

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22I-0027E

IN THE MATTER OF THE COMMISSION'S IMPLEMENTATION OF § 40-4-120, C.R.S.,
THE STUDY OF COMMUNITY CHOICE IN WHOLESALE ELECTRIC SUPPLY.

**COMMISSION DECISION OPENING AN
INVESTIGATORY PROCEEDING AND SOLICITING
INPUT FROM INTERESTED PARTICIPANTS**

Mailed Date: January 13, 2022
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I. BY THE COMMISSION

A. Statement

1. The Governor of the State of Colorado, Jared S. Polis, on June 21, 2021, signed into law, House Bill 21-1269, enacted as § 40-4-120, C.R.S. Study of Community Choice in Wholesale Electric Supply. The statute directs the Public Utilities Commission (Commission) to open an investigatory proceeding on or before January 15, 2022, to consider the regulatory implications and legal impacts of possible future legislation that would allow cities and counties

to acquire alternative wholesale electric supply on behalf of their residents, businesses, and local government facilities, in lieu of being provided electric supply from the incumbent investor-owned electric utilities, and report its recommendations to the General Assembly on or before December 15, 2022.¹

2. The investigation will provide an opportunity for the Commission to receive comments and information from interested persons including stakeholders, independent energy and utility experts, regulators from states in which community choice in wholesale supply has been implemented or is under consideration, and representatives of operational authorities where community choice in wholesale supply has been implemented.

3. The Commission will conduct this non-adjudicatory investigatory proceeding *en banc*.

B. Background

4. Community Choice Energy (CCE) is defined in the statute as:

a mechanism that allows cities, including a city and county, counties, or groups of cities and counties to combine their purchasing power and choose one or more alternative wholesale electricity suppliers on behalf of the residents, businesses, and municipal facilities in the jurisdiction while the incumbent investor-owned electric utility maintains its existing generation and continues to own and operate its transmission and distribution system and deliver the electricity to both its own customers and CCE customers.²

5. Pursuant to § 40-4-120(3)(a), C.R.S., the Commission is to “employ procedures that promote a productive, effective, and evidence-based process, including one or more commissioners’ informational meetings with presentations by subject-matter experts.” More

¹ §§ 40-4-120(3)(a) and (d), C.R.S.

² § 40-4-120(2), C.R.S.

specifically, § 40-4-120(3)(b), C.R.S., directs the Commission to solicit input from a broad and inclusive range of stakeholders to ensure that the investigation is not dominated by any one group or viewpoint.³

6. Further, § 40-4-120(3)(c), C.R.S., directs the Commission to explore the following topics and questions:

- (I) Whether the commission would require additional statutory authority to conduct a rule-making proceeding concerning the creation of CCE authorities in Colorado; except that the commission's determination that additional statutory authority is not required does not preclude the general assembly from increasing or amending the commission's statutory authority;
- (II) The appropriate scope of regulatory oversight of CCE operations, on a scale ranging from comprehensive, as with investor-owned electric utilities, to minimal, as with municipally owned electric utilities;
- (III) Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of:
 - (A) Resource adequacy planning;
 - (B) Assurance of reliability and how this is paid for;
 - (C) Compliance with renewable energy standards and emissions reduction targets;
 - (D) Supplemental demand-side management programs offered by CCE authorities;
 - (E) Time-of-use rates or other rate requirements if mandated for investor-owned electric utilities; and
 - (F) Standards for requests for proposals;
- (IV) The appropriate principles and considerations for calculating the amount and duration of reasonable transition fees, also known as exit fees, that

³ § 40-4-120(3)(b), C.R.S., provides a list of potential stakeholders including: local governments with declared goals regarding emissions or energy supply choices; business groups; environmental advocates; consumer advocates; electric utilities (including investor-owned, municipal and cooperative utilities); independent power producers and power marketers; renewable energy developers; consultants or experts in energy project financing; consultants or experts in energy efficiency and distributed energy resources; representatives of operational CCE authorities; and members of the public.

communities forming a CCE authority would pay to the incumbent investor-owned electric utility to offset their fair share of the costs of utility assets and contracts that were procured on their behalf and previously approved, in amounts sufficient to provide cost recovery for stranded investor-owned electric utility assets and contracts and direct transition costs while protecting non-CCE customers but without unduly burdening CCE customers. The principles and considerations shall include:

- (A) The age or the date of initial service of generation assets and existing contracts;
 - (B) The potential for exit fees to vary over time or by location;
 - (C) The establishment of a specific expiration period for exit fees;
 - (D) Measures to mitigate exit fees through potential contract transfer or resale to CCE authorities or other buyers, and appropriate forecasting of departing load to avoid over-procurement; and
 - (E) Pitfalls encountered in other states related to exit fees and how those pitfalls could be avoided or mitigated by up-front consideration.
- (V) The appropriate conditions, limitations, and procedures under which customers may opt out of CCE and receive bundled service from the incumbent investor-owned electric utility;
 - (VI) Whether any additional consumer protections would be required and the means of providing those protections;
 - (VII) Potential challenges for CCE start-up or continuing operations, including the availability of financing and credit rating considerations, and strategies to overcome those challenges;
 - (VIII) What regulatory and legal issues have arisen in other states that have adopted the wholesale, opt-out model of CCE and possible solutions for those issues;
 - (IX) Whether an investor-owned electric utility that remains the sole provider of distribution, transmission, and other services traditionally provided by the utility, such as metering and billing, should also be the provider of last resort for supplying electricity to customers who opt out of CCE;
 - (X) The appropriate process for approval of CCE on behalf of customers within a jurisdiction, whether by ordinance, by vote of the people, or otherwise;

- (XI) Whether CCE authorities should be allowed to offer demand-side management programs that either expand upon or replace such programs offered by the incumbent investor-owned electric utility;
- (XII) Regulatory and policy considerations related to forming CCE authorities in a state that does not currently belong to a regional transmission organization or participate in a wholesale electricity market, and possible solutions, including considerations in the areas of:
 - (A) Whether legislation should be adopted to guarantee open access and fair prices for transmission services;
 - (B) Recommendations for legislative or administrative measures, or both, concerning wholesale market access and development in Colorado; and
 - (C) Whether other legislative and regulatory modifications are necessary to successfully implement CCE in Colorado;
- (XIII) What, if any, minimum requirements and standards should apply to independent power producers and power marketers who wish to supply energy to a CCE authority;
- (XIV) What, if any, data-sharing requirements should be imposed on investor-owned electric utilities to help ensure that a CCE authority or a jurisdiction investigating whether to form or join a CCE authority can reasonably evaluate its financial and technical viability and implement its CCE program;
- (XV) How CCE might facilitate or impede:
 - (A) Increased integration of distributed energy resources, such as rooftop solar, community solar, and battery energy storage into distribution systems;
 - (B) Increased investment in beneficial electrification, including electrification of transport; and
 - (C) Resource adequacy and reliability, and what regulatory approaches would be needed to maximize positive impacts and mitigate negative impacts;
- (XVI) The appropriate considerations for ensuring that the implementation of CCE does not include customers in the certificated territories of municipally owned electric utilities or cooperative electric associations;
- (XVII) The impact of allowing CCE in Colorado on the ability of Colorado to reach its clean energy and greenhouse gas reduction goals and what

legislative and regulatory requirements for CCE would be needed to facilitate reaching those goals;

- (XVIII) The impact, both positive and negative, of CCE in communities that have formed or joined a CCE authority in states that have enabled the wholesale, opt-out model of CCE;
- (XIX) The impact of CCE on low-income households and communities disproportionately impacted by electricity generation, including the availability of low-income programs offered through the investor-owned electric utility to CCE customers and the ability of CCE authorities to establish additional programs to assist low-income households and communities disproportionately impacted by electricity generation;
- (XX) The risks a CCE authority might face that merit consideration, such as resource price risks, contract risks, or load defection, and the significance of those risks;
- (XXI) The impact of CCE on jobs in the electricity sector, including the number and classification of jobs lost or gained at investor-owned utilities and CCA authorities in California;
- (XXII) What options, including project labor agreements, would ensure that new energy projects built to supply CCE authorities are constructed using union labor; and
- (XXIII) How the procurement process works and how it varies from one CCE or CCA authority to another, especially in California.

7. The Commission is directed under § 40-4-120(3)(d), C.R.S., to summarize its findings, conclusions, and recommendations from the investigatory proceeding in a final report submitted to the transportation and energy committee of the senate and the energy and environment committee of the house of representatives, or their successor committees, on or before December 15, 2022, and to post the report on the Commission's public website.

8. In addition, § 40-4-120(3)(e), C.R.S., establishes that "[t]he implementation of any option determined from the study cannot have a negative impact on other ratepayers outside of the municipality that is the focus of the study."

C. Discussion

9. We open this non-adjudicatory proceeding to conduct the investigation contemplated in § 40-4-120, C.R.S. This proceeding will serve as a repository for the filing of comments, presentations, and other information provided for Commission consideration, and will serve as a platform from which to facilitate Commissioner Information Meetings and workshops, pose questions, discuss processes, issue orders, and report to the General Assembly.

10. In addition to the questions and topics detailed in the statute, the Commission seeks comments on the following questions:

- a. Are cities, counties, combined cities and counties, or groups of cities and counties implementing CCE public utilities as defined in § 40-1-103, C.R.S.?
- b. Despite Article XX of the Colorado Constitution, does the General Assembly need to define cities, counties, combined cities and counties, and groups of cities and counties implementing CCE as municipal utilities, such that they are excluded from Commission authority or jurisdiction or subject to limited Commission authority or jurisdiction?
- c. If it is determined by the General Assembly that cities, counties, combined cities and counties, or groups of cities and counties implementing CCE are public utilities subject to full or limited Commission authority or jurisdiction, should those cities, counties, combined cities and counties, or groups of cities and counties be assessed fees by the Department of Revenue pursuant to § 40-2-112, C.R.S.?
- d. Considering that Colorado's investor-owned utilities are currently vertically integrated, are cities, counties, combined cities and counties, or groups of cities and counties implementing CCE subject to a determination of recovery of stranded costs by the Federal Energy Regulatory Commission pursuant to Order 888?⁴
- e. What has been the experience in communities where CCE has been implemented with regard to the overall cost of electricity provided to CCE participating customers as compared to similarly situated customers opting

⁴ FERC Order 888, *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Final Rule*, Docket Nos. RM94-7-001 and RM95-8-000, Issued April 24, 1996.

to receive bundled service from the incumbent investor-owned electric utility?

- f. Should the renewable energy standards detailed in § 40-2-124, C.R.S., for municipally owned utilities apply to cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, or should the renewable energy standards detailed in § 40-2-124, C.R.S., for investor-owned utilities apply?
- g. Should investor-owned utilities be obligated to offer demand-side management programs pursuant to § 40-3.2-104, C.R.S., to customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?
- h. Should investor-owned utilities be obligated to offer net metering incentives to customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?
- i. Should investor-owned utilities be obligated to make investments or offer incentives to facilitate the deployment of customer-owned or utility-owned charging infrastructure pursuant to § 40-5-107, C.R.S., for customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?
- j. Should investor-owned utilities be obligated to make investments or offer incentives to facilitate beneficial electrification pursuant to § 40-3.2-109, C.R.S., for customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?
- k. Should investor-owned utilities be obligated to offer low-income energy assistance programs for customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?
- l. Should generation emissions from electricity served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE be excluded from clean energy plans submitted by investor-owned utilities pursuant to § 40-2-125.5, C.R.S.?

11. We encourage stakeholders to file a statement of interest indicating participation in this proceeding. Participants should submit initial comments no later than March 1, 2022.

Comments responsive to those initial filings may be made no later than April 15, 2022.

12. Does implementation of CCE in the near future introduce additional risks considering that Colorado's investor-owned utilities have been directed, pursuant to § 40-5-108(2), C.R.S., to join an organized wholesale market on or before January 1, 2030?

13. Should implementation of CCE be delayed until the investor-owned electric utilities in Colorado join an organized wholesale market pursuant to § 40-5-108(2), C.R.S.?

14. Could recent decisions by the Commission related to the acquisition of generation and transmission to meet future needs be negatively impacted by implementation of CCE in Colorado?

15. Stakeholders are further encouraged to provide comments to one, some, or all of the questions and issues identified in this Decision. In addition, the comments should identify the specific question or issue being commented on (*i.e.*, 6(III), 10c, etc.).

16. We will likely schedule one or more Commissioner Information Meetings or workshops by future Decision to further consider the regulatory implications and legal impacts of possible future legislation that would allow cities and counties to acquire alternative wholesale electric supply on behalf of their residents, businesses, and local government facilities.

17. The Commission will hear this non-adjudicatory investigatory proceeding *en banc* with Commissioner John Gavan taking a lead role in working with Commission Staff in administrating this investigation.

II. ORDER

A. The Commission Orders That:

1. The Commission opens this Investigatory Proceeding to collect comments and information helpful in evaluating the viability of wholesale, opt-out model of Community Choice Energy (CCE) in Colorado and to answer key questions about CCE in Colorado pursuant to § 40-4-120, C.R.S., consistent with the discussion above.

2. This proceeding shall serve as a platform to conduct the statutorily required investigation specified in § 40-4-120, C.R.S., and will serve as a platform from which to conduct Commissioner Information Meetings and workshops, pose questions, hold public hearings, file investigation results, issue orders, and issue a final report to the Transportation and Energy Committee of the Senate and the Energy and Environment Committee of the House of Representatives, or their successor committees, on or before December 15, 2022.

3. This proceeding is designated as an administrative proceeding under 4 *Code of Colorado Regulations* 723-1-1004(b) of the Commission's Rules of Practice and Procedure.

4. The Commission will conduct this non-adjudicatory investigatory proceeding *en banc* with Commissioner John Gavan taking a lead role in working with Commission Staff in administrating this investigation.

5. Persons interested in participating in this proceeding shall file a Notice of Participation by February 15, 2022.

6. Interested stakeholders shall submit initial comments in response to this Decision no later than March 1, 2022.

7. Responsive comments shall be filed by April 15, 2022.

8. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 12, 2022.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Doug Dean'.

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners