including base load, heavy load, peak, dispatchable, curtailable, assignable, firm, full requirements, load following, unit contingent, slice of the system (fixed percentage of hourly system load requirements), and others;

(d) an assessment of resource diversity within the existing portfolio with respect to generation fuel and generation technology (e.g., conventional coal, clean coal, hydro, natural gas combined cycle, natural gas simple cycle, wind, fuel cell, etc.); and

(e) an assessment of the flexibility of the existing portfolio with respect to generation resources, suppliers, demand-side management resources, electricity products, contract lengths, contract terms and conditions, and market conditions.

(3) A utility's resource needs assessment should include analyses of how cost allocation and rate design decisions might impact future loads and resource needs. A utility's cost allocation and rate design practices should support and complement the goals and objectives of these guidelines.

38.5.8213 MODELING AND ANALYSIS

(1) A utility's electricity supply resource planning, procurement, and decision-making processes should incorporate proven, cost-effective computer modeling and rigorous analyses. A utility should use modeling and analyses to:

(a) evaluate and quantify probable load characteristics, including trends in load shapes, load growth, and price elasticity of demand;

(b) evaluate the potential effect of various rate designs and demand-side management methods on future loads and resource needs;

(c) evaluate and quantify projected electricity supply resource requirements over the planning horizon;

(d) develop competitive resource solicitations, including associated bid evaluation and selection criteria, and/or develop alternative candidate resources for utility construction and ownership;

(e) develop methods for weighting resource attributes and ranking bid offers and alternative candidate owned resources. Resource attributes may include, but are not necessarily limited to:

(i) underlying fuel source and associated price volatility and risk, including risks related to future regulatory constraints on environmental impacts such as emissions of carbon dioxide, sulfur dioxide, nitrogen oxides and mercury;

(ii) contributions to achieving the lowest, long-term portfolio cost;

(iii) total life cycle resource costs;

(iv) contributions to achieving optimal resource diversity;

(v) external costs related to environmental emissions and intrusions;

(vi) direct or indirect transmission costs and/or benefits;

(vii) project feasibility, including engineering, development and financing;

(viii) resource availability, reliability and dispatchability;

(ix) supplier/developer creditworthiness; and

(x) supplier/developer experience;

(f) evaluate the performance of alternative resources under various loads and resource combinations through:

(i) scenario analyses;

(ii) portfolio analyses;

(iii) sensitivity analyses; and

(iv) risk analyses;

(g) help the utility, with input from an advisory committee, inject prudent and informed judgments into the electricity supply resource planning and acquisition process;

(h) optimize the mix of electricity supply resources in the context of the goals and objectives of these guidelines; and

(i) meet the utility's burden of proof in prudence and cost recovery filings before the commission.

38.5.8218 DEMAND-SIDE RESOURCES

(1) Energy efficiency and conservation measures can effectively contribute to serving total electricity load requirements at the lowest long-term total cost. A utility should develop a comprehensive inventory of all potentially cost-effective demand-side resources available in its service area and optimize the acquisition of demand-side resources over its planning horizon.

(2) A utility should evaluate the cost-effectiveness of demand-side resources and programs based on its long-term avoidable costs. Cost-effectiveness evaluations of demand-side resources should encompass avoidable electricity supply, transmission, and distribution costs.

(3) A nonparticipant (no-losers) test considers utility-sponsored demand-side management programs cost effective only if rates to customers that do not participate in the program are not affected by the program. A utility should not evaluate the cost-effectiveness of demand-side resources using a nonparticipant test.

(4) A utility should develop and strive to achieve targets for steady, sustainable investments in cost-effective, long-term demand-side resources. A utility's investment in demand-side resources should be coordinated with and complement its universal system benefits activities.

(5) Except when the entire resource would otherwise be lost, a utility's demand-side management programs should not be focused on "cream skimming;" the least expensive and most readily obtainable resource potential should be acquired in conjunction with other measures that are cost-effective only if acquired in a package with the least expensive, most readily available resources.

(6) Prudently incurred costs related to procuring demand-side resources are fully recoverable in rates. The commission will evaluate the prudence with which demand-side resources are procured, including resources acquired through programs, subcontractors, and competitive solicitations consistent with evaluations of supply-side resources.

(7) A utility's development of demand-side resources should include an examination of innovative methods to address cost recovery issues related to demand-side resource investments and expenses, including undesirable effects on revenues related to the provision of transmission and distribution services.

Proposed Rule

38.5.8207 RESOURCE ALTERNATIVES ASSESSMENT

(1) With respect to future Power Resources, a Resource Plan shall identify the types and amounts of Power Resources from which a utility could reasonably make acquisitions within the Action Plan Period. For each type of Power Resource identified, the Resource Plan shall provide a forecast over the Planning Period:

(a) For Power Resources that are wholesale power products, of:

(i) availability;

(ii) reliability;

(iii) dispatchability;

(iv) pricing;

(v) transmission access and cost; and

(vi) an Assessment of the likelihood and magnitude of financial or operational risk associated with price or availability, including replacement upon termination.

(b) For Power Resources that are an owned or leased electric generating plant or a contract right to the output of a specific electric generating plant, of:

(i) the acquisition or construction and lifetime costs including fuel, operations and maintenance, and capital additions (year-by-year and net present value), the risks associated with these assumptions, including engineering, development and financing, and options for mitigating or eliminating such risks;

(ii) the costs and risks associated with any necessary fuel or power infrastructure related to the plant and power transmission or fuel transportation needed, including any benefits related to such infrastructure additions;

(iii) useful life and risk of premature retirement (whether economic or technological) or longer-than-expected life and options for mitigating or eliminating such risks;

(iv) operating characteristics, including fuel or renewable power source availability, required ancillary services, plant availability, reliability, and dispatchability, and other operational risks and options for mitigating or eliminating these risks;

(v) end of life costs and residual value;

(vi) environmental impacts including emissions, water use, the likelihood, cost and timing of future regulation of such impacts, and qualitative assessment of other environmentally-related risks;

(vii) efforts to identify, minimize, or avoid adverse social, economic, health, public safety, and historic or aesthetic preservation effects;

(viii) quantitative or qualitative risks and benefits related to third-party or utility ownership of the resource; and

(ix) options to postpone construction/acquisition or mitigate retail rate coverage of resource fixed costs if it is not needed to meet retail load on the timing anticipated.

(c) A Resource Plan shall provide an Assessment of alternatives that do not directly generate power, including storage technologies, enlarged or new transmission interconnections, and revised or new Services.

(2) With respect to future Demand-Side and Distribution-Side Resources,

(a) Demand-Side and Distribution-Side Resources can effectively contribute to serving total electricity load requirements at the lowest long-term total cost. A utility should develop a comprehensive inventory of all potentially cost-effective Demand-side and Distribution-Side Resources available in its service area and optimize their acquisition over the Planning Period.

(b) a utility should evaluate the cost-effectiveness of Demand-side and Distribution-Side Resources and programs based on its long-term avoidable costs. Cost-effectiveness evaluations of Demand-side and Distribution-Side Resources should encompass avoidable electricity supply, transmission, and distribution costs.

(c) a utility should not use a nonparticipant (no-losers) test, which deems programs cost-effective only if rates to customers that do not participate do not increase, to determine the value of a Demand-side or Distribution-Side Resource.

(d) a utility should develop and strive to achieve targets for steady, sustainable investments in cost-effective, long-term Demand-side and Distribution-Side Resources and coordinate its investment in these with its universal system benefits activities.

(e) except when the entire Demand-Side Resource would otherwise be lost, a utility's programs should aim to acquire the least expensive and most readily obtainable resource potential in conjunction with other measures that are cost-effective only if acquired in a package with the least expensive, most readily available resources and avoid “cream-skimming”.

(f) prudently incurred costs related to procuring Demand-Side and Distribution-Side Resources are fully recoverable in rates. The commission will evaluate the prudence with which such resources are procured, including resources acquired through utility programs, subcontractors, and competitive solicitations consistent with evaluations of supply-side resources.

(g) a utility should examine innovative methods to address cost recovery issues related to Demand-Side and Distribution-Side Resource investments and expenses, including undesirable effects on revenues related to recovering the costs of transmission and distribution services.

Explanation

As noted above, this proposed rule is the counterpart of the "gap" assessment covered in proposed rule ARM 38.5.8206. Here the utility is looking at alternatives for filling the gap, regardless what type of Resource or change in Services that may be. Because this proposed rule primarily brings together language that already exists in current rules, it requires little further explanation. Worth noting is that we suggest limiting the Resource options the utility considers to those from which a utility could reasonably make acquisitions during the next five years -- the Action Plan Period. This is not to discourage conversation about experimental Resources that may reach commercial availability sometime in the next several decades as part of the context of long-term resource planning. Rather, it is to limit the burden of the information and analysis required to resource options that are likely possibilities for near-term procurement actions.

The proposed rule would totally replace current ARM 38.5.8218, which is subsumed within it.

Services and Resources Integration and Modeling, Proposed New ARM 38.5.8208

Introduction

This proposed rule completes the cycle of proposed rules that largely restructure portions of the existing rules to provide for these three clear groups of Resource Plan activities:

- Determining the Services a utility proposes to offer, the need for those Services and the existing Resources available to meet the need
- Identifying the Resource alternatives with which a utility could fill that "gap," and
- Integrating the need, the existing Resources and the Resource alternatives into forecasts of possible outcomes over the Planning Period

As with the prior two sections, a redline does not make sense. Instead, below are the current rules from which this proposed rule draws content, with portions used highlighted. This rule does include some additional proposals, however, which are explained below.

Current Rules

38.5.8213 MODELING AND ANALYSIS

(1) A utility's electricity supply resource planning, procurement, and decision-making processes should incorporate proven, cost-effective computer modeling and rigorous analyses. A utility should use modeling and analyses to:

(a) evaluate and quantify probable load characteristics, including trends in load shapes, load growth, and price elasticity of demand;

(b) evaluate the potential effect of various rate designs and demand-side management methods on future loads and resource needs;

I evaluate and quantify projected electricity supply resource requirements over the planning horizon;

(d) develop competitive resource solicitations, including associated bid evaluation and selection criteria, and/or develop alternative candidate resources for utility construction and ownership;

(e) develop methods for weighting resource attributes and ranking bid offers and alternative candidate owned resources. Resource attributes may include, but are not necessarily limited to:

(i) underlying fuel source and associated price volatility and risk, including risks related to future regulatory constraints on environmental impacts such as emissions of carbon dioxide, sulfur dioxide, nitrogen oxides and mercury;

(ii) contributions to achieving the lowest, long-term portfolio cost;

(iii) total life cycle resource costs;

(iv) contributions to achieving optimal resource diversity;

(v) external costs related to environmental emissions and intrusions;

(vi) direct or indirect transmission costs and/or benefits;

(vii) project feasibility, including engineering, development and financing;

(viii) resource availability, reliability and dispatchability;

(ix) supplier/developer creditworthiness; and

(x) supplier/developer experience;

(f) evaluate the performance of alternative resources under various loads and resource combinations through:

(i) scenario analyses;

(ii) portfolio analyses;

(iii) sensitivity analyses; and

(iv) risk analyses;

(g) help the utility, with input from an advisory committee, inject prudent and informed judgments into the electricity supply resource planning and acquisition process;

(h) optimize the mix of electricity supply resources in the context of the goals and objectives of these guidelines; and

(i) meet the utility's burden of proof in prudence and cost recovery filings before the commission.

38.5.8219 RISK MANAGEMENT AND MITIGATION

(1) Prudent electricity supply resource planning and procurement includes evaluating, managing, and mitigating risks associated with the inherent uncertainty of wholesale electricity markets and customer load. A utility should identify and analyze sources of risk using its own techniques, market intelligence, risk management policies, and judgment. The utility should apply industry standard instruments and strategies, document decisions to use various instruments and strategies, and monitor the ongoing appropriateness of such instruments and strategies. Sources of risk that should be evaluated may include, but are not limited to:

Underlying Risk Uncertainty Factor	Price/Cost Uncertainty Risk	Load Risk
(a) Fuel prices and price volatility	X	X
(b) Environmental regulations and taxes	X	X
(c) Retail supply rates	X	X
(d) Competitive suppliers' prices	X	
(e) Transmission constraints	X	
(f) Weather	X	X
(g) Supplier capabilities	X	X
(h) Supplier creditworthiness	X	
(i) Contract terms and conditions	X	X
(j) Construction costs	X	X

(2) A utility's strategy for managing and mitigating risks associated with the identified risk factors should be developed in the context of the goals and objectives of these guidelines and include an evaluation of relevant opportunity costs.

(3) A utility should manage and mitigate risk through adequate utility staffing and technical resources (e.g., computer modeling), diversity (fuels, technology, contract terms), and contingency planning.

(4) A utility should use an independent advisory committee of respected technical and public policy experts as a source of upfront, substantive input to mitigate risk and optimize resource procurement outcomes in a manner consistent with these guidelines.

(5) A utility should use cost-effective resource planning and acquisition techniques to manage and mitigate risks associated with the above identified risk factors, including, but not limited to:

(a) modeling and analyzing the relative risks of alternative resources, individually and integrated with all portfolio resources;

(b) acquiring resources which enhance scheduling flexibility;

I acquiring an optimal mix of small, short lead-time resources that better match load requirements;

(d) diversifying the resource portfolio to accommodate a broad range of future outcomes; and

(e) maintaining a transparent planning and procurement process (i.e., one which produces resource plans that can be reasonably understood by the public and the commission.)

Proposed Rule

38.5.8208 SERVICES AND RESOURCES INTEGRATION AND MODELING

(1) A utility's electricity supply resource planning, procurement, and decision-making processes should incorporate proven, cost-effective computer modeling and rigorous analyses including scenario analyses, portfolio analyses, sensitivity analyses, and risk analyses, in support of identifying the Resources most likely to meet the goals and objectives in ARM 38.5.8203 and

38.5.8204 and meet the utility's burden of proof in prudence and cost recovery filings before the commission.

(2) A Resource Plan shall provide an Assessment regarding how various combinations of new Resources combine with existing Resources under changing conditions over the Planning Period, studied both as deterministic inputs and stochastically varying inputs. For each combination studied, the Resource Plan shall examine how the result would affect the key outcomes identified in ARM 38.5.8204(3) if the modeled conditions persisted over the Planning Period.

(a) General Assessment Requirements and Expected Qualities:

(i) Although the Assessment will likely involve modeling done with data and information collected pursuant to ARM 38.5.8205 through ARM 38.5.8207, the Assessment must explain the meaning made of the output from any such modeling and its use in the development of the Action Plan.

(ii) If the modeling does not include quantification of each of the risks identified and assessed in ARM 38.5.8206 and 38.5.8207, the Assessment must explain why quantitative analysis was not practical or possible and how consideration of these risks, or any others not elsewhere identified, affected development of the Action Plan.

(b) Modeling:

(i) As much as possible, a utility should use modeling tools and materials that the Commission and other persons reviewing the Resource Plan can access in a manner adequate to allow duplication of the modeling in the Assessment.

(ii) Computational tools employed in modeling should demonstrably conform to accepted principles and practices of relevant analytical disciplines, including those of mathematics, statistics, engineering, numerical analysis and operations research.

(iii) Models should use clearly identified and quantified measurements for desired outcomes of the combinations of Resources tested and such measurements will likely be multiple and competing. Such measurements should be comparable across the various Resources and the set of Resource combinations, including the Resource combination of no change from the status quo. These measurements and the model outputs with which the Assessment will analyze them must include:

(1)The expected costs of each combination of Resources modeled;

(2) The range of costs possible with each combination of Resources modeled, obtained by a method that reflects an extremity, in amount and likelihood, of undesirable consequences of a given Resource combination and which is comparable across the set of combinations considered;

(3) The degree to which a Resource combination satisfies other requirements of legislation and Commission rule;

(4) The degree to which a Resource combination satisfies other requirements as identified in the planning process.

(iv) Prior to beginning modeling, a utility should commit to writing and include in the Assessment:

(1) A clear articulation of the decision or decisions that it is using modeling to support and the question or questions that it anticipates the modeling out will help address;

(2) An explanation how the model will use the inputs to produce the expected output; and

(3) A hypothesis of the output for the Resource combinations it plans to model.

(v) The Assessment should discuss any output from the model that did not conform to the hypotheses made or was surprising in some other respect.

Explanation

This proposed rule primarily aligns the rule that exists with current practice. Modeling is the core of the integration phase of the planning practice, as expressed in subsection (2) above. The proposed rule would totally replace current ARM 38.5.8213, a large portion of which was slotted into proposed rule ARM 38.5.8207.

Some of the other changes have their genesis in our review of model and modeling questions, and concerns that have arisen over the years. Most commercially available system operation modeling tools are adequate and the one used in Montana is no exception. Nonetheless, it can help the process if modeling tools and materials are available to or, at a minimum, understood by the stakeholders involved with them. The changes express this goal and state the minimum requirements for a modeling tool. Sometimes concerns about a model arise that more fundamentally relate to understanding the output and what the model did to produce it. Our suggestions in (2)(a) and (b)(iii), (iv) and (v) address this issue. Sub-section (2)(a)(ii) addresses risk analysis that may not lend itself well to modeling and sub-section (2)(b)(iii) largely embodies current practice.

Transmission and Distribution Assessment, Proposed New ARM 38.5.8209

Introduction

Below is a new proposed rule that provides content for a short phrase that presently appears in ARM 38.5.8226(3). Because the content is new, there is no redline version.

Current Rule

38.5.8226 ELECTRICITY SUPPLY RESOURCE PLANNING AND PROCUREMENT FILINGS

(1) A utility must file a comprehensive, long-term portfolio management and electricity supply resource procurement plan by December 15 in each odd-numbered year.

(2) As necessary, a utility's periodic electricity supply cost tracking filings should include the information, analyses, and documentation recommended in these guidelines to support its request for cost recovery related to electricity supply cost additions or changes.

(3) A periodic cost tracking filing should document the status of on-going portfolio planning, management, and electricity supply resource procurement activities and include rolling three-year action plans. Action plans should include a discussion of activities involving transmission and distribution functions and services.

(4) The commission may implement a utility's periodic electricity supply cost recovery request on an interim basis, subject to retroactive adjustment, to allow adequate time to process such requests and render a final order.

Proposed Rule

38.5.8209 TRANSMISSION AND DISTRIBUTION ASSESSMENT

(1) For a utility's existing transmission capability, a Resource Plan shall identify:

(a) The nature of the capability as owned, contracted for or acquired under tariff;

(b) The paths and locations of transmission used, including substations and terminal facilities;

(c) The transmission-related investment and operational initiatives of others that may affect a utility's use or cost of transmission;

(d) The general locations and extents of transfer capability limitations on the transmission network it uses that may affect the future siting of or access to Resources; and

(e) Ancillary services capability with respect to the transmission owned, contracted for or acquired under tariff.

(2) For a utility's future potential transmission, a Resource Plan shall:

(a) Identify the need for facilities of 115 kilovolts and above, including associated substations and terminal facilities, whether related to the addition of generation, additional market interconnections, or transmission customer demand and ancillary services conforming generally to those outlined in FERC Schedule 2-10 used to provide reliable electric service; and

(b) For each transmission line or facility identified:

(i) State its:

(1) Length and location;

(2) Estimated in-service date;

(3) Injection capacity;

(4) Estimated costs;

(5) Terminal points; and

(6) Voltage and megawatt rating.

(ii) Discuss the utility's efforts to identify, minimize, or avoid adverse environmental, social, economic, health, public safety, and historic or aesthetic preservation effects; and

(c) Provide an Assessment of alternatives to new transmission.

(3) For a utility's existing distribution system, a Resource Plan shall:

(a) Identify the types and amounts of distribution system facilities, the system capacity and the system's annual average and peak capacity factors;

(b) Provide the most recent five years' reliability statistics, including system average interruption duration indices (SAIDI), system average interruption frequency indices (SAIFI), and momentary event interruption frequency indices (MAIFI); and

(c) Discuss the status and results of major distribution system maintenance programs, including tree trimming, and pole inspection, testing, and maintenance.

(4) For a utility's future distribution system, a Resource Plan shall:

(a) Identify any major additions and replacements and any other initiatives that will result in significant investment planned for the Action Plan Period;

(b) Provide an Assessment of the capabilities and characteristics that may be required of the distribution system over the Planning Period to support Services.

Explanation

The current rules require a "discussion" of transmission and distribution in action plans. Most of the jurisdictions we reviewed, however, now fully include transmission in resource planning or, if they do not, require separate transmission plans. The language proposed is similar to an annual transmission plan filing requirement in South Dakota and language used for transmission planning Colorado. One less often finds distribution mentioned in resource planning rules but many jurisdictions have added planning around "Smart Grid" in recent years. The utility, moreover, is engaged in a distribution system upgrade that includes not just replacement of aging infrastructure but upgrades to substations that will affect system operations. It makes most sense to us to integrate all these activities with the Resource Plan, rather than engage in them separately, because many of the benefits of distribution investments relate to Demand-Side and Distribution-Side Resources. Moreover, with aging distribution infrastructure, including it as a topic in resource planning provides an opportunity for the informal gathering of questions, concerns and comments that provide a good foundation for utility investments.

Action Plans, Proposed New ARM 38.5.8210

Introduction

Below is a new proposed rule that provides content for a short phrase the presently appears in ARM 38.5.8226(3). Because the content is new, there is no redline version.

Current Rule

38.5.8226 ELECTRICITY SUPPLY RESOURCE PLANNING AND PROCUREMENT FILINGS

(1) A utility must file a comprehensive, long-term portfolio management and electricity supply resource procurement plan by December 15 in each odd-numbered year.

(2) As necessary, a utility's periodic electricity supply cost tracking filings should include the information, analyses, and documentation recommended in these guidelines to support its request for cost recovery related to electricity supply cost additions or changes.

(3) A periodic cost tracking filing should document the status of on-going portfolio planning, management, and electricity supply resource procurement activities and include rolling three-year action plans. Action plans should include a discussion of activities involving transmission and distribution functions and services.

(4) The commission may implement a utility's periodic electricity supply cost recovery request on an interim basis, subject to retroactive adjustment, to allow adequate time to process such requests and render a final order.

Proposed Rule

38.5.8210 ACTION PLANS

(1) A Resource Plan shall include, for the Action Plan Period beginning with the calendar year following a utility's filing of a Resource Plan with the Commission, an Action Plan that identifies:

(a) The terms, conditions and characteristics of new services that a utility plans to offer or changes to existing services that a utility plans to make;

(b) Based on the Resource Plan, the Resources that a utility plans to acquire subject to changes necessitated by new information, such as the result of a competitive bidding process, or shifts in major Resource Plan inputs and assumptions. This shall include the type and amount of each Resource and the anticipated means of acquisition, including the timing of any planned requests for proposals; and

(c) Any planned investment in new transmission or major distribution facilities or initiatives expected to affect the performance of the transmission and distribution system.

(2) Action Plans shall include a section in which a utility discusses actions taken under the prior Resource Plan's Action Plan and explains the reasons behind differences between the Action Plan's expectations and what actually transpired.

Explanation

As with proposed ARM 38.5.8209, this proposed rule adds content, largely reflecting current practice, to what is now a short reference in ARM 38.5.8226(3). As a matter of practice currently, the Action Plan is part of the resource plan, not the periodic cost tracking filing. This is as it should be. It also makes sense to specify some content for the Action Plan. The above reflects both current practice and common practice in the other jurisdictions reviewed. Per the new suggested definitions, the Action Plan Period is five years, beginning with the year after the year in which a utility files a new resource plan. Thus, it spans at least the entire subsequent three-year planning cycle and a year for Commission review thereafter. The additional rule simply allows some room should unexpected circumstances arise that delay either the next resource plan filing or its review.

Planning Process, Proposed New ARM 38.5.8211

Introduction

As explained in the cover memo for this report, language with respect to the resource planning process now appears in a number of places throughout the current rules. Because of this, a redline version does not make sense. Gathered below, however, are the various sub-sections including process language.

Current Rules

38.5.8201 INTRODUCTION AND APPLICABILITY

. . .

(2) These guidelines provide policy guidance on long-term electricity supply resource planning and procurement. With the exception of ARM 38.5.8301, the guidelines do not impose specific resource procurement processes or mandate particular resource acquisitions. Instead, the guidelines describe a process framework for considering resource needs and suggest optimal ways of meeting those needs. Electricity supply resource decisions affect the public interest. A utility can better fulfill its obligations, mitigate risks, and achieve resource

procurement goals if it includes the public in the electricity supply resource portfolio planning process. An independent advisory committee of respected technical and public policy experts may offer the utility an excellent source of up-front, substantive input that would help mitigate risk and improve resource procurement outcomes in a manner consistent with these guidelines. Consistent with these guidelines, and after an opportunity for public input, the utility must ultimately make electricity supply resource acquisition decisions based on economics, reliability, management expertise, and sound judgment.

(3) A utility should thoroughly document its portfolio planning processes, resource procurement processes, and management decision-making so that it can fully demonstrate to the commission and stakeholders the prudence of supply-related costs and/or justify requests for approval of electricity supply resources. A utility should routinely communicate with the commission and stakeholders regarding portfolio planning and resource procurement activities.

38.5.8213 MODELING AND ANALYSIS

(1) A utility's electricity supply resource planning, procurement, and decision-making processes should incorporate proven, cost-effective computer modeling and rigorous analyses. A utility should use modeling and analyses to:

. . .

(g) help the utility, with input from an advisory committee, inject prudent and informed judgments into the electricity supply resource planning and acquisition process;

. . .

38.5.8219 RISK MANAGEMENT AND MITIGATION

. . .

(4) A utility should use an independent advisory committee of respected technical and public policy experts as a source of upfront, substantive input to mitigate risk and optimize resource procurement outcomes in a manner consistent with these guidelines.

(5) A utility should use cost-effective resource planning and acquisition techniques to manage and mitigate risks associated with the above identified risk factors, including, but not limited to:

. . .

(e) maintaining a transparent planning and procurement process (i.e., one which produces resource plans that can be reasonably understood by the public and the commission.)

38.5.8220 TRANSPARENCY AND DOCUMENTATION

. . .

and

(i) document the discussion and recommendations of the utility's advisory committee.

38.5.8225 STAKEHOLDER INPUT

(1) A utility should maintain a broad-based advisory committee to review, evaluate, and make recommendations on technical, economic, and policy issues related to electricity supply resource portfolio planning, management, and procurement. An independent advisory committee of respected technical and public policy experts may provide an excellent source of

upfront, substantive input to mitigate risk and optimize resource procurement outcomes consistent with these guidelines. Maintaining an effective advisory committee could involve funding certain member participation. A utility should also facilitate processes that provide opportunities for a broader array of stakeholders to comment. Such processes could include:

(a) public meetings;

(b) customer surveys (large and small customers);

(c) other processes that may provide a utility information about public opinion on resource procurement matters.

38.5.8226 ELECTRICITY SUPPLY RESOURCE PLANNING AND PROCUREMENT FILINGS

(1) A utility must file a comprehensive, long-term portfolio management and electricity supply resource procurement plan by December 15 in each odd-numbered year.

. . .

Proposed Rule

38.5.8211 PLANNING PROCESS

(1) A utility shall file a Resource Plan every three years. If a utility does not intend to procure any Power Resources (other than wholesale power products of two years' or less in duration) for at least two years after its next Resource Plan is due, it may request an extension of up to twelve months. The first Resource Plans are due under these rules on December 15, 2014.

(2) Pre-filing and docketing. Twelve months prior to the due date of its next Resource Plan, a utility shall file with the Commission a planning process proposal, which shall include at a minimum:

(a) An estimated schedule for:

(i) Substantial completion of each of the major section of the Resource Plan described in ARM 38.5.8204 through 38.5.8210, and

(ii) Subject, time, place, and logistics of each of the briefings the utility plans to provide during preparation of the Resource Plan;

(b) A statement of whether the utility intends to use an advisory committee during the Resource Plan's preparation, the intended members of such advisory committee, and the timing by which it will file minutes and materials of advisory committee meetings with the Commission;

(c) A description of any public outreach the utility plans in connection with the preparation of its Resource Plan; and

(d) Any specific decisions and/or questions the utility proposes to explore during the Resource Plan preparation beyond those involved with the requirements of ARM 38.2.2003.

(3) Upon receiving the Planning Process Proposal, the Commission will open a docket through which it will:

(a) Receive comments on the planning process proposal.

(b) Post on an appropriate website:

(i) Utility notices of public briefings it will provide on Resource Plan topics, as required by ARM 38.5.8211(4)(a);

(ii) Minutes and materials of any advisory committee meetings a utility may call to assist it in developing its Resource Plan;

(iii) Any other materials a utility or interested party may file with the Commission that are relevant to the Resource Plan;

(iv) Requests by interested persons for relevant information from a utility; and

(v) A utility's draft Resource Plan.

(c) Resolve any issues regarding the relevance or burdensomeness of information requested during the Resource Plan preparation.

(4) Stakeholder and Public Involvement.

(a) To involve stakeholders and interested members in the preparation of the Resource Plan, a utility shall offer briefings to Stakeholders and other interested persons, noticed at least 14 days in advance, as it completes each of the major Resource Plan sections described in ARM 38.5.8204 through 38.5.8209. Briefings should include results of the Resource Plan step just completed and plans for the next step. Utilities may offer additional briefings, including a briefing regarding its draft Resource Plan or the final Resource Plan.

(b) A utility may maintain a broad-based technical advisory committee (e.g. customers and public interest organizations) to review, evaluate and recommend modifications to planning processes, resource plans, resource procurement and demand-side resource programs to assist it in Resource Plan preparation and restrict attendance at meetings of such a group to its members. If a utility maintains such a group, it may accommodate the briefings under ARM 38.5.8211(3)(a) by making certain technical advisory group meetings or portions of such meetings open to Stakeholders and other interested persons or may schedule separate meetings in which the briefings occur.

(c) A utility is encouraged to employ various means of engaging a broad cross-section of customers (demographically, type, and geographically) in issues of future services and resources that are likely to be of interest to non-experts.

(5) Draft Plan. Not less than 45 days before filing its Resource Plan, a utility shall make available to Stakeholders and other interested persons a draft of its Resource Plan and the date (not sooner than four weeks later) by which it will receive comments on the draft Resource Plan. The final Resource Plan shall include a section in which a utility describes how it handled comments it received on its draft plan.

(6) Commission Resource Plan Review. The Commission shall schedule at least one hearing at which the public has an opportunity to make comment on the Resource Plan. The Commission may schedule additional hearings or workshops as it deems would be useful in preparing its comments on the Plan. Unless it issues a notice extending the time, the Commission shall issue written comments within nine months of receiving the Resource Plan that:

(a) Review the Resource Plan's compliance with these rules; and

(b) State the steps a utility should take in its next Resource Plan to remedy any Commission concerns expressed in the review.

(7) Annual Briefing. The Commission shall schedule an annual briefing by a utility. The briefing shall cover, at a minimum:

(a) Past two years' actual results and two-year forecasts for power and fuels availability and market prices, retail loads, including reflections on how recent events may be affecting long-

term forecasts, and information causing a utility to update or revise its views on any other important inputs and assumptions used in the Resource Plan;

(b) Information regarding a utility's current Resources, including:

(i) The most recent two years' operations (availability factor, capacity factor, heat rate, and operation, maintenance, and fuel costs, if applicable) of owned or unit contingent Power Resources in its portfolio;

(ii) Environmental impacts associated with its Resources, including air emission quantities (in metric tons or pounds) and rates (in quantities per megawatt-hour) for carbon dioxide, nitrogen oxides, sulfur dioxide, mercury, particulates, and other air emissions subject to current or expected future environmental regulation, using relevant regional data for market purchases, and water use;

(iii) Demand-Side Resource program accomplishments; and

(iv) Distribution-Side Resource production or number of storage sites and any utility activity regarding such resources.

(c) Generating plants added within the control area of the Bonneville Power Administration;

(d) Developments concerning the Bonneville Power Administration and Northwest Power Planning and Conservation Council relevant to the Resource Plan;

(e) New transmission facilities, and transmission development plans within the area reached by a utility's existing interconnections;

(f) Natural gas production activity within the areas reached by interstate pipelines that connect with a utility's distribution pipelines;

(g) Activities by a utility listed in its most recent Action Plan or that substitute for those listed activities;

(h) Any resources acquired by a utility within the last year for which acquisition a utility did not use a request for proposals and any utility procurement plans for the following twelve months, including issuance of a request for proposals; and

(i) Any other topic of which the Commission provides the utility notice at least 30 days in advance of the briefing.

Explanation

This proposed rule consolidates in one place all of the requirements related to the process of resource planning. While continuing Montana's endorsement of the usefulness of an invitation-only technical advisory committee (TAC) that assists the utility throughout its resource planning work, it also establishes the framework for more general stakeholder involvement through sub-section (2) with the "plan for the plan;" sub-section (3) with the Commission docket that will be a place interested people can go for information about upcoming briefings and access to the notes and materials of TAC meetings; sub-section (4) with the briefings about major building blocks of the resource plan; and sub-section (5) with the availability of a draft Resource Plan for comment. The intent in making other public outreach part of the "plan for the plan" is to encourage participation and creativity by others in helping a utility identify ways to do this.

One of the important outcomes of resource planning is that those involved share a similar view of the broader context in which the utility is likely to be making decisions and taking resource

actions over the next few years. Because aspects of that shared view can quickly become outdated, it makes sense to conduct an annual briefing that occurs at the Commission and updates everyone on the most critical, and changeable, components of that overall context, as identified by the list in the proposed rule. This is an important part of the overall resource planning process that, over time, should lessen the utility's work-load during each planning cycle.

The proposed rule would totally replace current ARM 38.5.8225.

Resource Procurement, Proposed Revised ARM 38.5.8212

Current Rule

38.5.8212 RESOURCE ACQUISITION

(1) A utility should apply industry standard procurement practices to acquire electricity supply resources. The commission cannot prescribe in advance the precise industry standards a utility must apply since industry standards vary depending on context and circumstances. Generally, an acceptable approach to resource procurement should encompass the following basic steps:

(a) obtain and consider upfront input and recommendations from an advisory committee throughout planning and procurement processes, as described in ARM 38.5.8225;

(b) explore a wide variety of alternative electricity supply resources;

(c) collect proposals from various parties offering electricity supply resources;

(d) analyze the feasibility and economic costs, risks, and benefits of rate basing versus alternative electricity supply arrangements;

(e) analyze alternative electricity supply resources with respect to price and nonprice factors in the context of the goals and objectives of these guidelines;

(f) select the most appropriate options and develop a shortlist;

(g) refine the analysis of short-listed options and select the most appropriate option; and

(h) anticipate changing circumstances and remain flexible.

(2) Although these basic steps could be achieved through a variety of methods, a utility should use competitive solicitations with short-list negotiations as a preferred procurement method. A utility should design requests for proposals based on its resource needs assessment. Competitive solicitations should treat bidders fairly, promote transparent portfolio planning and electricity supply resource procurement processes and contribute to achieving the goals and objectives of these guidelines. A utility's resource acquisition process should conform to the following principles:

(a) A utility should clearly define the resources, products, and services it needs before issuing a resource solicitation and clearly communicate these needs to potential bidders in the request(s) for proposals. Multiple solicitations and/or solicitations for multiple resources, products, and services may be necessary to obtain information sufficient for prudent analyses and decision-making;

(b) A utility should establish bid evaluation and bidder qualification standards and criteria it will use to select from among offers before issuing a resource solicitation and clearly communicate these standards and criteria to potential bidders in the request for proposals. Once bids are received, a utility should apply its bid evaluation and bidder qualification standards and criteria firmly and consistently;

(c) A utility should develop a systematic rating mechanism that allows it to objectively rank bids with respect to price and nonprice attributes. A utility is not required to reveal to bidders the specific ranking method used to select preferred bids, however a utility should thoroughly document the development and use of the method for later presentation to the commission;

(d) A utility should establish a shortlist of offers from bidders with which the utility will pursue contract negotiations. A utility should complete due diligence regarding bid qualifications, bidder credit worthiness and experience and project feasibility before selecting an offer for the shortlist. A utility should not indicate to a bidder that its offer is being considered for the shortlist while performing initial due diligence;

(e) If, in evaluating offers, a utility determines that a previously unidentified resource attribute should be considered in the bid evaluation, or that additional evaluation criteria should be used, all bidders should be given an opportunity to supplement their offering to address the utility's desire for the new attribute or the new criteria. The utility should attempt to minimize such occurrences;

(f) A utility should not reassign or "flip" supply contracts to an additional third party(ies) after the original bid activity and during the evaluation of bids. A utility must notify the commission before reassigning any fully executed contract;

(g) During competitive solicitation and resource acquisition processes, a utility should not publicly disclose specific information related to particular bids, including price, before the utility completes its resource acquisition process and has signed contracts with the selected bidder(s);

(h) The utility should obtain input and recommendations from an advisory committee regarding any procurement process that may involve projects or proposals by an affiliate of the utility. The utility should employ an independent third party to develop competitive solicitations if affiliate interests could be involved. An independent third party should review the contract terms and conditions in any power purchase agreement between a utility and an affiliate before the utility signs the agreement. A utility should consult with its advisory committee before selecting the independent third party and should evaluate the third party's findings with the advisory committee. The utility should be prepared to offer substantially the same form of contract to other bidders for similar products to the extent procuring such products is otherwise justified under the goals, objectives, and procedures established in these guidelines; and

(i) A utility should not provide any information to an affiliate with respect to the utility's resource needs assessment, evaluation criteria, bidder qualification criteria, due diligence, or any other relevant resource procurement information unless such information is simultaneously provided to all other prospective bidders.

(3) To the extent a utility does not use competitive solicitations to acquire electricity supply resources it should thoroughly document the exercise of its judgment in evaluating and selecting resource options, including the decision not to use competitive solicitations.

(4) A decision by a utility regarding the acquisition of an equity interest in an electricity generating plant or equipment or the construction of such a resource on its own should be thoroughly evaluated against available market-based alternatives.

(5) Use of competitive solicitations as the preferred method for procuring electricity supply resources may not adequately achieve the goals and objectives of these guidelines with respect to demand-side resources. A utility should design programs and associated marketing and verification measures, as necessary, to ensure that its procurement of demand-side resources is optimized in the context of the goals and objectives of these guidelines.

Proposed Rule

38.5.8212 RESOURCE PROCUREMENT

(1) A utility should apply industry standard procurement practices to acquire Resources. The commission cannot prescribe in advance the precise industry standards a utility must apply since industry standards vary depending on context and circumstances. Generally, an acceptable approach to Resource procurement should encompass the following basic steps:

(a) rely on the information and analyses in its most recent Resource Plan and associated Action Plan, as modified for any comments received during commission processing of the Resource Plan or any assumptions that have changed since the Resource Plan's preparation, including, without being limited to, the:

(i) Services and Needs Assessment, prepared according to ARM 38.5.8206;

(ii) Resource Alternatives Assessment, prepared according to ARM 38.5.8207; and

(iii) Services and Resources Integration, prepared according to ARM 38.5.8208.

(b) obtain and consider input and recommendations from a technical advisory committee throughout planning and procurement processes, as described in ARM 38.5.8211(4)(b)0;

(c) enable the acquisition of information regarding the specific prices, terms and conditions of Resources considered in a utility most recent Resource Plan;;

(d) select the most appropriate Resource options and develop a shortlist for which to refine the analyses and identify the most appropriate selection; and

(e) anticipate changing circumstances and remain flexible.

(2) Although these basic steps could be achieved through a variety of methods, a utility should use competitive solicitations with short-list negotiations as a preferred procurement method for Power Resources and should consider the usefulness of such competitive solicitations for Demand-Side and Distribution-Side Resources. A utility should design requests for proposals based on its Resource Plan and associated Action Plan. Competitive solicitations should treat similarly situated bidders similarly and fairly, use understandable processes and result in decisions and outcomes that are understandable by all Stakeholders, and contribute to achieving the goals and objectives in ARM 38.5.8203 and 38.5.8204. To serve as a reasonable foundation for a commission determination of prudence with respect to the procurement of a particular Resource, a utility's competitive solicitation should:

(a) clearly define the Resources, products, and services the utility needs before issuing a competitive solicitation and clearly communicate these needs to potential bidders in the request(s) for proposals. Multiple solicitations and/or solicitations for multiple Resources,

products, and services may be necessary to obtain information sufficient for prudent analyses and decision-making;

(b) Establish bid evaluation and bidder qualification standards and criteria it will use to select from among offers before issuing a competitive solicitation and clearly communicate these standards and criteria to potential bidders in the request for proposals. Once bids are received, a utility should apply its bid evaluation and bidder qualification standards and criteria fairly and consistently and allow all bidders to respond should a utility revise these standards and criteria in any substantive respect;

(c) use a systematic rating methodology under which it objectively ranks bids with respect to price and nonprice attributes, relying on the information and analyses used in its most recent Resource Plan and, in particular, those sections prepared according to ARM 38.5.8206, 38.5.8207, and 38.5.8208, and allow all bidders to respond should a utility revise this methodology in any substantive respect such that it requires additional information from bidders to apply the revised methodology;

(d) establish a shortlist of offers from bidders with which the utility will pursue contract negotiations. A utility should complete due diligence regarding bid qualifications, bidder credit worthiness and experience and project feasibility before selecting an offer for the shortlist. A utility should not indicate to a bidder that its offer is being considered for the shortlist while performing initial due diligence. If a utility allows one or more bidders on the short list to refresh or supplement their bids in any way, it must allow all bidders on the short list to do so;

(e) A utility should not reassign or "flip" supply contracts to an additional third party(ies) after the original bid activity and during the evaluation of bids. A utility must notify the commission before reassigning any fully executed contract;

(f) During competitive solicitation and resource acquisition processes, a utility should not publicly disclose specific information related to particular bids, including price, before the utility completes its resource acquisition process and has signed contracts with the selected bidder(s); and

(g) A utility should not provide any information to an affiliate with respect to the utility's resource needs assessment, evaluation criteria, bidder qualification criteria, due diligence, or any other relevant resource procurement information unless such information is simultaneously provided to all other prospective bidders.

(3) Procurement of Major Power Resources by a utility subject to 69-8-421, MCA.

(a) It is the commission’s expectation that a utility will use a competitive solicitation to procure Major Power Resources. The Commission will not hold this expectation if:

(i) The proposed acquisition relates to an existing Major Power Resource for which the seller has defined a disposition process that is incompatible with the resource’s submission into a competitive solicitation conducted that the utility or the timing of the Major Supply Resource’s availability will not permit a utility to use a competitive procurement process; or

(ii) A utility has proposed and justified an alternate procurement methodology for a given Major Power Resource or type of Major Power Resource in its most recent Action Plan.

(b) Notice of procurement process. A utility shall provide notice of its intent to issue a request for proposals to acquire a Major Power Resource at least ninety days in advance of the availability of a draft request for proposals.

(b) Commission docket. Upon receiving a utility's notice of its intent to issue a request for proposals for Major Power Resources, the Commission will open a docket within which it can:

(i) Select and retain a person or organization to act as an Independent Monitor for the competitive solicitation process pursuant to 69-8-421(1), MCA;

(ii) Post and receive posted comments of others on the utility's draft request for proposals;

(iii) Process the utility's or bidders' motions for protective orders regarding information relating to the competitive solicitation, should Commission receipt of such information become necessary during the competitive solicitation process; and

(iv) Accept pre-approval applications resulting from the competitive solicitation.

(c) Independent Monitor. The Independent Monitor will assist the Commission during the request for proposals process. The Independent Monitor will:

(i) Provide comments on the consistency of the draft request for proposals with industry standard practices and the Commission's criteria, during or before the Commission meeting on the draft request for proposals in ARM 38.2.2005(2)(e);

(ii) Monitor and observe the request for proposals process, paying particular attention to the utility's evaluation of bids that will result in utility ownership of the resource, to ensure that the utility conducts it fairly and properly in accordance with industry standard practices and the Commission's criteria;

(iii) Notify the utility on a timely basis of any discrepancies it observes in the course of its duties under ARM 38.2.2005(d)(ii) and attempt to resolve any differences of opinion; and

(iv) Prepare a closing report regarding the consistency of the process, up to and including selection and notification of short-listed bidders, with industry standard practices and the Commission's criteria.

(d) Comments and Commission Meeting regarding a Draft request for proposals. Within 30 days of the filing of a draft request for proposals with the Commission, the Commission will hold a meeting at which it and any other interested person may ask questions of the utility regarding the request for proposals. Any interested person may file comments on a draft request for proposals within 45 days of when a utility files such request for proposals with the Commission. The utility shall consider any such comments in finalizing its request for proposals and retain a record of how it handled each such comment. A utility may supplement this process with pre-bid conferences and other means to ensure its request for proposals meets industry standard practices and the Commission's criteria.

(e) A utility planning a competitive solicitation with regard to Resources that are not a Major Power Resource may file a request with the Commission to follow any or all of the process steps in ARM 38.5.8212(3). For good cause shown, the Commission may grant the request. If a utility is not requesting an Independent Monitor pursuant to ARM 38.5.8212(3)(d), it need provide only 30 days' notice of an intent to issue a request for proposals.

(4) To the extent a utility does not use competitive solicitations to acquire Power Resources it should thoroughly document the exercise of its judgment in evaluating Resource options and making a selection, including the decision not to use competitive solicitations.

Redline

38.5.8212 RESOURCE ~~ACQUISITION~~PROCUREMENT

(1) A utility should apply industry standard procurement practices to acquire ~~electricity~~ Resources ~~supply resources~~. The commission cannot prescribe in advance the precise industry standards a utility must apply since industry standards vary depending on context and circumstances. Generally, an acceptable approach to R~~r~~esource procurement should encompass the following basic steps:

(a) rely on the information and analyses in its most recent Resource Plan and associated Action Plan, as modified for any comments received during commission processing of the Resource Plan or any assumptions that have changed since the Resource Plan's preparation, including, without being limited to, the:

(i) Services and Needs Assessment prepared according to ARM 38.5.8206;

(ii) Resource Alternatives Assessment, prepared according to ARM 38.5.8207; and

(iii) Services and Resources Integration, prepared according to ARM 38.5.8208.

(b) obtain and consider ~~upfront~~ input and recommendations from an advisory committee and Stakeholders ~~throughout planning and procurement processes, as described in ARM 38.5.8225~~;

(c~~b~~) enable the acquisition of information regarding the specific prices, terms and conditions of Resources considered in a utility's most recent Resource Plan; ~~explore a wide variety of alternative electricity supply resources;~~

~~(c) collect proposals from various parties offering electricity supply resources;~~

~~(d) analyze the feasibility and economic costs, risks, and benefits of rate basing versus alternative electricity supply arrangements;~~

~~(e) analyze alternative electricity supply resources with respect to price and nonprice factors in the context of the goals and objectives of these guidelines;~~

(d~~f~~) select the most appropriate Resource options and develop a shortlist for which to ~~;~~

~~(g)~~ refine the analyse~~i~~s ~~of short-listed options~~ and ~~select~~ identify the most appropriate ~~option~~selection; and

(e~~h~~) anticipate changing circumstances and remain flexible.

(2) Although these basic steps could be achieved through a variety of methods, a utility should use competitive solicitations with short-list negotiations as a preferred procurement method for Power Resources and should consider the usefulness of such competitive solicitations for Demand-Side and Distribution-Side Resources. A utility should design requests for proposals based on its Resource Plan and associated Action Plan~~resource needs assessment~~. Competitive solicitations should treat similarly situated bidders similarly and fairly, use understandable processes and result in decisions and outcomes that are understandable by all Stakeholders, ~~promote transparent portfolio planning and electricity supply resource procurement processes~~ and contribute to achieving the goals and objectives in ARM 38.5.8203 and 38.5.8204~~of these guidelines~~. A utility's competitive solicitation~~resource acquisition process~~ should ~~conform to the following principles~~:

(a) ~~A utility should~~ clearly define the R~~r~~esources, products, and services ~~it~~ the utility needs before issuing a ~~resource~~ competitive solicitation and clearly communicate these needs to potential bidders in the request(s) for proposals. Multiple solicitations and/or solicitations for multiple R~~r~~esources, products, and services may be necessary to obtain information sufficient for prudent analyses and decision-making;

(b) ~~A utility should~~ establish bid evaluation and bidder qualification standards and criteria it will use to select from among offers before issuing a ~~resource~~ competitive solicitation and clearly communicate these standards and criteria to potential bidders in the request for proposals. Once bids are received, a utility should apply its bid evaluation and bidder qualification standards and criteria ~~firmly~~ fairly and consistently and allow all bidders to respond should a utility revise these standards and criteria in any substantive respect;

(c) ~~A utility should develop~~use a systematic rating ~~mechanism~~ methodology under which ~~that allows~~ it ~~to~~ objectively ranks bids with respect to price and nonprice attributes, relying on the information and analyses used in its most recent Resource Plan and, in particular, those sections prepared according to ARM 38.5.8206, 38.5.8207, and 38.5.8208. ~~A utility is not required to reveal to bidders the specific ranking method used to select preferred bids, however a utility should thoroughly document the development and use of the method for later presentation to the commission~~and allow all bidders to respond should a utility revise this methodology in any substantive respect such that it requires additional information from bidders to apply it;

(d) ~~A utility should~~ establish a shortlist of offers from bidders with which the utility will pursue contract negotiations. A utility should complete due diligence regarding bid qualifications, bidder credit worthiness and experience and project feasibility before selecting an offer for the shortlist. A utility should not indicate to a bidder that its offer is being considered for the shortlist while performing initial due diligence. If a utility allows one or more bidders on the short list to refresh or supplement their bids in any way, it must allow all bidders on the short list to do so;

~~(e) If, in evaluating offers, a utility determines that a previously unidentified resource attribute should be considered in the bid evaluation, or that additional evaluation criteria should be used, all bidders should be given an opportunity to supplement their offering to address the utility's desire for the new attribute or the new criteria. The utility should attempt to minimize such occurrences;~~

(e~~f~~) A utility should not reassign or "flip" supply contracts to an additional third party(ies) after the original bid activity and during the evaluation of bids. A utility must notify the commission before reassigning any fully executed contract; and

(f~~g~~) During competitive solicitation and resource acquisition processes, a utility should not publicly disclose specific information related to particular bids, including price, before the utility completes its resource acquisition process and has signed contracts with the selected bidder(s);

~~(h) The utility should obtain input and recommendations from an advisory committee regarding any procurement process that may involve projects or proposals by an affiliate of the utility. The utility should employ an independent third party to develop competitive solicitations if affiliate interests could be involved. An independent third party should review the contract terms and conditions in any power purchase agreement between a utility and an affiliate before the utility signs the agreement. A utility should consult with its advisory committee before selecting the independent third party and should evaluate the third party's findings with the advisory committee. The utility should be prepared to offer substantially the same form of contract to other bidders for similar products to the extent procuring such products is otherwise justified under the goals, objectives, and procedures established in these guidelines; and~~

(gi) A utility should not provide any information to an affiliate with respect to the utility's resource needs assessment, evaluation criteria, bidder qualification criteria, due diligence, or any other relevant resource procurement information unless such information is simultaneously provided to all other prospective bidders.

(3) Procurement of Major Power Resources by a utility subject to 69-8-421, MCA.

(a) It is the commission's expectation that a utility will use a competitive solicitation to procure Major Power Resources. The Commission will not hold this expectation if:

(i) The proposed acquisition relates to an existing Major Power Resource for which the seller has defined a disposition process that is incompatible with the resource's submission into a competitive solicitation conducted that the utility or the timing of the Major Supply Resource's availability will not permit a utility to use a competitive procurement process; or

(ii) A utility has proposed and justified an alternate procurement methodology for a given Major Power Resource or type of Major Power Resource in its most recent Action Plan.

(b) Notice of procurement process. A utility shall provide notice of its intent to issue a request for proposals to acquire a Major Power Resource at least ninety days in advance of the availability of a draft request for proposals.

(c) Commission docket. Upon receiving a utility's notice of its intent to issue a request for proposals for Major Power Resources, the Commission will open a docket within which it can:

(i) Select and retain a person or organization to act as an Independent Monitor for the competitive solicitation process pursuant to 69-8-421(1), MCA;

(ii) Post and receive posted comments of others on the utility's draft request for proposals;

(iii) Process the utility's or bidders' motions for protective orders regarding information relating to the competitive solicitation, should Commission receipt of such information become necessary during the competitive solicitation process; and

(iv) Accept pre-approval applications resulting from the competitive solicitation.

(d) Independent Monitor. The Independent Monitor will assist the Commission during the request for proposals process. The Independent Monitor will:

(i) Provide comments on the consistency of the draft request for proposals with industry standard practices and the Commission's criteria, during or before the Commission meeting on the draft request for proposals in ARM 38.2.2005(2)(e);

(ii) Monitor and observe the request for proposals process, paying particular attention to the utility's evaluation of bids that will result in utility ownership of the resource, to ensure that the utility conducts it fairly and properly in accordance with industry standard practices and the Commission's criteria;

(iii) Notify the utility on a timely basis of any discrepancies it observes in the course of its duties under ARM 38.2.2005(d)(ii) and attempt to resolve any differences of opinion; and

(iv) Prepare a closing report regarding the consistency of the process, up to and including selection and notification of short-listed bidders, with industry standard practices and the Commission's criteria.

(e) Comments and Commission Meeting regarding a Draft request for proposals. Within 30 days of the filing of a draft request for proposals with the Commission, the Commission will hold a meeting at which it and any other interested person may ask questions of the utility regarding the request for proposals. Any interested person may file comments on a draft request for proposals within 45 days of when a utility files such request for proposals with the

Commission. The utility shall consider any such comments in finalizing its request for proposals and retain a record of how it handled each such comment. A utility may supplement this process with pre-bid conferences and other means to ensure its request for proposals meets industry standard practices and the Commission's criteria.

(f) A utility planning a competitive solicitation with regard to Resources that are not a Major Power Resource may file a request with the Commission to follow any or all of the process steps in ARM 38.5.8212(3). For good cause shown, the Commission may grant the request. If a utility is not requesting an Independent Monitor pursuant to ARM 38.5.8212(3)(d), it need provide only 30 days' notice of an intent to issue a request for proposals.

(~~3~~4) To the extent a utility does not use competitive solicitations to acquire ~~electricity supply r~~Resources it should thoroughly document the exercise of its judgment in evaluating ~~and selecting r~~Resource options and making a selection, including the decision not to use competitive solicitations.

~~(4) A decision by a utility regarding the acquisition of an equity interest in an electricity generating plant or equipment or the construction of such a resource on its own should be thoroughly evaluated against available market-based alternatives.~~

~~(5) Use of competitive solicitations as the preferred method for procuring electricity supply resources may not adequately achieve the goals and objectives of these guidelines with respect to demand-side resources. A utility should design programs and associated marketing and verification measures, as necessary, to ensure that its procurement of demand-side resources is optimized in the context of the goals and objectives of these guidelines.~~

Explanation

The proposed changes in sub-section (1) are to align procurement more closely with Resource planning, in particular replacing former sub-section (1)(c) through (e) with references to the appropriate Resource Plan sections. The other minor changes simply conform language to other proposed rules.

The proposed changes in sub-section (2) similarly strengthen the tie back to the Resource Plan, use consistent language, and clarify that fair treatment of bidders requires giving all – or the short list in one instance – a chance to respond if the utility changes something in its bid methodology mid-stream. The final sub-sections regarding affiliates are now handled under the new sub-section 3 discussed below.

As explained in the cover memo, the potential controversy and consequences of long-lived Resources require extra effort to ensure that any process is suitable as a foundation for a finding of prudence. The protections added for these resource acquisitions are an opportunity for comment on a draft request for proposals and a neutral monitor of the parts of the competitive solicitation process that cannot otherwise be open to anyone outside the utility. A number of jurisdictions, including Arizona, Colorado, Georgia, Louisiana, Oklahoma, Oregon, and Utah, now require an independent monitor for some or all utility competitive solicitations. Although the list of duties here is among the most minimal of the examples, it should be sufficient for the commission's purposes.

We recommend removing current sub-section (4) because it is redundant with analysis already required in the Resource planning process and, to the extent it is not the evaluation will be a logical outcome of the bid ranking methodology. The proposed changes in sub-section (2) removed the need for sub-section (5) of the current rule.

Risk Management and Mitigation, Proposed Revised ARM 38.5.8219

Current Rule

38.5.8219 RISK MANAGEMENT AND MITIGATION

(1) Prudent electricity supply resource planning and procurement includes evaluating, managing, and mitigating risks associated with the inherent uncertainty of wholesale electricity markets and customer load. A utility should identify and analyze sources of risk using its own techniques, market intelligence, risk management policies, and judgment. The utility should apply industry standard instruments and strategies, document decisions to use various instruments and strategies, and monitor the ongoing appropriateness of such instruments and strategies. Sources of risk that should be evaluated may include, but are not limited to:

Underlying Risk Uncertainty Factor	Price/Cost Uncertainty Risk	Load Risk
(a) Fuel prices and price volatility	X	X
(b) Environmental regulations and taxes	X	X
(c) Retail supply rates	X	X
(d) Competitive suppliers' prices	X	
(e) Transmission constraints	X	
(f) Weather	X	X
(g) Supplier capabilities	X	X
(h) Supplier creditworthiness	X	
(i) Contract terms and conditions	X	X
(j) Construction costs	X	X

(2) A utility's strategy for managing and mitigating risks associated with the identified risk factors should be developed in the context of the goals and objectives of these guidelines and include an evaluation of relevant opportunity costs.

(3) A utility should manage and mitigate risk through adequate utility staffing and technical resources (e.g., computer modeling), diversity (fuels, technology, contract terms), and contingency planning.

(4) A utility should use an independent advisory committee of respected technical and public policy experts as a source of upfront, substantive input to mitigate risk and optimize resource procurement outcomes in a manner consistent with these guidelines.

(5) A utility should use cost-effective resource planning and acquisition techniques to manage and mitigate risks associated with the above identified risk factors, including, but not limited to:

(a) modeling and analyzing the relative risks of alternative resources, individually and integrated with all portfolio resources;

(b) acquiring resources which enhance scheduling flexibility;

(c) acquiring an optimal mix of small, short lead-time resources that better match load requirements;

(d) diversifying the resource portfolio to accommodate a broad range of future outcomes; and

(e) maintaining a transparent planning and procurement process (i.e., one which produces resource plans that can be reasonably understood by the public and the commission.)

Proposed Rule

38.5.8219 RISK MANAGEMENT AND MITIGATION

(1) Prudent Resource planning and procurement includes evaluating, managing, and mitigating risks associated with the inherent uncertainty of various types of Resources and customer use of Services. A utility should identify and analyze sources of risk using its own techniques, market intelligence, risk management policies, and judgment. The utility should apply industry standard techniques, tools and strategies; document decisions to use various techniques, tools and strategies; and monitor the ongoing appropriateness of such techniques, tools and strategies. Sources of risk that should be evaluated may include, but are not limited to:

Underlying Risk Uncertainty Factor	Price/Cost Uncertainty Risk	Load Risk
(a) Fuel prices and price volatility	X	X
(b) Environmental regulations and taxes	X	X
(c) Retail supply rates	X	X
(d) Competitive suppliers' prices	X	
(e) Transmission constraints	X	
(f) Weather	X	X
(g) Supplier capabilities	X	X
(h) Supplier creditworthiness	X	
(i) Contract terms and conditions	X	X
(j) Construction costs	X	X

(2) A utility's strategy for managing and mitigating risks associated with the identified risk factors should be developed in the context of the goals and objectives of these guidelines and include an evaluation of relevant opportunity costs.

(3) A utility should manage and mitigate risk through adequate utility staffing and technical resources (e.g., computer modeling), diversity (fuels, technology, contract terms), and contingency planning.

(4) A utility should use cost-effective resource planning and acquisition techniques to manage and mitigate risks associated with the above identified risk factors, including, but not limited to:

(a) modeling and analyzing the relative risks of alternative resources, individually and integrated with all portfolio resources;

(b) acquiring resources which enhance scheduling flexibility;

(c) acquiring an optimal mix of small, short lead-time resources that better match load requirements;

(d) diversifying the resource portfolio to accommodate a broad range of future outcomes; and

(e) maintaining a transparent planning and procurement process (i.e., one which produces resource plans that can be reasonably understood by the public and the commission.)

Redline

38.5.8219 RISK MANAGEMENT AND MITIGATION

(1) Prudent ~~electricity supply r~~Resource planning and procurement includes evaluating, managing, and mitigating risks associated with the inherent uncertainty of various types of Resources and customer use of Services~~wholesale electricity markets and customer load~~. A utility should identify and analyze sources of risk using its own techniques, market intelligence, risk management policies, and judgment. The utility should apply industry standard ~~instruments~~ techniques, tools and strategies~~,~~; document decisions to use various techniques, tools~~instruments~~ and strategies~~,~~; and monitor the ongoing appropriateness of such techniques, tools~~instruments~~ and strategies. Sources of risk that should be evaluated may include, but are not limited to:

Underlying Risk Uncertainty Factor	Price/Cost Uncertainty Risk	Load Risk
(a) Fuel prices and price volatility	X	X
(b) Environmental regulations and taxes	X	X
(c) Retail supply rates	X	X
(d) Competitive suppliers' prices	X	
(e) Transmission constraints	X	
(f) Weather	X	X
(g) Supplier capabilities	X	X
(h) Supplier creditworthiness	X	
(i) Contract terms and conditions	X	X
(j) Construction costs	X	X

(2) A utility's strategy for managing and mitigating risks associated with the identified risk factors should be developed in the context of the goals and objectives of these guidelines and include an evaluation of relevant opportunity costs.

(3) A utility should manage and mitigate risk through adequate utility staffing and technical resources (e.g., computer modeling), diversity (fuels, technology, contract terms), and contingency planning.

~~(4) A utility should use an independent advisory committee of respected technical and public policy experts as a source of upfront, substantive input to mitigate risk and optimize resource procurement outcomes in a manner consistent with these guidelines.~~

(4~~5~~) A utility should use cost-effective resource planning and acquisition techniques to manage and mitigate risks associated with the above identified risk factors, including, but not limited to:

(a) modeling and analyzing the relative risks of alternative resources, individually and integrated with all portfolio resources;

(b) acquiring resources which enhance scheduling flexibility;

(c) acquiring an optimal mix of small, short lead-time resources that better match load requirements;

(d) diversifying the resource portfolio to accommodate a broad range of future outcomes; and

(e) maintaining a transparent planning and procurement process (i.e., one which produces resource plans that can be reasonably understood by the public and the commission.)

Explanation

The proposed rule makes minimal conforming changes to this section. It removes sub-section (4) because proposed ARM 38.5.8211 fully covers the concept of a technical advisory committee.

Transparency and Documentation, Proposed Revised ARM 38.5.8220

Current Rule

38.5.8220 TRANSPARENCY AND DOCUMENTATION

(1) A utility should thoroughly document the exercise of its judgment in implementing all aspects of the guidelines, including any deviations from the framework set forth in these guidelines.

(2) A utility must procure and manage a portfolio of electricity supply resources to serve the full load requirements of its customers. The commission must allow a utility to recover all costs it prudently incurs to perform this function. Whether the costs a utility incurs are prudent is, in part, directly related to whether its resource procurement process was conducted prudently. It is vital that a utility document its portfolio planning, management and electricity supply resource procurement activities to justify the prudence of its resource procurement decisions. The better a utility documents the steps involved in its resource procurement process and explains how and why decisions were made during procurement and in developing

management strategies, the easier it is to satisfy its burden of proof. When a utility requests cost recovery related to the procurement of electricity supply resources it should, as applicable:

(a) document and explain all due diligence regarding the qualification of bidders and resource offers, including why selected bidders were sufficiently qualified financially and technically to warrant further evaluation of the offer based on the resource needs assessment;

(b) provide and explain the calculation of all cost estimates for all resource alternatives considered;

(c) list and describe all resource attributes considered in evaluating resource alternatives and how the attributes are relevant to the evaluation of potential resources based on the resource needs assessment;

(d) explain how the identified resource attributes were weighted as part of the resource evaluation and discuss the trade-offs between alternative resources that have different attributes and various weights;

(e) document and explain the use of the ranking methodology and decision criteria used to evaluate resource alternatives;

(f) document and explain computer modeling and analysis designed to assess how various potential resources fit with existing resources and contribute to optimizing the overall portfolio;

(g) document relevant industry practices, instruments, and actions to procure resources and manage risk observed in other utilities in the Western Electricity Coordinating Council regarding portfolio design, to the extent such practices form the basis for a utility's decisions;

(h) document and explain how and when management injected its judgment onto analyses of resource alternatives, final selection, and contract negotiations, and the impact of management judgment; and

(i) document the discussion and recommendations of the utility's advisory committee.

Proposed Rule

38.5.8220 TRANSPARENCY AND DOCUMENTATION

(1) A utility should thoroughly document the exercise of its judgment in implementing all aspects of these rules, including any deviations from the framework set forth.

(2) A utility must procure and manage the Resources on which it relies in providing Services. The commission must allow a utility to recover all costs it prudently incurs to perform this function. Whether the costs a utility incurs are prudent is, in part, directly related to whether its Resource planning and procurement processes were conducted prudently. It is vital that a utility document its Resource planning, procurement, and management activities, including its compliance with ARM 38.5.8201 et seq., to justify the prudence of its Resource procurement decisions. The better a utility documents the steps involved in its Resource planning, procurement, and management processes and explains how and why decisions were made during planning, procurement and in developing management strategies, the easier it is to satisfy its burden of proof. When a utility requests cost recovery related to the procurement of a Resource it should, as applicable, document and explain:

(a) the relationship and consistency between the Resource procurement and the assumptions, analyses, and Action Plan of its last Resource Plan, and any modifications or

adaptations of the Resource Plan made in the course of considering the Resource procured and alternatives to it or in addressing Commission comments on the Resource Plan;

(b) its compliance with the guidelines and requirements of ARM 38.5.8212;

(c) how and when management injected its judgment onto analyses of Resource alternatives, final selection, and any contract negotiations, and the impact of management judgment; and

(d) the discussion and recommendations of the utility's advisory committee and any other Stakeholder or public input considered prior to or during the procurement.

Redline

38.5.8220 TRANSPARENCY AND DOCUMENTATION

(1) A utility should thoroughly document the exercise of its judgment in implementing all aspects of these ~~guidelines~~rules, including any deviations from the framework set forth ~~in these guidelines~~.

(2) A utility must procure and manage the Resources on which it relies in providing Services.~~a portfolio of electricity supply resources to serve the full load requirements of its customers.~~ The commission must allow a utility to recover all costs it prudently incurs to perform this function. Whether the costs a utility incurs are prudent is, in part, directly related to whether its ~~r~~Resource planning and procurement processes were~~as~~ conducted prudently. It is vital that a utility document its Resource planning, procurement, and management ~~portfolio planning, management and electricity supply resource procurement~~ activities, including its compliance with ARM 38.5.8201 et seq., to justify the prudence of its ~~r~~Resource procurement decisions. The better a utility documents the steps involved in its R~~r~~esource planning, procurement, and management processes and explains how and why decisions were made during planning, procurement and in developing management strategies, the easier it is to satisfy its burden of proof. When a utility requests cost recovery related to the procurement of a ~~electricity supply~~ R~~r~~esource~~s~~ it should, as applicable, document and explain:

(a) the relationship and consistency between the Resource procurement and the assumptions, analyses, and Action Plan of its last Resource Plan, and any modifications or adaptations of the Resource Plan made in the course of considering the Resource procured and alternatives to it or in addressing Commission comments on the Resource Plan;

(b) its compliance with the guidelines and requirements of ARM 38.5.8212;

~~document and explain all due diligence regarding the qualification of bidders and resource offers, including why selected bidders were sufficiently qualified financially and technically to warrant further evaluation of the offer based on the resource needs assessment;~~

~~(b) provide and explain the calculation of all cost estimates for all resource alternatives considered;~~

~~(c) list and describe all resource attributes considered in evaluating resource alternatives and how the attributes are relevant to the evaluation of potential resources based on the resource needs assessment;~~

~~(d) explain how the identified resource attributes were weighted as part of the resource evaluation and discuss the trade-offs between alternative resources that have different attributes and various weights;~~

~~(e) document and explain the use of the ranking methodology and decision criteria used to evaluate resource alternatives;~~

~~(f) document and explain computer modeling and analysis designed to assess how various potential resources fit with existing resources and contribute to optimizing the overall portfolio;~~

~~(g) document relevant industry practices, instruments, and actions to procure resources and manage risk observed in other utilities in the Western Electricity Coordinating Council regarding portfolio design, to the extent such practices form the basis for a utility's decisions;~~

(c~~h~~) ~~document and explain~~ how and when management injected its judgment onto analyses of R~~r~~esource alternatives, final selection, and any contract negotiations, and the impact of management judgment; and

(d~~i~~) ~~document~~ the discussion and recommendations of the utility's advisory committee and any other Stakeholder or public input considered prior to or during the procurement.

Explanation

These are largely conforming changes to other proposed rules previously discussed. Sub-section (b) through (g) are all encompassed in the requirements of proposed ARM 38.5.8212 and, thus, proposed sub-section (2)(b) replaces the prior detail.

Affiliate Transactions, Proposed Revised ARM 38.5.8221

Current Rule

38.5.8221 AFFILIATE TRANSACTIONS

(1) The commission subjects transactions between a utility and any of its affiliates to close scrutiny. A utility should not acquire resources involving affiliate transactions except through competitive solicitations that are consistent with these guidelines. A utility should sufficiently demonstrate through transparent, documented modeling, analysis, and judgment that any resource acquired from an affiliate corresponds to a predetermined portfolio need.

(2) To the extent a utility procures resources involving affiliate transactions it should respond to the following primary regulatory concerns:

. . .

[We propose no change to any other sub-section of this current rule and, thus, have not reproduced it.]

Proposed Rule

38.5.8221 AFFILIATE TRANSACTIONS

(1) The commission subjects transactions between a utility and any of its affiliates to close scrutiny. A utility should not acquire Resources involving affiliate transactions except through the procedures of ARM 38.5..8212(3). A utility should sufficiently demonstrate through transparent, documented modeling, analysis, and judgment that any Resource acquired from an affiliate corresponds to a predetermined portfolio need.

(2) To the extent a utility procures Resources involving affiliate transactions it should respond to the following primary regulatory concerns:

. . .

Redline

38.5.8221 AFFILIATE TRANSACTIONS

(1) The commission subjects transactions between a utility and any of its affiliates to close scrutiny. A utility should not acquire R~~r~~esources involving affiliate transactions except through the procedures of ARM 38.5..8212(3)~~competitive solicitations that are consistent with these guidelines~~. A utility should sufficiently demonstrate through transparent, documented modeling, analysis, and judgment that any R~~r~~esource acquired from an affiliate corresponds to a predetermined portfolio need.

(2) To the extent a utility procures R~~r~~esources involving affiliate transactions it should respond to the following primary regulatory concerns:

Explanation

These are simply conforming changes to prior proposed rule changes. In particular, they acknowledge that the definition of a Major Power Resources includes those owned or controlled by a utility affiliate, in whole or in part.

Resource Cost Tracking Filings, Proposed Revised ARM 38.5.8226

Current Rule

38.5.8226 ELECTRICITY SUPPLY RESOURCE PLANNING AND PROCUREMENT FILINGS

(1) A utility must file a comprehensive, long-term portfolio management and electricity supply resource procurement plan by December 15 in each odd-numbered year.

(2) As necessary, a utility's periodic electricity supply cost tracking filings should include the information, analyses, and documentation recommended in these guidelines to support its request for cost recovery related to electricity supply cost additions or changes.

(3) A periodic cost tracking filing should document the status of on-going portfolio planning, management, and electricity supply resource procurement activities and include rolling three-year action plans. Action plans should include a discussion of activities involving transmission and distribution functions and services.

(4) The commission may implement a utility's periodic electricity supply cost recovery request on an interim basis, subject to retroactive adjustment, to allow adequate time to process such requests and render a final order.

Proposed Rule

38.5.8226 RESOURCE COST TRACKING FILINGS

(1) As necessary, a utility's periodic electricity supply cost tracking filings should include the information, analyses, and documentation recommended in these guidelines to support its request for cost recovery related to Resource cost additions or changes.

(2) A periodic cost tracking filing should document the status of on-going Resource planning, procurement, and management activities and explain how those activities are supported by and

consistent with the utility's most recent Resource Plan and associated Action Plan and any modifications to those made as a result of changing conditions.

(3) The commission may implement a utility's periodic Resource cost recovery request on an interim basis, subject to retroactive adjustment, to allow adequate time to process such requests and render a final order.

(4) For purposes of ARM 38.5.8226, Resource costs means the actual costs incurred in providing Services through Resources, including but not limited to: capacity costs, energy costs, fuel costs, ancillary service costs, transmission costs (including congestion and losses), planning and administrative costs, and any other costs directly related to Resource procurement and the management of Resources.

Redline

38.5.8226 ~~ELECTRICITY SUPPLY~~ RESOURCE COST ~~PLANNING AND PROCUREMENT~~ TRACKING FILINGS

~~(1) A utility must file a comprehensive, long-term portfolio management and electricity supply resource procurement plan by December 15 in each odd-numbered year.~~

(1~~2~~) As necessary, a utility's periodic electricity supply cost tracking filings should include the information, analyses, and documentation recommended in these guidelines to support its request for cost recovery related to ~~electricity supply~~ Resource cost additions or changes.

(2~~3~~) A periodic cost tracking filing should document the status of on-going ~~portfolio~~ Resource planning, procurement, and management~~, and electricity supply resource procurement~~ activities and explain how those activities are supported by and consistent with the utility's most recent Resource Plan and associated Action Plan and any modifications to those made as a result of changing conditions. ~~include rolling three-year action plans. Action plans should include a discussion of activities involving transmission and distribution functions and services.~~

(3~~4~~) The commission may implement a utility's periodic Resource ~~electricity supply~~ cost recovery request on an interim basis, subject to retroactive adjustment, to allow adequate time to process such requests and render a final order.

(4) For purposes of ARM 38.5.8226, Resource costs means the actual costs incurred in providing Services through Resources, including but not limited to: capacity costs, energy costs, fuel costs, ancillary service costs, transmission costs (including congestion and losses), planning and administrative costs, and any other costs directly related to Resource procurement and the management of Resources.

Explanation

The proposed rule makes conforming changes to proposed rules previously discussed.

Reward for Superior Performance, Proposed Revised ARM 38.5.8227

Current Rule

38.5.8227 REWARD FOR SUPERIOR ELECTRICITY SUPPLY SERVICE

(1) The commission will evaluate a utility's performance in providing service pursuant to the goals and objectives of these guidelines and may reward the utility monetarily for superior performance at a level commensurate with such performance.

Proposed Rule

38.5.8227 REWARD FOR SUPERIOR PERFORMANCE

(1) The commission will evaluate a utility's performance in providing Services and Resources pursuant to the goals and objectives of ARM 38.5.8203 and 38.5.8204 and may reward the utility monetarily for superior performance at a level commensurate with such performance.

Redline

38.5.8227 REWARD FOR SUPERIOR ~~ELECTRICITY SUPPLY SERVICE~~PERFORMANCE

(1) The commission will evaluate a utility's performance in providing S~~s~~ervices and Resources pursuant to the goals and objectives of ~~these guidelines~~ARM 38.5.8203 and 38.5.8204 and may reward the utility monetarily for superior performance at a level commensurate with such performance.

Explanation

The revisions conform this rule to the definitions of Resources and Services.

Minimum Filing Requirements for Utility Applications for Approval of Resources, Proposed Revised ARM 38.5.8228

Current Rule

38.5.8228 MINIMUM FILING REQUIREMENTS FOR UTILITY APPLICATIONS FOR APPROVAL OF ELECTRICITY SUPPLY RESOURCES

(1) If a utility intends to file an application for approval of a electricity supply resource that is not yet procured, it must notify the commission and the Montana Consumer Counsel far enough in advance of filing to accommodate adequate pre-filing communication. If the resource will result from a competitive solicitation, notice must be provided before the utility issues a request for proposals.

(2) An application by a utility for approval of a electricity supply resource must include, as applicable:

(a) a complete and thorough explanation and justification of all changes to the utility's most recent long-term resource plan and three year action plan, including how the utility has responded to all commission written comments;

(b) a statement explaining whether the application pertains to a power purchase agreement with an existing generating resource, a lease or acquisition of an equity interest in a new or existing generating resource, or a power purchase agreement for which approval will result in construction of a new generating resource;

(c) testimony and supporting work papers describing the resource and stating the facts (not conclusory statements) that show that acquiring the resource is in the public interest and is consistent with the requirements in 69-3-201 and 69-8-419, MCA, the utility's most recent long-term resource plan (as modified by (2)(a)), and these rules;

(d) testimony and supporting work papers demonstrating the utility's estimates of the cost of the resource compared to the cost of each alternative resource the utility considered and all relevant functional differences between each alternative;

(e) testimony and supporting work papers demonstrating the implementation of cost-effective carbon offsets for a electricity supply resource fueled primarily by natural or synthetic gas constructed after January 1, 2007;

(f) testimony and supporting work papers demonstrating the capture and sequestration of 50% of the carbon dioxide produced by a electricity supply resource fueled primarily by coal constructed after January 1, 2007;

(g) a copy of the proposed power purchase agreement, including all appendices and attachments;

(h) a copy of any request for proposals issued in connection with acquisition of the electricity supply resource;

(i) testimony and supporting work papers comparing all bids received in connection with any request for proposals with respect to price and nonprice factors;

(j) testimony and work papers describing all due diligence and bid evaluation in connection with any request for proposals, including the ranking of bids and reliance on management judgment;

(k) thorough explanation and justification for any terms, other than price, quantity, and contract duration, in a power purchase agreement for which the utility is requesting approval;

(l) a complete description of each aspect of the resource for which the utility requests approval; and

(m) testimony and supporting documentation describing all pre-filing communication.

Proposed Rule

38.5.8228 MINIMUM FILING REQUIREMENTS FOR UTILITY APPLICATIONS FOR APPROVAL OF RESOURCES

(1) If a utility intends to file an application for approval of a Resource that is not yet procured, it must notify the commission and the Montana Consumer Counsel far enough in advance of filing to accommodate adequate pre-filing communication.

(2) An application by a utility for approval of a Resource must include, as applicable:

(a) a complete and thorough explanation and justification of all changes to the utility's most recent Resource Plan and Action Plan, including how the utility has responded to all commission written comments;

(b) a statement explaining whether the application pertains to a power purchase agreement with an existing generating resource, a lease or acquisition of an equity interest in a new or existing generating resource, or a power purchase agreement for which approval will result in construction of a new generating resource;

(c) testimony and supporting work papers describing the Resource and stating the facts (not conclusory statements) that show that acquiring the Resource is in the public interest and is

consistent with the requirements in 69-3-201 and 69-8-419, MCA, the utility's most recent Resource Plan (as modified by (2)(a)), and these rules;

(d) testimony and supporting work papers demonstrating the utility's estimates of the cost of the Resource compared to the cost of each alternative Resource the utility considered and all relevant functional differences between each alternative, including the types of information detailed in ARM 38.5.8207;

(e) testimony and supporting work papers demonstrating the implementation of cost-effective carbon offsets for a Resource fueled primarily by natural or synthetic gas constructed after January 1, 2007;

(f) testimony and supporting work papers demonstrating the capture and sequestration of 50% of the carbon dioxide produced by a Resource fueled primarily by coal constructed after January 1, 2007;

(g) a copy of the proposed power purchase agreement, including all appendices and attachments;

(h) all documentation related to compliance with the requirements of ARM 38.5.8212;

(k) thorough explanation and justification for any terms, other than price, quantity, and contract duration, in a power purchase agreement for which the utility is requesting approval;

(l) a complete description of each aspect of the resource for which the utility requests approval and a demonstration that such aspect is ripe for decision; and

(m) testimony and supporting documentation describing all pre-filing communication.

Redline

38.5.8228 MINIMUM FILING REQUIREMENTS FOR UTILITY APPLICATIONS FOR APPROVAL OF ~~ELECTRICITY SUPPLY~~ RESOURCES

(1) If a utility intends to file an application for approval of a ~~electricity supply r~~Resource that is not yet procured, it must notify the commission and the Montana Consumer Counsel far enough in advance of filing to accommodate adequate pre-filing communication. ~~If the resource will result from a competitive solicitation, notice must be provided before the utility issues a request for proposals.~~

(2) An application by a utility for approval of a ~~electricity supply r~~Resource must include, as applicable:

(a) a complete and thorough explanation and justification of all changes to the utility's most recent ~~long-term R~~resource Pplan and ~~three-year a~~Action Pplan, including how the utility has responded to all commission written comments;

(b) a statement explaining whether the application pertains to a power purchase agreement with an existing generating resource, a lease or acquisition of an equity interest in a new or existing generating resource, or a power purchase agreement for which approval will result in construction of a new generating resource;

(c) testimony and supporting work papers describing the R~~r~~esource and stating the facts (not conclusory statements) that show that acquiring the R~~r~~esource is in the public interest and is consistent with the requirements in 69-3-201 and 69-8-419, MCA, the utility's most recent ~~long-term r~~Resource Pplan (as modified by (2)(a)), and these rules;

(d) testimony and supporting work papers demonstrating the utility's estimates of the cost of the ~~r~~Resource compared to the cost of each alternative R~~r~~esource the utility considered and

all relevant functional differences between each alternative, including the types of information detailed in ARM 38.5.8207;

(e) testimony and supporting work papers demonstrating the implementation of cost-effective carbon offsets for a ~~electricity supply r~~Resource fueled primarily by natural or synthetic gas constructed after January 1, 2007;

(f) testimony and supporting work papers demonstrating the capture and sequestration of 50% of the carbon dioxide produced by a ~~electricity supply r~~Resource fueled primarily by coal constructed after January 1, 2007;

(g) a copy of the proposed power purchase agreement, including all appendices and attachments;

(h) all documentation related to compliance with the requirements of ARM 38.5.8212~~a copy of any request for proposals issued in connection with acquisition of the electricity supply resource;~~

~~(i) testimony and supporting work papers comparing all bids received in connection with any request for proposals with respect to price and nonprice factors;~~

~~(j) testimony and work papers describing all due diligence and bid evaluation in connection with any request for proposals, including the ranking of bids and reliance on management judgment~~;

(k) thorough explanation and justification for any terms, other than price, quantity, and contract duration, in a power purchase agreement for which the utility is requesting approval;

(l) a complete description of each aspect of the resource for which the utility requests approval and a demonstration that such aspect is ripe for decision; and

(m) testimony and supporting documentation describing all pre-filing communication.

Explanation

The proposed changes are all conforming changes, based on proposed rules previously discussed.

QF Rule Amendments, Proposed Revised ARM 38.5.1902 and 38.5.1905

Current Rules Redlined

38.5.1902 GENERAL PROVISIONS

(1) The commission hereby adopts and incorporates by reference 18 CFR, Part 292, which sets forth general requirements and criteria for cogeneration and small power production facilities which are eligible for consideration under sections 201 and 210 of the federal Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617. A copy of this incorporated material may be obtained from the commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601.

(2) Any cogeneration or small power production facility in Montana, which is a qualifying facility under the criteria for size, fuel-use, and ownership established by FERC regulations, 18 CFR, Part 292, as incorporated in ARM 38.5.1901(1), is a qualifying facility eligible to participate,

under these rules, in arrangements for purchases and sales of electric power with electric utilities regulated by the commission.

(3) Any qualifying facility in Montana which produces electric energy or capacity, or both, available for purchase by any public utility regulated by the commission, shall not be considered a public utility within the meaning of 69-3-101, MCA, and shall be exempt from regulation by the commission as a public utility, except insofar as these rules or any other commission order, tariff, requirement, or rule governing the activities of public utilities may affect the facility in its dealings with such regulated utilities. Nothing in these rules is to be construed to limit the full powers of regulation, supervision, and control of public utilities vested by law in the commission.

(4) Nothing in these rules shall exempt any qualifying facility from the applicable licensing or permit requirements which may be imposed on facilities by Montana laws and regulations governing water use, land use, community development and planning, zoning, air quality, environmental protection, or any other existing pertinent law or regulation administered by state agencies other than the commission.

(5) All purchases and sales of electric power between a utility and a qualifying facility shall be accomplished according to the terms of a written contract between the parties or in accordance with the standard tariff provisions as approved by the commission. A long-term contract for purchases and sales of energy and capacity between a utility and a qualifying facility greater than 10MW in size shall be contingent upon selection of the qualifying facility by a utility through a~~n all-source~~ competitive solicitation conducted in accordance with the provisions of ARM 38.5.8212~~2001 through38.5.2012~~ or ARM 38.5.2001 through 38.5.2012, as applicable. Between competitive solicitations, purchases and sales of energy and capacity between a utility and a qualifying facility greater than 1~~0~~MW in size shall be accomplished in accordance with the short-term standard avoided cost tariff approved by the commission or through negotiation of a short-term written contract. The utility shall recompute the short-term and long-term standard tariffed avoided cost rates following public review and comment on each Resource Plan or integrated least cost plan~~least cost plan~~ filing, ARM 38.5.820~~0~~1 through 38.5.8229 or ARM 38.5.2001 through 38.5.2012, respectively and as applicable~~012~~ and, no more frequently than once per year, may update fuel and power price forecast inputs to the methodology used for computing avoided costs in that first filing following public review and comment on its Resource Plan or integrated least cost resource plan. The recomputed avoided cost rates should reflect any amendments to the plan due to the comments of the commission and the public. If the qualifying facility is not selected, or does not participate, in the first available competitive solicitation, purchases and sales of energy and capacity shall continue only according to the terms of a newly negotiated short-term written contract or in accordance with the newly computed, short-term standard tariffed avoided cost rates. Long-term contracts for purchases and sales of energy and capacity between a utility and a qualifying facility 1~~0~~MW or less may be accomplished according to standard tariffed rates as approved by the commission. The contract shall specify:

(a) the nature of the purchases and sales;

(b) the applicable rate schedule or negotiated rates for the purchases and sales;

(c) the amount and manner of payment of interconnection costs;

(d) the means for measurement of the energy or capacity purchased or sold by the utility;

(e) the method of payment by the utility for purchases, and the method of payment by the facility for utility sales;

(f) any installation and performance incentives to be provided by the utility to the qualifying facility;

(g) the services to be provided or discontinued by either party during system emergencies;

(h) the term of the contract;

(i) applicable operating safety and reliability standards with which the qualifying facility must comply;

(j) appropriate insurance indemnity and liability provisions.

(6) All purchases and sales of electric power between a utility and a qualifying facility shall be compatible with the goals expressed in ARM 38.5.8203 or ARM 38.5.2001 through 38.5.2012 of the commission's integrated least cost resource planning and acquisition guidelines. ~~of the commission's integrated least cost resource planning and acquisition guidelines, ARM 38.5.2001 through 38.5.2012.~~

History: 69-3-103, MCA; IMP, 69-3-102, MCA; NEW, 1981 MAR p. 459, Eff. 5/15/81; AMD, 1992 MAR p. 2764, Eff. 12/25/92; AMD, 2007 MAR p. 2140, Eff. 12/21/07.

38.5.1905 RATES FOR PURCHASES

(1) Each utility shall submit to the commission within 30 days of the filing of its ~~integrated least cost~~Resource ~~resource~~ ~~p~~Plan or integrated least cost resource plan, or an update to that plan, as required by ARM 38.5.82~~0~~01 - 38.5.8229~~012~~ or ARM 38.5.2001 through 38.5.2012, respectively and as applicable, the following cost data for use by the commission in determining avoided costs and standard rates therefrom.

(a) The estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of 10 megawatts and in blocks of 100 megawatts for systems with peak demand of 1000 megawatts or more, and in blocks of 10 megawatts and in blocks equivalent to 10 percent of the system peak demand for systems of less than 1000 megawatts. The avoided costs shall be stated on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next five years;

(b) The electric utility's ~~integrated least cost r~~Resource P~~p~~lan or integrated least cost resource plan, developed with reference to the commission's guidelines in ARM 38.5.820~~0~~1 - 38.5.8229~~012~~ or ARM 38.5.2001 through 38.5.2012, respectively and as applicable, for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding ten years; and

(c) The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases and shall represent the avoidable resources in the utility's Resource Plan or integrated least cost resource plan developed according to the commission's guidelines, ARM 38.5.8201 – 38.5.8229 or ARM 38.5.2001 - 38.5.2012, respectively and as applicable.

(2) Each utility shall purchase available power from any qualifying facility at either the standard rate determined by the commission to be appropriate for the utility, or at a rate which is a negotiated term of the contract between the utility and the qualifying facility.

(3) The rate paid by the utility for any purchase shall not exceed the avoided costs to the utility, calculated:

(i) At the time of delivery of the facility's energy or capacity, for "as available" purchases; or

(ii) At either the time of delivery or the time the obligation is incurred, at the facility's option, for purchases of firm power over the term of the contract.

(4) The standard rate for purchases from a qualifying facility shall be that rate calculated on the basis of avoided costs to the utility which is determined by the commission to be appropriate for the particular utility after consideration, to the extent practicable, of the avoided cost data submitted to the commission by the utility and other interested persons.

(5) Assignment of a particular qualifying facility to the appropriate standard rate schedule for purchases by the utility should consider:

(a) The availability of capacity and energy from the qualifying facility during system daily and seasonal peak periods;

(b) The expected or demonstrated reliability of the qualifying facility;

(c) The relationship of the availability of energy or capacity from the qualifying facility to the ability of the utility to avoid cost;

(d) The contractual obligations the owner or operator of the qualifying facility is willing to undertake.

(e) The full range of resource attributes listed in the commission's integrated least cost resource planning and acquisition guidelines, ARM 38.5.2001 - 38.5.2012.

(6) If a qualifying facility has provided in its contract with a utility that measurement of facility energy input to the utility system and measurement of facility load will be accomplished with one meter, the qualifying facility shall be subject to a net billing system, whereby the utility shall pay the standard rate or the negotiated rate for purchases only for the facility's input to the system which is in excess of the facility's load.

(7) If the qualifying facility has agreed in its contract with a utility that measurement of facility input to the utility system shall be accomplished by metering separate from that measuring the facility load, the qualifying facility may receive payment for all of the energy it supplies to the utility according to the applicable schedule of standard rates for purchases. Unless the qualifying facility has contracted for a different rate, the standard rate is applicable regardless of whether the qualifying facility is simultaneously served by the utility for the facility's load, and regardless of the rate charged by the utility for such simultaneous sales.

History: 69-3-103, MCA; IMP, 69-3-102, MCA; NEW, 1981 MAR p. 459, Eff. 5/15/81; AMD, 1992 MAR p. 2764, Eff. 12/25/92.

Explanation

The proposed changes conform these rules to all of the proposed changes to ARM 38.5.8201 through 38.5.8229 and make the change discussed in the introduction.