



POLICY

Financial Assurance - Annual Contributions

Document Change Log

Date	Description of Changes
4/14/23	Policy implemented

Rule/Statute Citation

Rules 702.d.(3).C and Rule 702.d.(4).C state:

"The contribution amount of the Operator's Contributed Financial Assurance will increase each year as established pursuant to the Operator's Financial Assurance Plan."

Background

The Financial Assurance Plan (Plan) approved by means of a Form 3 or Commission Order will change as the Operator buys and sells assets and other circumstances identified as part of the annual review conducted pursuant to Rule 707.a.(1). The above referenced Rules relate to Option 3 and Option 4 Plans where the Operator is required to annually provide five percent or ten percent, respectively, of the total required Financial Assurance until the full amount of assurance is provided.

Purpose of Policy

This policy makes clear that the intention of the Rules is for the existing balance of financial assurance associated with Option 3 and Option 4 Plans to increase annually. When an Option 3 or Option 4 Plan is approved, the calculated annual contribution is simply the amount by which the existing financial assurance should increase each year until such time as the entire amount of required financial assurance is provided or a revised Plan is approved. The Policy also establishes when such contributions are due.

Application of Existing Assurance

Financial Assurance balances will be distinct by Rule, meaning assurance related to Rule 702 will be kept separate from the balance of assurance related to Rule 703, etc.

Initial Plans

The Director will generally not apply existing assurance at the time an initial Form 3 is approved, unless the amount of assurance due within 90 days of the Form 3 approval date is less than the associated current assurance balance. If the Director does not apply existing assurance to the initial Plan, the Operator may still choose to apply the assurance when submitting a Form 3A, Financial Assurance. If the Director does apply existing assurance to an initial Plan, the Operator may provide alternate assurance (Form 3A) in an equal or greater

amount and request the existing assurance be released (Form 3C). Once the replacement assurance is provided and approved, the existing assurance may be released.

Revised Plans

Any Plan approved after the initial Plan is considered a revised Plan. All assurance associated with the previously approved Plan will be retained until such time as the assurance is no longer needed to meet the requirements of the currently approved Plan.

Due Date

The rules are silent as to the date by which the annual contribution associated with Option 3 and Option 4 Plans is due. Rules 702.d.(1).B, 702.d.(2).B, 702.d.(5).B, and 702.d.(6).B clearly establish that the entire amount of financial assurance associated with an Option 1, 2, 5, or 6 Plan is due within 90 days of the Plan approval date. Accordingly, COGCC requires the first annual contribution of an Option 3 or Option 4 Plan be made within 90 days of the initial Plan approval date.

Given that a Plan could be approved any month of the year, even multiple times in a year, the most reasonable administration of the ongoing annual contribution is to require the first annual contribution subsequent to the contribution made within 90 days of the initial Plan approval to be provided by July 1 of the year following the year in which the initial Plan was approved. Contributions will continue to be due by July 1 annually thereafter until such time as there are no more contributions required. The amount due will be the annual contribution required by the Plan that is in effect as of July 1 of the year in which the contribution is due.