Decision No. R20-0209

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0608E

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, RELATING TO COMMUNITY SOLAR GARDENS.

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE ROBERT I. GARVEY AMENDING RULES

Mailed Date: April 6, 2020

TABLE OF CONTENTS

I. STATEMENT

1. On November 5, 2019, the Public Utilities Commission issued the Notice of Proposed Rulemaking (NOPR) that commenced this proceeding. *See* Decision No. C19-0900. The Commission referred the instant rulemaking proceeding to an Administrative Law Judge (ALJ) and scheduled a hearing for January 13, 2020. The purpose of this limited rulemaking is to amend the rules governing Community Solar Gardens (CSG Rules) within the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3. The Commission's CSG Rules implement § 40-2-127, C.R.S. The CSG Rules are presently located within the Renewable Energy Standard Rules (RES Rules) at 4 CCR 723-3-3650 *et seq*. This NOPR proposes to move the CSG Rules to a new standalone section within 4 CCR 723-3, comprising Rules 4 CCR 723-3-3875 *et seq*. This NOPR also proposes substantive changes to the CSG Rules, as described in this Decision and its attachments.

2. In Decision No. C19-0900, the Commission requested that interested persons file Initial Comments no later than December 6, 2019. Black Hills/Colorado Electric Utility Company, LP (Black Hills), the Colorado Energy Office (CEO), Energy Outreach Colorado (EOC), the Colorado Solar and Storage Association and the Solar Energy Industries Association (collectively COSSA), Grid Alternatives (Grid), The Office of Consumer Counsel (OCC), Western Resource Advocates (WRA), Vote Solar, and Public Service Company of Colorado (Public Service or Company) all filed initial comments.

3. By that same decision the Commission requested comments responsive to initial comments (Reply Comments) be filed no later than January 3, 2020. The City and County of Denver, Grid, COSSA, Vote Solar, Black Hills, EOC, Public Service, and WRA, all filed Reply Comments.

4. The ALJ held the hearing on January 13, 2020. Based on written comments and the comments provided at the January hearing, the ALJ concluded that no further hearing is necessary.

5. At the hearing, the ALJ informed the parties that post-hearing comments are due no later than January 27, 2020. Colorado Energy Consumers, OCC, the City of Boulder, Public Service, and WRA filed closing comments on January 27, 2020.

6. Being fully advised in this matter and consistent with the discussion below, in accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. FINDINGS, DISCUSSION, AND CONCLUSION

7. In Decision No. C19-0900, the Commission described the nature and purpose of this limited rulemaking as addressing the changes to the rules required by the passage of Senate Bill (SB) 19-236. SB-236 introduces new forms of eligible energy resources that can be used to comply with the RES, eliminates a requirement that eligible energy resources must be located in Colorado to be eligible for a multiplier, and amends the RES applicable to cooperative electric associations.

8. Not all modifications to the proposed rules are specifically addressed herein. Any changes incorporated into the redline version of the rules appended hereto are recommended for adoption.

9. The ALJ has reviewed the record in this proceeding to date, including written and oral comments.

10. The proposed rules attached to Decision No. C19-0900 in legislative (*i.e.*, strikeout/underline) format and in final format, were made available through the Commission's

Electronic Filings system. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.,* 40-2-108, and 40-2-127, C.R.S.

11. This NOPR is the second NOPR issued by the Commission proposing amendments to the CSG Rules. The Commission first proposed amendments through a NOPR issued by Decision No. C19-0197, issued February 27, 2019, in Proceeding No. 19R-0096E. That NOPR proposed substantive amendments to revise the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3, in six areas: electric resource planning, the RES, net metering, utility purchases from qualifying facilities, interconnection procedures and standards, and CSGs. Prior to commencing the rulemaking in Proceeding No. 19R-0096E, the Commission conducted a robust stakeholder outreach effort through Staff of the Colorado Public Utilities Commission in Proceeding No. 17M-0694E (Stakeholder Outreach Proceeding).[1]

12. The proposed amendments to the CSG Rules in the first NOPR, issued in Proceeding No. 19R-0096E, would move the CSG Rules to a standalone section in the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3.[2] In addition, the amendments propose to expand the definition of an eligible low-income subscriber to include not only residential customers but also operators of affordable housing. The amendments propose to add various new provisions to the CSG Rules to allow a CSG subscriber to contribute billing credits to a low-income customer energy assistance organization. In addition, the Commission solicited feedback on a new provision that would require at least half of the new CSGs to target

[1] For purposes of § 24-4-103(2), C.R.S., pre-rulemaking stakeholder outreach was conducted through the Stakeholder Outreach Proceeding preceding issuance of the NOPR in Proceeding No. 19R-0096E. Service of this CSG-specific NOPR will be provided to all current participants in Proceeding No. 19R-0096E.

[2] Attachment E to Decision No. C19-0197 in Proceeding No. 19R-0096E shows the proposed CSG Rules in their new location with redlining to indicate changes compared to the existing provisions.

residential, agricultural, and small commercial customers consistent with the legislative declaration in § 40-2-127(1), C.R.S.

13. After issuing the NOPR in Proceeding No. 19R-0096E and receiving initial written comments, the Commission held a rulemaking hearing on April 30, 2019, for public comment on the amendments to the CSG Rules proposed in the NOPR. Shortly after that rulemaking hearing, two bills enacted by the 2019 General Assembly made substantive changes to state law governing CSGs. First and most significantly, House Bill (HB) 19-1003 modified § 40-2-127, C.R.S., by increasing the size limit permitted for CSGs, expanding the options for locating CSGs eligible to provide service to utility customers, and allowing for further consideration of the treatment of the renewable energy credits (RECs) at the time they are generated by the CSGs. Second, SB 19-236 struck § 40-2-124(f)(I), C.R.S., which had allowed utilities to rate-base certain new renewable energy resources but also imposed ownership limitations on those resources. Post-hearing comments filed by participants acknowledged that some of the energy-related bills from the 2019 General Assembly required further modification to provisions of the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3, already subject to review in Proceeding No. 19R-0096E. Although some participants provided high-level comments about the statutory changes, there were no significant submission of proposed rule revisions to implement these changes.

14. After considering the statutory changes enacted by the 2019 General Assembly, and the participants' comments to date in Proceeding No. 19R-0096E, the Commission decided at its September 25, 2019 Commissioners' Weekly Meeting to sever the CSG Rules from the larger ongoing rulemaking.

15. By Decision No. C19-0822-I, issued October 7, 2019, the Commission severed the CSG Rules from the rulemaking in Proceeding No. 19R-0096E. The Commission found it had sufficient information to issue a new set of proposed CSG Rules to implement the recent statutory changes and to respond to suggestions and criticisms in participant comments. The Commission concluded a separate, standalone rulemaking for the CSG Rules would allow for rule changes implementing the new statutory provisions to take effect sooner than if the CSG Rules remained part of the broader rulemaking in Proceeding No. 19R-0096E. The Commission indicated it would issue a separate NOPR for CSG Rules in order to focus and expedite adoption of revised CSG Rules, resulting in this Decision and NOPR.

A. Discussion of Comments

1. Rule 3875. Applicability

16. Proposed Rule 3875 describing the applicability of the CSG Rules is identical to the language in the beginning of Existing Rule 3665.

17. COSSA adds the term "'QRUs regarding'" in order to make clear that the rules apply to the utility's administration of CSG programs.

18. The ALJ adopts this language to clarify that applicability of the CSG Rules apply to the QRU's administration of CSG programs, consistent with § 40-2-127, C.R.S.

2. Rule 3876. Overview and Purpose

19. This is a new rule that incorporates language from the legislative declaration in § 40-2-127(1), C.R.S. The new rule language better clarifies and explain the purpose of the CSG Rules.

20. WRA, GRID, COSSA, and OCC provide clarifying edits to this rule.

21. The ALJ adopts the language recommended by COSSA, which emphasizes that the purpose of the rules is to ensure access by all utility customers to solar generation opportunities.

3. Rule 3877. Definitions

22. The CSG-related definitions currently located in the RES Rules at 4 CCR 723-3-3650, *et seq*. are moved into Proposed Rule 3877. Most of the definitions are not substantively modified, except those identified below.

23. WRA proposes to strike "renewable energy" and replace it with "electricity" throughout the rules, beginning in Rule 3877(a), in order to clarify that it is only the electricity that is tied to the bill crediting process, and only the electricity that must be sold to the utility serving the geographic area where the CSG is located.

24. The ALJ agrees with WRA and makes the change throughout this rule where applicable.

a) Rule 3877(a) "Community Solar Garden"

25. Recently enacted HB 19-1003 increases the maximum allowable size of a CSG from two MW to five MW, effective immediately. In addition, the statute allows the Commission, in rules, to approve the formation of a CSG of up to ten MW on or after July 1, 2023.

26. To implement these recent statutory changes, Proposed Rule 3877(a) replaces "two" with "five" in the maximum nameplate rating for a CSG. The Commission proposes this size increase should apply to *existing* CSGs as well as new CSGs. This would allow existing CSGs developed under the prior two MW restriction to grow to five MW, provided the

enlargement of the facility is part of the utility's implementation of a future approved RES compliance plan.

27. Proposed Rule 3877(a) also provides that a CSG with a nameplate rating of up to ten MW will be allowed on or after July 1, 2023.

28. Public Service argues that it is premature to memorialize an increase in capacity that will take place more than three years from now as the industry is rapidly evolving. The Company has safety, reliability, and policy concerns with respect to increasing the target capacity to 10 MW. Additionally, Black Hills believes a future rulemaking is the appropriate time to evaluate such a change.

29. COSSA suggests changing DC to AC, arguing DC ratings are not representative of the maximum output capacity of a CSG and the AC rating is what determines how much electricity can be exported at any one time. Public Service responds that this change leads to increased energy credits and incentive payments that would likely need to be recalibrated in future RES Plan budgets. In addition, the change has system operations and administrative implications.

30. COSSA adds language to clarify that the expansion to 5 MW AC applies universally on a prospective basis.

31. COSSA also adds language regarding interconnection, including transmission. They argue that there is no statutory restriction on CSG transmission level interconnections. Opening up interconnection sites to transmission level interconnection could solve a number of the interconnection problems that CSGs have been facing at existing substations and provide many new siting options.

32. The ALJ agrees with COSSA that DC ratings are not representative of the maximum output capacity of a community solar system, which is based on the efficiency of the inverter. As

COSSA points out, the AC rating is what determines how much electricity can be exported at any one time. Capacity should be measured using the AC rating throughout the rule's discussion of capacity.

33. The ALJ also agrees with COSSA's rule language clarifying that CSGs may interconnect with the distribution, or transmission system, in accordance with Interconnection Standards and Procedures.

a) **Rule 3877(f) "Eligible Low-Income CSG Subscriber"**

34. Based on comments received in the Stakeholder Outreach Proceeding, Proposed Rule 3877(f) expands the definition of an eligible low-income CSG subscriber to include not only residential customers but also operators of affordable housing. "Affordable housing" as used in this rule means at least 60 percent of the residents are either below 165 percent of the current federal poverty level or meet the eligibility criteria in the Colorado Department of Human Services rules adopted pursuant to § 40-8.5-105, C.R.S., and the operator of the affordable housing provides verifiable information that these low-income residents are the beneficiaries of the CSG subscription(s).

35. Several parties note that the percentage in Rule 3877(f)(I) should be 185, not 165.

36. Public Service notes that Rule 3877(f)(III) should cite § 40-8.5-106, C.R.S., not 105.

37. The ALJ adopts these recommended modifications.

a) **Rule 3877(g) "Eligible Low-Income Service Provider"**

38. GRID adds an additional definition to clarify the difference between Low-income Subscriber and Service Provider, because it believes the rule as proposed would severely limit low-income residential customer participation in the CSG program. GRID explains the inclusion of "operators of affordable housing" within the definition of "Eligible low-income

subscriber," would create an imbalance towards participation by affordable housing buildings and away from residential low-income customers. GRID therefore proposes separately defining "Eligible Low-income Service Providers" in Rule 3877(g) to include an operator of affordable housing and nonprofits providing essential services for low-income customers.

39. The ALJ agrees with GRID that separate definitions, and separate treatment within the CSG rules, will ensure low-income residential customers have equitable access to the CSG program and allow the Commission to tailor effective policies, such as incentive adders and carve outs, to better address the financial barriers faced by low-income residential customers and tenants of affordable housing within the CSG program.

4. Rule 3878. Subscriptions, Subscribers, and Subscriber Organizations

40. Proposed Rule 3878 describes the requirements and restrictions applicable to CSG subscribers, CSG subscriptions, and CSG subscriber organizations. This rule derives from Existing Rule 3665(a)(I) with the one substantive modification identified below.

i. Rule 3878(c) Location of Subscriber

41. Recently enacted HB 19-1003 expands the availability of CSG subscribers for a particular CSG by eliminating the requirement that a CSG subscriber's premise must be located in the same county or an adjacent county to the physical CSG; however, the CSG still must be located within the service territory of the same utility.

42. To implement this statutory change, Proposed Rule 3878(c) strikes the language in Existing Rule 3665(a)(I)(C) requiring the CSG subscriber's premise to be located in the same county or an adjacent county to the CSG.

43. Public Service adds a clarifying phrase "within the same service territory," as the Company believes the current language is inconsistent with the revised language contained within HB 1003.

44. The ALJ adopts the language added by Public Service.

5. Rule 3879. Share Transfers and Portability

45. Proposed Rule 3879 concerning the transfer or assignment of CSG subscriptions derives from Existing Rule 3665(a)(II). No modifications were initially proposed to this rule in the NOPR issued in Proceeding No. 19R-0096E. However, based on comments subsequently received in Proceeding No. 19R-0096E, this NOPR shall incorporate preferences for offering subscriptions to low-income customers and other categories of utility customers.

46. COSSA adds language to Rule 3879(b) to ensure parity with subsection (c) as to compliance with the terms and conditions of a CSG subscription.

47. The ALJ adopts COSSA's language in Rule 3879(b).

i. Rule 3879(d) Waiting List to Purchase Subscriptions

48. Proposed Rule 3879(d), like Existing Rule 3665(a)(II)(D), requires the CSG subscriber organization to maintain a waiting list and offer subscriptions that existing subscribers wish to transfer or assign on a first-come, first-serve basis. It was proposed to modify this rule to require that the CSG subscriber organization give a preference to eligible low-income CSG subscribers and, to the extent the CSG subscriber organization has made any subscriber mix commitments, to any other categories of utility customers.

49. CEO argues that Rule 3879(d) is not clear as to what kinds of groups could be allowed preference and if a subscriber organization could give preference to these other groups over low-income customers. CEO recommends the Commission interpret the proposed language

to mean that if a CSG subscriber organization has made commitments to serve the "underserved" groups referenced in § 40-2-127(1)(b)(II), C.R.S., with a portion of the CSG, then customers in those groups could also be given preference.

50. COSSA provides language changes to the proposed rule. COSSA states that while it is important to prioritize low-income customers, consistent with the statute and policy directives, the statute does not require or intend that low-income customers should displace other customers waiting on an existing queue.

51. Black Hills adds that it is not appropriate to apply new requirements to existing CSG subscriber organizations when their existing request for proposal (RFP) award contract may not contain those requirements.

52. Public Service objects to the proposed rule, stating that CSG subscriber organizations are unregulated entities, the manner in which they choose their subscribers is not subject to Commission oversight, and the process in which it is handled by the CSG subscriber organizations is not transparent. Both Black Hills and Public Service provide clarifying language.

53. The ALJ makes no changes to proposed Rule 3879(d).

i. **Rule 3879(e)**

54. COSSA recommends that the Commission clarify in subsection (e) that communications regarding changes in the CSG subscriber roll should be communicated by electronic means. They argue that communications in outdated forms such as written notices are inefficient and should be eliminated.

55. The ALJ adopts COSSA's proposed language in Rule 3879(e).

6. Rule 3880. Production Data

56. Proposed Rule 3880 derives from Existing Rule 3665(b). This rule requires utility access to production, system operation, and meteorological data for certain CSGs. The cross reference to Existing Rule 3656(l) in Existing Rule 3665(b)(III) is struck in Proposed Rule 3880(c). Proposed Rule 3880(d) now incorporates language from Existing Rule 3656(l) to address utility access to production, system operation, and meteorological data.

57. Black Hills adds the term "production" in front of "meter" to specify what is required to be paid by the CSG owner.

58. The ALJ adopts Black Hills's proposed language in Rule 3880(a).

7. Rule 3881. Billing Credits and Unsubscribed Renewable Energy

59. The provisions in Proposed Rule 3881 derive from Existing Rule 3665(c), with the modifications described below.

i. Rule 3881(a) Payment of Billing Credit

60. Proposed Rule 3881(a) allows a CSG subscriber to contribute their billing credits to an unspecified, third party administrator qualified by the utility to provide low-income energy assistance and bill reductions within the utility's service territory. This rule is deliberately broad in order to potentially allow for a third-party administrator other than EOC to provide this service.

61. WRA and GRID believe this billing credit should be transferred to the recipient as kWh credits. Public Service and Black Hills both respond that such a change will add further complications to an already complex billing process and would increase administrative and billing system costs to accommodate such complex functionality.

62. Public Service also expressed concern that the proposed language provides a lack of clarity regarding the manner in which a utility is tasked with choosing the third-party administrator. The collections taken by the third-party administrator should be distributed annually instead of monthly to account for the seasonal fluctuations in customers' bills, which will impact the bill credit.

63. The Proposed Rule gives the utilities the discretion to choose a third-party administrator without additional oversight from the Commission. The ALJ agrees with the utilities' response to the proposed change in billing credits. The Proposed Rule will result an annual distribution of monetary credits, which will simplify the billing process and allow subscribers choosing this option to better understand the monetized value of their donation for their business or personal purposes.

i. **Rule 3881(a)(I) Calculation of Billing Credit**

64. Based on comments received in the Stakeholder Outreach Proceeding, Proposed Rule 3881(a)(I) is clarified to state that transmission, distribution, and Renewable Energy Standard Adjustment (RESA) rate components are not included in the utility's total aggregate retail rate.

65. COSSA believes proposed section (a)(I) requires the delivery fee to include all transmission and distribution rate components. However, this level of specificity may exceed what is a reasonable delivery fee in some contexts. COSSA provides an example of a CSG located on the roof of a condominium complex that it serves may not ever need to utilize the transmission system.

66. WRA argues Demand Side Management Cost Adjustment falls under the types of "reasonable charges" that the Commission can consider as a cost of delivering electricity. WRA

explains that it is similar to other charges and riders that apply to all customers as a part of general electricity service. The OCC agrees, stating that it supports excluding all Demand Side Management costs from the calculation of the bill credit, including the costs embedded in the base rates.

67. CEO adds a minor change to clarify that the billing credit calculation will multiply the subscriber's share as a percentage of the renewable energy generated by the CSG times the utility's total aggregate retail rate (with some exceptions), as charged to the CSG subscriber's class and not the individual CSG subscriber.

68. The ALJ finds these proposed language changes reasonable and helpful to clarify the calculation of the billing credit.

i. Rule 3881(a)(II) Credit for Subscribers on Demand Tariff

69. The proposed changes in Rule 3881(a)(II) are to update the determination of billing credits for non-residential CSG subscribers who use "on demand" rates. These changes conform to the waivers granted to Public Service in Proceeding Nos. 13A-0836E[3] and 16AL-0048E.[4]

70. Several participants point out that Proposed Rule 3881(a)(II)(A) should read "before" January 1, 2016, rather than "after".

71. Black Hills recommends replacing "and" with "or" at the end of Rule 3881(a)(II)(A) to clarify that a total aggregate retail rate is determined either for an

[3] Decision No. C16-0747, issued August 12, 2016, Proceeding No. 13A-0836E.

[4] Decision No. C16-1075, issued November 23, 2016, Consolidated Proceeding Nos. 16AL-0048E, 16A-0055E, and 16A-0139E.

individual customer as provided for in subsection (A), or as a class average method as provided for in subsection (B), pointing out that these are mutually exclusive.

72. The ALJ adopts both of these recommended changes to 3881(a)(II)(A).

i. Rule 3881(a)(IV) Revisions to Billing Credit

73. Rule 3881(a)(IV) retains the existing prohibition of changing a CSG billing credit level more than once per year. The provision in Existing Rule 3665(c)(II) that requires such change in the billing credit to be sought in conjunction with the utility's acquisition plan for CSGs is stricken.

74. COSSA adds language that it will support increased stability in the Commission-approved charges assessed to a CSG, based on the year the developer signs a producer agreement with the utility. COSSA argues this amendment is reasonable because the costs associated with the CSG should be identified in the year the CSG signs a producer agreement.

75. Public Service counters COSSA's addition, arguing that the crux of the problem is that CSGs developers have sold subscriptions to customers with inflated assumptions regarding the escalation of utility rates. When those projected rate increases do not come to fruition, which is reflected in the bill credit, there is potential for dissatisfaction from the CSG subscribers.

76. Black Hills requests further analysis on the impacts of COSSA's proposed language, including how the proposal will impact existing CSG projects that have already executed producer agreements. Black Hills believes the proposed language would require contract amendments and calculations of fixed deductions for projects that already exist.

77. The ALJ will not adopt COSSA's proposed language, for the reasons cited by Public Service and Black Hills.

i. **Rule 3881(b) Excess Billing Credit**

78. New provisions are added in Proposed Rule 3881(b). The provisions will allow billing credits remaining when a customer terminates service with the utility to be contributed to a third party administrator qualified by the utility to provide low-income energy assistance and bill reductions within the utility's service territory.

79. COSSA adds language to ensure that customers with multiple accounts, such as municipalities, water districts, or school districts, are able to utilize their bill credits across their accounts, in the event the bill credits exceed the monthly usage of any single account.

80. Black Hills adds additional language to subsections (b) and (c), arguing that they understand the proposed benefits of the Commission's proposal for contributions of billing credits and excess billing credits for low-income assistance. Black Hills requires sufficient time to work through the operational challenges and billing system issues associated with it.

81. The ALJ finds these proposed language changes reasonable and adopts COSSA's and Black Hills's changes.

i. **Rule 3881(c) Monthly Billing Credit**

82. Similar to the changes in Proposed Rules 3881(a) and (b), new provisions are added in Proposed Rule 3881(c) that would allow a CSG subscriber to contribute its excess monthly billing credit to low-income energy assistance instead of rolling the billing credit over as a credit from month-to-month.

83. Public Service recommends that a CSG subscriber may contribute the excess of 12 months' net billing credit at the end of an annual billing cycle ending in April of each year. The Company believes that amending the rule to create an annual payout during the shoulder season would help mitigate administrative billing burdens as well as stabilize seasonal fluctuations with respect to customers' bills.

84. The ALJ agrees with Public Service's proposed modifications.

i. **Rules 3881(d) and (e) Utility Billing Credit Donation Program**

85. In order to track and evaluate the new rules allowing contributions of billing credits to low-income energy assistance organizations, Proposed Rules 3881(d) and (e) require utilities to include in their CSG acquisition plans, a description of any proposed program to allow contributions of billing credits to a third party administrator qualified by the utility to provide low-income energy assistance and bill reductions within the utility's service territory. This description shall include the proposed process for qualification of third parties; the criteria to become qualified; the method for allocating billing credits, unsubscribed renewable energy, and RECs to multiple third party administrators; how the program will be marketed to low-income customers; and a reporting methodology to be included in the utility's RES compliance report.

86. WRA adds additional language to account for the fact that the Total Aggregate Retail Rate (TARR) for the recipient's customer class may be different than the value associated with the original CSG subscriber. The proposed language requires that the billing credit be calculated based on the total aggregate retail rate of the contributing CSG subscriber, rather than the recipient, ensures that the utility's original budgeting under a CSG plan is not substantially impacted as a result of the transaction.

87. The ALJ adopts the additional clarification provided by WRA.

i. **Rule 3881(f) REC Purchases**

88. It was proposed to strike the first sentence of Existing Rule 3665(c)(IV) from Proposed Rule 3881(f). This sentence requires the utility to purchase all of the renewable energy and RECs generated by a CSG if the utility enters into a contract with the CSG owner pursuant to a Commission-approved CSG acquisition plan. This sentence is redundant with Proposed Rule 3882(b), which already specifies that all of the renewable energy and associated RECs from a CSG acquired by a utility pursuant to an approved RES compliance plan shall be sold and purchased by the utility. Specifically, Proposed Rule 3882(b) requires the utility to acquire the renewable energy and associated RECs by entering into contracts with CSG owners as part of the utility's RES compliance plan.

89. COSSA argues that the statute no longer bundles renewable energy credits with renewable energy generation and directs the Commission to consider enhancing a CSG subscriber's right to retain renewable energy credits as a separate commodity. COSSA therefore proposed additional language that will create a separate line item on the bill for renewable energy credits, asserting it is an appropriate measure of customer transparency.

90. The ALJ adopts the additional language provided by COSSA.

i. **Rule 3881(g) Unsubscribed Renewable Energy**

91. In this rule, the added language would allow a utility to donate its purchased unsubscribed renewable energy to low-income CSG subscribers as kWh credits. As many participants suggested in Proceeding No. 19R-0096E, this is an opportunity to provide low-income energy assistance and bill reductions within the utility's service territory.

92. WRA adds language to the proposed rule, stating it is more appropriate to calculate unsubscribed renewable energy based on the recipient's TAAR, since there is no customer class associated with the unsubscribed energy.

93. The ALJ adopts the additional clarification provide by WRA.

8. Rule 3882. Purchases from CSGs

94. Proposed Rule 3882 derives mainly from Existing Rule 3665(d).

i. Rule 3882(a) Minimum and Maximum Acquisition Levels

95. In Proposed Rule 3882(a), the outdated statutory reference to the six MW ceiling for CSG purchases is eliminated, which applied only the first three compliance years. It directly references § 40-2-127(5)(a)(IV), C.R.S., which allows the Commission to determine the minimum and maximum acquisition levels.

96. In addition, a provision is added that would require at least half of the new CSGs to target residential, agricultural, and small commercial customers consistent with the legislative declaration in § 40-2-127(1), C.R.S. The proposed rule would also allow the utility to establish a standard offer price for the purchase of RECs.

97. Public Service states that since the statute makes no mention of small commercial customers, the Company recommends replacing "small commercial customers" with "low-income customers."

98. WRA proposes a new rule revision in Rule 3882(a) be broken into four subparts. WRA states that if the Commission does not adopt a market approach to increase the availability of CSGs to serve customer demand, a Standard Offer approach is the best alternative and the rules should include clarity on a mechanism for the customer to be able to retain the RECs corresponding to their subscription.

99. COSSA adds that without a clear, non-discretionary directive for the utility to propose a price adder, there is no clear mechanism to achieve targets for subscribing additional low-income, residential, agricultural, and small commercial customers. COSSA adds language for such a standard offer price adder.

100. Public Service states that under WRA's proposal, REC prices would be artificially pre-set for targeted segments and therefore, there would be no cost discipline to these prices. In fact, the Company's competitively-bid RFP process has demonstrated that CSGs can be bid and developed with low or even negative REC prices when combined with the bill credit payment for the energy received, so the Standard Offer approach will inherently cost more to non-participant customers.

101. Black Hills argues that there has not been any evidence in the record showing that price adders are in fact necessary for a CSG subscriber organization to sell and maintain CSG subscriptions to policy-preferred groups.

102. The ALJ adopts WRA's proposed language as an alternative to Market-CSGs (Proposed Rule 3884). The comments of Black Hills, Public Service, and the OCC that the RFP process is the only means of acquiring CSGs are noted but not followed. In order to meet its RES compliance, a low-cost RFP process is appropriate. There has been shown to be a high demand for CSG acquisition beyond RES Compliance. The ALJ, however, does not adopt WRA's proposal of a standard offer "only" approach.

i. Rule 3882(b) Purchase of Renewable Energy and RECs through Contract

103. This rule clarifies that all of the renewable energy and associated RECs from a CSG acquired by a utility pursuant to a RES compliance plan approved by the Commission shall be sold and purchased by the utility. The utility is to acquire the energy and RECs by entering

into contracts with CSG owners as part of its RES compliance plan. This clarification is made in order to clearly meet the intent of § 40-2-127(5)(b)(I)(B), C.R.S., which requires the Commission to determine whether a utility shall purchase all of the electricity and RECs generated by the CSG, or whether a subscriber may choose to retain or sell to the utility the subscriber's RECs, once a CSG is part of the utility's approved RES compliance plan.

104. WRA recommends that the Commission revise proposed Rule 3882(b) to clarify that the utility does not have to purchase *all* RECs generated by CSGs as part of it acquisition in a RES compliance plan. As discussed above, WRA believes § 40-2-127(5), C.R.S., distinguishes the purchase of electricity from the purchase of RECs and does not mandate that a utility purchase RECs when it purchases electricity from a CSG. WRA asserts that the purchase of RECs and electricity from a CSG are two separate transactions and should be independently negotiated between the CSG subscriber organization and the utility if appropriate.

105. The ALJ agrees with WRA's proposed language.

a) **Rule 3882(c) Construct and Commence Operations of the CSG**

106. COSSA proposes changes to Rule 3882(c)(I), arguing that deposit payments reflect a financial commitment to move forward with the project, as well as the CSG developer's capacity to provide financial resources. As this satisfies the purpose of the escrow, there is no basis to retain the escrowed funds past this point.

107. The ALJ agrees with COSSA's proposed deletion.

a) **Rule 3882(d) 5 Percent Reservation for Low-Income Subscribers**

108. A provision is added to allow the utility to use other low-income status verification methods from low-income service and service providers in addition to using

Low-Income Energy Assistance Program acceptance. This addition is based on comments in the Stakeholder Outreach Proceeding.

109. WRA adds additional language that clarifies that a utility plan should balance low-income subscriber access to ensure a reasonable share of program participants are low-income residential individuals or families, as distinct from service providers.

110. The ALJ agrees with WRA's additional language, as well as GRID's intent throughout its recommendations, that an acquisition plan shall be designed to ensure reasonable access for low-income residential customers as distinct from low-income service providers. The required 5 percent set aside for CSG subscriptions for low-income customers is increased to 10 percent.

a) **Rule 3882(e) Utility Investment Incentives**

111. Proposed Rule 3882(e) derives from Existing Rules 3665(d)(V), (VI), and (VII). The outdated reference in this rule to the ownership limitations in § 40-2-124(f)(I), C.R.S., is stricken to reflect repeal of this statutory provision by SB 19-236.

112. WRA argues that lost revenue collections should instead be addressed holistically through a revenue decoupling adjustment. In contrast, the retail rate impact for CSGs should conform more closely to statute and include only REC payments and unsubscribed energy, as well as program administration costs. WRA recognizes that implementing changes to utility cost recovery of CSG bill credits will need to occur by Commission decision in a fully litigated proceeding, such as a review of a decoupling advice letter or a RES compliance plan.

113. COSSA agrees with WRA's position, arguing the Commission should effect a change to how Public Service at present inappropriately charges the Electric Cost Adjustment (ECA) and the RESA for bill credits for CSGs. COSSA argues that the statute provides that,

"[u]tility expenditures for unsubscribed energy and renewable energy credits generated by community solar gardens shall be included in the calculations of retail rate impact required by that section."[5] COSSA argues that nowhere does the statute state that any portion of the bill credit should be charged to the RESA.

114. Public Service argues that in its RES Compliance Report filed in June 2019, the Company reported that it made approximately $2.7 million in REC payments to solar garden developers and provided $5.9 million in bill credits to subscribers. WRA's proposal would essentially impose a $5.9 million penalty on the Company's shareholders and create a strong incentive against solar gardens moving forward. Accounting for the CSG resource cost through the ECA and RESA has been an established practice and one that has been vetted through a number of RES Plan Proceedings and complies with existing rules and statute. If this treatment were disallowed, then CSGs would exhibit the same cost recognition failure that is seen today with on-site solar.

115. The ALJ has reviewed the arguments regarding proposed Rule 3882(e) and clarifies that the acquisition of electricity from a CSG shall be recovered through the ECA. Expenditures for unsubscribed energy and RECs shall be recovered through the RESA.

9. Rule 3883. Financing and Operating CSGs

116. Proposed Rule 3883 derives from Existing Rule 3665(e). These provisions are not substantively modified.

117. COSSA adds language to Rule 3883(a), arguing that a minimum time-to-completion is appropriate to ensure reasonable expectations for the completion of CSGs. At present, Public Service defines such timeframes in its contracts with CSG developers, but

[5] COSSA Initial Comments at p. 14.

COSSA recommends that the Commission take this opportunity to enshrine a 24-month timeline in the CSG rules for all regulated utilities.

118. Public Service does not believe that memorializing such rigid timeframes within the rules is prudent and believes timeframes are more appropriately set in program plans that are in line with construction realities during the time.

119. Black Hills states that there is no reason supporting the public interest for the Commission to make a blanket determination on the appropriate CSG buildout and term commitment at this time. These case-specific issues are more appropriately addressed in the RES plan.

120. COSSA and CEO recommend deleting proposed Rule 3883(b). COSSA argues that the Rule is overly prescriptive and unnecessary. In addition, while a report of the energy produced is conceivably valuable, such production data is already collected from the required meters under current Rule 3665 at subsection (b), or Proposed Rule 3880 in Attachment A to the Commission's decision in this proceeding.

121. Public Service counters that since CSG subscriber organizations are not regulated by the Commission, removing this requirement adds to the already opaque nature of these organizations. These reports are important for transparency to reduce risk for all customers that are paying into the RESA for incentives used by solar garden developers, as well as participating customers when it comes to understanding what is being delivered from their participation.

122. GRID adds Eligible Low-income customer bill savings as a metric for subscriber organizations to publish in its annual reports.

123. The ALJ agrees with the additional metric recommended by GRID, as well as the argument made by Public Service that the reports provide increased transparency in order to

reduce risk regarding incentives used by solar garden developers. The ALJ also agrees with Public Service and Black Hills regarding COSSA's proposed timelines for completion.

10. Rule 3884. Market Community Solar Gardens

124. The most controversial addition to the proposed rules was Rule 3884. The rule proposed a new program that would allow CSGs to be developed outside of the utilities' approved RES compliance plans. Under the program, RECs would be retained by the CSG subscriber.

125. Interested parties were specifically invited to provide comments on this proposed rule and were asked to provide answers to specific questions.

126. Both Black Hills and Public Service recommended the removal of the entire rule due to it being contrary to established law. The OCC opposed the rule due to concerns of ratepayer safeguards.

127. CEO in its initial comments saw the proposed rule as an "innovative response" to a market-based approach to CSGs. However, by their Reply comments, CEO had decided that there were too many questions that needed to be resolved before the Commission should adopt the proposed rule. WRA and Vote Solar also applauded the effort but raised concerns with different aspects of the proposed rule.

128. COSSA fully supported the concept and suggested minor modifications.

129. The concept of market based CSGs is an interesting concept and one the Commission should explore. The opinions of the stakeholders varied and presented many issues and questions concerning the adoption of Proposed Rule 3884.

130. The ALJ believes that these questions need further consideration and to start such an ambitious program without answers to these questions would be unwise. While the ALJ does

not believe Proposed Rule 3884 should be adopted now, market based CSG programs should be examined and explored by the Commission in the future.

III. ORDER

A. The Commission Orders That:

1. The Rules Implementing the Community Solar Gardens within the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, contained in legislative (*i.e.*, strikeout/underline) format (Attachment A), and final format (Attachment B) are adopted, and are available through the Commission's Electronic Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0608E.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the

3. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-3

PART 3
RULES REGULATING ELECTRIC UTILITIES

RENEWABLE ENERGY STANDARD

* * * *

[indicates omission of unaffected rules]

~~**3665. Community Solar Gardens.**~~

~~The following rules shall apply to all community solar gardens (CSGs) developed pursuant to § 40-2-127, C.R.S. These rules shall not apply to cooperative electric associations or to municipally owned utilities.~~

~~(a) CSG subscriptions, subscribers, and subscriber organizations.~~

~~(I) Requirements for CSG subscribers, CSG subscriptions, and CSG subscriber organizations.~~

~~(A) No CSG subscriber may own more than a 40 percent interest in the beneficial use of the electricity generated by the CSG, including without limitation, the renewable energy and RECs associated with or attributable to the CSG.~~

~~(B) Each CSG subscription shall be sized to represent at least one kW of the CSG's nameplate rating and supply no more than 120 percent of the CSG subscriber's average annual electricity consumption at the premise to which the subscription is attributed, with a deduction for the amount of any existing retail renewable distributed generation at such premise. The minimum one kW sizing requirement herein shall not apply to subscriptions owned by an eligible low-income CSG subscriber.~~

~~(C) The premise to which a subscription is attributed by a CSG subscriber shall be served by the investor owned QRU and shall be within the same county as, or a county adjacent to, the CSG. The CSG subscriber may change from time to time the premise to which the CSG subscription shall be attributed, so long as the premise is served by the investor owned QRU and is within the same county as, or a county adjacent to, the CSG.~~

~~(D) No CSG subscriber organization may own more than a 40 percent interest in the beneficial use of the electricity generated by the CSG, including without~~

limitation, the renewable energy and RECs associated with or attributable to the CSG, after the CSG has operated commercially for 18 months.

(II) Share transfers and portability.

(A) A CSG subscription may be transferred or assigned to the associated CSG subscriber organization or to any person or entity who qualifies to be a subscriber in the CSG.

(B) A CSG subscriber who desires to transfer or assign all or part of his subscription to the CSG subscriber organization, in its own name or to become unsubscribed shall notify the CSG subscriber organization and the transfer of the subscription to the CSG subscriber organization shall be effective upon such notification, unless the CSG subscriber specifies a later effective date.

(C) A CSG subscriber who desires to transfer or assign all or part of his subscription to an eligible QRU customer desiring to purchase a subscription may do so only in compliance with the terms and conditions of the subscription and will be effective in accordance therewith.

(D) If the CSG is fully subscribed, the CSG subscriber organization shall maintain a waiting list of eligible QRU customers who desire to purchase subscriptions. The CSG subscriber organization shall offer the CSG subscription of the CSG subscriber desiring to transfer or assign their interest, or a portion thereof, on a first-come, first-serve basis to customers on the waiting list.

(E) The CSG subscriber organization and the investor owned QRU shall jointly verify that each CSG subscriber is eligible to be a subscriber in the CSG pursuant to subparagraph 3665(a)(I). The CSG subscriber roll shall include, at a minimum, the percentage share owned by the CSG subscriber, the effective date of the ownership of that percentage share, and the meters at the premises to which the CSG subscription is attributed for the purpose of applying billing credits. Changes in the CSG subscriber roll shall be communicated by the CSG subscriber organization to the QRU, in written or electronic form, as soon as practicable, but on no less than a monthly basis.

(F) Prices paid for subscriptions in a CSG shall not be subject to regulation by the Commission.

(b) Production data.

(I) The amount of renewable energy and RECs generated by each CSG shall be measured by a production meter installed by the investor owned QRU or the CSG owner and paid for by the CSG owner.

(II) The owner of a CSG with a nameplate rating of one MW or greater shall register the CSG and report the CSG's production data to the WREGIS in accordance with paragraph 3659(j).

(III) CSGs are required to provide real time reporting of production as specified by the QRU. For CSGs greater than 250 kW, the CSG owner shall provide real time electronic access to production data under paragraph 3656(l). A QRU may require different real time reporting for CSGs 250 kW and smaller.

(IV) Production from the CSG shall be reported by the CSG subscriber organization to its CSG subscribers at least monthly. To facilitate the tracking of production data by CSG subscribers, CSG owners or CSG subscriber organizations are encouraged to provide website access to subscribers showing real time output from the CSG, if practicable, as well as historical production data.

(c) Billing credits and unsubscribed renewable energy.

(I) Compensation to the CSG subscriber for its share of the renewable energy generated by a CSG shall take the form of a billing credit paid to the CSG subscriber by the investor owned QRU.

(A) The billing credit shall be calculated by multiplying the CSG subscriber's share as a percentage of the renewable energy generated by the CSG times the QRU's total aggregate retail rate (including all billed components) as charged to the CSG subscriber.

(B) For the purpose of calculating the billing credit for a commercial or industrial customer on a demand tariff, the total aggregate retail rate (including all billed components) shall be determined by dividing the total electric charges to be paid by the customer to the investor owned QRU for the most recent calendar year (including demand charges) by the customers' total electricity consumption for that year. In the event that the designated premises to which the CSG subscription is attributed has less than one year of billing history, an estimate of the total annual charges shall be made by the QRU.

(C) Billing credits shall be reflected in the CSG subscriber's bill from the investor owned QRU no later than the 60th day after the QRU receives the information required to calculate the billing credit from the CSG subscriber organization.

(II) The investor owned QRU may assess a Commission-approved charge to cover the QRU's costs of delivering to the CSG subscriber's premises the renewable energy generated by the CSG, integrating the generation from the CSG into the utility's system, and administering the contracts with CSG owners and billing credits. This charge shall be a fixed amount and shall not reflect costs that are already recovered by the QRU from CSG subscribers through other charges. The QRU may seek a revision of this charge no more frequently than once per year in conjunction with its acquisition plan submitted under paragraph 3665(d).

(III) If, in a monthly billing period, the CSG subscriber's billing credit associated with a CSG subscription exceeds the customer's bill from the investor owned QRU, the excess billing credit will be rolled over as a credit from month to month indefinitely until the customer terminates service with the investor owned QRU, at which time no payment shall be

required from the investor owned QRU for any remaining billing credits associated with the customer's CSG subscription..

(IV) The investor owned QRU shall purchase all of the renewable energy and RECs generated by a CSG if the QRU enters into a contract with the CSG owner pursuant to a Commission-approved acquisition plan under paragraph 3665(d). For RECs purchased by the QRU, the QRU and the CSG owner shall agree on whether subscribers will be compensated by a credit on each CSG subscriber's bill from the QRU or by a payment to the CSG owner.

(V) The investor owned QRU shall purchase from the CSG owner the unsubscribed renewable energy and RECs at a rate equal to the QRU's average hourly incremental cost of electricity supply over the immediately preceding calendar year.

(d) Acquisitions of renewable energy and RECs from CSGs.

(I) The Commission shall establish the minimum and maximum purchases of renewable energy from newly installed CSG generation (new CSGs) by the investor owned QRU for each compliance year under the RES. For compliance years 2014 and thereafter, the Commission shall determine the minimum and maximum purchases of renewable energy and RECs from new CSGs of different segments based on the capacity of the CSGs (capacity segments) without regard to the six MW ceiling for the period 2011 through 2013. The Commission shall establish such minimum and maximum levels of purchases in consideration of a plan for the acquisition of renewable energy and RECs from CSGs filed by the investor owned QRU. The investor owned QRU's plan for the acquisition of renewable energy and RECs from CSGs shall be part of the investor owned QRU's RES compliance plan filed pursuant to rule 3657.

(II) The investor owned QRU shall acquire renewable energy and RECs by entering into contracts with CSG owners. A CSG whose owner enters into a contract with the QRU shall be deemed to be part of the QRU's Commission-approved acquisition plan if the cumulative total of the nameplate capacity of the new CSGs acquired in the compliance year does not exceed the maximum purchases established by the Commission for that compliance year.

(III) The investor owned QRU shall conduct due diligence on proposed contracts with new CSG owners to reasonably assure that the CSG owner and CSG subscriber organization have sufficient resources to successfully construct and commence operations of the CSG.

(A) Except for CSGs owned by governmental or quasi-governmental entities, the investor owned QRU shall be deemed to have conducted sufficient due diligence by requiring from the CSG owner documentation of escrowed funds of not less than $100 per kW of the CSG's nameplate rating. The escrow shall be maintained by its terms until such time as the CSG commences commercial operation as certified by the QRU's acceptance of renewable energy generated by the CSG.

(B) If a CSG owner properly documents escrowed funds consistent with this subparagraph 3665(d)(IV), the investor owned QRU may not refuse to enter into a contract with the CSG owner for failure to demonstrate sufficient resources to reasonably assure successful construction and commencement of CSG operations .

(IV) In each plan to acquire renewable energy and RECs from CSGs, the investor owned QRU shall reserve, to the extent there is demand for such ownership, at least five percent of its renewable energy purchases from new CSGs for eligible low-income CSG subscribers.

(A) CSG subscriber organizations and investor owned QRUs may rely on certification by the Colorado Department of Human Services for acceptance in the Colorado Low-Income Energy Assistance Program (LEAP) as evidence of eligibility as an eligible low-income CSG subscriber in a CSG.

(B) Acquisition of energy and RECs from eligible low-income CSG subscribers to CSGs may be either through dedicated low-income CSGs or low-income set asides within other CSGs.

(V) For investments in a new CSG, the investor owned QRU shall be eligible for the incentives and be subject to the ownership limitations set forth in rule 3660; however such incentive payments shall be excluded from the retail rate impact under rule 3661.

(VI) The investor owned QRU may file an application with the Commission for approval to recover through rates a margin on renewable energy and RECs purchased from CSGs; however such incentive payments shall be excluded from the retail rate impact under rule 3661.

(VII) Notwithstanding the exclusion from the retail rate impact in subparagraphs 3665(d)(VI) and (VII), the acquisition of renewable energy and RECs from CSGs shall be subject to the retail rate impact under rule 3661. QRU expenditures for unsubscribed energy and RECs generated by CSGs shall be included in the calculations of retail rate impact under that rule.

(e) Financing and operating CSGs.

(I) Contracts signed by QRUs with CSG owners shall be a matter of public record and shall be filed with the Commission by the QRU.

(II) CSG subscriber organizations shall issue public annual reports as of the end of the calendar or other fiscal year containing, at a minimum, the energy produced by the CSG; audited financial statements including a balance sheet, income statement, and sources and uses of funds statement; and the management and ownership of the CSG and the CSG subscriber organization, if different. Individual subscribers shall receive, in addition to the annual report of the CSG subscriber organization, a report of the energy, multiplier (e.g., aggregate retail rate), and net metering credits attributed to the CSG subscriber's account.

~~(III) CSG subscriber funds, collected by the CSG in advance of commercial operation of the CSG, shall be held in escrow. The escrow shall be maintained by its terms until such time as the CSG commences commercial operation as certified by QRU acceptance of energy from the CSG.~~

COMMUNITY SOLAR GARDENS

3875. Applicability.

The following rules shall apply to all QRUs regarding community solar gardens (CSGs) developed pursuant to § 40-2-127, C.R.S. These rules shall not apply to cooperative electric associations or to municipally owned utilities.

3876. Overview and Purpose.

The purpose of this rule is to implement the development and deployment of CSGs: to provide opportunities to all utility customers to participate in solar generation in addition to on-site solar systems; to allow renters, low-income utility customers, and agricultural producers to own interests in solar generation facilities; to allow interests in solar generation facilities to be portable and transferrable; and to leverage solar generating capacity through economies of scale.

3877. Definitions.

The following definitions apply to rules 3877 through 3883. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Community solar garden" or "CSG" means a solar electric generation facility with a nameplate rating of five MW AC or less that is located in or near a community served by a utility where the beneficial use of the electricity generated by the facility belongs to the subscribers of the CSG. A CSG shall have at least ten CSG subscribers. A CSG shall be deemed to be located on the site of each subscribing customer's facilities for the purpose of crediting the CSG subscribers' bills for the electricity purchased from the CSG by the utility. The electricity generated by a CSG shall be sold only to the utility serving the geographic area where the CSG is located. The renewable energy generated by a CSG shall constitute retail renewable distributed generation under paragraph 3001(qq). More than one CSG, or a combination of CSGs may be interconnected at the same location as long as they do not cumulatively exceed five MW AC (or ten MW AC, as applicable), without regard to whether the CSGs are new or existing facilities. The utility or a developer may propose a CSG with a nameplate rating of up to ten MW AC or less will be allowed on or after July 1, 2023.

(b) "CSG owner" means the owner of the solar generation facilities installed at a CSG that contracts to sell the unsubscribed electricity generated by the CSG to a utility. A CSG subscriber organization operating a CSG not owned by it will be deemed to be a CSG owner for purposes of these rules. A CSG owner may be the utility or any other for-profit or nonprofit entity or organization, including a CSG subscriber organization.

(c) "CSG subscriber" means a retail customer of a utility who owns a subscription to a CSG and who has identified one or more premises served by the utility to which the CSG subscription shall be attributed.

(d) "CSG subscriber organization" means any for-profit or nonprofit entity permitted by Colorado law and whose sole purpose shall be:

(I) to beneficially own and operate the CSG; or

(II) to operate the CSG that is built, owned, and operated by a third party under contract with such CSG subscriber organization.

(e) "CSG subscription" means a proportionate interest in the beneficial use of the electricity generated by the CSG, including without limitation, the renewable energy associated with or attributable to the CSG.

(f) "Eligible low-income CSG subscriber" means:

(I) a residential customer of a utility who has a household income at or below 185 percent of the current federal poverty level, as published each year in the federal register by the U.S. Department of Health and Human Services; or

(II) a residential customer of a utility who otherwise meets the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

(g) "Eligible low-income service provider" means:

(~~I~~I) an operator of affordable housing where at least 60 percent of the residents are either below the income level in this definition or meet the eligibility criteria in the rules promulgated under§ 40-8.5-106, C.R.S. and the nonprofit or public housing authority operator provides verifiable information that these low-income residents are the beneficiaries of the CSG subscription(s); or

(II) a non-profit corporation that is able to demonstrate that it provides essential services including, but not limited to, food, clothing, job training, housing, or medical services primarily to low-income recipients who meet the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

3878. CSG Subscriptions, Subscribers, and Subscriber Organizations.

(a) No CSG subscriber may own more than a 40 percent interest in the beneficial use of the electricity generated by the CSG, including without limitation, the renewable energy and RECs associated with or attributable to the CSG.

(b) Each CSG subscription shall be sized to represent at least one kW AC of the CSG's nameplate rating and supply no more than 120 percent of the CSG subscriber's average annual electricity consumption at the premise to which the subscription is attributed, with a deduction for the amount of any existing retail renewable distributed generation at such premise. The minimum

one kW AC sizing requirement herein shall not apply to subscriptions owned by an eligible low-income CSG subscriber.

(c) The premise to which a subscription is attributed by a CSG subscriber shall be served by the utility. The CSG subscriber may change from time to time the premise to which the CSG subscription shall be attributed, so long as the premise is within the same service territory served by the utility.

(d) No CSG subscriber organization may own more than a 40 percent interest in the beneficial use of the electricity generated by the CSG, including without limitation, the renewable energy and RECs associated with or attributable to the CSG, after the CSG has operated commercially for 18 months.

3879. Share Transfers and Portability.

(a) A CSG subscription may be transferred or assigned to the associated CSG subscriber organization or to any person or entity who qualifies to be a subscriber in the CSG.

(b) A CSG subscriber who desires to transfer or assign all or part of his subscription to the CSG subscriber organization, in its own name or to become unsubscribed, in compliance with the terms and conditions of the subscription, shall notify the CSG subscriber organization and the transfer of the subscription to the CSG subscriber organization shall be effective upon such notification, unless the CSG subscriber specifies a later effective date.

(c) A CSG subscriber who desires to transfer or assign all or part of his subscription to an eligible utility customer desiring to purchase a subscription may do so only in compliance with the terms and conditions of the subscription and will be effective in accordance therewith.

(d) If the CSG is fully subscribed, the CSG subscriber organization shall maintain a waiting list of eligible utility customers who desire to purchase subscriptions. The CSG subscriber organization shall offer the CSG subscription of the CSG subscriber desiring to transfer or assign their interest, or a portion thereof, on a first-come, first-serve basis to customers on the waiting list~~.~~, except that the CSG subscriber organization shall give a preference to eligible low-income CSG subscribers and, to the extent that the CSG subscriber organization has made any subscriber mix commitments, to any other categories of utility customers.

(e) The CSG subscriber organization and the utility shall jointly verify that each CSG subscriber is eligible to be a subscriber in the CSG pursuant to rule 3878. The CSG subscriber roll shall include, at a minimum, the percentage share owned by the CSG subscriber, the effective date of the ownership of that percentage share, and the meters at the premises to which the CSG subscription is attributed for the purpose of applying billing credits. Changes in the CSG subscriber roll shall be communicated by the CSG subscriber organization to the utility, in a standard electronic form, as soon as practicable, but on no less than a monthly basis.

(f) Prices paid for subscriptions in a CSG shall not be subject to regulation by the Commission.

3880. Production Data.

(a) The CSG owner shall pay for the production meter to be used to measure the amount of electricity and RECs generated by each CSG whether installed by the utility or the CSG owner.

(b) The owner of a CSG with a nameplate rating of one MW AC or greater shall register the CSG and report the CSG's production data to the WREGIS in accordance with paragraph 3658(j).

(c) CSGs are required to provide real time reporting of production as specified by the utility. For CSGs greater than 250 kW AC, the CSG owner shall provide real time electronic access to production and system operation data. In the event that a CSG greater than 250 kW AC also collects meteorological data, the CSG owner shall provide, at the QRU's request, real time electronic access to the utility to such meteorological data. A utility may require different real time reporting for CSGs 250 kW AC and smaller.

(d) Production from the CSG shall be reported by the CSG subscriber organization to its CSG subscribers at least monthly. To facilitate the tracking of production data by CSG subscribers, CSG owners or CSG subscriber organizations are encouraged to provide website access to subscribers showing real time output from the CSG, if practicable, as well as historical production data.

3881. Billing Credits and Unsubscribed Renewable Energy.

(a) Compensation to the CSG subscriber for its share of the renewable energy generated by a CSG shall take the form of a billing credit paid to the CSG subscriber by the utility or, if authorized by the CSG subscriber, contributed to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory.

(I) The billing credit shall be calculated by multiplying the CSG subscriber's share as a percentage of the renewable energy generated by the CSG times the utility's total aggregate retail rate of the subscriber's rate class, including all billed components except for the customer charge, demand side management (DSM), and RESA rate components, as charged to the CSG subscriber's class.

(II) For the purpose of calculating the billing credit for a commercial or industrial customer on a demand tariff:

(A) the total aggregate retail rate shall be determined by dividing the total electric charges to be paid by the customer to the utility for the most recent calendar year (including demand charges) by the customers' total electricity consumption for that year for subscriptions to CSGs planned for purchases by the utility before January 1, 2016. In the event that the designated premises to which the CSG subscription is attributed has less than one year of billing history, an estimate of the total annual charges shall be made by the utility; or

(B) the total aggregate retail rate shall be determined using the average charges and usage for the subscriber's rate class for subscriptions to CSGs planned for purchases by the utility after January 1, 2016.

(III) Billing credits shall be reflected in the CSG subscriber's bill from the utility no later than the 60th day after the utility receives the information required to calculate the billing credit from the CSG subscriber organization.

(IV) The utility may assess a Commission-approved charge to cover the utility's costs of delivering to the CSG subscriber's premises the renewable energy generated by the CSG, integrating the generation from the CSG into the utility's system, and administering the contracts with CSG owners and billing credits. This charge shall be a fixed amount and shall not reflect costs that are already recovered by the utility from CSG subscribers through other charges. The utility may seek a revision of this charge no more frequently than once per year.

(b) If, in a monthly billing period, the CSG subscriber's billing credit associated with a CSG subscription exceeds the customer's bill from the utility, the excess billing credit will be rolled over as a credit from month to month indefinitely until the customer terminates service with the utility, at which time no payment shall be required from the utility for any remaining billing credits associated with the customer's CSG subscription on an annual basis; however, nothing in this rule precludes the CSG subscriber or the utility from contributing the remaining bill credits to another utility account paid by the CSG subscriber to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, where the utility has provided a program for such contributions in its Commission-approved RES compliant plan pursuant to paragraph (d).

(c) In lieu of the rolling over of billing credits from month to month pursuant to paragraph 3881(b), the CSG subscriber may contribute the excess 12 months net billing credit at the end of the April billing cycle to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory.

(d) A description of any proposed program to allow contributions of billing credits or excess billing credits to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, pursuant to paragraphs 3881(a), 3881(b), and 3881(c), shall be included in the utility's acquisition plan for purchases from CSGs. The description shall include the utility's proposed process for qualification and approval of third parties; the criteria a third party must meet to become qualified and approved; the method by which a utility will allocate billing credits, unsubscribed electricity to multiple third party administrators; the way in which the program will be marketed to low-income customers as a renewable program such that customers are made aware that a portion of the bill assistance they receive was derived from renewable energy resources; and a reporting methodology to be included in each RES Compliance Report. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the contributing CSG subscriber.

(e) In its RES Compliance Report, the utility shall, at a minimum, provide the total number of CSG billing credits that were contributed to qualified third party administrator, pursuant to paragraphs 3881(a), 3881(b), and 3881(c).

(f) For RECs purchased by the utility, the utility and the CSG owner shall agree on whether subscribers will be compensated by a credit on each CSG subscriber's bill from the QRU or by a payment to the CSG owner. If compensation will take the form of a credit on the CSG

subscriber's bill, then the REC credit shall be listed as a separate line item on the bill and shall not be combined in a single line item with the bill credit that separately compensates the CSG subscriber for its share of the renewable energy generated by a CSG.

(g) The utility shall purchase from the CSG owner the unsubscribed renewable energy and RECs at a rate equal to the utility's average hourly incremental cost of electricity supply over the immediately preceding calendar year. A utility may donate the purchased unsubscribed renewable energy to low-income CSG subscribers as kWh credits. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the recipient's customer class.

3882. Purchases from CSGs.

(a) The Commission shall establish the minimum and maximum purchases of renewable energy through approved utility procurements plans newly installed CSG generation (new CSGs) by the utility for each year in accordance with § 40-2-127(5)(a)(IV), C.R.S. The Commission shall establish such minimum and maximum levels of purchases in consideration of an acquisition plan for renewable energy or REC purchases from new CSGs filed by the utility pursuant to rule 3656 or rule 3603.

(I) The utility's acquisition plan shall include a proposed method for requiring CSG subscriber organizations to verify that the organization will sell and maintain CSG subscriptions resulting in at least 50 percent of the established minimum aggregate new CSG purchases correspond to residential, agricultural, eligible low-income, eligible low-income service providers, and small commercial customers.

(II) The utility may propose a standard offer pricing program in order to acquire CSG generation. The standard offer may be at a differing price that would enable the CSG subscribers to keep the RECs generated by the CSG.

(III) As part of a standard offer, the utility may also include a price adder for the purchase of RECs from low-income residential, agricultural, and small commercial customers, or for the purpose of encouraging CSGs with certain beneficial characteristics or innovations.

(IV) To the extent it is shown necessary, the utility may also propose an incentive to be paid to the CSG subscriber organization for subscriptions offered to low-income, residential, agricultural, and small commercial customers. This may exist in addition to any standard offer price adder for the purchase of RECs.

(b) All of the energy from a CSG acquired by a utility pursuant to a RES Compliance Plan approved by the Commission shall be sold and purchased by the utility. A utility shall not restrict or unreasonably delay any CSG that is approved pursuant to a Commission approved procurement plan from interconnecting to the utility's distribution or transmission system in accordance with the interconnection standards and procedures. The utility shall acquire electricity by entering into contracts with CSG owners as part of its RES Compliance Plan. The CSG subscriber organization shall state in its proposed contract with the utility whether the RECs will be retained by subscribers to the CSG or ownership of the RECs will be transferred to the utility. A CSG whose owner enters into a contract with the utility shall be deemed to be part of the utility's Commission-approved acquisition plan if the cumulative total of the nameplate capacity of the

acquired new CSGs does not exceed the maximum purchases established by the Commission for that year.

(c) The utility shall conduct due diligence on proposed contracts with new CSG owners to reasonably assure that the CSG owner and CSG subscriber organization have sufficient resources to successfully construct and commence operations of the CSG.

(I) Except for CSGs owned by governmental, quasi-governmental, or non-profit entities, the utility shall be deemed to have conducted sufficient due diligence by requiring from the CSG owner documentation of escrowed funds of not less than $100 per kW AC of the CSG's nameplate rating. The escrow shall be maintained by its terms until such time as the CSG owner makes an interconnection agreement deposit payment.

(II) If a CSG owner properly documents escrowed funds consistent with this paragraph, the utility may not refuse to enter into a contract with the CSG owner for failure to demonstrate sufficient resources to reasonably assure successful construction and commencement of CSG operations.

(d) In each plan for purchases from CSGs, the utility shall reserve, to the extent there is demand for such ownership, at least ten percent of its electricity purchases from new CSGs for eligible low-income CSG subscribers.

(I) CSG subscriber organizations and investor owned QRUs may rely on certification by the Colorado Department of Human Services for acceptance in the Colorado Low-Income Energy Assistance Program (LEAP) as evidence of eligibility as an eligible low-income CSG subscriber in a CSG or other reliable verification methods from low-income services and service providers.

(II) CSGs for eligible low-income CSG subscribers may be either dedicated low-income CSGs or low-income set asides within other CSGs.

(III) The utility's CSG acquisition plan shall be designated to ensure reasonable access for low-income residential customers as distinct from low-income service providers.

(e) For investments in a new CSG, the utility shall be eligible for the incentives in rule 3660 and be subject to the ownership limitations set forth in §40-2-124(1)(f)(I), C.R.S.; however such incentive payments shall be excluded from the retail rate impact under rule 3661. Notwithstanding the exclusion from the retail rate impact of such incentives, the acquisition of RECs from CSGs shall be subject to the retail rate impact under rule 3661. The acquisition of electricity shall be recovered through the ECA. Utility expenditures for unsubscribed energy and RECs generated by CSGs shall be included in the calculations of retail rate impact under that rule.

3883. Financing and Operating CSGs.

(a) Contracts signed by utilities with CSG owners shall be a matter of public record and shall be filed with the Commission by the utility.

(b) CSG subscriber organizations shall issue public annual reports as of the end of the calendar or other fiscal year containing, at a minimum, the energy produced by the CSG; audited financial

statements including a balance sheet, income statement, and sources and uses of funds statement; and the management and ownership of the CSG and the CSG subscriber organization, if different. Individual subscribers shall receive, in addition to the annual report of the CSG subscriber organization, a report of the energy, multiplier (e.g., aggregate retail rate), eligible low-income customer bill savings, and net metering credits attributed to the CSG subscriber's account.

(c) CSG subscriber funds, collected by the CSG in advance of commercial operation of the CSG, shall be held in escrow. The escrow shall be maintained by its terms until such time as the CSG commences commercial operation as certified by utility acceptance of energy from the CSG.

3884. – 3899. [Reserved].

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-3

PART 3
RULES REGULATING ELECTRIC UTILITIES

RENEWABLE ENERGY STANDARD

* * * *

[indicates omission of unaffected rules]

COMMUNITY SOLAR GARDENS

3875. Applicability.

The following rules shall apply to all QRUs regarding community solar gardens (CSGs) developed pursuant to § 40-2-127, C.R.S. These rules shall not apply to cooperative electric associations or to municipally owned utilities.

3876. Overview and Purpose.

The purpose of this rule is to implement the development and deployment of CSGs: to provide opportunities to all utility customers to participate in solar generation in addition to on-site solar systems; to allow renters, low-income utility customers, and agricultural producers to own interests in solar generation facilities; to allow interests in solar generation facilities to be portable and transferrable; and to leverage solar generating capacity through economies of scale.

3877. Definitions.

The following definitions apply to rules 3877 through 3883. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Community solar garden" or "CSG" means a solar electric generation facility with a nameplate rating of five MW AC or less that is located in or near a community served by a utility where the beneficial use of the electricity generated by the facility belongs to the subscribers of the CSG. A CSG shall have at least ten CSG subscribers. A CSG shall be deemed to be located on the site of each subscribing customer's facilities for the purpose of crediting the CSG subscribers' bills for the electricity purchased from the CSG by the utility. The electricity generated by a CSG shall be sold only to the utility serving the geographic area where the CSG is located. The renewable energy generated by a CSG shall constitute retail renewable distributed generation under paragraph 3001(qq). More than one CSG, or a combination of CSGs may be interconnected at the same location as long as they do not cumulatively exceed five MW AC (or ten MW AC, as applicable), without regard to whether the CSGs are new or existing facilities. The utility or a developer may propose a CSG with a nameplate rating of up to ten MW AC or less will be allowed on or after July 1, 2023.

(b) "CSG owner" means the owner of the solar generation facilities installed at a CSG that contracts to sell the unsubscribed electricity generated by the CSG to a utility. A CSG subscriber organization operating a CSG not owned by it will be deemed to be a CSG owner for purposes of these rules. A CSG owner may be the utility or any other for-profit or nonprofit entity or organization, including a CSG subscriber organization.

(c) "CSG subscriber" means a retail customer of a utility who owns a subscription to a CSG and who has identified one or more premises served by the utility to which the CSG subscription shall be attributed.

(d) "CSG subscriber organization" means any for-profit or nonprofit entity permitted by Colorado law and whose sole purpose shall be:

(I) to beneficially own and operate the CSG; or

(II) to operate the CSG that is built, owned, and operated by a third party under contract with such CSG subscriber organization.

(e) "CSG subscription" means a proportionate interest in the beneficial use of the electricity generated by the CSG, including without limitation, the renewable energy associated with or attributable to the CSG.

(f) "Eligible low-income CSG subscriber" means:

(I) a residential customer of a utility who has a household income at or below 185 percent of the current federal poverty level, as published each year in the federal register by the U.S. Department of Health and Human Services; or

(II) a residential customer of a utility who otherwise meets the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

(g) "Eligible low-income service provider" means:

(I) an operator of affordable housing where at least 60 percent of the residents are either below the income level in this definition or meet the eligibility criteria in the rules promulgated under§ 40-8.5-106, C.R.S. and the nonprofit or public housing authority operator provides verifiable information that these low-income residents are the beneficiaries of the CSG subscription(s); or

(II) a non-profit corporation that is able to demonstrate that it provides essential services including, but not limited to, food, clothing, job training, housing, or medical services primarily to low-income recipients who meet the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

3878. CSG Subscriptions, Subscribers, and Subscriber Organizations.

(a) No CSG subscriber may own more than a 40 percent interest in the beneficial use of the electricity generated by the CSG, including without limitation, the renewable energy and RECs associated with or attributable to the CSG.

(b) Each CSG subscription shall be sized to represent at least one kW AC of the CSG's nameplate rating and supply no more than 120 percent of the CSG subscriber's average annual electricity consumption at the premise to which the subscription is attributed, with a deduction for the amount of any existing retail renewable distributed generation at such premise. The minimum one kW AC sizing requirement herein shall not apply to subscriptions owned by an eligible low-income CSG subscriber.

(c) The premise to which a subscription is attributed by a CSG subscriber shall be served by the utility. The CSG subscriber may change from time to time the premise to which the CSG subscription shall be attributed, so long as the premise is within the same service territory served by the utility.

(d) No CSG subscriber organization may own more than a 40 percent interest in the beneficial use of the electricity generated by the CSG, including without limitation, the renewable energy and RECs associated with or attributable to the CSG, after the CSG has operated commercially for 18 months.

3879. Share Transfers and Portability.

(a) A CSG subscription may be transferred or assigned to the associated CSG subscriber organization or to any person or entity who qualifies to be a subscriber in the CSG.

(b) A CSG subscriber who desires to transfer or assign all or part of his subscription to the CSG subscriber organization, in its own name or to become unsubscribed, in compliance with the terms and conditions of the subscription, shall notify the CSG subscriber organization and the transfer of the subscription to the CSG subscriber organization shall be effective upon such notification, unless the CSG subscriber specifies a later effective date.

(c) A CSG subscriber who desires to transfer or assign all or part of his subscription to an eligible utility customer desiring to purchase a subscription may do so only in compliance with the terms and conditions of the subscription and will be effective in accordance therewith.

(d) If the CSG is fully subscribed, the CSG subscriber organization shall maintain a waiting list of eligible utility customers who desire to purchase subscriptions. The CSG subscriber organization shall offer the CSG subscription of the CSG subscriber desiring to transfer or assign their interest, or a portion thereof, on a first-come, first-serve basis to customers on the waiting list~~.~~, except that the CSG subscriber organization shall give a preference to eligible low-income CSG subscribers and, to the extent that the CSG subscriber organization has made any subscriber mix commitments, to any other categories of utility customers.

(e) The CSG subscriber organization and the utility shall jointly verify that each CSG subscriber is eligible to be a subscriber in the CSG pursuant to rule 3878. The CSG subscriber roll shall include, at a minimum, the percentage share owned by the CSG subscriber, the effective date of the ownership of that percentage share, and the meters at the premises to which the CSG subscription is attributed for the purpose of applying billing credits. Changes in the CSG subscriber roll shall be communicated by the CSG subscriber organization to the utility, in a standard electronic form, as soon as practicable, but on no less than a monthly basis.

(f) Prices paid for subscriptions in a CSG shall not be subject to regulation by the Commission.

3880. Production Data.

(a) The CSG owner shall pay for the production meter to be used to measure the amount of electricity and RECs generated by each CSG whether installed by the utility or the CSG owner.

(b) The owner of a CSG with a nameplate rating of one MW AC or greater shall register the CSG and report the CSG's production data to the WREGIS in accordance with paragraph 3658(j).

(c) CSGs are required to provide real time reporting of production as specified by the utility. For CSGs greater than 250 kW AC, the CSG owner shall provide real time electronic access to production and system operation data. In the event that a CSG greater than 250 kW AC also collects meteorological data, the CSG owner shall provide, at the QRU's request, real time electronic access to the utility to such meteorological data. A utility may require different real time reporting for CSGs 250 kW AC and smaller.

(d) Production from the CSG shall be reported by the CSG subscriber organization to its CSG subscribers at least monthly. To facilitate the tracking of production data by CSG subscribers, CSG owners or CSG subscriber organizations are encouraged to provide website access to subscribers showing real time output from the CSG, if practicable, as well as historical production data.

3881. Billing Credits and Unsubscribed Renewable Energy.

(a) Compensation to the CSG subscriber for its share of the renewable energy generated by a CSG shall take the form of a billing credit paid to the CSG subscriber by the utility or, if authorized by the CSG subscriber, contributed to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory.

(I) The billing credit shall be calculated by multiplying the CSG subscriber's share as a percentage of the renewable energy generated by the CSG times the utility's total

aggregate retail rate of the subscriber's rate class, including all billed components except for the customer charge, demand side management (DSM), and RESA rate components, as charged to the CSG subscriber's class.

(II) For the purpose of calculating the billing credit for a commercial or industrial customer on a demand tariff:

(A) the total aggregate retail rate shall be determined by dividing the total electric charges to be paid by the customer to the utility for the most recent calendar year (including demand charges) by the customers' total electricity consumption for that year for subscriptions to CSGs planned for purchases by the utility before January 1, 2016. In the event that the designated premises to which the CSG subscription is attributed has less than one year of billing history, an estimate of the total annual charges shall be made by the utility; or

(B) the total aggregate retail rate shall be determined using the average charges and usage for the subscriber's rate class for subscriptions to CSGs planned for purchases by the utility after January 1, 2016.

(III) Billing credits shall be reflected in the CSG subscriber's bill from the utility no later than the 60th day after the utility receives the information required to calculate the billing credit from the CSG subscriber organization.

(IV) The utility may assess a Commission-approved charge to cover the utility's costs of delivering to the CSG subscriber's premises the renewable energy generated by the CSG, integrating the generation from the CSG into the utility's system, and administering the contracts with CSG owners and billing credits. This charge shall be a fixed amount and shall not reflect costs that are already recovered by the utility from CSG subscribers through other charges. The utility may seek a revision of this charge no more frequently than once per year.

(b) If, in a monthly billing period, the CSG subscriber's billing credit associated with a CSG subscription exceeds the customer's bill from the utility, the excess billing credit will be rolled over as a credit from month to month indefinitely until the customer terminates service with the utility, at which time no payment shall be required from the utility for any remaining billing credits associated with the customer's CSG subscription on an annual basis; however, nothing in this rule precludes the CSG subscriber or the utility from contributing the remaining bill credits to another utility account paid by the CSG subscriber to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, where the utility has provided a program for such contributions in its Commission-approved RES compliant plan pursuant to paragraph (d).

(c) In lieu of the rolling over of billing credits from month to month pursuant to paragraph 3881(b), the CSG subscriber may contribute the excess 12 months net billing credit at the end of the April billing cycle to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory.

(d) A description of any proposed program to allow contributions of billing credits or excess billing credits to a third party administrator qualified and approved by the utility for the purpose of

providing low-income energy assistance and bill reductions within the utility's service territory, pursuant to paragraphs 3881(a), 3881(b), and 3881(c), shall be included in the utility's acquisition plan for purchases from CSGs. The description shall include the utility's proposed process for qualification and approval of third parties; the criteria a third party must meet to become qualified and approved; the method by which a utility will allocate billing credits, unsubscribed electricity to multiple third party administrators; the way in which the program will be marketed to low-income customers as a renewable program such that customers are made aware that a portion of the bill assistance they receive was derived from renewable energy resources; and a reporting methodology to be included in each RES Compliance Report. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the contributing CSG subscriber.

(e) In its RES Compliance Report, the utility shall, at a minimum, provide the total number of CSG billing credits that were contributed to qualified third party administrator, pursuant to paragraphs 3881(a), 3881(b), and 3881(c).

(f) For RECs purchased by the utility, the utility and the CSG owner shall agree on whether subscribers will be compensated by a credit on each CSG subscriber's bill from the QRU or by a payment to the CSG owner. If compensation will take the form of a credit on the CSG subscriber's bill, then the REC credit shall be listed as a separate line item on the bill and shall not be combined in a single line item with the bill credit that separately compensates the CSG subscriber for its share of the renewable energy generated by a CSG.

(g) The utility shall purchase from the CSG owner the unsubscribed renewable energy and RECs at a rate equal to the utility's average hourly incremental cost of electricity supply over the immediately preceding calendar year. A utility may donate the purchased unsubscribed renewable energy to low-income CSG subscribers as kWh credits. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the recipient's customer class.

3882. Purchases from CSGs.

(a) The Commission shall establish the minimum and maximum purchases of renewable energy through approved utility procurements plans newly installed CSG generation (new CSGs) by the utility for each year in accordance with § 40-2-127(5)(a)(IV), C.R.S. The Commission shall establish such minimum and maximum levels of purchases in consideration of an acquisition plan for renewable energy or REC purchases from new CSGs filed by the utility pursuant to rule 3656 or rule 3603.

(I) The utility's acquisition plan shall include a proposed method for requiring CSG subscriber organizations to verify that the organization will sell and maintain CSG subscriptions resulting in at least 50 percent of the established minimum aggregate new CSG purchases correspond to residential, agricultural, eligible low-income, eligible low-income service providers, and small commercial customers.

(II) The utility may propose a standard offer pricing program in order to acquire CSG generation. The standard offer may be at a differing price that would enable the CSG subscribers to keep the RECs generated by the CSG.

(III) As part of a standard offer, the utility may also include a price adder for the purchase of RECs from low-income residential, agricultural, and small commercial customers, or for the purpose of encouraging CSGs with certain beneficial characteristics or innovations.

(IV) To the extent it is shown necessary, the utility may also propose an incentive to be paid to the CSG subscriber organization for subscriptions offered to low-income, residential, agricultural, and small commercial customers. This may exist in addition to any standard offer price adder for the purchase of RECs.

(b) All of the energy from a CSG acquired by a utility pursuant to a RES Compliance Plan approved by the Commission shall be sold and purchased by the utility. A utility shall not restrict or unreasonably delay any CSG that is approved pursuant to a Commission approved procurement plan from interconnecting to the utility's distribution or transmission system in accordance with the interconnection standards and procedures. The utility shall acquire electricity by entering into contracts with CSG owners as part of its RES Compliance Plan. The CSG subscriber organization shall state in its proposed contract with the utility whether the RECs will be retained by subscribers to the CSG or ownership of the RECs will be transferred to the utility. A CSG whose owner enters into a contract with the utility shall be deemed to be part of the utility's Commission-approved acquisition plan if the cumulative total of the nameplate capacity of the acquired new CSGs does not exceed the maximum purchases established by the Commission for that year.

(c) The utility shall conduct due diligence on proposed contracts with new CSG owners to reasonably assure that the CSG owner and CSG subscriber organization have sufficient resources to successfully construct and commence operations of the CSG.

(I) Except for CSGs owned by governmental, quasi-governmental, or non-profit entities, the utility shall be deemed to have conducted sufficient due diligence by requiring from the CSG owner documentation of escrowed funds of not less than $100 per kW AC of the CSG's nameplate rating. The escrow shall be maintained by its terms until such time as the CSG owner makes an interconnection agreement deposit payment.

(II) If a CSG owner properly documents escrowed funds consistent with this paragraph, the utility may not refuse to enter into a contract with the CSG owner for failure to demonstrate sufficient resources to reasonably assure successful construction and commencement of CSG operations.

(d) In each plan for purchases from CSGs, the utility shall reserve, to the extent there is demand for such ownership, at least ten percent of its electricity purchases from new CSGs for eligible low-income CSG subscribers.

(I) CSG subscriber organizations and investor owned QRUs may rely on certification by the Colorado Department of Human Services for acceptance in the Colorado Low-Income Energy Assistance Program (LEAP) as evidence of eligibility as an eligible low-income CSG subscriber in a CSG or other reliable verification methods from low-income services and service providers.

(II) CSGs for eligible low-income CSG subscribers may be either dedicated low-income CSGs or low-income set asides within other CSGs.

(III) The utility's CSG acquisition plan shall be designated to ensure reasonable access for low-income residential customers as distinct from low-income service providers.

(e) For investments in a new CSG, the utility shall be eligible for the incentives in rule 3660 and be subject to the ownership limitations set forth in §40-2-124(1)(f)(I), C.R.S.; however such incentive payments shall be excluded from the retail rate impact under rule 3661. Notwithstanding the exclusion from the retail rate impact of such incentives, the acquisition of RECs from CSGs shall be subject to the retail rate impact under rule 3661. The acquisition of electricity shall be recovered through the ECA. Utility expenditures for unsubscribed energy and RECs generated by CSGs shall be included in the calculations of retail rate impact under that rule.

3883. Financing and Operating CSGs.

(a) Contracts signed by utilities with CSG owners shall be a matter of public record and shall be filed with the Commission by the utility.

(b) CSG subscriber organizations shall issue public annual reports as of the end of the calendar or other fiscal year containing, at a minimum, the energy produced by the CSG; audited financial statements including a balance sheet, income statement, and sources and uses of funds statement; and the management and ownership of the CSG and the CSG subscriber organization, if different. Individual subscribers shall receive, in addition to the annual report of the CSG subscriber organization, a report of the energy, multiplier (e.g., aggregate retail rate), eligible low-income customer bill savings, and net metering credits attributed to the CSG subscriber's account.

(c) CSG subscriber funds, collected by the CSG in advance of commercial operation of the CSG, shall be held in escrow. The escrow shall be maintained by its terms until such time as the CSG commences commercial operation as certified by utility acceptance of energy from the CSG.

3884. – 3899. [Reserved].

Decision No. C20-0482

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0608E

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, RELATING TO COMMUNITY SOLAR GARDENS.

DECISION ADDRESSING EXCEPTIONS TO DECISION NO. R20-0209 AND ADOPTING RULES

Mailed Date: July 09, 2020
Adopted Date: June 17, 2020

TABLE OF CONTENTS

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission grants, in part, and denies, in part the exceptions filed to Decision No. R20-0209, issued April 6, 2020, by Administrative Law Judge (ALJ) Robert Garvey (Recommended Decision). The Commission adopts revised rules governing Community Solar Gardens (CSG Rules), located within the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules) at 4 CCR 723-3-3875 *et seq*. The CSG Rules implement § 40-2-127, C.R.S. The adopted CSG Rules are attached to this Decision in legislative format (*i.e.*, strikeout/underline) as Attachment A, and in final format as Attachment B.

B. Background

2. On November 5, 2019, the Commission commenced this rulemaking through a Notice of Proposed Rulemaking (NOPR) issued as Decision No. C19-0900 in this Proceeding No. 19R-0608E. The current CSG Rules are located within the Renewable Energy Standard (RES) rules at 4 CCR 723-3-3650 *et seq*. (RES Rules). The NOPR proposed to move the CSG Rules to a new standalone section within the Electric Rules of 4 CCR 723-3, comprising new Rules 4 CCR 723-3-3875 *et seq*. The NOPR also proposed substantive changes to the provisions of the CSG Rules.

3. Prior to this rulemaking, the Commission first proposed changes to the CSG Rules through a NOPR issued as Decision No. C19-0197 in Proceeding No. 19R-0096E.[1] In that first

[1] Proceeding No. 19R-0096E, Decision No. C19-0197 (Feb. 27, 2019).

NOPR, the Commission proposed to amend the Electric Rules in six areas including Electric Resource Planning, the RES, Net Metering, Qualifying Facilities, and Interconnection as well as the CSG Rules. In the NOPR, the Commission proposed to move the CSG Rules to a new standalone section within the Electric Rules and proposed substantive revisions including to expand the definition of an eligible low-income subscriber and to allow a subscriber to contribute billing credits to assist low-income customers. In addition, the Commission solicited feedback on a new rule that would require at least half of new CSGs to target residential, agricultural, and small commercial customers.

4. In 2019, the Colorado General Assembly enacted the Community Solar Gardens Modernization Act, House Bill (HB) 19-1003, which Governor Polis signed into law May 30, 2019. This Act, effective August 2, 2019, amends § 40-2-127, C.R.S., by increasing the maximum size of a CSG from 2 megawatts (MW) to 5 MW, with the option for the Commission to, in rule, approve the formation of a CSG up to 10 MW beginning July 1, 2023; by removing the requirement that a subscriber's physical location be in the same or adjacent county as the CSG facility; and by establishing standards for construction and operation of CSGs. HB 19-1003 also requires the Commission to, in a new or active proceeding, determine whether the utility shall purchase all the electricity and renewable energy credits (RECs) generated by the CSG or whether a subscriber may, upon becoming a subscriber, choose to retain or sell the RECs to the utility.

5. After considering these statutory changes and the participant comments in Proceeding No. 19R-0096E, the Commission determined to sever the CSG Rules and commence a separate rulemaking. By Decision No. C19-0822-I,[2] the Commission concluded it had enough information to issue a new set of proposed CSG Rules that implement the statutory changes and

[2] Proceeding No. 19R-0096E, Decision No. C19-0822-I (Oct. 7, 2019).

respond to participant comments. The Commission concluded that a standalone rulemaking would allow amended CSG Rules to be implemented sooner than if they remained part of the broader rulemaking Proceeding No. 19R-0096E.

6. By Decision No. C19-0900, the Commission issued the NOPR initiating this Proceeding. Among other proposals, the NOPR proposed revisions to reflect the amendments in HB 19-1003 and proposed, for discussion, an "Open Market CSG" or "M-CSG" concept that would allow for CSGs to be developed outside of the utilities' Commission-approved RES compliance plans and for subscribers to retain the RECs. The Commission referred the rulemaking to an ALJ and scheduled a public hearing for participant comments.

7. After receiving initial and responsive comments from rulemaking participants, the ALJ held the scheduled rulemaking hearing on January 13, 2020. Based on written comments and the oral comments provided at the January hearing, the ALJ concluded no further hearing was necessary. Rulemaking participants filed closing comments after the rulemaking hearing. On April 6, 2020, the ALJ issued the Recommended Decision.

8. On April 27, 2020, the following rulemaking participants filed exceptions to the Recommended Decision: Public Service Company of Colorado (Public Service); Western Resources Advocates (WRA); Energy Outreach Colorado (EOC); Vote Solar; the Colorado Solar and Storage Association and the Solar Energy Industries Association (together referred to as COSSA/SEIA); Pivot Energy; and a collection of Solar Developers (including AES Distributed Energy, Grid Alternatives, Namaste Solar, Oakleaf Energy Partners, Pivot Energy, and SunShare).

9. On May 11, 2020, the following rulemaking participants filed responses to the exceptions: Black Hills Colorado Electric, LLC, d/b/a Black Hills Energy (Black Hills); Public Service; WRA; COSSA/SEIA; the Office of Consumer Counsel (OCC); and SunShare.

C. Exceptions to Recommended Decision

10. Below, we address the exceptions filed to the Recommended Decision, any responses, and the Commission's findings and conclusions granting or denying the exceptions.

1. Rule 3876 - Overview and Purpose

11. This rule incorporates language from the legislative declaration introducing the CSG statute, § 40-2-127(1), C.R.S. The Recommended Decision states this new rule clarifies and explains the purpose of the CSG Rules.

a. Exceptions

12. Public Service requests that the Commission add to this rule certain additional language from § 40-2-127(5)(a)(IV)(C), C.R.S., which instructs the Commission to implement policies that encourage "[t]he development of community solar gardens with attributes that the commission finds result in lower overall total costs for the qualifying retail utility's customers." Public Service argues that, without this additional language, the overview and purpose rule is "imbalanced" and fails to account for the cost impact to utility customers.

b. Responses

13. COSSA/SEIA respond that Public Service's proposed language is out of context since it does not derive from the legislative declaration section like the rest of the rule language. COSSA/SEIA contend, because the legislature did not include this cost language in the legislative declaration, it would be inappropriate to add it to this rule. COSSA/SEIA object, if Public Service's additional language is added, then all the factors from § 40-2-127(5)(a)(IV)(A) through (E), C.R.S., should be included to make clear that all the considerations in this section must be "simultaneously encouraged" under the terms of the statute.

c. Findings and Conclusions

14. We deny Public Service's exceptions. We agree with COSSA/SEIA that Public Service's proposed additional language would inconsistently mix language from the legislative declaration and other sections of the CSG statute. We also agree it would be incomplete to add just one of the factors from § 40-2-127(5)(a)(IV)(A) through (E), C.R.S.

2. Rule 3877(a) - Increase in Maximum CSG Size from 2 MW to 5 MW

15. To implement HB 19-1003, which increased the maximum size limit for CSGs from 2 MW to 5 MW, this rule revises the definition of a CSG to refer to a solar electric generation facility with a nameplate rating of 5 MW AC (alternating current) or less.

16. During the rulemaking, COSSA/SEIA advocated that the amended 5 MW size limit should apply universally on a prospective basis such that current 2 MW CSGs should be allowed to grow to 5 MW by co-locating with new projects. COSSA/SEIA argued, by changing the definition of a CSG without restriction to new CSGs, the legislature eliminated the 2 MW size restriction for all CSGs. COSSA/SEIA also urged that, as a policy matter, restricting existing sites to 2 MW would limit the availability of low-cost land with favorable interconnection and the potential for economies of scale.

17. The Recommended Decision adopts COSSA/SEIA's proposed language that clarifies:

> More than one CSG, or a combination of CSGs may be interconnected at the same location as long as they do not cumulatively exceed five MW AC (or ten MW AC, as applicable), without regard to whether the CSGs are new or existing facilities.

a. Exceptions

18. Public Service requests the Commission clarify that existing CSGs developed under the 2 MW size limit may grow to 5 MW *provided the enlargement of the facility is part of the utility's implementation of a future approved RES compliance plan*. Public Service states this

means the 5 MW size limit can be implemented by combining an existing 2 MW award with a new award from a 2020 or later request for proposal (RFP). Public Service contends this would constitute proper prospective application of the statutory amendment.

19. COSSA/SEIA request the Commission clarify that the separate "legal parcel" constraint in the Non-Unanimous Comprehensive Settlement Agreement in Proceeding No. 16A-0139E (Settlement), approved pursuant to Commission Decision No. C16-1075, is no longer applicable. The Settlement applies to Public Service's 2017-19 Renewable Energy Plan. COSSA/SEIA state the Settlement's co-location constraints "give effect to" the then-applicable 2 MW statutory size limit. COSSA/SEIA assert, in approving the Settlement, the Commission stated these constraints were consistent with the 2 MW statutory limit. COSSA/SEIA contend the Settlement no longer imposes a requirement that each CSG must be contained on its own legal parcel because the size limit has been increased. COSSA/SEIA conclude it is "absurd" to apply this constraint to CSGs that can now be co-located up to 5 MW.

b. Responses

20. COSSA/SEIA oppose Public Service's exceptions. They maintain co-location is allowed up to the current 5 MW size limit. Although they concede that contracts in place pursuant to past utility RES compliance plans will limit prior-awarded 2 MW projects from expanding to 5 MW, COSSA/SEIA counter that there is no statutory or policy basis to prohibit co-location up to the current 5 MW size limit. COSSA/SEIA argue that CSGs awarded in a past RFP should be permitted to co-locate on a single site so long as they are separately interconnected and metered, have individual producer agreements, and do not exceed an aggregate of 5 MW. COSSA/SEIA maintain that co-location will not increase the total megawatts awarded or contracted in past utility RFPs.

21. Public Service opposes COSSA/SEIA's exceptions. Public Service objects that COSSA/SEIA's requested clarifications exceed the scope of this rulemaking. Public Service notes that COSSA filed a separate petition for declaratory order in Proceeding No. 20D-0148E concerning the application of the statutory size limit change to awards subject to the Settlement.

c. Findings and Conclusions

22. We deny the requests of Public Service and COSSA/SEIA to add additional language to this rule. This issue has already been addressed by Decision No. C20-0406, issued May 29, 2020, in Proceeding No. 20D-0148E. In Proceeding 20D-0148E, the Commission found, for CSGs subject to Public Service's 2017-19 Renewable Energy Plan, current law allows commonly owned projects to co-locate up to 5 MW in total aggregate capacity. The Commission found, as a result, the Settlement approved through Decision No. C16-1075 does not prohibit a developer from relocating a project by co-locating multiple Public Service 2017-19 Renewable Energy Plan awards at the same site up to 5 MW in total aggregate capacity. The Commission's declarations in Proceeding No. 20D-0148E address the unique and limited circumstance that has arisen necessitating re-location of certain bids awarded in Public Service's 2017-19 Renewable Energy Plan. COSSA/SEIA concede that existing contracts in place pursuant to a past RES plan limit a prior-awarded 2 MW CSG from expanding. If a new and specific dispute arises with respect to this rule, affected parties can file a petition for a declaratory order or other relief.

23. We also deny COSSA/SEIA's request to make a determination regarding the separate "legal parcel" requirement in the Settlement. We find this request procedurally improper at this stage and, in any event, outside the scope of this rulemaking. The Commission already provided declaratory relief in Proceeding No. 20D-0148E regarding interpretation of the terms of the Settlement under the amended statute. Additional requests to resolve controversy or

uncertainty regarding the Settlement should have been made in that proceeding. Even if the Commission were to take up this issue in rulemaking, we find the request unsupported. COSSA/SEIA fail to sufficiently explain or support their argument that the legal parcel constraint is tied to the 2 MW statutory size. As noted above, if a specific issue arises concerning this rule, affected parties can file for appropriate relief.

3. Rule 3877(a) - Potential Increase in Maximum CSG Size to 10 MW

24. To implement HB 19-1003, which allows the Commission to, by rule, approve the formation of a CSG up to 10 MW on or after July 1, 2023, this rule provides that a utility or developer may propose a CSG with a nameplate capacity of up to 10 MW on or after July 1, 2023. WRA urged in the rulemaking that adopting a rule now to address the 10 MW size increase would eliminate the need to open a future rulemaking for this purpose in 2023.

a. Exceptions

25. WRA requests that the Commission strike the language in the recommended rule suggesting these larger projects "will be allowed." WRA urges this correction is necessary to avoid the interpretation that every 10 MW CSG proposed after July 1, 2023, will be allowed. WRA explains its intent in proposing this language was to permit in rule for larger projects to be proposed after July 1, 2023, but remain subject to review and vetting through the approved interconnection procedures and the utilities' RES compliance plan proceedings.

b. Responses

26. The OCC responds that it supports the permissive intent of the recommended rule but agrees with WRA that striking the words "will be allowed" is appropriate.

c. Findings and Conclusions

27. We grant WRA's exception and strike "will be allowed" from the recommended rule. We agree this provides more flexibility and clarity as to the intended treatment of future proposals for up to 10 MW CSGs.

4. Rule 3878(b) - Use of AC or DC Rating

28. This rule specifies that a CSG's capacity is measured in AC rating rather than DC (direct current). In the rulemaking, COSSA/SEIA advocated for this clarification. The Recommended Decision agrees with COSSA/SEIA that DC ratings are not representative of the maximum output capacity of a CSG system. The Recommended Decision concludes that capacity should be measured using the AC rating, as the AC rating is what determines how much electricity can be exported at any one time.

a. Exceptions

29. Public Service requests that the Commission retain the use of DC ratings. Public Service objects that solar programs have in the past been measured by DC, in part due to the variety of inverter power factor capabilities and settings. Public Service argues that mandating a change to AC will have system operations and administrative implications. Public Service states, due to losses from DC to AC conversions, changing size limits to AC will cause an approximate 20 percent increase of program capacity. Public Service states it has observed the negative real-world impacts of this conversion through operating an AC-sized program in its Minnesota territory. Public Service states facilities that originally were tested to perform with a maximum approved output later underwent inverter upgrades or setting changes that led to more AC production on the system than previously approved and tested. Public Service cautions this could adversely impact other customers on these lines.

30. Public Service suggests the Commission should seek to avoid adverse system impacts by imposing a maximum DC system size of 120 percent of AC capacity.

31. Finally, Public Service states the conversion to AC should not be retroactively applied to systems already operating in the queue or for bid projects already awarded.

b. Responses

32. COSSA/SEIA oppose Public Service's exceptions requesting the Commission retain the use of DC ratings. They respond the Recommended Decision correctly finds DC ratings do not represent the maximum output capacity and the AC rating is what determines how much electricity can be exported at any time. COSSA/SEIA contend the DC rating refers to the maximum potential output of the solar panels while the AC rating refers to the nameplate rating of the system's inverter(s), which delivers energy to the AC grid. They conclude the AC rating is thus more reflective of the actual energy the utility and its customers receive. They respond that Public Service complicates a simple issue by claiming the conversion could have dire results. COSSA/SEIA note that Public Service's grid runs on AC and all utility conventional and wind generation produce and deliver use AC. COSSA/SEIA add that Public Service already tracks its solar production facilities in AC output and uses AC ratings for evaluation of solar interconnection applications. They respond that Public Service's concern that AC ratings will necessitate additional monitoring and measurement to ensure inverter settings that limit the AC output to allowed capacity levels over time does not exceed the approved interconnection capacity makes little sense because Public Service already uses AC ratings for all conventional generation and solar interconnection reviews.

33. COSSA/SEIA object to Public Service's request to institute a maximum DC system size of 120 percent of AC capacity. They maintain this would serve no purpose other than to limit

the total amount of renewable energy that can be generated and exported to the grid. They assert a system with a maximum AC inverter rating of 5 MW cannot export more than 5 MW of energy at any given time because the inverter will not allow it. COSSA/SEIA explain, in sites where shading is an issue, however, it may make economic sense for a developer to oversize the DC panels beyond the inverter efficiency requirements. They explain while this may result in curtailment during peak production it could be net beneficial by ensuring more energy is produced and delivered during off peak production. COSSA/SEIA add that allowing developers flexibility in DC system sizing enables them to effectively account for production reductions due to lower power factor requirements.

34. COSSA/SEIA do not oppose Public Service's requested clarification that the conversion to AC is not "retroactively applied" and state they do not seek to void any previous contracts negotiated using DC. COSSA/SEIA urge the Commission also clarify that the 2020-2021 CSG capacity allocations are to be filled using AC capacity and any additional new requirements will be implemented upon adoption of the CSG Rules in this Proceeding.

c. Findings and Conclusions

35. We deny Public Service's exceptions requesting to retain the use of DC ratings. We find unpersuasive Public Service's concerns of system and administrative implications. Public Service claims that using AC ratings will necessitate additional monitoring and measurement but does not thoroughly explain how this will occur. As COSSA/SEIA respond, the use of AC ratings for CSG photovoltaic systems is consistent with other fossil-fueled generators on Public Service's system. Likewise, Public Service's claim that it has had negative experience with AC ratings in its Minnesota territory fails to fully explain the resulting administrative implications.

36. We also deny Public Service's exceptions requesting that the Commission institute a maximize DC system size of 120 percent of AC capacity. We find Public Service fails to make a compelling case for imposing this additional restriction. Conversely, we find persuasive COSSA/SEIA's response that this requirement would unnecessarily hinder developers in sizing their systems to account for production and power factor variables.

37. We grant Public Service's exceptions requesting the Commission clarify that the conversion to AC should not be retroactively applied to systems already operating in the queue or for bid projects that have already been awarded.

38. We grant COSSA/SEIA's exceptions requesting the Commission clarify that the 2020-21 CSG capacity allocations are to be filled using AC capacity and any additional new requirements shall be implemented upon finalization of the CSG Rules adopted in this Proceeding.

5. Rule 3879(d) - Preference for Certain Waitlist Customers

39. This rule requires the CSG subscriber organization to maintain a waiting list of customers who desire to purchase subscriptions and offer subscriptions of other subscribers desiring to transfer or assign their interest on a first-come, first-serve basis. Based on rulemaking participant comments received in Proceeding No. 19R-0096E, the Recommended Decision requires that the subscriber organization give preference to eligible low-income customers and, to the extent it has made any subscriber mix commitments, to any other categories of utility customers.

a. Exceptions

40. COSSA/SEIA request clarification in this rule that the subscriber organization must preference subscribers only to the extent their RFP bid specifies a plan to subscribe those customer segments. COSSA/SEIA explain, through the RFP process, a CSG subscriber organization submits

a bid at a price necessary to cover the costs of its subscriber development plan for this project, including the costs for subscriber outreach, education, and maintenance to the customer segments identified in the bid. COSSA/SEIA state each subscriber segment has different needs thus it is essential not to later upend the mix of planned customers. They suggest enabling the subscriber organization to carry out its subscription development plan that accords with its bid will ensure an appropriately diverse mix of subscribers consistent with the producer agreement for that CSG, per the terms of its award.

b. Findings and Conclusions

41. We grant COSSA/SEIA's exceptions and revise the language in this rule to specify the CSG subscriber organization shall give preference to the categories of customers in Rule 3882(a)(I), which are residential, small commercial, agricultural, and eligible low-income customers, and eligible low-income service providers, as set out in the RFP bid awarded for that CSG project.

6. Rule 3880(a) - Production Meters

42. In the NOPR commencing this rulemaking, the Commission noted that, in rulemaking Proceeding No. 19R-0096E, both utilities and non-utilities agreed that production meters should not be required for CSGs. The NOPR cites rulemaking comments from Public Service explaining that CSGs have minimal energy usage so there are only negligible differences between readings from a production meter and the meter used for net metering. In the NOPR for this Proceeding, the Commission acknowledged these comments but pointed out that the statutory language in § 40-2-127(5)(b)(I)(C), C.R.S., requires the electricity and RECs generated by a CSG to be determined by a "production meter."

43. In the rulemaking, Black Hills recommended adding the term "production" to the proposed rule to more clearly specify the CSG owner must pay for the production meter and any billing meter. COSSA/SEIA raised again that, for CSGs, a net meter can serve the same function as a production meter because there is no onsite load. The OCC suggested adding more description to the rule in order to outline the parameters of what is considered a production meter and specify when a production meter is required.

44. The Recommended Decision adopts the recommendation of Black Hills to add the term "production" to specify what is required to be paid by the CSG owner.

a. Exceptions

45. COSSA/SEIA request that the Commission revise this rule to specify there is no need for any additional meters beyond a typical net meter so long as the meter accurately captures production data for the CSG. COSSA/SEIA contend that any additional production metering would be duplicative and unnecessary. Citing the agreement among rulemaking participants in Proceeding No. 19R-0096E, COSSA/SEIA reiterate their position that there is no practical need for an additional separate "production meter" because CSGs have virtually no onsite load. COSSA/SEIA argue that where there is virtually no onsite load, a net meter can serve the same function as a production meter because it measures the flow of exported energy.

b. Findings and Conclusions

46. We grant COSSA/SEIA's exceptions and add language that specifies a net meter can serve as the production meter required by the statute in § 40-2-127(5)(b)(I)(C), C.R.S., where there is no material onsite load for the CSG. We find in these limited and specific circumstances a "net meter" that measures the flow of exported energy can serve as the required "production meter" since the onsite load is negligible.

7. Rule 3881(a)(I) - Calculation of CSG Billing Credit

47. This rule addresses calculation of the CSG billing credit allocated to the CSG subscriber for its share of the CSG's generation. Pursuant to § 40-2-127(5)(b)(II), C.R.S., the credit is calculated by multiplying the subscriber's share of the electricity production from the CSG by the utility's total aggregate retail rate as charged to the subscriber, *minus* a reasonable charge as determined by the Commission to cover the utility's costs of delivering to the subscriber's premises the electricity generated by the CSG, integrating the solar generation with the utility's system, and administering the CSG's contracts and net metering credits.

48. The Recommended Decision adopts WRA's proposal to include demand side management (DSM) costs in the "reasonable charge" determined by the Commission as part of the utility's cost of delivering electricity to the CSG subscriber's premises. The ALJ finds this a reasonable change to the rule language that helps clarify calculation of the CSG billing credit.

49. WRA advocated in the rulemaking that the Demand Side Management Cost Adjustment (DSMCA) should be included as a bill component excluded from the CSG billing credit. WRA argued that this exclusion would ensure the CSG billing credit does not overinflate the total aggregate retail rate credit. WRA reasoned that all CSG subscribers can participate in DSM programs and all CSG subscribers benefit from the emission and cost reductions of those programs. WRA argued that CSG subscribers should be accountable for their share of the costs. CEO, Black Hills, and Public Service supported WRA's recommendation.

50. In its rulemaking comments, Vote Solar opposed WRA's position. Vote Solar objected that excluding DSM costs "would chip away the economic benefits of CSG subscribers."[3] Vote Solar contended there is no evidence the "very small" DMSCA rider overinflates the CSG

[3] Vote Solar Reply Comments p. 2-3 (Jan. 3, 2020).

billing credit.[4] Vote Solar also challenged WRA's contention that the DSMCA is a cost of delivering electricity. Vote Solar argued that CSGs are intended to be a substitute for rooftop solar. Vote Solar argued the CSG subscriber's billing credit is intended to include the full range of costs reflected in subscribers' electric rates, excluding the reasonable charge for delivery the CSG electricity to the subscriber. Vote Solar concluded that transmission and distribution costs can be considered these type of delivery costs, but not the DSMCA.

a. Exceptions

51. Vote Solar, COSSA/SEIA, and the Solar Developers request that the Commission reject WRA's proposal as unlawful and discriminatory.

52. Vote Solar argues that DSM costs, which relate to improving efficiency of appliances and lighting, weatherization, and related benchmarking, outreach, and administration, bear no relationship to the excludable costs under § 40-2-127(5)(b)(II), C.R.S. Vote Solar objects that excluding DSM costs is discriminatory because it would require CSG subscribers to pay proportionally more DSM costs than other customers for each kWh of energy purchased. Vote Solar explains that CSG subscribers would have to pay DSM costs based on the amount of electricity they purchase from the utility *and* the amount they reduce their purchases through their CSG subscription. Vote Solar objects that other customers may reduce their total purchased electricity through energy efficiency, fuel switch, rooftop solar, and battery efforts, but only CSG subscribers must "make up" the reduction. Vote Solar objects that requiring CSG subscribers to pay proportionally more DSM costs than other customers will erect a barrier to CSG development. Finally, Vote Solar contends that reducing the CSG billing credit with factors unrelated to CSG

[4] Vote Solar Reply Comments p. 3.

generation and delivery makes CSGs less comparable to rooftop solar because those customers receive full net metering credits for generation.

53. COSSA/SEIA argue that DSM costs, which are used to fund energy efficiency and demand response programs, cannot be included in the "reasonable charge" permitted in § 40-2-127(5)(b)(II), C.R.S., for the costs of delivering and administering CSG contracts and credits. COSSA/SEIA assert, if the legislature intended costs like DSM to be excluded, it would have so specified. They add that reducing the CSG billing credit to reflect DSM costs inappropriately diverges from the way on-site solar is treated for net metering.

54. The Solar Developers (AES Distributed Energy, Grid Alternatives, Namaste Solar, Oakleaf Energy Partners, Pivot Energy, and SunShare) object that excluding DSM charges is contrary to state law and policy. They claim that expanding the excluded delivery charge to include costs that are not related to the delivery of energy will destabilize the perception of the CSG billing credit calculation. They argue the billing credit is already a veiled and unpredictable element of the Colorado market and this change would add more confusion and volatility. They caution the proposal may seem a "small tweak,"[5] but it would create distrust for subscribers and owners and negatively impact perception of the Colorado market.

b. Responses

55. COSSA/SEIA support Vote Solar's exceptions. They caution that modifying calculation of the CSG billing credit would be a disruptive shift for customers and project financers by retroactively changing the expected compensation. They state this uncertainty will also negatively affect future projects by artificially inflating and complicating financing.

[5] Solar Developers Exceptions p. 1 (Apr. 27, 2020).

56. WRA, Black Hills, Public Service, and the OCC oppose Vote Solar's exceptions.

57. WRA responds that the language in § 40-2-127(5)(b)(II), C.R.S., is at best unclear. WRA maintains that nothing in the statute identifies with any specificity the riders to be subtracted. WRA concludes that identifying the "reasonable charge" associated with the cost of "delivering" electricity from the CSG is left to Commission determination. By way of example, WRA notes the deductible costs of "administering" CSG contracts and credits are not defined. WRA posits, in theory, utilities could perform a cost causation study examining the costs they incur administering CSG contracts and providing billing credits. WRA notes, instead, the Commission has determined to subtract the Renewable Energy Standard Adjustment (RESA) rider as a stand-in for these costs. WRA contends the Commission should broadly interpret the statutory term referring to costs of "delivering" electricity to the CSG subscriber. WRA states the programs supported by the DSMCA provide system-wide benefits to customers in the form of decreased electricity use (and costs) that impact customer bills, and in the availability of DSM programs and incentives. WRA suggests the DSMCA is thus a system-wide program associated with delivery of electricity to all customers. WRA contends CSG subscribers are distinguishable from rooftop solar or DSM participants because a CSG subscriber's use of electricity from the utility's system is not functionally impacted by its CSG subscription. WRA notes the utility must still deliver to the subscriber's premises all the electricity the subscriber consumes. WRA concludes it is thus reasonable these subscribers pay the DSM costs associated with the cost of delivering them energy from the utility's system.

58. Black Hills responds that deducting DSM costs is fair, reasonable, and rationally related to the delivery, integration, and administration of CSGs. Black Hills contends it would be inequitable for CSG subscribers to pay less DSM costs than other customers since CSG subscribers

can fully participate in DSM programs. Black Hills explains, because DSM costs are charged as a percentage multiplier to a customer's bill, lowering a CSG subscriber's bill will result in that customer paying less DSM costs than other customers. Black Hills adds that deducting DSM costs from the CSG billing credit will increase the total pool of contributions to DSM, which in turn will allow utilities to offer more DSM programs that save all customers money. Black Hills cites § 40-3.2-104(4), C.R.S., which directs the Commission to ensure that utilities develop and implement DSM programs that give "all classes of customers an opportunity to participate and shall give due consideration to the impact of DSM programs on nonparticipants and on low-income customers." Black Hills suggests, when reading this provision together with § 40-2-127(5)(b)(II), C.R.S., excluding DSM costs from the CSG billing credit will help ensure that CSG subscribers do not improperly shift costs of DSM programs to other customers. Black Hills also responds that CSG subscribers currently fail to pay their fair share of DSM costs. Black Hills reasons, because CSG subscribers offset their billed amount with their CSG credit, they are assessed lower DSM charges when the DSM charge is applied as a percentage multiplier to their bill. Finally, Black Hills challenges the comparison to net-metered customers. Black Hills states the rules applicable to net-metered customers are subject to revision in the ongoing separate rulemaking Proceeding No. 19R-0096E.

59. Public Service responds that deducting DSM costs is lawful and will not result in discriminatory rates. Like Black Hills, Public Service cites the statutory directive in § 40-3.2-104(4), C.R.S., to ensure utilities develop DSM programs that give all classes of customers opportunity to participate and give due consideration to the impact on other customers. Public Service contends that removing DSM costs from the CSG billing credit will help ensure CSG subscribers equitably contribute to DSM programs.

60. The OCC responds that it agrees DSM costs are reasonably part of the cost of delivering electricity to the subscriber. The OCC agrees excluding these costs from the CSG billing credit is reasonable and ensures CSG subscribers pay their fair share for DSM programs.

c. Supplemental Facts

61. On May 27, 2020, Vote Solar filed comments providing "supplemental facts" for consideration in this rulemaking. Vote Solar states that Public Service and Black Hills recently filed Transportation Electrification Plans (TEPs) in which the utilities propose to recover TEP costs through the DSMCA rider. Vote Solar contends these proposals demonstrate why the Commission should limit deductions to the CSG billing credit to the actual costs of delivering CSG electricity. Vote Solar argues, if the Commission were to allow the CSG billing credit to be reduced based on non-delivery costs, there would be no principled limit on the costs utilities may attempt to use to reduce the CSG billing credit. Vote Solar cautions this would conflict with statute and undermine the legislature's goal of ensuring broad access to CSGs. Vote Solar adds that developers may find it necessary to intervene in TEP proceedings to protect their interests.

62. On May 29, 2020, COSSA/SEIA filed comments responding to Vote Solar's filing. COSSA/SEIA urge it is important the Commission recognize utility bill riders are fluid, particularly as electrification, storage, demand reduction, and demand-side management programs emerge. COSSA/SEIA caution that approving WRA's proposal would give utilities incentive to increase spending through their riders and will put CSG interests in the position of having to oppose increased spending on carbon reduction policies.

63. On June 2, 2020, Black Hills and Public Service filed comments responding to Vote Solar's filing. They object that Vote Solar "erroneously" contends deducting TEP costs from the CSG billing credit will result in bad policy. They counter that CSG subscribers are eligible

participants in DSM programs, which justifies their contribution, and CSG subscribers will likewise be eligible participants in TEP programs. The utilities caution that shifting the costs of these programs to other customers would lower the pool of available funding and raise rates for remaining customers. They add that the utilities' TEP proposals remain subject to Commission decision. Finally, they respond, if CSG subscribers shift costs to other customers, those customers will have no ability to protect their interest in future DSM or TEP proceedings.

64. On June 2, 2020, the OCC filed a response stating it is premature to consider whether TEP costs should be funded through the DSMCA as the Commission has not yet approved the utilities' proposals in the TEP proceedings.

d. Findings and Conclusions

65. We deny the exceptions of Vote Solar, COSSA/SEIA, and the Solar Developers requesting the Commission reject WRA's proposal.

66. We agree with WRA that § 40-2-127(5)(b)(II), C.R.S., leaves discretion to the Commission in determining what comprises the "reasonable charge" to be deducted from the CSG billing credit. As WRA points out, the statute does not define what comprises the "utility's costs of delivery to the subscriber's premises the electricity generated by" the CSG. Thus, it is reasonable to conclude the Commission is left with discretion to determine what these costs include as part of its obligation under the statute to determine the total "reasonable charge" to be deducted.

67. We find it reasonable to conclude the DSMCA is a system-wide program that is associated with the delivery of electricity to all the utility's customers. We find compelling the point made by WRA and the utilities that the DSM programs funded by the DSMCA rider provide system-wide benefits to all customers in the form of decreased electricity use (and costs) that

impact customer bills, and in the availability of DSM programs and incentives. The intent of DSM programs is to benefit the system; this benefit is effected through individual customer participation in available programs. We also find persuasive WRA's argument distinguishing CSG subscribers from rooftop solar or DSM participating customers in that the utility still must deliver to the CSG subscriber's premises all the electricity the subscriber consumes. We thus agree it is reasonable that these subscribers pay the DSM costs for all the electricity delivered to them from the utility's system.

68. We find unsupported the claims from COSSA/SEIA, Vote Solar, and the Solar Developers that this modification of the CSG billing credit is significant enough to negatively affect the Colorado market. Although we understand and share the general concern with introducing change to calculation of the CSG billing credit, we find little support in the record for the contention that the modification for DSM costs that we adopt here will have real negative effects on the Colorado market.

69. To implement this change, Public Service and Black Hills shall file modifications to their tariffs once the CSG Rules adopted through this Decision become effective.

8. Rule 3881 (b) & (c) - Transfer of Excess CSG Billing Credits

70. These rules address treatment of a CSG subscriber's excess billing credits at the end of the billing cycle and when the subscriber terminates its utility service. As adopted in the Recommended Decision, Rule 3881(b) provides that excess CSG billing credits remaining when a subscriber terminates its utility service are forfeited to the utility or may be contributed by the subscriber or the utility "to another utility account paid by the CSG subscriber to a third party administrator" for low-income customer assistance. As adopted in the Recommended Decision, Rule 3881(c) provides that, in lieu of rolling over excess billing credits to the next year, the CSG

subscriber may elect to contribute the excess 12-months' net billing credit at the end of the billing cycle for low-income customer assistance.

a. Exceptions

71. EOC requests that the Commission move the option for a CSG subscriber to contribute excess billing credits from one account to another from Rule 3881(b) to Rule 3881(c), so that this is option at the end of each annual billing cycle, instead of when a subscriber terminates utility service, and limiting this option to public entity subscribers. EOC suggests it is likely when a subscriber terminates utility service that any other account it has with the utility would also terminate. EOC states it understood COSSA/SEIA's recommendation as intending to afford customers with multiple accounts, most often public entities, flexibility to spread credits across accounts. EOC explains it suggests limiting the multi-account option to public entities in order to avoid watering down the other new option in the rule for subscribers to donate excess billing credits to assist low-income customers.

72. WRA recommends revisions to Rule 3881(b) clarifying the terminating CSG subscriber's bill credits may be contributed to another utility account, with that donation paid by the CSG subscriber or the utility to a third-party administrator to assist low-income customers.

b. Responses

73. COSSA/SEIA do not object to EOC's exceptions. They agree this revision could ensure that customers with multiple accounts, such as municipalities, water districts, or school districts, can utilize bill credits across their accounts in the event the credits exceed the monthly usage of any single account.

c. Findings and Conclusions

74. We deny EOC and WRA's exceptions and adopt the recommended rule, with minor clarifying edits. We revise the rule to strike the phrase "on an annual basis" and we insert an "or"

between the rule language addressing contribution to another utility account and contribution for low-income customer assistance.

9. Rule 3882 - Purchases from CSGs

75. This rule addresses purchases from CSGs including Commission-established minimum and maximum acquisition levels of new CSGs, utility acquisition plans, treatment of RECs, interconnection, due diligence, and program targets.

76. In its rulemaking comments, WRA proposed, as an alternative to the M-CSG concept in the NOPR, that the Commission adopt a standard offer approach. WRA proposed requiring utilities to offer a first-come, first-serve CSG capacity program with standard terms and without an RFP that would set the REC prices at greater than zero and allow subscribers to retain RECs. The Recommended Decision finds, for utilities to meet RES compliance obligations, a low-cost RFP process continues to be appropriate. The Recommended Decision finds, however, there has been shown a high level of demand for CSG acquisition beyond RES compliance plan acquisitions. The Recommended Decision adopts WRA's proposed language except it declines to adopt WRA's proposal to replace the RFP process with a standard offer "only" approach.

77. In its rulemaking comments, WRA took the position that the generation of electricity, and the CSG billing credit paid to subscribers for that electricity, are distinct. WRA proposed the Commission clarify the utility does not have to purchase all the RECs generated by CSGs as part of its acquisition in a Commission-approved RES compliance plan. WRA suggested § 40-2-127(5), C.R.S., distinguishes between the purchase of electricity and RECs and thus does not mandate that the utility purchase RECs when it purchases electricity. WRA asserts the purchase of electricity and RECs from a CSG are separate transactions and should be

independently negotiated between the CSG subscriber organization and the utility, if appropriate. The Recommended Decision agrees with WRA's proposed language.

a. Exceptions

78. Public Service requests clarification of this rule. Public Service states the proposals in its 2020-21 RES Plan demonstrate that it is receptive to adjusting the total CSG capacity offered through a standard offer. Public Service notes it has implemented a standard offer for a portion of its CSG offering with the REC price informed by the RFP solicitations. Public Service recommends the standard offer be based on rates informed by competitive solicitations. Public Service contends this will balance the incentive with the most recent market price, rather than set an artificial incentive rate. Public Service opposes WRA's proposal to allow customers to keep the RECs while also receiving a REC incentive. Public Service states it understands certain customers desire RECs, but it is concerned that doing so uses RESA-funded RECs while also gaining savings via CSG subscription. Public Service argues the utility is disadvantaged because it is paying the same credit while not receiving the benefit of the REC. Public Service concludes the CSG billing credit must be re-evaluated where subscribers retain RECs. Public Service cautions, if RECs are provided to subscribers who also earn a REC incentive, all customers will have paid for an asset in the REC but will not receive its value. Public Service adds, if the utility later needs RECs to comply with state targets, then customers will be required to pay to acquire more RECs. Public Service contends it is a "flawed" concept to offer subscribers the potential for cost savings due to an above-market price via the CSG billing credit and to have the REC subsidized by RESA funds. Public Service recommends allowing the utility to adjust its pricing to reflect the loss of the REC. Public Service states this properly recognizes a REC as an asset

with value to some customers, and there is willingness of customers to pay for that asset through an incremental price.

79. WRA objects that the recommended rule does not resolve two critical issues. First, that there is no requirement for a utility to assign any percentage of its RES compliance plan capacity to standard offers instead of RFPs. And second, that an optional standard offer program will not guarantee the opportunity for customers to retain RECs. WRA concedes there could be value in retaining some form of an RFP process so long as it does not prevent the availability of standard offers and the ability for subscribers to retain RECs. WRA suggests past controversies over CSG acquisition demonstrate why the standard offer should be the default approach. WRA recommends replacing the term "purchases of renewable energy" with the term "acquisition of CSG," which WRA contends will better reflect the role of the RES compliance plan proceeding in acquiring CSG energy where the RECs are not necessarily acquired along with electricity. WRA also provides clarifying edits in Rule 3882(b) to specify the energy shall be acquired and distributed by the utility.

80. COSSA/SEIA recommend the Commission require both a RES compliance plan program and a mandatory market-based standard offer program. COSSA/SEIA question how subscribers will be able to retain RECs without a mandatory program. They note the current practice requires bidders to offer a REC "price" to secure a project, thus contractually committing the developer to selling the CSG's RECs to the utility. COSSA/SEIA recommend the RES compliance plan process continue to serve as the primary means for utilities to secure RECs for RES compliance and to achieve targets for policy-preferred subscribers. They suggest the standard offer program, which they propose to call the "Community Access Standard Offer Program," should function as a broader, less restrictive program that allows customer choice including REC

ownership. COSSA/SEIA propose, if a utility falls short on RECs under the RES compliance program, then the utility could offer an optional standard REC purchase offer to solicit RECs from customers participating in the standard offer program. COSSA/SEIA argue the CSG billing credits for the standard offer program must be consistent with the methodology set forth in § 40-2-127, C.R.S. COSSA/SEIA argues this will ensure the program is an appropriate alternative to on-site solar and provide consistency for subscribers. COSSA/SEIA argues the bill credit should be separate from other compensation that may be needed for utility compliance, such as standard REC purchase offers from subscribers.

81. EOC suggests minor revisions to the rule language for clarity.

b. Responses

82. Public Service challenges that COSSA/SEIA's "parallel framework" creating a Community Access Standard Offer Program primarily focused on subscriber REC retention will not achieve appropriate targets for customer segment participation. Public Service also raises concern that COSSA/SEIA's program assumes it should take a customer bill credit "as-is" without re-evaluation. Public Service also questions what constitutes "community access" for this offering. Public Service suggests the issue of a standard offer would be more effectively vetted through a separate investigatory proceeding. In addition, Public Service disagrees with COSSA/SEIA's proposal that any rule reference to the utility's electric resource plan should be removed.

83. Black Hills objects that COSSA/SEIA's exceptions raise new issues not discussed in the record. Black Hills suggests that developers would choose to pursue acquisitions through less restrictive standard offer rebates. Black Hills cautions the separate regimes will push CSG acquisitions to the standard offer, which will not involve the same policy outcomes, such as low-income subscription reservations, as RES compliance plan CSGs.

84. The OCC recommends denying WRA's exceptions that would establish the standard offer as the primary means for utilities to purchase CSG output. The OCC argues, until it can be demonstrated an insufficient capacity has resulted from an RFP process, mandating a standard offer will translate into additional profits to unregulated CSG developers at the expense of public utility ratepayers. The OCC responds that COSSA/SEIA's interest in this and other proceedings substantiates there is adequate developer interest for CSGs. The OCC reasons, where adequate developer demand exists, it is in the ratepayers' interest for competitive solicitations to achieve cost-effective acquisitions. The OCC notes the CSG statute identifies that successful financing and operation must be simultaneously considered with lower overall total costs for the utility's customers. Finally, the OCC asserts that COSSA/SEIA's proposal would implement a type of unregulated CSG program under the guise of a standard offer. The OCC cautions against implementing this type of unregulated concept without more information.

85. WRA responds that Public Service misunderstands its proposal. WRA maintains the CSG statute allows for energy and RECs to be acquired separately. WRA explains, under its approach, different standard offers could be developed for different types of CSG subscriptions. WRA suggests that standard offers that allow the subscriber to retain the RECs could be established at a lower price point, which, according to WRA, would avoid Public Service's concern with being subject to an "imbalanced transaction" where the utility pays the same level of billing credits to customers while receiving no benefit of the REC itself.[6]

86. COSSA/SEIA continue to propose the Commission utilize the standard offer model to provide subscribers with the option to retain the value of both the generation and the environmental attributes. Under this framework, COSSA/SEIA argue that subscribers in the

[6] WRA Response to Exceptions p. 3 (May 11, 2020) (citing Public Service Exceptions p. 14).

standard offer program choosing to retain RECs would only receive bill credits from the utility for the energy associated with their CSG subscriptions and not the environmental attributes.

c. Findings and Conclusions

87. After considering the participants' comments in the rulemaking and the issues raised in the exceptions and responses, we grant, in part, and deny, in part, the exceptions of Public Service, WRA, COSSA/SEIA, and EOC. We adopt a revised version of Rule 3882, as shown in the attachments to this Decision.

88. Consistent with the directive in HB 19-1003 requiring the Commission to, in a new or active proceeding, determine whether the utility shall purchase all the electricity and RECs generated by the CSG or whether a subscriber may, upon becoming a subscriber, choose to retain or sell the RECs to the utility, we consider in this Proceeding whether to implement changes that provide opportunity for a subscriber to retain the RECs. We adopt in Rule 3882 the requirement that the utility implement a standard offer program under which subscribers can elect to retain the RECs associated with the CSG generation.

89. As shown in the rule revisions in the attachments to this Decision, we require utilities to use a combination of one or more competitive solicitations and one or more standard offers to cause purchases of electricity from new CSGs over the period covered by the utility's Commission-approved RES compliance plan. We require the utility to propose a standard offer pricing program to acquire CSG generation. We specify in this new rule that the standard offer may be at a differing price that would enable the CSG subscribers to keep the RECs generated by the CSG rather than transfer ownership to the utility.

10. Rule 3882(b) - Interconnection to Transmission System

90. This rule specifies that the utility shall not restrict or unreasonably delay any CSG that is approved pursuant to a Commission-approved procurement plan from interconnecting to the utility's distribution or transmission system in accordance with the interconnection standards and procedures. The Recommended Decision adopts COSSA/SEIA's proposal to add "or transmission" to this rule in order to specify that CSGs may interconnect at the transmission system level. In their rulemaking comments, COSSA/SEIA argued there is no statutory restriction of CSG transmission system level interconnections and suggested that opening interconnection sites to transmission system interconnection could solve a number of the interconnection problems at existing substations and provide new siting options.

a. Exceptions

91. Public Service requests that the Commission reject the proposal to specify that CSGs may interconnect at the transmission system level. Public Service cautions this change could lead to legal jurisdictional issues and introduce additional policy confusion. Public Service states that it currently has Open Access Transmission Tariffs (OATT) approved by the Federal Energy Regulatory Commission (FERC) that apply to transmission interconnections, which would apply to CSG transmission level interconnects. Public Service urges the Commission should recognize jurisdictional responsibilities and cross-jurisdictional limitations between distribution and transmission. In addition, Public Service objects that expanding the definition of a CSG to encompass transmission-level interconnection would be inconsistent with IEEE 1547, which it states is the primary industry technical standard for addressing interconnection requirements utilized within the interconnection technical review.

b. Responses

92. The OCC responds that it is also concerned that the impact of this change has not been adequately vetted. The OCC agrees with Public Service that connecting CSGs at the transmission level is different from the distribution level for the jurisdictional purposes raised by Public Service. In addition, noting that small scale solar developers already have opportunity to connect at the transmission level as qualifying facilities under federal law, the OCC contends that permitting CSGs to connect at the transmission level would be a windfall to CSG developers by providing opportunity to recover rates other than the wholesale avoided cost rate, with ratepayers paying the difference. The OCC also raises concern that the transmission system has a different interconnection process and tariffs than the distribution system, thus utilities would need to re-evaluate their approved tariffs and associated aggregate retail rates.

93. COSSA/SEIA respond that they proposed transmission level interconnection to solve a problem raised by Public Service regarding capacity at existing distribution substations. COSSA/SEIA argue that allowing CSGs to interconnect at the transmission level is one way to open more interconnection opportunities. COSSA/SEIA disagree with Public Service over concerns of FERC jurisdiction. COSSA/SEIA reason, because a CSG is a qualifying facility under federal law, and because it sells all its electricity to the utility, there is little risk FERC would have jurisdiction over a CSG interconnection, even at the transmission level. since the installation would meet the definition of a qualifying facility under federal law. They argue, even if there were increased regulatory burdens, those burdens would impact the developer rather than the utility or customers. COSSA/SEIA suggest that developers should have discretion to determine if the risk of FERC jurisdiction is worth to the ability interconnect at a suitable site on the utility's transmission system. COSSA/SEIA suggest, in the event the utility does not own the transmission

system delivering the CSG electricity, the developer could be required to pay for any incremental costs caused by their decision to interconnect on that transmission line. Finally, COSSA/SEIA argue that CSG billing credits, which subscribers receive for every kWh of CSG generation, are statutorily defined as the total aggregate retail rate minus the utility's costs of delivering the electricity. They suggest that, since the statute only states "delivery" and does not expressly state a CSG must connect to the distribution system, the deducted delivery costs can include both transmission and distribution costs.

94. SunShare opposes Public Service's exceptions. SunShare states there are currently no rules preventing a CSG from connecting to the transmission system and this issue was raised in this rulemaking simply as clarification.

c. Findings and Conclusions

95. We deny these exceptions and will adopt the change specifying that CSGs may interconnect at the distribution or transmission system level. Although we are mindful of the potential legal and technical issues raised by the utilities and the OCC in their exceptions, we find these concerns are insufficiently explained and supported to warrant the Commission reversing the ALJ's recommendation. We note that, if an actual legal or technical issue arises with respect to transmission-level interconnection of a CSG in the future, we can revisit this issue with the benefit of the specific facts and circumstances presented in that instance.

11. Rule 3882(e) - Utility Cost Recovery

96. In its rulemaking comments, WRA took the position that utility cost recovery through the Electric Commodity Adjustment (ECA) exceeds the statutory requirements in § 40-2-127(6), C.R.S. WRA asserted the utility's lost revenue due to CSG billing credits should instead be addressed holistically through a revenue decoupling adjustment. COSSA/SEIA supported

WRA, agreeing there is no statutory support for the current approach and arguing that recovering lost revenue through the ECA and RESA mechanisms drives up customer charges. COSSA/SEIA suggested, had the legislature intended CSG billing credits to be accounted for in the retail rate impact, it would have specified so in the statute.

97. In its rulemaking comments, Public Service argued that accounting for the CSG resource cost through the ECA and RESA is an established practice and has been vetted through several utility RES compliance plan proceedings to ensure compliance with statute and rule. Public Service claimed that WRA's proposal would materially change the economics of existing and future CSG transactions between the utility and its customers.

98. In the Recommended Decision, the ALJ declines to adopt WRA's position that the Commission should discontinue its existing practice of allowing utility cost recovery of CSG billing credits from the ECA and RESA. Instead, the ALJ recommends adding language in Rule 3882(e) to specify that the acquisition of electricity from a CSG shall be recovered through the ECA mechanism.

a. Exceptions

99. WRA renews its argument that the Commission should discontinue the practice of recovery through the ECA and RESA. WRA asserts this is a significant policy decision the Commission should weigh before it affirms that cost recovery from the ECA is appropriate. WRA argues the retail rate impact rule in § 40-2-124(1)(g), C.R.S., applies only to the purchase of unsubscribed energy and RECs. WRA posits the current approach allowing utilities to recover the costs associated with CSG billing credits from subscribed CSGs from the ECA and RESA is inconsistent with § 40-2-127(6), C.R.S. WRA also objects that this approach allows the ECA and RESA to finance a lost revenue adjustment mechanism. WRA notes this approach is different from

net metering, where only the REC incentive payment is recovered from ratepayers through the RESA. WRA contends this is a cost recovery policy decision that should be determined in an evidentiary proceeding such as a RES plan proceeding, a decoupling proceeding, or a rate case. WRA urges the Commission should weigh this policy decision before it affirms that allowing recovery from the ECA is appropriate, particularly now that other lost sales recovery mechanisms, specifically decoupling for the residential and small customer classes, are a reality in Public Service's territory. WRA recommends the Commission strike the ALJ's recommended language so that the Commission will not be limited in its future decisions on this issue.

b. Responses

100. Public Service opposes WRA's exceptions. Public Service asserts that WRA is attempting to materially change the economics of existing and future CSG transactions. Public Service states the CSG billing credit is the mechanism by which the utility pays for CSG generation and is effectively a similar arrangement as the utility would have for any other purchase power agreement. Public Service responds that WRA's proposal has not received serious vetting, would cause regulatory lag, and would shift costs to shareholders, effectively penalizing the utility for offering CSG options to its customers.

c. Findings and Conclusions

101. Through our revisions to Rule 3882, we strike the entire paragraph where the ALJ recommended adding language specifying that the acquisition of electricity from a CSG shall be recovered from the ECA. This, in part, addresses WRA's concern that the Commission should not codify in rule that recovery shall be through the existing mechanisms. That said, we find no merit on the record of this rulemaking proceeding to WRA's arguments that the existing practice is unlawful or inappropriate. We agree with Public Service the CSG billing credit, by which the

utility pays for CSG generation, is similar to the arrangement the utility would have for any other power purchase agreement. And we find concerning, as Public Service raises, that WRA's proposal could impose a significant penalty on shareholders and create a strong incentive against CSGs moving forward.

12. Rule 3883 - 25 Year Minimum Contract Term

102. In their rulemaking comments, COSSA/SEIA proposed that the Commission establish in this rule a minimum term of 25 years for the CSG contract. COSSA/SEIA suggested that formalizing a 25-year term for CSG contracts with the possibility for extension would provide regulatory certainty and transparency for the industry and better reflect the expected lifespan of a solar facility. They explained that many CSG subscribers choose to participate in order to help meet long-term renewable energy mandates, which do not expire after 20 years.

103. The Recommended Decision declines to adopt this proposal.

a. Exceptions

104. COSSA/SEIA renew their request that CSG contracts should be set to a minimum term of 25 years, with automatic extension for five years beyond that minimum term, if participants wish to continue. COSSA/SEIA contend that a term of 25 years is becoming increasingly standard across the country, in part based on performance of equipment and associated extensions of warranties. COSSA/SEIA state that a 25-year term is supported by multiple credible technical analyses, including the analysis of the National Renewable Energy Lab, which indicates that solar photovoltaic systems have a useful life of 25-40 years.

b. Findings and Conclusions

105. We deny these exceptions requesting that the Commission establish in rule a minimum contract term for CSGs of 25 years. We conclude that contract terms should remain

flexible and not be set by Commission rule. In addition, we have concern that increasing the minimum contract term may reduce the risk for CSG developers but would, in turn, shift that risk to ratepayers.

13. Open Market CSG Proposal

106. In their rulemaking comments, both Public Service and Black Hills opposed the NOPR's M-CSG proposal on grounds that it was unlawful. The utilities objected that this type of program would allow for a competitive retail choice market despite Colorado's vertically integrated construct. They objected that § 40-2-127(4), C.R.S., expressly states CSGs are not public utilities and not subject to Commission regulation. They objected that no provision in § 40-2-127, C.R.S., would permit a CSG to sell electricity to end-use customers within a Colorado public utility's service territory.

107. In its comments, the OCC agreed with the legal concerns raised by the utilities. The OCC agreed the inclusion of CSGs outside of a regulatory proceeding would conflict with the concept of regulated monopoly. The OCC cautioned that requiring regulated utilities to allow M-CSGs to interconnect, granting them access to regulated ratepayers, is contradictory to the doctrine of regulated monopoly because it allows a competing service provider to enter a regulated territory. The OCC also raised policy concern that the Commission already encourages high levels of CSG investment through establishing the minimum and maximum acquisition levels adopted in RES compliance proceedings. The OCC asserted that any additional CSG capacity beyond this maximum has already been deemed to not be in the public interest.

108. The Recommended Decision declines to adopt the proposed rule implementing an M-CSG program. The ALJ concludes that the Commission would need to address the many issues raised by the rulemaking participants before implementing this concept.

a. Exceptions

109. COSSA/SEIA request the Commission open a new proceeding to further consider the concept of an open market for CSGs. They request that the Commission open a proceeding within the next 120 days to consider the goals and parameters of an open market CSG program, and to develop applicable rules, with a targeted Commission decision by March 31, 2021.

110. Vote Solar likewise requests the Commission open an investigatory proceeding that will convene stakeholders to further explore and discuss a market CSG program.

b. Findings and Conclusions

111. We deny the exceptions requesting that the Commission decide at this time whether to open an investigatory proceeding to consider the issues raised in this rulemaking regarding the M-CSG proposal. As raised by the utilities and other rulemaking participants, there are both legal and technical challenges at this point to implementing this concept under current law and the regulatory framework in Colorado. Considering these challenges and the changes already made through this Decision to update and revise the CSG Rules, we find it unnecessary at this time to commit to opening a new proceeding to further explore the M-CSG concept proposed in the NOPR.

14. Use of Term "Renewable Energy"

112. In its exceptions, WRA request that the Commission strike the term "renewable energy" in certain instances in the CSG Rules and replace it with the term "electricity." We adopt this change in certain instances in the CSG Rules, but not in every instance requested by WRA. The Commission construes the general term "output" as used in § 40-2-127, C.R.S., to refer to both the electricity generated by the CSG and the associated RECs. We find this a reasonable conclusion since the legislature throughout § 40-2-127, C.R.S., uses the more specific terms "electricity," "electricity and renewable energy credits," "electrical output," "electricity production," and "electricity output" to refer more narrowly to the energy component of CSG

generation and to distinguish it from the RECs. The revisions that we adopt to correspond with this interpretation are shown in the attachments to this Decision containing the final adopted CSG Rules.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R20-0209, filed by Public Service Company of Colorado on April 27, 2020, are granted in part, and denied in part, consistent with the discussion above.

2. The exceptions to Recommended Decision No. R20-0209, filed by Western Resources Advocates on April 27, 2020, are granted in part, and denied in part, consistent with the discussion above.

3. The exceptions to Recommended Decision No. R20-0209, filed by Energy Outreach Colorado on April 27, 2020, are denied, consistent with the discussion above.

4. The exceptions to Recommended Decision No. R20-0209, filed by Vote Solar on April 27, 2020, are denied, consistent with the discussion above.

5. The exceptions to Recommended Decision No. R20-0209, filed by the Colorado Solar and Storage Association and the Solar Energy Industries Association on April 27, 2020, are granted in part, and denied in part, consistent with the discussion above.

6. The exceptions to Recommended Decision No. R20-0209, filed by AES Distributed Energy, Grid Alternatives, Namaste Solar, Oakleaf Energy Partners, Pivot Energy, and SunShare on April 27, 2020, are denied, consistent with the discussion above.

7. The Rules Implementing the Community Solar Gardens within the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, contained in legislative

(*i.e.*, strikeout/underline) format (Attachment A), and final format (Attachment B) are adopted, and are available through the Commission's Electronic Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0608E

8. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

9. Public Service Company of Colorado and Black Hills Colorado Electric, LLC, d/b/a Black Hills Energy, shall file revised tariffs to implement the modified rules no later than 30 days after the revised rules adopted through this Decision become effective. The compliance tariff sheets shall be filed on not less than thirty days' notice. The advice letter and tariff sheets shall be filed as a new advice letter proceeding and shall comply will all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date.

10. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

11. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING June 17, 2020.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN GILMAN

Commissioners

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-3

PART 3
RULES REGULATING ELECTRIC UTILITIES

RENEWABLE ENERGY STANDARD

* * * *

[indicates omission of unaffected rules]

~~**3665. Community Solar Gardens.**~~

~~The following rules shall apply to all community solar gardens (CSGs) developed pursuant to § 40-2-127, C.R.S. These rules shall not apply to cooperative electric associations or to municipally owned utilities.~~

~~(a) CSG subscriptions, subscribers, and subscriber organizations.~~

~~(I) Requirements for CSG subscribers, CSG subscriptions, and CSG subscriber organizations.~~

~~(A) No CSG subscriber may own more than a 40 percent interest in the beneficial use of the electricity generated by the CSG, including without limitation, the renewable energy and RECs associated with or attributable to the CSG.~~

~~(B) Each CSG subscription shall be sized to represent at least one kW of the CSG's nameplate rating and supply no more than 120 percent of the CSG subscriber's average annual electricity consumption at the premise to which the subscription is attributed, with a deduction for the amount of any existing retail renewable distributed generation at such premise. The minimum one kW sizing requirement herein shall not apply to subscriptions owned by an eligible low-income CSG subscriber.~~

~~(C) The premise to which a subscription is attributed by a CSG subscriber shall be served by the investor owned QRU and shall be within the same county as, or a county adjacent to, the CSG. The CSG subscriber may change from time to time the premise to which the CSG subscription shall be attributed, so long as the premise is served by the investor owned QRU and is within the same county as, or a county adjacent to, the CSG.~~

~~(D) No CSG subscriber organization may own more than a 40 percent interest in the beneficial use of the electricity generated by the CSG, including without~~

~~limitation, the renewable energy and RECs associated with or attributable to the CSG, after the CSG has operated commercially for 18 months.~~

~~(II) Share transfers and portability.~~

~~(A) A CSG subscription may be transferred or assigned to the associated CSG subscriber organization or to any person or entity who qualifies to be a subscriber in the CSG.~~

~~(B) A CSG subscriber who desires to transfer or assign all or part of his subscription to the CSG subscriber organization, in its own name or to become unsubscribed shall notify the CSG subscriber organization and the transfer of the subscription to the CSG subscriber organization shall be effective upon such notification, unless the CSG subscriber specifies a later effective date.~~

~~(C) A CSG subscriber who desires to transfer or assign all or part of his subscription to an eligible QRU customer desiring to purchase a subscription may do so only in compliance with the terms and conditions of the subscription and will be effective in accordance therewith.~~

~~(D) If the CSG is fully subscribed, the CSG subscriber organization shall maintain a waiting list of eligible QRU customers who desire to purchase subscriptions. The CSG subscriber organization shall offer the CSG subscription of the CSG subscriber desiring to transfer or assign their interest, or a portion thereof, on a first-come, first-serve basis to customers on the waiting list.~~

~~(E) The CSG subscriber organization and the investor owned QRU shall jointly verify that each CSG subscriber is eligible to be a subscriber in the CSG pursuant to subparagraph 3665(a)(I). The CSG subscriber roll shall include, at a minimum, the percentage share owned by the CSG subscriber, the effective date of the ownership of that percentage share, and the meters at the premises to which the CSG subscription is attributed for the purpose of applying billing credits. Changes in the CSG subscriber roll shall be communicated by the CSG subscriber organization to the QRU, in written or electronic form, as soon as practicable, but on no less than a monthly basis.~~

~~(F) Prices paid for subscriptions in a CSG shall not be subject to regulation by the Commission.~~

~~(b) Production data.~~

~~(I) The amount of renewable energy and RECs generated by each CSG shall be measured by a production meter installed by the investor owned QRU or the CSG owner and paid for by the CSG owner.~~

~~(II) The owner of a CSG with a nameplate rating of one MW or greater shall register the CSG and report the CSG's production data to the WREGIS in accordance with paragraph 3659(j).~~

(III) CSGs are required to provide real time reporting of production as specified by the QRU. For CSGs greater than 250 kW, the CSG owner shall provide real time electronic access to production data under paragraph 3656(l). A QRU may require different real time reporting for CSGs 250 kW and smaller.

(IV) Production from the CSG shall be reported by the CSG subscriber organization to its CSG subscribers at least monthly. To facilitate the tracking of production data by CSG subscribers, CSG owners or CSG subscriber organizations are encouraged to provide website access to subscribers showing real time output from the CSG, if practicable, as well as historical production data.

(c) Billing credits and unsubscribed renewable energy.

(I) Compensation to the CSG subscriber for its share of the renewable energy generated by a CSG shall take the form of a billing credit paid to the CSG subscriber by the investor owned QRU.

(A) The billing credit shall be calculated by multiplying the CSG subscriber's share as a percentage of the renewable energy generated by the CSG times the QRU's total aggregate retail rate (including all billed components) as charged to the CSG subscriber.

(B) For the purpose of calculating the billing credit for a commercial or industrial customer on a demand tariff, the total aggregate retail rate (including all billed components) shall be determined by dividing the total electric charges to be paid by the customer to the investor owned QRU for the most recent calendar year (including demand charges) by the customers' total electricity consumption for that year. In the event that the designated premises to which the CSG subscription is attributed has less than one year of billing history, an estimate of the total annual charges shall be made by the QRU.

(C) Billing credits shall be reflected in the CSG subscriber's bill from the investor owned QRU no later than the 60th day after the QRU receives the information required to calculate the billing credit from the CSG subscriber organization.

(II) The investor owned QRU may assess a Commission-approved charge to cover the QRU's costs of delivering to the CSG subscriber's premises the renewable energy generated by the CSG, integrating the generation from the CSG into the utility's system, and administering the contracts with CSG owners and billing credits. This charge shall be a fixed amount and shall not reflect costs that are already recovered by the QRU from CSG subscribers through other charges. The QRU may seek a revision of this charge no more frequently than once per year in conjunction with its acquisition plan submitted under paragraph 3665(d).

(III) If, in a monthly billing period, the CSG subscriber's billing credit associated with a CSG subscription exceeds the customer's bill from the investor owned QRU, the excess billing credit will be rolled over as a credit from month to month indefinitely until the customer terminates service with the investor owned QRU, at which time no payment shall be

~~required from the investor owned QRU for any remaining billing credits associated with the customer's CSG subscription..~~

~~(IV) The investor owned QRU shall purchase all of the renewable energy and RECs generated by a CSG if the QRU enters into a contract with the CSG owner pursuant to a Commission-approved acquisition plan under paragraph 3665(d). For RECs purchased by the QRU, the QRU and the CSG owner shall agree on whether subscribers will be compensated by a credit on each CSG subscriber's bill from the QRU or by a payment to the CSG owner.~~

~~(V) The investor owned QRU shall purchase from the CSG owner the unsubscribed renewable energy and RECs at a rate equal to the QRU's average hourly incremental cost of electricity supply over the immediately preceding calendar year.~~

~~(d) Acquisitions of renewable energy and RECs from CSGs.~~

~~(I) The Commission shall establish the minimum and maximum purchases of renewable energy from newly installed CSG generation (new CSGs) by the investor owned QRU for each compliance year under the RES. For compliance years 2014 and thereafter, the Commission shall determine the minimum and maximum purchases of renewable energy and RECs from new CSGs of different segments based on the capacity of the CSGs (capacity segments) without regard to the six MW ceiling for the period 2011 through 2013. The Commission shall establish such minimum and maximum levels of purchases in consideration of a plan for the acquisition of renewable energy and RECs from CSGs filed by the investor owned QRU. The investor owned QRU's plan for the acquisition of renewable energy and RECs from CSGs shall be part of the investor owned QRU's RES compliance plan filed pursuant to rule 3657.~~

~~(II) The investor owned QRU shall acquire renewable energy and RECs by entering into contracts with CSG owners. A CSG whose owner enters into a contract with the QRU shall be deemed to be part of the QRU's Commission-approved acquisition plan if the cumulative total of the nameplate capacity of the new CSGs acquired in the compliance year does not exceed the maximum purchases established by the Commission for that compliance year.~~

~~(III) The investor owned QRU shall conduct due diligence on proposed contracts with new CSG owners to reasonably assure that the CSG owner and CSG subscriber organization have sufficient resources to successfully construct and commence operations of the CSG.~~

~~(A) Except for CSGs owned by governmental or quasi-governmental entities, the investor owned QRU shall be deemed to have conducted sufficient due diligence by requiring from the CSG owner documentation of escrowed funds of not less than $100 per kW of the CSG's nameplate rating. The escrow shall be maintained by its terms until such time as the CSG commences commercial operation as certified by the QRU's acceptance of renewable energy generated by the CSG.~~

(B) If a CSG owner properly documents escrowed funds consistent with this subparagraph 3665(d)(IV), the investor owned QRU may not refuse to enter into a contract with the CSG owner for failure to demonstrate sufficient resources to reasonably assure successful construction and commencement of CSG operations .

(IV) In each plan to acquire renewable energy and RECs from CSGs, the investor owned QRU shall reserve, to the extent there is demand for such ownership, at least five percent of its renewable energy purchases from new CSGs for eligible low-income CSG subscribers.

(A) CSG subscriber organizations and investor owned QRUs may rely on certification by the Colorado Department of Human Services for acceptance in the Colorado Low-Income Energy Assistance Program (LEAP) as evidence of eligibility as an eligible low-income CSG subscriber in a CSG.

(B) Acquisition of energy and RECs from eligible low-income CSG subscribers to CSGs may be either through dedicated low-income CSGs or low-income set asides within other CSGs.

(V) For investments in a new CSG, the investor owned QRU shall be eligible for the incentives and be subject to the ownership limitations set forth in rule 3660; however such incentive payments shall be excluded from the retail rate impact under rule 3661.

(VI) The investor owned QRU may file an application with the Commission for approval to recover through rates a margin on renewable energy and RECs purchased from CSGs; however such incentive payments shall be excluded from the retail rate impact under rule 3661.

(VII) Notwithstanding the exclusion from the retail rate impact in subparagraphs 3665(d)(VI) and (VII), the acquisition of renewable energy and RECs from CSGs shall be subject to the retail rate impact under rule 3661. QRU expenditures for unsubscribed energy and RECs generated by CSGs shall be included in the calculations of retail rate impact under that rule.

(e) Financing and operating CSGs.

(I) Contracts signed by QRUs with CSG owners shall be a matter of public record and shall be filed with the Commission by the QRU.

(II) CSG subscriber organizations shall issue public annual reports as of the end of the calendar or other fiscal year containing, at a minimum, the energy produced by the CSG; audited financial statements including a balance sheet, income statement, and sources and uses of funds statement; and the management and ownership of the CSG and the CSG subscriber organization, if different. Individual subscribers shall receive, in addition to the annual report of the CSG subscriber organization, a report of the energy, multiplier (e.g., aggregate retail rate), and net metering credits attributed to the CSG subscriber's account.

~~(III) CSG subscriber funds, collected by the CSG in advance of commercial operation of the CSG, shall be held in escrow. The escrow shall be maintained by its terms until such time as the CSG commences commercial operation as certified by QRU acceptance of energy from the CSG.~~

COMMUNITY SOLAR GARDENS

3875. Applicability.

The following rules shall apply to all utilities regarding community solar gardens (CSGs) developed pursuant to § 40-2-127, C.R.S. These rules shall not apply to cooperative electric associations or to municipally owned utilities.

3876. Overview and Purpose.

The purpose of these rules is to implement the development and deployment of CSGs; to provide opportunities to all utility customers to participate in solar generation in addition to on-site solar systems; to allow renters, low-income utility customers, and agricultural producers to own interests in solar generation facilities; to allow interests in solar generation facilities to be portable and transferrable; and to leverage solar generating capacity through economies of scale.

3877. Definitions.

The following definitions apply to rules 3877 through 3883. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Community solar garden" or "CSG" means a solar electric generation facility with a nameplate rating of five MW AC or less that is located in or near a community served by a utility where the beneficial use of the electricity generated by the facility belongs to the subscribers of the CSG. A CSG shall have at least ten CSG subscribers. A CSG shall be deemed to be located on the site of each subscribing customer's facilities for the purpose of crediting the CSG subscribers' bills for the electricity purchased from the CSG by the utility. The electricity and RECs generated by a CSG shall be sold only to the utility serving the geographic area where the CSG is located. More than one CSG, or a combination of CSGs, may be interconnected at the same location as long as they do not cumulatively exceed five MW AC (or ten MW AC, as applicable), without regard to whether the CSGs are new or existing facilities. The utility or a developer may propose a CSG with a nameplate rating of up to ten MW AC on or after July 1, 2023.

(b) "CSG owner" means the owner of the solar generation facilities installed at a CSG that contracts to sell the unsubscribed electricity generated by the CSG to a utility. A CSG subscriber organization operating a CSG not owned by it will be deemed to be a CSG owner for purposes of these rules. A CSG owner may be the utility or any other for-profit or nonprofit entity or organization, including a CSG subscriber organization.

(c) "CSG subscriber" means a retail customer of a utility who owns a subscription to a CSG and who has identified one or more premises served by the utility to which the CSG subscription shall be attributed.

(d) "CSG subscriber organization" means any for-profit or nonprofit entity permitted by Colorado law and whose sole purpose shall be:

(I) to beneficially own and operate the CSG; or

(II) to operate the CSG that is built, owned, and operated by a third party under contract with such CSG subscriber organization.

(e) "CSG subscription" means a proportionate interest in the solar electric generation facilities installed at a CSG, including without limitation, the electricity and RECs associated with or attributable to such facilities.

(f) "Eligible low-income CSG subscriber" means:

(I) a residential customer of a utility who has a household income at or below 185 percent of the current federal poverty level, as published each year in the federal register by the U.S. Department of Health and Human Services; or

(II) a residential customer of a utility who otherwise meets the eligibility criteria set forth in the rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

(g) "Eligible low-income service provider" means:

(I) a nonprofit or public housing authority operator where at least 60 percent of the residents meet the eligibility criteria in paragraph 3877(f) and the operator provides verifiable information that these low-income residents are the beneficiaries of the CSG subscription(s); or

(II) a non-profit corporation that is able to demonstrate that it provides essential services including, but not limited to, food, clothing, job training, housing, or medical services primarily to low-income recipients who meet the eligibility criteria set forth in the rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

3878. CSG Subscriptions, Subscribers, and Subscriber Organizations.

(a) No CSG subscriber may own more than a 40 percent interest in the electricity and RECs associated with or attributable to the CSG.

(b) Each CSG subscription shall be sized to represent at least one kW AC of the CSG's nameplate rating and supply no more than 120 percent of the CSG subscriber's average annual electricity consumption at the premise to which the subscription is attributed, with a deduction for the amount of any existing retail renewable distributed generation at such premise. The minimum one kW AC sizing requirement herein shall not apply to subscriptions owned by an eligible low-income CSG subscriber.

(c) The premise to which a subscription is attributed by a CSG subscriber shall be served by the utility. The CSG subscriber may change from time to time the premise to which the CSG

subscription shall be attributed, so long as the premise is within the same service territory served by the utility.

(d) No CSG subscriber organization may own more than a 40 percent interest in the electricity and RECs associated with or attributable to the CSG, after the CSG has operated commercially for 18 months.

3879. Share Transfers and Portability.

(a) A CSG subscription may be transferred or assigned to the associated CSG subscriber organization or to any person or entity who qualifies to be a subscriber in the CSG.

(b) A CSG subscriber who desires to transfer or assign all or part of a subscription to the CSG subscriber organization, in its own name or to become unsubscribed, in compliance with the terms and conditions of the subscription, shall notify the CSG subscriber organization and the transfer of the subscription to the CSG subscriber organization shall be effective upon such notification, unless the CSG subscriber specifies a later effective date.

(c) A CSG subscriber who desires to transfer or assign all or part of a subscription to an eligible utility customer desiring to purchase a subscription may do so only in compliance with the terms and conditions of the subscription and will be effective in accordance therewith.

(d) If the CSG is fully subscribed, the CSG subscriber organization shall maintain a waiting list of eligible utility customers who desire to purchase subscriptions. The CSG subscriber organization shall offer the CSG subscription of the CSG subscriber desiring to transfer or assign their interest, or a portion thereof, on a first-come, first-serve basis to customers on the waiting list, except that the CSG subscriber organization shall give a preference to eligible low-income CSG subscribers or other categories of customers identified below in subparagraph 3882(a)(I), to the extent the CSG owner has made any subscriber mix commitments in its contract with the utility.

(e) The CSG subscriber organization and the utility shall jointly verify that each CSG subscriber is eligible to be a subscriber in the CSG pursuant to rule 3878. The CSG subscriber roll shall include, at a minimum, the percentage share owned by the CSG subscriber, the effective date of the ownership of that percentage share, and the meters at the premises to which the CSG subscription is attributed for the purpose of applying billing credits. Changes in the CSG subscriber roll shall be communicated by the CSG subscriber organization to the utility, in a standard electronic form, as soon as practicable, but on no less than a monthly basis.

(f) Prices paid for subscriptions in a CSG shall not be subject to regulation by the Commission.

3880. Production Data.

(a) The CSG owner shall pay for a production meter to be used to measure the amount of electricity and RECs generated by each CSG whether installed by the utility or the CSG owner. A net meter can serve as the production meter if the utility determines that there is no material onsite load at the CSG facility.

(b) The owner of a CSG with a nameplate rating of one MW AC or greater shall register the CSG and report the CSG's production data to the WREGIS in accordance with paragraph 3659(j).

(c) CSGs are required to provide real time reporting of production as specified by the utility. For CSGs greater than 250 kW AC, the CSG owner shall provide real time electronic access to production and system operation data. In the event that a CSG greater than 250 kW AC also collects meteorological data, the CSG owner shall provide, at the utility's request, real time electronic access to the utility to such meteorological data. A utility may require different real time reporting for CSGs 250 kW AC and smaller.

(d) Production from the CSG shall be reported by the CSG subscriber organization to its CSG subscribers at least monthly. To facilitate the tracking of production data by CSG subscribers, CSG owners or CSG subscriber organizations are encouraged to provide website access to subscribers showing real time output from the CSG, if practicable, as well as historical production data.

3881. Billing Credits and Unsubscribed Electricity and RECs.

(a) Compensation to the CSG subscriber for its share of the electricity and RECs generated by a CSG shall take the form of a billing credit paid to the CSG subscriber by the utility or, if authorized by the CSG subscriber, contributed to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory.

(I) The billing credit shall be calculated by multiplying the CSG subscriber's share as a percentage of the electricity generated by the CSG times the utility's total aggregate retail rate of the subscriber's rate class, including all billed components except for the customer charge, demand side management (DSM), and RESA rate components, as charged to the CSG subscriber's class.

(II) For the purpose of calculating the billing credit for a commercial or industrial customer on a demand tariff:

(A) the total aggregate retail rate shall be determined by dividing the total electric charges to be paid by the customer to the utility for the most recent calendar year (including demand charges) by the customers' total electricity consumption for that year for subscriptions to CSGs planned for purchases by the utility before January 1, 2016. In the event that the designated premises to which the CSG subscription is attributed has less than one year of billing history, an estimate of the total annual charges shall be made by the utility; or

(B) the total aggregate retail rate shall be determined using the average charges and usage for the subscriber's rate class for subscriptions to CSGs planned for purchases by the utility after January 1, 2016.

(III) Billing credits shall be reflected in the CSG subscriber's bill from the utility no later than the 60th day after the utility receives the information required to calculate the billing credit from the CSG subscriber organization.

(IV) The utility may assess a Commission-approved charge to cover the utility's costs of delivering to the CSG subscriber's premises the electricity generated by the CSG, integrating the generation from the CSG into the utility's system, and administering the

contracts with CSG owners and billing credits. This charge shall be a fixed amount and shall not reflect costs that are already recovered by the utility from CSG subscribers through other charges. The utility may seek a revision of this charge no more frequently than once per year.

(b) If, in a monthly billing period, the CSG subscriber's billing credit associated with a CSG subscription exceeds the customer's bill from the utility, the excess billing credit will be rolled over as a credit from month to month indefinitely until the customer terminates service with the utility, at which time no payment shall be required from the utility for any remaining billing credits associated with the customer's CSG subscription; however, nothing in this rule precludes the CSG subscriber or the utility from contributing the remaining billing credits to another utility account paid by the CSG subscriber or to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, where the utility has implemented a program for such contributions pursuant to paragraph 3881(d).

(c) In lieu of rolling over billing credits from month to month pursuant to paragraph 3881(b), the CSG subscriber may contribute the excess 12 months' net billing credit at the end of the April billing cycle to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, where the utility has implemented a program for such contributions pursuant to paragraph 3881(d).

(d) A description of any proposed program to allow contributions of billing credits or excess billing credits to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, pursuant to paragraphs 3881(a) through (c), shall be included in the utility's acquisition plan for new CSGs filed with the Commission. The description shall include the utility's proposed process for qualification and approval of third party administrators; the criteria a third party must meet to become qualified and approved; the method by which a utility will allocate billing credits, unsubscribed electricity to multiple third party administrators; the way in which the program will be marketed to low-income customers as a renewable program such that customers are made aware that a portion of the bill assistance they receive was derived from renewable energy resources; and a reporting methodology to be included in each annual RES compliance report filed with the Commission. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the contributing CSG subscriber.

(e) In its annual RES compliance report filed with the Commission, the utility shall, at a minimum, provide the total number of CSG billing credits that were contributed to qualified third party administrator, pursuant to paragraphs 3881(a) through (c).

(f) For RECs purchased by the utility, the utility and the CSG owner shall agree on whether subscribers will be compensated by the billing credit on each CSG subscriber's bill in accordance with paragraph 3881(a) or by a payment to the CSG owner.

(g) The utility shall purchase from the CSG owner the unsubscribed electricity and RECs at a rate equal to the utility's average hourly incremental cost of electricity supply over the immediately preceding calendar year. A utility may donate the purchased unsubscribed electricity to eligible

low-income CSG subscribers as kWh credits. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the recipient's customer class.

3882. Purchases from CSGs.

(a) The Commission shall establish the minimum and maximum purchases from new CSGs for each year in accordance with § 40-2-127(5)(a)(IV), C.R.S. The Commission shall establish such minimum and maximum levels of purchases through the utility's acquisition plan for new CSGs filed by the utility pursuant to rule 3656 or rule 3603.

(I) The utility's acquisition plan shall include a proposed method for requiring CSG subscriber organizations to verify that the organization will sell and maintain CSG subscriptions to achieve the result that at least 50 percent of the established minimum aggregate new CSG purchases correspond to residential, small commercial, agricultural, and eligible low-income CSG subscribers, and eligible low-income service providers.

(II) The utility's acquisition plan shall explain how it will use a combination of one or more competitive solicitations and one or more standard offers to cause purchases from new CSGs over the period covered by the plan.

(III) The utility shall propose as part of its acquisition plan a standard offer pricing program in order to acquire new CSG generation.

(A) The standard offer may be at a differing price that would enable the CSG subscribers to keep the RECs generated by the CSG.

(B) The standard offer may include a price adder for purchases from new CSGs with subscribers from the categories identified in subparagraph 3882(a)(I), or for the purpose of encouraging CSGs with certain beneficial characteristics or innovations.

(IV) For acquisitions made through competitive solicitations, the utility shall select projects in combination to ensure participation of subscribers from the categories identified in subparagraph 3882(a)(I).

(b) All of the electricity from a CSG shall be acquired and distributed by the utility. A utility shall not restrict or unreasonably delay any CSG that is approved pursuant to a Commission approved procurement plan from interconnecting to the utility's distribution or transmission system in accordance with the applicable interconnection standards and procedures.

(c) The utility shall enter into contracts with CSG owners in accordance with the competitive solicitations and standard offers identified in the utility's acquisition plan. The CSG owner shall state in its proposed contract with the utility whether the RECs will be retained by CSG subscribers or ownership of the RECs will be transferred to the utility. A CSG whose owner enters into a contract with the utility shall be deemed to be part of the utility's Commission-approved acquisition plan if the cumulative total of the nameplate capacity of the acquired new CSGs does not exceed the maximum purchases established by the Commission for that year.

(d) The utility shall conduct due diligence on proposed contracts with new CSG owners to reasonably assure that the CSG owner and CSG subscriber organization have sufficient resources to successfully construct and commence operations of the CSG.

(I) Except for CSGs owned by governmental, quasi-governmental, or non-profit entities, the utility shall be deemed to have conducted sufficient due diligence by requiring from the CSG owner documentation of escrowed funds of not less than $100 per kW AC of the CSG's nameplate rating. The escrow shall be maintained by its terms until such time as the CSG owner makes an interconnection agreement deposit payment.

(II) If a CSG owner properly documents escrowed funds consistent with this paragraph, the utility may not refuse to enter into a contract with the CSG owner for failure to demonstrate sufficient resources to reasonably assure successful construction and commencement of CSG operations.

(e) In each acquisition plan for purchases from new CSGs, the utility shall reserve, on a program-wide basis and to the extent there is demand for such ownership, at least ten percent of its electricity purchases from new CSGs for eligible low-income CSG subscribers.

(I) CSG subscriber organizations and utilities may rely on certification by the Colorado Department of Human Services for acceptance in the Colorado Low-Income Energy Assistance Program (LEAP) as evidence of eligibility as an eligible low-income CSG subscriber in a CSG or other reliable verification methods from low-income service providers.

(II) CSGs for eligible low-income CSG subscribers may be either dedicated low-income CSGs or low-income set asides within other CSGs.

(III) The utility's CSG acquisition plan shall be designated to ensure reasonable access for low-income residential customers as distinct from low-income service providers.

3883. Financing and Operating CSGs.

(a) Contracts signed by utilities with CSG owners shall be a matter of public record and shall be filed with the Commission by the utility.

(b) CSG subscriber organizations shall issue public annual reports as of the end of the calendar or other fiscal year containing, at a minimum, the energy produced by the CSG; audited financial statements including a balance sheet, income statement, and sources and uses of funds statement; and the management and ownership of the CSG and the CSG subscriber organization, if different. Individual subscribers shall receive, in addition to the annual report of the CSG subscriber organization, a report of the energy, multiplier (e.g., aggregate retail rate), eligible low-income customer bill savings, and net metering credits attributed to the CSG subscriber's account.

(c) CSG subscriber funds, collected by the CSG in advance of commercial operation of the CSG, shall be held in escrow. The escrow shall be maintained by its terms until such time as the CSG commences commercial operation as certified by utility acceptance of energy from the CSG.

3884. – 3899. [Reserved].

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-3

PART 3
RULES REGULATING ELECTRIC UTILITIES

RENEWABLE ENERGY STANDARD

* * * *

[indicates omission of unaffected rules]

COMMUNITY SOLAR GARDENS

3875. Applicability.

The following rules shall apply to all utilities regarding community solar gardens (CSGs) developed pursuant to § 40-2-127, C.R.S. These rules shall not apply to cooperative electric associations or to municipally owned utilities.

3876. Overview and Purpose.

The purpose of these rules is to implement the development and deployment of CSGs; to provide opportunities to all utility customers to participate in solar generation in addition to on-site solar systems; to allow renters, low-income utility customers, and agricultural producers to own interests in solar generation facilities; to allow interests in solar generation facilities to be portable and transferrable; and to leverage solar generating capacity through economies of scale.

3877. Definitions.

The following definitions apply to rules 3877 through 3883. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Community solar garden" or "CSG" means a solar electric generation facility with a nameplate rating of five MW AC or less that is located in or near a community served by a utility where the beneficial use of the electricity generated by the facility belongs to the subscribers of the CSG. A CSG shall have at least ten CSG subscribers. A CSG shall be deemed to be located on the site of each subscribing customer's facilities for the purpose of crediting the CSG subscribers' bills for the electricity purchased from the CSG by the utility. The electricity and RECs generated by a CSG shall be sold only to the utility serving the geographic area where the CSG is located. More than one CSG, or a combination of CSGs, may be interconnected at the same location as long as they do not cumulatively exceed five MW AC (or ten MW AC, as applicable), without regard to whether the CSGs are new or existing facilities. The utility or a developer may propose a CSG with a nameplate rating of up to ten MW AC on or after July 1, 2023.

(b) "CSG owner" means the owner of the solar generation facilities installed at a CSG that contracts to sell the unsubscribed electricity generated by the CSG to a utility. A CSG subscriber organization operating a CSG not owned by it will be deemed to be a CSG owner for purposes of these rules. A CSG owner may be the utility or any other for-profit or nonprofit entity or organization, including a CSG subscriber organization.

(c) "CSG subscriber" means a retail customer of a utility who owns a subscription to a CSG and who has identified one or more premises served by the utility to which the CSG subscription shall be attributed.

(d) "CSG subscriber organization" means any for-profit or nonprofit entity permitted by Colorado law and whose sole purpose shall be:

(I) to beneficially own and operate the CSG; or

(II) to operate the CSG that is built, owned, and operated by a third party under contract with such CSG subscriber organization.

(e) "CSG subscription" means a proportionate interest in the solar electric generation facilities installed at a CSG, including without limitation, the electricity and RECs associated with or attributable to such facilities.

(f) "Eligible low-income CSG subscriber" means:

(I) a residential customer of a utility who has a household income at or below 185 percent of the current federal poverty level, as published each year in the federal register by the U.S. Department of Health and Human Services; or

(II) a residential customer of a utility who otherwise meets the eligibility criteria set forth in the rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

(g) "Eligible low-income service provider" means:

(I) a nonprofit or public housing authority operator where at least 60 percent of the residents meet the eligibility criteria in paragraph 3877(f) and the operator provides verifiable

information that these low-income residents are the beneficiaries of the CSG subscription(s); or

(II) a non-profit corporation that is able to demonstrate that it provides essential services including, but not limited to, food, clothing, job training, housing, or medical services primarily to low-income recipients who meet the eligibility criteria set forth in the rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

3878. CSG Subscriptions, Subscribers, and Subscriber Organizations.

(a) No CSG subscriber may own more than a 40 percent interest in the electricity and RECs associated with or attributable to the CSG.

(b) Each CSG subscription shall be sized to represent at least one kW AC of the CSG's nameplate rating and supply no more than 120 percent of the CSG subscriber's average annual electricity consumption at the premise to which the subscription is attributed, with a deduction for the amount of any existing retail renewable distributed generation at such premise. The minimum one kW AC sizing requirement herein shall not apply to subscriptions owned by an eligible low-income CSG subscriber.

(c) The premise to which a subscription is attributed by a CSG subscriber shall be served by the utility. The CSG subscriber may change from time to time the premise to which the CSG subscription shall be attributed, so long as the premise is within the same service territory served by the utility.

(d) No CSG subscriber organization may own more than a 40 percent interest in the electricity and RECs associated with or attributable to the CSG, after the CSG has operated commercially for 18 months.

3879. Share Transfers and Portability.

(a) A CSG subscription may be transferred or assigned to the associated CSG subscriber organization or to any person or entity who qualifies to be a subscriber in the CSG.

(b) A CSG subscriber who desires to transfer or assign all or part of a subscription to the CSG subscriber organization, in its own name or to become unsubscribed, in compliance with the terms and conditions of the subscription, shall notify the CSG subscriber organization and the transfer of the subscription to the CSG subscriber organization shall be effective upon such notification, unless the CSG subscriber specifies a later effective date.

(c) A CSG subscriber who desires to transfer or assign all or part of a subscription to an eligible utility customer desiring to purchase a subscription may do so only in compliance with the terms and conditions of the subscription and will be effective in accordance therewith.

(d) If the CSG is fully subscribed, the CSG subscriber organization shall maintain a waiting list of eligible utility customers who desire to purchase subscriptions. The CSG subscriber organization shall offer the CSG subscription of the CSG subscriber desiring to transfer or assign their interest, or a portion thereof, on a first-come, first-serve basis to customers on the waiting list, except that the CSG subscriber organization shall give a preference to eligible low-income CSG subscribers

or other categories of customers identified below in subparagraph 3882(a)(I), to the extent the CSG owner has made any subscriber mix commitments in its contract with the utility.

(e) The CSG subscriber organization and the utility shall jointly verify that each CSG subscriber is eligible to be a subscriber in the CSG pursuant to rule 3878. The CSG subscriber roll shall include, at a minimum, the percentage share owned by the CSG subscriber, the effective date of the ownership of that percentage share, and the meters at the premises to which the CSG subscription is attributed for the purpose of applying billing credits. Changes in the CSG subscriber roll shall be communicated by the CSG subscriber organization to the utility, in a standard electronic form, as soon as practicable, but on no less than a monthly basis.

(f) Prices paid for subscriptions in a CSG shall not be subject to regulation by the Commission.

3880. Production Data.

(a) The CSG owner shall pay for a production meter to be used to measure the amount of electricity and RECs generated by each CSG whether installed by the utility or the CSG owner. A net meter can serve as the production meter if the utility determines that there is no material onsite load at the CSG facility.

(b) The owner of a CSG with a nameplate rating of one MW AC or greater shall register the CSG and report the CSG's production data to the WREGIS in accordance with paragraph 3659(j).

(c) CSGs are required to provide real time reporting of production as specified by the utility. For CSGs greater than 250 kW AC, the CSG owner shall provide real time electronic access to production and system operation data. In the event that a CSG greater than 250 kW AC also collects meteorological data, the CSG owner shall provide, at the utility's request, real time electronic access to the utility to such meteorological data. A utility may require different real time reporting for CSGs 250 kW AC and smaller.

(d) Production from the CSG shall be reported by the CSG subscriber organization to its CSG subscribers at least monthly. To facilitate the tracking of production data by CSG subscribers, CSG owners or CSG subscriber organizations are encouraged to provide website access to subscribers showing real time output from the CSG, if practicable, as well as historical production data.

3881. Billing Credits and Unsubscribed Electricity and RECs.

(a) Compensation to the CSG subscriber for its share of the electricity and RECs generated by a CSG shall take the form of a billing credit paid to the CSG subscriber by the utility or, if authorized by the CSG subscriber, contributed to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory.

(I) The billing credit shall be calculated by multiplying the CSG subscriber's share as a percentage of the electricity generated by the CSG times the utility's total aggregate retail rate of the subscriber's rate class, including all billed components except for the customer charge, demand side management (DSM), and RESA rate components, as charged to the CSG subscriber's class.

(II) For the purpose of calculating the billing credit for a commercial or industrial customer on a demand tariff:

(A) the total aggregate retail rate shall be determined by dividing the total electric charges to be paid by the customer to the utility for the most recent calendar year (including demand charges) by the customers' total electricity consumption for that year for subscriptions to CSGs planned for purchases by the utility before January 1, 2016. In the event that the designated premises to which the CSG subscription is attributed has less than one year of billing history, an estimate of the total annual charges shall be made by the utility; or

(B) the total aggregate retail rate shall be determined using the average charges and usage for the subscriber's rate class for subscriptions to CSGs planned for purchases by the utility after January 1, 2016.

(III) Billing credits shall be reflected in the CSG subscriber's bill from the utility no later than the 60th day after the utility receives the information required to calculate the billing credit from the CSG subscriber organization.

(IV) The utility may assess a Commission-approved charge to cover the utility's costs of delivering to the CSG subscriber's premises the electricity generated by the CSG, integrating the generation from the CSG into the utility's system, and administering the contracts with CSG owners and billing credits. This charge shall be a fixed amount and shall not reflect costs that are already recovered by the utility from CSG subscribers through other charges. The utility may seek a revision of this charge no more frequently than once per year.

(b) If, in a monthly billing period, the CSG subscriber's billing credit associated with a CSG subscription exceeds the customer's bill from the utility, the excess billing credit will be rolled over as a credit from month to month indefinitely until the customer terminates service with the utility, at which time no payment shall be required from the utility for any remaining billing credits associated with the customer's CSG subscription; however, nothing in this rule precludes the CSG subscriber or the utility from contributing the remaining billing credits to another utility account paid by the CSG subscriber or to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, where the utility has implemented a program for such contributions pursuant to paragraph 3881(d).

(c) In lieu of rolling over billing credits from month to month pursuant to paragraph 3881(b), the CSG subscriber may contribute the excess 12 months' net billing credit at the end of the April billing cycle to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, where the utility has implemented a program for such contributions pursuant to paragraph 3881(d).

(d) A description of any proposed program to allow contributions of billing credits or excess billing credits to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, pursuant to paragraphs 3881(a) through (c), shall be included in the utility's acquisition plan for

new CSGs filed with the Commission. The description shall include the utility's proposed process for qualification and approval of third party administrators; the criteria a third party must meet to become qualified and approved; the method by which a utility will allocate billing credits, unsubscribed electricity to multiple third party administrators; the way in which the program will be marketed to low-income customers as a renewable program such that customers are made aware that a portion of the bill assistance they receive was derived from renewable energy resources; and a reporting methodology to be included in each annual RES compliance report filed with the Commission. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the contributing CSG subscriber.

(e) In its annual RES compliance report filed with the Commission, the utility shall, at a minimum, provide the total number of CSG billing credits that were contributed to qualified third party administrator, pursuant to paragraphs 3881(a) through (c).

(f) For RECs purchased by the utility, the utility and the CSG owner shall agree on whether subscribers will be compensated by the billing credit on each CSG subscriber's bill in accordance with paragraph 3881(a) or by a payment to the CSG owner.

(g) The utility shall purchase from the CSG owner the unsubscribed electricity and RECs at a rate equal to the utility's average hourly incremental cost of electricity supply over the immediately preceding calendar year. A utility may donate the purchased unsubscribed electricity to eligible low-income CSG subscribers as kWh credits. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the recipient's customer class.

3882. Purchases from CSGs.

(a) The Commission shall establish the minimum and maximum purchases from new CSGs for each year in accordance with § 40-2-127(5)(a)(IV), C.R.S. The Commission shall establish such minimum and maximum levels of purchases through the utility's acquisition plan for new CSGs filed by the utility pursuant to rule 3656 or rule 3603.

(I) The utility's acquisition plan shall include a proposed method for requiring CSG subscriber organizations to verify that the organization will sell and maintain CSG subscriptions to achieve the result that at least 50 percent of the established minimum aggregate new CSG purchases correspond to residential, small commercial, agricultural, and eligible low-income CSG subscribers, and eligible low-income service providers.

(II) The utility's acquisition plan shall explain how it will use a combination of one or more competitive solicitations and one or more standard offers to cause purchases from new CSGs over the period covered by the plan.

(III) The utility shall propose as part of its acquisition plan a standard offer pricing program in order to acquire new CSG generation.

(A) The standard offer may be at a differing price that would enable the CSG subscribers to keep the RECs generated by the CSG.

(B) The standard offer may include a price adder for purchases from new CSGs with subscribers from the categories identified in subparagraph 3882(a)(I), or for the

purpose of encouraging CSGs with certain beneficial characteristics or innovations.

(IV) For acquisitions made through competitive solicitations, the utility shall select projects in combination to ensure participation of subscribers from the categories identified in subparagraph 3882(a)(I).

(b) All of the electricity from a CSG shall be acquired and distributed by the utility. A utility shall not restrict or unreasonably delay any CSG that is approved pursuant to a Commission approved procurement plan from interconnecting to the utility's distribution or transmission system in accordance with the applicable interconnection standards and procedures.

(c) The utility shall enter into contracts with CSG owners in accordance with the competitive solicitations and standard offers identified in the utility's acquisition plan. The CSG owner shall state in its proposed contract with the utility whether the RECs will be retained by CSG subscribers or ownership of the RECs will be transferred to the utility. A CSG whose owner enters into a contract with the utility shall be deemed to be part of the utility's Commission-approved acquisition plan if the cumulative total of the nameplate capacity of the acquired new CSGs does not exceed the maximum purchases established by the Commission for that year.

(d) The utility shall conduct due diligence on proposed contracts with new CSG owners to reasonably assure that the CSG owner and CSG subscriber organization have sufficient resources to successfully construct and commence operations of the CSG.

(I) Except for CSGs owned by governmental, quasi-governmental, or non-profit entities, the utility shall be deemed to have conducted sufficient due diligence by requiring from the CSG owner documentation of escrowed funds of not less than $100 per kW AC of the CSG's nameplate rating. The escrow shall be maintained by its terms until such time as the CSG owner makes an interconnection agreement deposit payment.

(II) If a CSG owner properly documents escrowed funds consistent with this paragraph, the utility may not refuse to enter into a contract with the CSG owner for failure to demonstrate sufficient resources to reasonably assure successful construction and commencement of CSG operations.

(e) In each acquisition plan for purchases from new CSGs, the utility shall reserve, on a program-wide basis and to the extent there is demand for such ownership, at least ten percent of its electricity purchases from new CSGs for eligible low-income CSG subscribers.

(I) CSG subscriber organizations and utilities may rely on certification by the Colorado Department of Human Services for acceptance in the Colorado Low-Income Energy Assistance Program (LEAP) as evidence of eligibility as an eligible low-income CSG subscriber in a CSG or other reliable verification methods from low-income service providers.

(II) CSGs for eligible low-income CSG subscribers may be either dedicated low-income CSGs or low-income set asides within other CSGs.

(III) The utility's CSG acquisition plan shall be designated to ensure reasonable access for low-income residential customers as distinct from low-income service providers.

3883. Financing and Operating CSGs.

(a) Contracts signed by utilities with CSG owners shall be a matter of public record and shall be filed with the Commission by the utility.

(b) CSG subscriber organizations shall issue public annual reports as of the end of the calendar or other fiscal year containing, at a minimum, the energy produced by the CSG; audited financial statements including a balance sheet, income statement, and sources and uses of funds statement; and the management and ownership of the CSG and the CSG subscriber organization, if different. Individual subscribers shall receive, in addition to the annual report of the CSG subscriber organization, a report of the energy, multiplier (e.g., aggregate retail rate), eligible low-income customer bill savings, and net metering credits attributed to the CSG subscriber's account.

(c) CSG subscriber funds, collected by the CSG in advance of commercial operation of the CSG, shall be held in escrow. The escrow shall be maintained by its terms until such time as the CSG commences commercial operation as certified by utility acceptance of energy from the CSG.

3884. – 3899. [Reserved].

Decision No. C20-0628

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0608E

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, RELATING TO COMMUNITY SOLAR GARDENS.

DECISION GRANTING, IN PART, AND DENYING, IN PART, APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION

Mailed Date: August 28, 2020
Adopted Date: August 26, 2020

TABLE OF CONTENTS

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission addresses the Applications for Rehearing, Reargument, or Reconsideration of Decision No. C20-0482 (RRR) filed pursuant to § 40-6-114, C.R.S., on July 29, 2020, by rulemaking participants Public Service Company of Colorado (Public Service); Western Resource Advocates (WRA); and the Colorado Solar and Storage Association and the Solar Energy Industry Association (COSSA/SEIA).

2. The RRRs request the Commission reconsider or clarify certain aspects of Decision No. C20-0482, issued in this rulemaking proceeding on July 9, 2020. Through Decision No. C20-0482, the Commission addressed exceptions filed by several rulemaking participants to Recommended Decision No. R20-0209, issued by Administrative Law Judge (ALJ) Robert Garvey in this rulemaking on April 6, 2020. By Decision No. C20-0482, the Commission granted, in part, and denied, in part, the exceptions to the ALJ's recommended decision and adopted revised rules governing Community Solar Gardens (CSG Rules) to implement § 40-2-127, C.R.S. The adopted revised CSG Rules are located within the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3, at 4 CCR 723-3-3875 *et seq*.

3. By this Decision, the Commission grants, in part, and denies, in part, the RRRs filed by Public Service and WRA, and denies the RRR filed by COSSA/SEIA. The final adopted

CSG Rules are attached to this Decision in legislative format (*i.e.*, strikeout/underline) as Attachment A, and in final format as Attachment B.

B. Applications for RRR

1. Public Service

a. Rule 3882(c)

4. In its RRR, Public Service requests the Commission reconsider the language in Rule 3882(c). This rule states the utility shall enter into contracts with CSG owners in accordance with the competitive solicitations and standard offers identified in the utility's CSG acquisition plan. The rule requires the CSG owner to state in its proposed contract with the utility whether the renewable energy credits (RECs) will be retained by the CSG subscribers or transferred to the utility.

5. Public Service requests the Commission incorporate into this rule additional language similar to the language in Rule 3882(a)(III)(A) that states: "The standard offer may be at a differing price that would enable the CSG subscribers to keep the RECs generated by the CSG."[1] Public Service states that incorporating this language into Rule 3882(c) is needed to ensure equitable treatment for both standard offer and competitive solicitation CSG subscribers.

b. Findings and Conclusions

6. The Commission grants, in part, and denies, in part, Public Service's RRR. We agree that incorporating the additional language in Rule 3882(c) is an appropriate clarification of the Commission's intent that, where RECs are retained by a CSG subscriber, the utility may find it appropriate to adjust the compensation to CSG subscribers to accommodate such an

[1] Public Service RRR at p. 2.

arrangement. This clarification ensures if this option is offered to subscribers through a competitive solicitation project, the same consideration applies.

7. We adopt Public Service's additional rule language with the modification that we use the term "compensation" instead of "price." We find the term "compensation" is appropriate here as it refers to the CSG subscriber benefits via the bill credit. We therefore adopt new rule language in Rule 3882(c) that states: "Compensation may differ that would enable the CSG subscribers to keep the RECs generated by the CSG." We also make a corresponding revision in Rule 3882(a)(III)(A) to similarly replace the word "price" with the more specific term "compensation." We therefore adopt revised language in Rule 3882(a)(III)(A) that states: "The standard offer may result in differing compensation that would enable the CSG subscribers to keep the RECs generated by the CSG." This corresponding revision ensures the CSG Rules generally use the term "compensation" when referring to CSG subscriber benefits and "pricing" when referring to competitive solicitations and standard offers.

2. WRA

a. Rule 3882(a)(III)(A)

8. In its RRR, WRA requests the Commission reconsider the language in Rule 3882(a)(III)(A).

9. WRA states, as currently drafted, this rule could be interpreted to allow utilities to offer CSG subscribers the opportunity to retain RECs but not to require that utilities provide this new offering. WRA states this interpretation would be inconsistent with the Commission's explanation at ¶ 88 of Decision No. C20-0482 stating that adopted Rule 3882 establishes "the requirement that the utility implement a standard offer program under which subscribers can elect to retain the RECs associated with the CSG generation." WRA suggests, to better align the

rule language and the Commission's explanatory statement, this rule should be modified to specify: "At least one standard offer must enable CSG subscribers to keep the RECs generated by the CSG."[2]

10. WRA also proposes revising the language in Rule 3882(a)(III)(A) that states: "The standard offer may be at a differing price that would enable the CSG subscribers to keep the RECs generated by the CSG." WRA proposes revising this language to read: "This standard offer may be at a differing price to reflect the value of the REC being retained by the subscriber."[3]

b. Rule 3881(a)

11. WRA requests the Commission reconsider the language in Rule 3881(a). As adopted in Decision No. C20-0482, this rule states, in relevant part: "Compensation to the CSG subscriber for its share of the electricity and RECs generated by a CSG shall take the form of a billing credit paid to the CSG subscriber by the utility …" WRA states, as currently drafted, this rule creates a presumption that all RECs generated by a CSG will be transferred to the utility. WRA states this would be inconsistent with the new requirement in Rule 3882(a)(III) that utilities prepare a standard offer that allows CSG subscribers to retain RECs.

c. Findings and Conclusions

12. The Commission grants WRA's request to modify Rule 3882(a)(III)(A) to add a new sentence specifying: "At least one standard offer must enable CSG subscribers to keep the RECs generated by the CSG." We agree this additional language is appropriate to clarify that utilities are **required** to propose a new standard offer in their next CSG acquisition plans that

[2] WRA RRR at p. 3. (Emphasis Omitted)
[3] *Id.*

includes the option for CSG subscribers to retain RECs. We expect utilities to propose a reasonable, viable option consistent with this rule that will allow this new standard offer program to be available to a substantial number of the utility's customers.

13. The Commission denies WRA's remaining RRR requests. First, we do not adopt WRA's proposed revisions to the existing language in Rule 3882(a)(III)(A). We find WRA's proposed revisions to this rule go beyond merely clarification and would make this rule more prescriptive than the originally adopted language.

14. Second, we do not adopt WRA's proposed revision to Rule 3881(a) striking the words "and RECs" in this rule. We recognize the CSG Rules now allow that CSG subscribers may retain RECs, but we disagree that this rule must be modified to reflect that change. As addressed in ¶ 112 of Decision No. C20-0482, we construe the term "output" as used throughout § 40-2-127, C.R.S., to refer to both the electricity and RECs generated by the CSG. Thus, to be consistent with the statutory language in § 40-2-127(5)(b)(II), C.R.S., stating the utility's purchase of the output of the CSG shall take the form of a net metering credit, this rule appropriately refers to both electricity and RECs. This portion of the statute remains unchanged, so we find it necessary to include both electricity and RECs in our implementing rules. This is also consistent with Rule 3882(a)(III)(A), which recognizes that a standard offer allowing for CSG subscribers to retain RECs may result in differing compensation that would enable the CSG subscribers to keep the RECs. We find WRA's concern that this language creates an incorrect presumption that all RECs must transfer to the utility is addressed and corrected in the rules by the new language adopted by this Decision in Rule 3882(a)(III) that states the utility must propose a standard offer that enables CSG subscribers to retain RECs and the language in Rule 3882(c) that states the CSG owner shall state in its proposed contract with the utility

whether the RECs will be retained by subscribers or transferred to the utility. These more specific rules rebut any incorrect presumption that all RECs generated by a CSG will be transferred to the utility in all cases.

3. COSSA/SEIA

15. In their RRR, COSSA/SEIA request the Commission reconsider and clarify two aspects of Decision No. C20-0482: (1) the provisions in Rule 3882 adopting the requirement that utilities implement a standard off program under which CSG subscribers can elect to retain RECs; and (2) the provisions in Rule 3881(a)(I) adopting a change to the calculation of the CSG billing credit to deduct the demand side management (DSM) rate component. Similar to WRA's RRR, COSSA/SEIA also request the Commission strike the words "and RECs" in Rule 3877(a).

a. Rule 3882(a)

16. COSSA/SEIA contend that House Bill 19-1003, which amended § 40-2-127, C.R.S., established a "clear directive" that CSG programs should provide options for subscribers to retain RECs. COSSA/SEIA challenge that the Commission's Rule 3882 will not result in a standard offer program that meets this directive. They request the Commission modify this rule to clarify that utilities are required to propose a new standard offer program that includes the option for CSG subscribers to retain RECs. COSSA/SEIA also request the Commission clarify the meaning of the term "differing price" as used in Rule 3882(a)(III)(A) and clarify other program parameters such as the size and location of participating CSG projects.

17. Specifically, COSSA/SEIA request the Commission adopt modifications to Rule 3882(a) to address the following issues.

18. They request the Commission add language to differentiate the standard offer required in Rule 3882(a) and the utilities' current standard offer programs. COSSA/SEIA recommend using the term "standard offer REC access program" to differentiate this new program.

19. They request the Commission modify the rule language referring to a "differing price" that enables subscribers to retain RECs. COSSA/SEIA contend the term "price" is unclear. They argue, if "price" refers to the CSG billing credit, this would be inconsistent with the law. They further argue, if "price" refers to REC price, it makes little sense for the utility to offer a "differing" REC price. They reason, since there is no REC conveyance, no REC price should be paid. Finally, they argue, if "price" refers to the subscription, the Commission lacks jurisdiction to regulate that price. COSSA/SEIA recommend removing the term "price" and revising the rule to state subscribers will receive a net metering bill credit pursuant to Rule 3881 and any applicable incentive adders.

20. They request the Commission add to the rule the requirement that the "standard offer REC access program" is a mandatory and significant component of utility CSG acquisition plans. They request we clarify that utilities are required to implement a new program under which subscribers can retain RECs. They further request the rule makes this offering a mandatory component of utility CSG acquisition plans and require it be comparable in size to the competitive solicitation program.

21. They request the Commission add to the rule the requirement that the "standard offer REC access program" is open to all CSG projects within the size limits, subscriber mix requirements, geographical constraints, and other requirements set forth in statute and rule. They

believe the new requirement in Rule 3882(a)(I) to encourage participation by traditionally underserved customer groups would also apply.

22. They request the Commission add to the rule the requirement that the "standard offer REC access program" be available in 2021. COSSA/SEIA state this deadline would be consistent with the Commission's statement at ¶ 38 of Decision No. C20-0482 that new requirements shall be implemented upon finalization of the rules adopted in this proceeding.

23. Finally, they request the Commission reconsider whether to impose by rule project maturity requirements. They state such requirements would ensure that only viable projects are awarded and allocated capacity in this new program.

b. Findings and Conclusions

24. The Commission denies COSSA/SEIA's RRR on this issue.

25. To start, we clarify that House Bill 19-1003 gives the Commission a choice to make in this proceeding; it does not establish an unequivocal directive that CSG programs must provide options for subscribers to retain RECs. Rather, the plain language of the statute requires the Commission to determine **whether** the utility shall purchase all the electricity and RECs or **whether** a subscriber may choose to retain or sell to the utility the RECs. Exercising this discretion, the Commission has resolved in this rulemaking that it will require that utilities develop a standard offer that affords customers this new option. As addressed above in discussing WRA's RRR, we adopt in this Decision a clarifying change to Rule 3882(a)(III)(A) to more clearly specify that at least one of the standard offers proposed by the utilities in their next CSG acquisition plans shall enable subscribers to retain RECs. This clarification should address some of COSSA/SEIA and the stakeholders' concerns on this issue.

26. We also deny COSSA/SEIA's assertion that the Commission must modify the rule language in Rule 3882(a)(III)(A) that states: "The standard offer may be at a differing price that would enable the CSG subscribers to keep the RECs generated by the CSG." We retain the original language with the modification adopted above in addressing WRA's RRR. The modified rule reads: "The standard offer may result in differing compensation that would enable the CSG subscribers to keep the RECs generated by the CSG." We use the term "compensation" in this rule to refer to compensation to CSG subscribers. Pursuant to this rule, utilities will be required to propose, as part of their next CSG acquisition plans, a standard offer program that enables subscribers to retain RECs. This rule affords utilities the opportunity to propose a compensation level that enables subscribers to retain RECs; provided, however, the utilities' proposals must still adhere to the statutory requirements in § 40-2-127(5)(b)(II), C.R.S., for calculation of the CSG billing credit. The Commission, and stakeholders participating in those future proceedings, will have an opportunity to review at that time whether the utilities' proposals are reasonable and lawful.

27. As to the remaining arguments in COSSA/SEIA's RRR, we do not find it appropriate or necessary at this time to create by rule a new defined program with the specific parameters requested by COSSA/SEIA. Many of these requests are adequately addressed in concept in these rules. Other requests simply exceed at this point what we find appropriate to establish by rule. We conclude the Commission can achieve many of these same objectives through the new standard offer required in Rule 3882.

c. Rule 3881(a)(I)

28. In their RRR, COSSA/SEIA contend Rule 3881(a)(I) must be modified to eliminate the deduction of the demand side management cost adjustment (DSMCA) from the CSG billing credit.

29. COSSA/SEIA contend the Commission's decision to deduct the DSMCA is arbitrary and capricious because it conflicts with a prior decision where the Commission rejected as unlawful a similar proposal by Public Service. COSSA/SEIA claim the Commission "already dispatched" this issue in Proceeding No. 11A-418E. COSSA/SEIA state, in that proceeding, the ALJ "rejected Public Service's request on the basis that deducting the DSMCA from the bill credit would be inconsistent with the express language of the statute" and that the ALJ reasoned "DSM program costs do not generally relate to the costs of delivering electricity."[4] COSSA/SEIA contend that to "reverse" the prior decision would be arbitrary and capricious since the relevant statutory language has not changed.[5]

30. COSSA/SEIA further argue, in any event, the statute is specific and unambiguous and cannot be stretched to include the costs of energy efficiency and demand response programming. COSSA/SEIA contend the plain meaning of "the utility's costs of delivering to the subscriber's premises the electricity generated by the community solar garden"[6] in § 40-2-127(5)(b)(II), C.R.S., refers to the utility's cost of "transporting" or "moving" electricity from the CSG to the subscriber. In a footnote, COSSA/SEIA acknowledge the actual electrons charged by the CSG will co-mingle in transit with other electrons but argue "the costs of

[4] COSSA/SEIA RRR p. 5 (citing Proceeding No. 11A-418E, Decision No. R12-0261 at 48-52 (Mar. 8, 2012)).

[5] *Id.* at p. 6.

[6] *Id.* at p. 8. (Emphasis Omitted)

delivering a specific volume of electricity from one location to another is specific and unambiguous under utility rates authorized by the Commission."[7]

31. COSSA/SEIA maintain that DSM programs relate to improving air quality and not to delivering electricity. They reason, since DSM programs are authorized under Article 3.2, which pertains to "Air Quality Improvement Costs," DSM costs are authorized as a cost of improving air quality.

32. COSSA/SEIA also argue that the Commission, in approving Public Service's initial DSM programs, declared the purpose of DSM programs "'is to avoid or delay new supply-side resources and the costs associated with those resources.'"[8] COSSA/SEIA argue that avoiding and delaying utility resources refers to the demand on a utility's generation portfolio and not its distribution or transmission system. COSSA/SEIA add that the DSMCA is not rate-based with other utility delivery costs but rather billed separately.

33. COSSA/SEIA further argue, even if the statutory language were not clear, this deduction would be contrary to the legislative intent, which COSSA/SEIA describe as to create a thriving CSG market parallel to the market for on-site solar. COSSA/SEIA reason, because the DSMCA is not deducted from the bill credit for on-site solar, it should not be deducted from the bill credit for CSGs. COSSA/SEIA contend the Colorado Legislature (Legislature) must have been aware of DSM programs when it passed the original enabling legislation for CSGs and subsequent amendments, yet it did not at any of those opportunities specify that DSM costs should be deducted. COSSA/SEIA further argue the Legislature made a choice in 2010 when it

[7] *Id* at p. 10, fn. 41.

[8] *Id.* at p. 10 (quoting Proceeding No. 00A-008E, Decision No. C00-1057 at p. 24 (Sept. 26, 2000)).

passed a bill that authorized deduction of the Renewable Energy Standard Adjustment from the net-metering credit for on-site solar but made no comparable deduction for the DSMCA.

34. In addition, COSSA/SEIA dispute the Commission's finding in Decision No. C20-0482 that the record contains little support for the claim that this change in calculation of the CSG billing credit will have a negative effect on the Colorado market. COSSA/SEIA contend they provided substantial comments regarding the negative impacts of variability on CSG markets and subscribers. They note public comments provided additional support for the negative impacts this rule change would have on customers and the market in Colorado.

35. COSSA/SEIA request, at a minimum, the Commission clarify this deduction of the DSMCA will apply only on a prospective basis to new awards. They argue existing subscribers should not be penalized for acting in reliance on rules in place when they subscribed.

36. COSSA/SEIA also request, if the Commission retains the deduction, it should revisit the reasonableness of this deduction at a future date. They urge the Commission to revisit this deduction in the next two to three years or upon any major changes to the DSMCA arising from decisions in other proceedings.

37. Public comments filed in this rulemaking reflect the same concerns raised by COSSA/SEIA. These commenters state that allowing deduction of the DSMCA from the CSG billing credit will erode customer savings, create disruption for existing subscribers, and erode investor confidence in this program.

d. Findings and Conclusions

38. The Commission denies COSSA/SEIA's RRR on this issue.[9]

[9] Commissioner Megan M. Gilman dissents from this portion of the Decision and would vote instead to grant COSSA/SEIA's RRR on this issue.

39. As an initial matter, we dismiss COSSA/SEIA's contention that prior Proceeding No. 11A-418E is dispositive of this issue. The ALJ in that case made only limited findings on this issue. Specifically, the ALJ stated the "only reduction … contemplated by the community solar gardens statute entails the costs of delivering electricity which DSM programs do not generally relate."[10] No party challenged this finding by the ALJ and so the Commission did not address it in its subsequent decisions in that proceeding. Moreover, these findings were based on the specific record and arguments in that proceeding. For example, Public Service's arguments focused on ensuring that CSG subscribers do not avoid responsibility to pay their share of this "public benefits program" and Public Service described DSM programs as advancing "an important societal and public-policy goal."[11] Yet in this rulemaking, WRA directly argued the DSMCA is a system-wide program associated with the delivery of electricity to all customers. WRA persuasively argued that DSM programs provide system-wide benefits to utility customers in the form of decreased electricity use (and costs) that impact customer bills, and in the availability of DSM programs and incentives. WRA persuasively argued that CSG subscribers are not identical to on-site solar customers because the utility must still deliver to the CSG subscriber's premises all the electricity the subscriber consumes. Public Service, Black Hills Colorado Electric, LLC (Black Hills) and the Office of Consumer Counsel all added that excluding DSM costs from the CSG billing credit will help ensure that CSG subscribers do not improperly shift costs of DSM programs to other customers. Based on these arguments, the Commission concluded it was reasonable and lawful that CSG subscribers pay the DSM costs associated with the cost of delivering them energy from the utility's system.

[10] Proceeding No. 11A-418E, Decision No. R12-0261 at ¶ 167 (Mar. 8, 2012).

[11] *See, e.g.*, Proceeding No. 11A-418E, Direct Testimony of Scott B. Brockett at p. 11.

40. We also dismiss COSSA/SEIA's contention that the utility's "costs of delivering" electricity to the subscriber's premises in § 40-2-127(5)(b)(II), C.R.S., necessarily refers strictly to the utility's cost of "transporting" or "moving" electricity from the CSG to the subscriber. This interpretation of the statutory language relies on an oversimplified view of utility operations. Considerations of distribution, transmission, and overall system reliability constraints factor into even the process of delivering electricity. Further, DSM programs that lower electricity demand help alleviate the very transmission and distribution constraints that many CSG developers and other stakeholders claim are limiting their efforts to bring more CSG projects online. In Proceeding No. 00A-008E, cited by COSSA/SEIA in their RRR, the Commission recognized these overarching system benefits. The Commission found, "Appropriate, cost-effective DSM will benefit all ratepayers, including those who are not direct participants in a specific program, by avoiding the costs of building new capacity.[12] Elaborating further, the Commission found, "DSM will promote system reliability, reducing the possibility of electric service interruptions in the future."[13] Further, the Commission dismissed the argument that DSM is an unlawful "social policy" unrelated to the cost of service and found instead that "DSM is related to cost and reliability of utility service."[14] These findings are consistent with the Commission's conclusion in this rulemaking that the DSMCA is a system-wide program that is associated with the delivery of electricity to all the utility's customers. Through § 40-2-127(5)(b)(II), C.R.S., the Legislature left to the Commission discretion to determine the "reasonable charge" to be deducted to "cover the utility's costs of delivering" electricity to

[12] Proceeding No. 00A-008E, Decision No. C00-1057 at pp. 24-25 (Sept. 26, 2000).
[13] *Id*. at p. 26.
[14] *Id*. at p. 32.

CSG subscribers. The Commission reasonably and lawfully exercised that discretion in this rulemaking.

41. Next, we find unpersuasive COSSA/SEIA's argument that deducting the DSMCA is contrary to the legislative intent to create a CSG program parallel to on-site solar. As argued by WRA during this rulemaking, and as discussed in Decision No. C20-0482, CSG subscribers are distinguishable from rooftop solar customers because a CSG subscriber's use of electricity from the utility's system is not functionally impacted by its CSG subscription. The utility must still deliver to the CSG subscriber's premises all the electricity the subscriber consumes. *See* Decision No. C20-0482 at ¶¶ 57 and 67. We affirm in this Decision that we find a practical distinction between CSG subscribers and on-site solar customers because the utility is still required to deliver to the CSG subscriber all the electricity the subscriber consumes.

42. Finally, we deny COSSA/SEIA's objection that the Commission ignored record evidence that modifying the calculation of the CSG billing credit will negatively affect the market in Colorado. As we found at ¶ 68 of Decision No. C20-0482, this rulemaking record contains little support for the contention that modifying the CSG billing credit to exclude the DSMCA will have negative effects on the Colorado market. Commenters raising concern of a negative market impact from this rule change did not provide helpful quantification or evidence demonstrating exactly how or why this single change to the credit calculation will have enough impact to affect the market. Further, the mere objection that any modification to a subscriber's billing credit will disrupt the market is unpersuasive. The total aggregate retail rate as charged to CSG subscribers already changes quarterly for most CSG subscribers. Thus, CSG subscribers already experience minor fluctuations in their monthly credit. Based on the record of this

rulemaking proceeding, we find the concerns of a negative market effect do not provide a reason to reconsider our adopted rule.

43. We reject COSSA/SEIA's request to clarify that this deduction will apply only on a prospective basis to only new CSG awards. We find any attempt to "grandfather" existing subscribers to be both legally and administratively unworkable. As we stated at ¶ 69 of Decision No. C20-0482 and the Ordering Paragraphs therein, the affected utilities, Public Service and Black Hills, are required to file revised tariffs to implement the modified rules no later than 30 days after the rules become effective.

44. We do find merit to COSSA/SEIA's suggestion that we plan to revisit the reasonableness of this deduction at a future date. We recognize there may be substantial changes to the DSMCA rider adopted in future proceedings before the Commission. We agree, as COSSA/SEIA note, that customer and market impacts will be more apparent after such a decision has been adopted.

e. Rule 3877(a)

45. Finally, COSSA/SEIA request the Commission strike the words "and RECs" in Rule 3877(a). Similar to WRA's RRR, COSSA/SEIA state that striking this language in the rules is needed to reflect that RECs may now be retained by CSG subscribers in some cases.

f. Findings and Conclusions

46. For the same reasons concerning construction of the statutory term "output" as used throughout § 40-2-127, C.R.S., discussed above in this Decision when denying WRA's RRR, and previously at ¶ 112 of Decision No. C20-0482, the Commission denies COSSA/SEIA's RRR on this issue.

47. Rules Implementing the CSGs within the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3, contained in legislative (*i.e.*, strikeout/underline) format (Attachment A), and final format (Attachment B) are adopted, and are available through the Commission's Electronic Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0608E

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0482 filed by Public Service Company of Colorado on July 29, 2020, is granted, in part, and denied, in part, consistent with the discussion above.

2. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0482 filed by Western Resource Advocates on July 29, 2020, is granted, in part, and denied, in part, consistent with the discussion above.

3. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0482 filed by the Colorado Solar and Storage Association and the Solar Energy Industry Association on July 29, 2020, is denied, consistent with the discussion above.

4. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

5. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING August 26, 2020.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN
_____

JOHN GAVAN
_____

MEGAN M. GILMAN
_____
Commissioners

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-3

PART 3
RULES REGULATING ELECTRIC UTILITIES

RENEWABLE ENERGY STANDARD

* * * *

[indicates omission of unaffected rules]

~~**3665. Community Solar Gardens.**~~

~~The following rules shall apply to all community solar gardens (CSGs) developed pursuant to § 40-2-127, C.R.S. These rules shall not apply to cooperative electric associations or to municipally owned utilities.~~

~~(a) CSG subscriptions, subscribers, and subscriber organizations.~~

~~(I) Requirements for CSG subscribers, CSG subscriptions, and CSG subscriber organizations.~~

~~(A) No CSG subscriber may own more than a 40 percent interest in the beneficial use of the electricity generated by the CSG, including without limitation, the renewable energy and RECs associated with or attributable to the CSG.~~

~~(B) Each CSG subscription shall be sized to represent at least one kW of the CSG's nameplate rating and supply no more than 120 percent of the CSG subscriber's average annual electricity consumption at the premise to which the subscription is attributed, with a deduction for the amount of any existing retail renewable distributed generation at such premise. The minimum one kW sizing requirement herein shall not apply to subscriptions owned by an eligible low-income CSG subscriber.~~

~~(C) The premise to which a subscription is attributed by a CSG subscriber shall be served by the investor owned QRU and shall be within the same county as, or a county adjacent to, the CSG. The CSG subscriber may change from time to time the premise to which the CSG subscription shall be attributed, so long as the premise is served by the investor owned QRU and is within the same county as, or a county adjacent to, the CSG.~~

~~(D) No CSG subscriber organization may own more than a 40 percent interest in the beneficial use of the electricity generated by the CSG, including without~~

limitation, the renewable energy and RECs associated with or attributable to the CSG, after the CSG has operated commercially for 18 months.

(II) Share transfers and portability.

(A) A CSG subscription may be transferred or assigned to the associated CSG subscriber organization or to any person or entity who qualifies to be a subscriber in the CSG.

(B) A CSG subscriber who desires to transfer or assign all or part of his subscription to the CSG subscriber organization, in its own name or to become unsubscribed shall notify the CSG subscriber organization and the transfer of the subscription to the CSG subscriber organization shall be effective upon such notification, unless the CSG subscriber specifies a later effective date.

(C) A CSG subscriber who desires to transfer or assign all or part of his subscription to an eligible QRU customer desiring to purchase a subscription may do so only in compliance with the terms and conditions of the subscription and will be effective in accordance therewith.

(D) If the CSG is fully subscribed, the CSG subscriber organization shall maintain a waiting list of eligible QRU customers who desire to purchase subscriptions. The CSG subscriber organization shall offer the CSG subscription of the CSG subscriber desiring to transfer or assign their interest, or a portion thereof, on a first-come, first-serve basis to customers on the waiting list.

(E) The CSG subscriber organization and the investor owned QRU shall jointly verify that each CSG subscriber is eligible to be a subscriber in the CSG pursuant to subparagraph 3665(a)(I). The CSG subscriber roll shall include, at a minimum, the percentage share owned by the CSG subscriber, the effective date of the ownership of that percentage share, and the meters at the premises to which the CSG subscription is attributed for the purpose of applying billing credits. Changes in the CSG subscriber roll shall be communicated by the CSG subscriber organization to the QRU, in written or electronic form, as soon as practicable, but on no less than a monthly basis.

(F) Prices paid for subscriptions in a CSG shall not be subject to regulation by the Commission.

(b) Production data.

(I) The amount of renewable energy and RECs generated by each CSG shall be measured by a production meter installed by the investor owned QRU or the CSG owner and paid for by the CSG owner.

(II) The owner of a CSG with a nameplate rating of one MW or greater shall register the CSG and report the CSG's production data to the WREGIS in accordance with paragraph 3659(j).

(III) CSGs are required to provide real time reporting of production as specified by the QRU. For CSGs greater than 250 kW, the CSG owner shall provide real time electronic access to production data under paragraph 3656(l). A QRU may require different real time reporting for CSGs 250 kW and smaller.

(IV) Production from the CSG shall be reported by the CSG subscriber organization to its CSG subscribers at least monthly. To facilitate the tracking of production data by CSG subscribers, CSG owners or CSG subscriber organizations are encouraged to provide website access to subscribers showing real time output from the CSG, if practicable, as well as historical production data.

(c) Billing credits and unsubscribed renewable energy.

(I) Compensation to the CSG subscriber for its share of the renewable energy generated by a CSG shall take the form of a billing credit paid to the CSG subscriber by the investor owned QRU.

(A) The billing credit shall be calculated by multiplying the CSG subscriber's share as a percentage of the renewable energy generated by the CSG times the QRU's total aggregate retail rate (including all billed components) as charged to the CSG subscriber.

(B) For the purpose of calculating the billing credit for a commercial or industrial customer on a demand tariff, the total aggregate retail rate (including all billed components) shall be determined by dividing the total electric charges to be paid by the customer to the investor owned QRU for the most recent calendar year (including demand charges) by the customers' total electricity consumption for that year. In the event that the designated premises to which the CSG subscription is attributed has less than one year of billing history, an estimate of the total annual charges shall be made by the QRU.

(C) Billing credits shall be reflected in the CSG subscriber's bill from the investor owned QRU no later than the 60th day after the QRU receives the information required to calculate the billing credit from the CSG subscriber organization.

(II) The investor owned QRU may assess a Commission-approved charge to cover the QRU's costs of delivering to the CSG subscriber's premises the renewable energy generated by the CSG, integrating the generation from the CSG into the utility's system, and administering the contracts with CSG owners and billing credits. This charge shall be a fixed amount and shall not reflect costs that are already recovered by the QRU from CSG subscribers through other charges. The QRU may seek a revision of this charge no more frequently than once per year in conjunction with its acquisition plan submitted under paragraph 3665(d).

(III) If, in a monthly billing period, the CSG subscriber's billing credit associated with a CSG subscription exceeds the customer's bill from the investor owned QRU, the excess billing credit will be rolled over as a credit from month to month indefinitely until the customer terminates service with the investor owned QRU, at which time no payment shall be

required from the investor owned QRU for any remaining billing credits associated with the customer's CSG subscription..

(IV) The investor owned QRU shall purchase all of the renewable energy and RECs generated by a CSG if the QRU enters into a contract with the CSG owner pursuant to a Commission-approved acquisition plan under paragraph 3665(d). For RECs purchased by the QRU, the QRU and the CSG owner shall agree on whether subscribers will be compensated by a credit on each CSG subscriber's bill from the QRU or by a payment to the CSG owner.

(V) The investor owned QRU shall purchase from the CSG owner the unsubscribed renewable energy and RECs at a rate equal to the QRU's average hourly incremental cost of electricity supply over the immediately preceding calendar year.

(d) Acquisitions of renewable energy and RECs from CSGs.

(I) The Commission shall establish the minimum and maximum purchases of renewable energy from newly installed CSG generation (new CSGs) by the investor owned QRU for each compliance year under the RES. For compliance years 2014 and thereafter, the Commission shall determine the minimum and maximum purchases of renewable energy and RECs from new CSGs of different segments based on the capacity of the CSGs (capacity segments) without regard to the six MW ceiling for the period 2011 through 2013. The Commission shall establish such minimum and maximum levels of purchases in consideration of a plan for the acquisition of renewable energy and RECs from CSGs filed by the investor owned QRU. The investor owned QRU's plan for the acquisition of renewable energy and RECs from CSGs shall be part of the investor owned QRU's RES compliance plan filed pursuant to rule 3657.

(II) The investor owned QRU shall acquire renewable energy and RECs by entering into contracts with CSG owners. A CSG whose owner enters into a contract with the QRU shall be deemed to be part of the QRU's Commission-approved acquisition plan if the cumulative total of the nameplate capacity of the new CSGs acquired in the compliance year does not exceed the maximum purchases established by the Commission for that compliance year.

(III) The investor owned QRU shall conduct due diligence on proposed contracts with new CSG owners to reasonably assure that the CSG owner and CSG subscriber organization have sufficient resources to successfully construct and commence operations of the CSG.

(A) Except for CSGs owned by governmental or quasi-governmental entities, the investor owned QRU shall be deemed to have conducted sufficient due diligence by requiring from the CSG owner documentation of escrowed funds of not less than $100 per kW of the CSG's nameplate rating. The escrow shall be maintained by its terms until such time as the CSG commences commercial operation as certified by the QRU's acceptance of renewable energy generated by the CSG.

(B) If a CSG owner properly documents escrowed funds consistent with this subparagraph 3665(d)(IV), the investor owned QRU may not refuse to enter into a contract with the CSG owner for failure to demonstrate sufficient resources to reasonably assure successful construction and commencement of CSG operations .

(IV) In each plan to acquire renewable energy and RECs from CSGs, the investor owned QRU shall reserve, to the extent there is demand for such ownership, at least five percent of its renewable energy purchases from new CSGs for eligible low-income CSG subscribers.

(A) CSG subscriber organizations and investor owned QRUs may rely on certification by the Colorado Department of Human Services for acceptance in the Colorado Low-Income Energy Assistance Program (LEAP) as evidence of eligibility as an eligible low-income CSG subscriber in a CSG.

(B) Acquisition of energy and RECs from eligible low-income CSG subscribers to CSGs may be either through dedicated low-income CSGs or low-income set asides within other CSGs.

(V) For investments in a new CSG, the investor owned QRU shall be eligible for the incentives and be subject to the ownership limitations set forth in rule 3660; however such incentive payments shall be excluded from the retail rate impact under rule 3661.

(VI) The investor owned QRU may file an application with the Commission for approval to recover through rates a margin on renewable energy and RECs purchased from CSGs; however such incentive payments shall be excluded from the retail rate impact under rule 3661.

(VII) Notwithstanding the exclusion from the retail rate impact in subparagraphs 3665(d)(VI) and (VII), the acquisition of renewable energy and RECs from CSGs shall be subject to the retail rate impact under rule 3661. QRU expenditures for unsubscribed energy and RECs generated by CSGs shall be included in the calculations of retail rate impact under that rule.

(e) Financing and operating CSGs.

(I) Contracts signed by QRUs with CSG owners shall be a matter of public record and shall be filed with the Commission by the QRU.

(II) CSG subscriber organizations shall issue public annual reports as of the end of the calendar or other fiscal year containing, at a minimum, the energy produced by the CSG; audited financial statements including a balance sheet, income statement, and sources and uses of funds statement; and the management and ownership of the CSG and the CSG subscriber organization, if different. Individual subscribers shall receive, in addition to the annual report of the CSG subscriber organization, a report of the energy, multiplier (e.g., aggregate retail rate), and net metering credits attributed to the CSG subscriber's account.

~~(III) CSG subscriber funds, collected by the CSG in advance of commercial operation of the CSG, shall be held in escrow. The escrow shall be maintained by its terms until such time as the CSG commences commercial operation as certified by QRU acceptance of energy from the CSG.~~

COMMUNITY SOLAR GARDENS

3875. Applicability.

The following rules shall apply to all utilities regarding community solar gardens (CSGs) developed pursuant to § 40-2-127, C.R.S. These rules shall not apply to cooperative electric associations or to municipally owned utilities.

3876. Overview and Purpose.

The purpose of these rules is to implement the development and deployment of CSGs; to provide opportunities to all utility customers to participate in solar generation in addition to on-site solar systems; to allow renters, low-income utility customers, and agricultural producers to own interests in solar generation facilities; to allow interests in solar generation facilities to be portable and transferrable; and to leverage solar generating capacity through economies of scale.

3877. Definitions.

The following definitions apply to rules 3877 through 3883. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Community solar garden" or "CSG" means a solar electric generation facility with a nameplate rating of five MW AC or less that is located in or near a community served by a utility where the beneficial use of the electricity generated by the facility belongs to the subscribers of the CSG. A CSG shall have at least ten CSG subscribers. A CSG shall be deemed to be located on the site of each subscribing customer's facilities for the purpose of crediting the CSG subscribers' bills for the electricity purchased from the CSG by the utility. The electricity and RECs generated by a CSG shall be sold only to the utility serving the geographic area where the CSG is located. More than one CSG, or a combination of CSGs, may be interconnected at the same location as long as they do not cumulatively exceed five MW AC (or ten MW AC, as applicable), without regard to whether the CSGs are new or existing facilities. The utility or a developer may propose a CSG with a nameplate rating of up to ten MW AC on or after July 1, 2023.

(b) "CSG owner" means the owner of the solar generation facilities installed at a CSG that contracts to sell the unsubscribed electricity generated by the CSG to a utility. A CSG subscriber organization operating a CSG not owned by it will be deemed to be a CSG owner for purposes of these rules. A CSG owner may be the utility or any other for-profit or nonprofit entity or organization, including a CSG subscriber organization.

(c) "CSG subscriber" means a retail customer of a utility who owns a subscription to a CSG and who has identified one or more premises served by the utility to which the CSG subscription shall be attributed.

(d) "CSG subscriber organization" means any for-profit or nonprofit entity permitted by Colorado law and whose sole purpose shall be:

(I) to beneficially own and operate the CSG; or

(II) to operate the CSG that is built, owned, and operated by a third party under contract with such CSG subscriber organization.

(e) "CSG subscription" means a proportionate interest in the solar electric generation facilities installed at a CSG, including without limitation, the electricity and RECs associated with or attributable to such facilities.

(f) "Eligible low-income CSG subscriber" means:

(I) a residential customer of a utility who has a household income at or below 185 percent of the current federal poverty level, as published each year in the federal register by the U.S. Department of Health and Human Services; or

(II) a residential customer of a utility who otherwise meets the eligibility criteria set forth in the rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

(g) "Eligible low-income service provider" means:

(I) a nonprofit or public housing authority operator where at least 60 percent of the residents meet the eligibility criteria in paragraph 3877(f) and the operator provides verifiable information that these low-income residents are the beneficiaries of the CSG subscription(s); or

(II) a non-profit corporation that is able to demonstrate that it provides essential services including, but not limited to, food, clothing, job training, housing, or medical services primarily to low-income recipients who meet the eligibility criteria set forth in the rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

3878. CSG Subscriptions, Subscribers, and Subscriber Organizations.

(a) No CSG subscriber may own more than a 40 percent interest in the electricity and RECs associated with or attributable to the CSG.

(b) Each CSG subscription shall be sized to represent at least one kW AC of the CSG's nameplate rating and supply no more than 120 percent of the CSG subscriber's average annual electricity consumption at the premise to which the subscription is attributed, with a deduction for the amount of any existing retail renewable distributed generation at such premise. The minimum one kW AC sizing requirement herein shall not apply to subscriptions owned by an eligible low-income CSG subscriber.

(c) The premise to which a subscription is attributed by a CSG subscriber shall be served by the utility. The CSG subscriber may change from time to time the premise to which the CSG

subscription shall be attributed, so long as the premise is within the same service territory served by the utility.

(d) No CSG subscriber organization may own more than a 40 percent interest in the electricity and RECs associated with or attributable to the CSG, after the CSG has operated commercially for 18 months.

3879. Share Transfers and Portability.

(a) A CSG subscription may be transferred or assigned to the associated CSG subscriber organization or to any person or entity who qualifies to be a subscriber in the CSG.

(b) A CSG subscriber who desires to transfer or assign all or part of a subscription to the CSG subscriber organization, in its own name or to become unsubscribed, in compliance with the terms and conditions of the subscription, shall notify the CSG subscriber organization and the transfer of the subscription to the CSG subscriber organization shall be effective upon such notification, unless the CSG subscriber specifies a later effective date.

(c) A CSG subscriber who desires to transfer or assign all or part of a subscription to an eligible utility customer desiring to purchase a subscription may do so only in compliance with the terms and conditions of the subscription and will be effective in accordance therewith.

(d) If the CSG is fully subscribed, the CSG subscriber organization shall maintain a waiting list of eligible utility customers who desire to purchase subscriptions. The CSG subscriber organization shall offer the CSG subscription of the CSG subscriber desiring to transfer or assign their interest, or a portion thereof, on a first-come, first-serve basis to customers on the waiting list, except that the CSG subscriber organization shall give a preference to eligible low-income CSG subscribers or other categories of customers identified below in subparagraph 3882(a)(I), to the extent the CSG owner has made any subscriber mix commitments in its contract with the utility.

(e) The CSG subscriber organization and the utility shall jointly verify that each CSG subscriber is eligible to be a subscriber in the CSG pursuant to rule 3878. The CSG subscriber roll shall include, at a minimum, the percentage share owned by the CSG subscriber, the effective date of the ownership of that percentage share, and the meters at the premises to which the CSG subscription is attributed for the purpose of applying billing credits. Changes in the CSG subscriber roll shall be communicated by the CSG subscriber organization to the utility, in a standard electronic form, as soon as practicable, but on no less than a monthly basis.

(f) Prices paid for subscriptions in a CSG shall not be subject to regulation by the Commission.

3880. Production Data.

(a) The CSG owner shall pay for a production meter to be used to measure the amount of electricity and RECs generated by each CSG whether installed by the utility or the CSG owner. A net meter can serve as the production meter if the utility determines that there is no material onsite load at the CSG facility.

(b) The owner of a CSG with a nameplate rating of one MW AC or greater shall register the CSG and report the CSG's production data to the WREGIS in accordance with paragraph 3659(j).

(c) CSGs are required to provide real time reporting of production as specified by the utility. For CSGs greater than 250 kW AC, the CSG owner shall provide real time electronic access to production and system operation data. In the event that a CSG greater than 250 kW AC also collects meteorological data, the CSG owner shall provide, at the utility's request, real time electronic access to the utility to such meteorological data. A utility may require different real time reporting for CSGs 250 kW AC and smaller.

(d) Production from the CSG shall be reported by the CSG subscriber organization to its CSG subscribers at least monthly. To facilitate the tracking of production data by CSG subscribers, CSG owners or CSG subscriber organizations are encouraged to provide website access to subscribers showing real time output from the CSG, if practicable, as well as historical production data.

3881. Billing Credits and Unsubscribed Electricity and RECs.

(a) Compensation to the CSG subscriber for its share of the electricity and RECs generated by a CSG shall take the form of a billing credit paid to the CSG subscriber by the utility or, if authorized by the CSG subscriber, contributed to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory.

(I) The billing credit shall be calculated by multiplying the CSG subscriber's share as a percentage of the electricity generated by the CSG times the utility's total aggregate retail rate of the subscriber's rate class, including all billed components except for the customer charge, demand side management (DSM), and RESA rate components, as charged to the CSG subscriber's class.

(II) For the purpose of calculating the billing credit for a commercial or industrial customer on a demand tariff:

(A) the total aggregate retail rate shall be determined by dividing the total electric charges to be paid by the customer to the utility for the most recent calendar year (including demand charges) by the customers' total electricity consumption for that year for subscriptions to CSGs planned for purchases by the utility before January 1, 2016. In the event that the designated premises to which the CSG subscription is attributed has less than one year of billing history, an estimate of the total annual charges shall be made by the utility; or

(B) the total aggregate retail rate shall be determined using the average charges and usage for the subscriber's rate class for subscriptions to CSGs planned for purchases by the utility after January 1, 2016.

(III) Billing credits shall be reflected in the CSG subscriber's bill from the utility no later than the 60th day after the utility receives the information required to calculate the billing credit from the CSG subscriber organization.

(IV) The utility may assess a Commission-approved charge to cover the utility's costs of delivering to the CSG subscriber's premises the electricity generated by the CSG, integrating the generation from the CSG into the utility's system, and administering the

contracts with CSG owners and billing credits. This charge shall be a fixed amount and shall not reflect costs that are already recovered by the utility from CSG subscribers through other charges. The utility may seek a revision of this charge no more frequently than once per year.

(b) If, in a monthly billing period, the CSG subscriber's billing credit associated with a CSG subscription exceeds the customer's bill from the utility, the excess billing credit will be rolled over as a credit from month to month indefinitely until the customer terminates service with the utility, at which time no payment shall be required from the utility for any remaining billing credits associated with the customer's CSG subscription; however, nothing in this rule precludes the CSG subscriber or the utility from contributing the remaining billing credits to another utility account paid by the CSG subscriber or to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, where the utility has implemented a program for such contributions pursuant to paragraph 3881(d).

(c) In lieu of rolling over billing credits from month to month pursuant to paragraph 3881(b), the CSG subscriber may contribute the excess 12 months' net billing credit at the end of the April billing cycle to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, where the utility has implemented a program for such contributions pursuant to paragraph 3881(d).

(d) A description of any proposed program to allow contributions of billing credits or excess billing credits to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, pursuant to paragraphs 3881(a) through (c), shall be included in the utility's acquisition plan for new CSGs filed with the Commission. The description shall include the utility's proposed process for qualification and approval of third party administrators; the criteria a third party must meet to become qualified and approved; the method by which a utility will allocate billing credits, unsubscribed electricity to multiple third party administrators; the way in which the program will be marketed to low-income customers as a renewable program such that customers are made aware that a portion of the bill assistance they receive was derived from renewable energy resources; and a reporting methodology to be included in each annual RES compliance report filed with the Commission. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the contributing CSG subscriber.

(e) In its annual RES compliance report filed with the Commission, the utility shall, at a minimum, provide the total number of CSG billing credits that were contributed to qualified third party administrator, pursuant to paragraphs 3881(a) through (c).

(f) For RECs purchased by the utility, the utility and the CSG owner shall agree on whether subscribers will be compensated by the billing credit on each CSG subscriber's bill in accordance with paragraph 3881(a) or by a payment to the CSG owner.

(g) The utility shall purchase from the CSG owner the unsubscribed electricity and RECs at a rate equal to the utility's average hourly incremental cost of electricity supply over the immediately preceding calendar year. A utility may donate the purchased unsubscribed electricity to eligible

low-income CSG subscribers as kWh credits. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the recipient's customer class.

3882. Purchases from CSGs.

(a) The Commission shall establish the minimum and maximum purchases from new CSGs for each year in accordance with § 40-2-127(5)(a)(IV), C.R.S. The Commission shall establish such minimum and maximum levels of purchases through the utility's acquisition plan for new CSGs filed by the utility pursuant to rule 3656 or rule 3603.

(I) The utility's acquisition plan shall include a proposed method for requiring CSG subscriber organizations to verify that the organization will sell and maintain CSG subscriptions to achieve the result that at least 50 percent of the established minimum aggregate new CSG purchases correspond to residential, small commercial, agricultural, and eligible low-income CSG subscribers, and eligible low-income service providers.

(II) The utility's acquisition plan shall explain how it will use a combination of one or more competitive solicitations and one or more standard offers to cause purchases from new CSGs over the period covered by the plan.

(III) The utility shall propose as part of its acquisition plan a standard offer pricing program in order to acquire new CSG generation.

(A) At least one standard offer must enable CSG subscribers to keep the RECs generated by the CSG. The standard offer may result in differing compensation that would enable the CSG subscribers to keep the RECs generated by the CSG.

(B) The standard offer may include a price adder for purchases from new CSGs with subscribers from the categories identified in subparagraph 3882(a)(I), or for the purpose of encouraging CSGs with certain beneficial characteristics or innovations.

(IV) For acquisitions made through competitive solicitations, the utility shall select projects in combination to ensure participation of subscribers from the categories identified in subparagraph 3882(a)(I).

(b) All of the electricity from a CSG shall be acquired and distributed by the utility. A utility shall not restrict or unreasonably delay any CSG that is approved pursuant to a Commission approved procurement plan from interconnecting to the utility's distribution or transmission system in accordance with the applicable interconnection standards and procedures.

(c) The utility shall enter into contracts with CSG owners in accordance with the competitive solicitations and standard offers identified in the utility's acquisition plan. The CSG owner shall state in its proposed contract with the utility whether the RECs will be retained by CSG subscribers or ownership of the RECs will be transferred to the utility. Compensation may differ that would enable the CSG subscribers to keep the RECs generated by the CSG. A CSG whose owner enters into a contract with the utility shall be deemed to be part of the utility's Commission-approved acquisition plan if the cumulative total of the nameplate capacity of the acquired new CSGs does not exceed the maximum purchases established by the Commission for that year.

(d) The utility shall conduct due diligence on proposed contracts with new CSG owners to reasonably assure that the CSG owner and CSG subscriber organization have sufficient resources to successfully construct and commence operations of the CSG.

(I) Except for CSGs owned by governmental, quasi-governmental, or non-profit entities, the utility shall be deemed to have conducted sufficient due diligence by requiring from the CSG owner documentation of escrowed funds of not less than $100 per kW AC of the CSG's nameplate rating. The escrow shall be maintained by its terms until such time as the CSG owner makes an interconnection agreement deposit payment.

(II) If a CSG owner properly documents escrowed funds consistent with this paragraph, the utility may not refuse to enter into a contract with the CSG owner for failure to demonstrate sufficient resources to reasonably assure successful construction and commencement of CSG operations.

(e) In each acquisition plan for purchases from new CSGs, the utility shall reserve, on a program-wide basis and to the extent there is demand for such ownership, at least ten percent of its electricity purchases from new CSGs for eligible low-income CSG subscribers.

(I) CSG subscriber organizations and utilities may rely on certification by the Colorado Department of Human Services for acceptance in the Colorado Low-Income Energy Assistance Program (LEAP) as evidence of eligibility as an eligible low-income CSG subscriber in a CSG or other reliable verification methods from low-income service providers.

(II) CSGs for eligible low-income CSG subscribers may be either dedicated low-income CSGs or low-income set asides within other CSGs.

(III) The utility's CSG acquisition plan shall be designated to ensure reasonable access for low-income residential customers as distinct from low-income service providers.

3883. Financing and Operating CSGs.

(a) Contracts signed by utilities with CSG owners shall be a matter of public record and shall be filed with the Commission by the utility.

(b) CSG subscriber organizations shall issue public annual reports as of the end of the calendar or other fiscal year containing, at a minimum, the energy produced by the CSG; audited financial statements including a balance sheet, income statement, and sources and uses of funds statement; and the management and ownership of the CSG and the CSG subscriber organization, if different. Individual subscribers shall receive, in addition to the annual report of the CSG subscriber organization, a report of the energy, multiplier (e.g., aggregate retail rate), eligible low-income customer bill savings, and net metering credits attributed to the CSG subscriber's account.

(c) CSG subscriber funds, collected by the CSG in advance of commercial operation of the CSG, shall be held in escrow. The escrow shall be maintained by its terms until such time as the CSG commences commercial operation as certified by utility acceptance of energy from the CSG.

3884. – 3899. [Reserved].

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 *CODE OF COLORADO REGULATIONS* (CCR) 723-3

PART 3
RULES REGULATING ELECTRIC UTILITIES

RENEWABLE ENERGY STANDARD

* * * *

[indicates omission of unaffected rules]

COMMUNITY SOLAR GARDENS

3875. Applicability.

The following rules shall apply to all utilities regarding community solar gardens (CSGs) developed pursuant to § 40-2-127, C.R.S. These rules shall not apply to cooperative electric associations or to municipally owned utilities.

3876. Overview and Purpose.

The purpose of these rules is to implement the development and deployment of CSGs; to provide opportunities to all utility customers to participate in solar generation in addition to on-site solar systems; to allow renters, low-income utility customers, and agricultural producers to own interests in solar generation facilities; to allow interests in solar generation facilities to be portable and transferrable; and to leverage solar generating capacity through economies of scale.

3877. Definitions.

The following definitions apply to rules 3877 through 3883. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(a) "Community solar garden" or "CSG" means a solar electric generation facility with a nameplate rating of five MW AC or less that is located in or near a community served by a utility where the beneficial use of the electricity generated by the facility belongs to the subscribers of the CSG. A CSG shall have at least ten CSG subscribers. A CSG shall be deemed to be located on the site of each subscribing customer's facilities for the purpose of crediting the CSG subscribers' bills for the electricity purchased from the CSG by the utility. The electricity and RECs generated by a CSG shall be sold only to the utility serving the geographic area where the CSG is located. More than one CSG, or a combination of CSGs, may be interconnected at the same location as long as they do not cumulatively exceed five MW AC (or ten MW AC, as applicable), without regard to whether the CSGs are new or existing facilities. The utility or a developer may propose a CSG with a nameplate rating of up to ten MW AC on or after July 1, 2023.

(b) "CSG owner" means the owner of the solar generation facilities installed at a CSG that contracts to sell the unsubscribed electricity generated by the CSG to a utility. A CSG subscriber organization operating a CSG not owned by it will be deemed to be a CSG owner for purposes of these rules. A CSG owner may be the utility or any other for-profit or nonprofit entity or organization, including a CSG subscriber organization.

(c) "CSG subscriber" means a retail customer of a utility who owns a subscription to a CSG and who has identified one or more premises served by the utility to which the CSG subscription shall be attributed.

(d) "CSG subscriber organization" means any for-profit or nonprofit entity permitted by Colorado law and whose sole purpose shall be:

(I) to beneficially own and operate the CSG; or

(II) to operate the CSG that is built, owned, and operated by a third party under contract with such CSG subscriber organization.

(e) "CSG subscription" means a proportionate interest in the solar electric generation facilities installed at a CSG, including without limitation, the electricity and RECs associated with or attributable to such facilities.

(f) "Eligible low-income CSG subscriber" means:

(I) a residential customer of a utility who has a household income at or below 185 percent of the current federal poverty level, as published each year in the federal register by the U.S. Department of Health and Human Services; or

(II) a residential customer of a utility who otherwise meets the eligibility criteria set forth in the rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

(g) "Eligible low-income service provider" means:

(I) a nonprofit or public housing authority operator where at least 60 percent of the residents meet the eligibility criteria in paragraph 3877(f) and the operator provides verifiable

information that these low-income residents are the beneficiaries of the CSG subscription(s); or

(II) a non-profit corporation that is able to demonstrate that it provides essential services including, but not limited to, food, clothing, job training, housing, or medical services primarily to low-income recipients who meet the eligibility criteria set forth in the rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

3878. CSG Subscriptions, Subscribers, and Subscriber Organizations.

(a) No CSG subscriber may own more than a 40 percent interest in the electricity and RECs associated with or attributable to the CSG.

(b) Each CSG subscription shall be sized to represent at least one kW AC of the CSG's nameplate rating and supply no more than 120 percent of the CSG subscriber's average annual electricity consumption at the premise to which the subscription is attributed, with a deduction for the amount of any existing retail renewable distributed generation at such premise. The minimum one kW AC sizing requirement herein shall not apply to subscriptions owned by an eligible low-income CSG subscriber.

(c) The premise to which a subscription is attributed by a CSG subscriber shall be served by the utility. The CSG subscriber may change from time to time the premise to which the CSG subscription shall be attributed, so long as the premise is within the same service territory served by the utility.

(d) No CSG subscriber organization may own more than a 40 percent interest in the electricity and RECs associated with or attributable to the CSG, after the CSG has operated commercially for 18 months.

3879. Share Transfers and Portability.

(a) A CSG subscription may be transferred or assigned to the associated CSG subscriber organization or to any person or entity who qualifies to be a subscriber in the CSG.

(b) A CSG subscriber who desires to transfer or assign all or part of a subscription to the CSG subscriber organization, in its own name or to become unsubscribed, in compliance with the terms and conditions of the subscription, shall notify the CSG subscriber organization and the transfer of the subscription to the CSG subscriber organization shall be effective upon such notification, unless the CSG subscriber specifies a later effective date.

(c) A CSG subscriber who desires to transfer or assign all or part of a subscription to an eligible utility customer desiring to purchase a subscription may do so only in compliance with the terms and conditions of the subscription and will be effective in accordance therewith.

(d) If the CSG is fully subscribed, the CSG subscriber organization shall maintain a waiting list of eligible utility customers who desire to purchase subscriptions. The CSG subscriber organization shall offer the CSG subscription of the CSG subscriber desiring to transfer or assign their interest, or a portion thereof, on a first-come, first-serve basis to customers on the waiting list, except that the CSG subscriber organization shall give a preference to eligible low-income CSG subscribers

or other categories of customers identified below in subparagraph 3882(a)(I), to the extent the CSG owner has made any subscriber mix commitments in its contract with the utility.

(e) The CSG subscriber organization and the utility shall jointly verify that each CSG subscriber is eligible to be a subscriber in the CSG pursuant to rule 3878. The CSG subscriber roll shall include, at a minimum, the percentage share owned by the CSG subscriber, the effective date of the ownership of that percentage share, and the meters at the premises to which the CSG subscription is attributed for the purpose of applying billing credits. Changes in the CSG subscriber roll shall be communicated by the CSG subscriber organization to the utility, in a standard electronic form, as soon as practicable, but on no less than a monthly basis.

(f) Prices paid for subscriptions in a CSG shall not be subject to regulation by the Commission.

3880. Production Data.

(a) The CSG owner shall pay for a production meter to be used to measure the amount of electricity and RECs generated by each CSG whether installed by the utility or the CSG owner. A net meter can serve as the production meter if the utility determines that there is no material onsite load at the CSG facility.

(b) The owner of a CSG with a nameplate rating of one MW AC or greater shall register the CSG and report the CSG's production data to the WREGIS in accordance with paragraph 3659(j).

(c) CSGs are required to provide real time reporting of production as specified by the utility. For CSGs greater than 250 kW AC, the CSG owner shall provide real time electronic access to production and system operation data. In the event that a CSG greater than 250 kW AC also collects meteorological data, the CSG owner shall provide, at the utility's request, real time electronic access to the utility to such meteorological data. A utility may require different real time reporting for CSGs 250 kW AC and smaller.

(d) Production from the CSG shall be reported by the CSG subscriber organization to its CSG subscribers at least monthly. To facilitate the tracking of production data by CSG subscribers, CSG owners or CSG subscriber organizations are encouraged to provide website access to subscribers showing real time output from the CSG, if practicable, as well as historical production data.

3881. Billing Credits and Unsubscribed Electricity and RECs.

(a) Compensation to the CSG subscriber for its share of the electricity and RECs generated by a CSG shall take the form of a billing credit paid to the CSG subscriber by the utility or, if authorized by the CSG subscriber, contributed to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory.

(I) The billing credit shall be calculated by multiplying the CSG subscriber's share as a percentage of the electricity generated by the CSG times the utility's total aggregate retail rate of the subscriber's rate class, including all billed components except for the customer charge, demand side management (DSM), and RESA rate components, as charged to the CSG subscriber's class.

(II) For the purpose of calculating the billing credit for a commercial or industrial customer on a demand tariff:

(A) the total aggregate retail rate shall be determined by dividing the total electric charges to be paid by the customer to the utility for the most recent calendar year (including demand charges) by the customers' total electricity consumption for that year for subscriptions to CSGs planned for purchases by the utility before January 1, 2016. In the event that the designated premises to which the CSG subscription is attributed has less than one year of billing history, an estimate of the total annual charges shall be made by the utility; or

(B) the total aggregate retail rate shall be determined using the average charges and usage for the subscriber's rate class for subscriptions to CSGs planned for purchases by the utility after January 1, 2016.

(III) Billing credits shall be reflected in the CSG subscriber's bill from the utility no later than the 60th day after the utility receives the information required to calculate the billing credit from the CSG subscriber organization.

(IV) The utility may assess a Commission-approved charge to cover the utility's costs of delivering to the CSG subscriber's premises the electricity generated by the CSG, integrating the generation from the CSG into the utility's system, and administering the contracts with CSG owners and billing credits. This charge shall be a fixed amount and shall not reflect costs that are already recovered by the utility from CSG subscribers through other charges. The utility may seek a revision of this charge no more frequently than once per year.

(b) If, in a monthly billing period, the CSG subscriber's billing credit associated with a CSG subscription exceeds the customer's bill from the utility, the excess billing credit will be rolled over as a credit from month to month indefinitely until the customer terminates service with the utility, at which time no payment shall be required from the utility for any remaining billing credits associated with the customer's CSG subscription; however, nothing in this rule precludes the CSG subscriber or the utility from contributing the remaining billing credits to another utility account paid by the CSG subscriber or to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, where the utility has implemented a program for such contributions pursuant to paragraph 3881(d).

(c) In lieu of rolling over billing credits from month to month pursuant to paragraph 3881(b), the CSG subscriber may contribute the excess 12 months' net billing credit at the end of the April billing cycle to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, where the utility has implemented a program for such contributions pursuant to paragraph 3881(d).

(d) A description of any proposed program to allow contributions of billing credits or excess billing credits to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, pursuant to paragraphs 3881(a) through (c), shall be included in the utility's acquisition plan for

new CSGs filed with the Commission. The description shall include the utility's proposed process for qualification and approval of third party administrators; the criteria a third party must meet to become qualified and approved; the method by which a utility will allocate billing credits, unsubscribed electricity to multiple third party administrators; the way in which the program will be marketed to low-income customers as a renewable program such that customers are made aware that a portion of the bill assistance they receive was derived from renewable energy resources; and a reporting methodology to be included in each annual RES compliance report filed with the Commission. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the contributing CSG subscriber.

(e) In its annual RES compliance report filed with the Commission, the utility shall, at a minimum, provide the total number of CSG billing credits that were contributed to qualified third party administrator, pursuant to paragraphs 3881(a) through (c).

(f) For RECs purchased by the utility, the utility and the CSG owner shall agree on whether subscribers will be compensated by the billing credit on each CSG subscriber's bill in accordance with paragraph 3881(a) or by a payment to the CSG owner.

(g) The utility shall purchase from the CSG owner the unsubscribed electricity and RECs at a rate equal to the utility's average hourly incremental cost of electricity supply over the immediately preceding calendar year. A utility may donate the purchased unsubscribed electricity to eligible low-income CSG subscribers as kWh credits. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the recipient's customer class.

3882. Purchases from CSGs.

(a) The Commission shall establish the minimum and maximum purchases from new CSGs for each year in accordance with § 40-2-127(5)(a)(IV), C.R.S. The Commission shall establish such minimum and maximum levels of purchases through the utility's acquisition plan for new CSGs filed by the utility pursuant to rule 3656 or rule 3603.

(I) The utility's acquisition plan shall include a proposed method for requiring CSG subscriber organizations to verify that the organization will sell and maintain CSG subscriptions to achieve the result that at least 50 percent of the established minimum aggregate new CSG purchases correspond to residential, small commercial, agricultural, and eligible low-income CSG subscribers, and eligible low-income service providers.

(II) The utility's acquisition plan shall explain how it will use a combination of one or more competitive solicitations and one or more standard offers to cause purchases from new CSGs over the period covered by the plan.

(III) The utility shall propose as part of its acquisition plan a standard offer pricing program in order to acquire new CSG generation.

(A) At least one standard offer must enable CSG subscribers to keep the RECs generated by the CSG. The standard offer may result in differing compensation that would enable the CSG subscribers to keep the RECs generated by the CSG.

(B) The standard offer may include a price adder for purchases from new CSGs with subscribers from the categories identified in subparagraph 3882(a)(I), or for the purpose of encouraging CSGs with certain beneficial characteristics or innovations.

(IV) For acquisitions made through competitive solicitations, the utility shall select projects in combination to ensure participation of subscribers from the categories identified in subparagraph 3882(a)(I).

(b) All of the electricity from a CSG shall be acquired and distributed by the utility. A utility shall not restrict or unreasonably delay any CSG that is approved pursuant to a Commission approved procurement plan from interconnecting to the utility's distribution or transmission system in accordance with the applicable interconnection standards and procedures.

(c) The utility shall enter into contracts with CSG owners in accordance with the competitive solicitations and standard offers identified in the utility's acquisition plan. The CSG owner shall state in its proposed contract with the utility whether the RECs will be retained by CSG subscribers or ownership of the RECs will be transferred to the utility. Compensation may differ that would enable the CSG subscribers to keep the RECs generated by the CSG. A CSG whose owner enters into a contract with the utility shall be deemed to be part of the utility's Commission-approved acquisition plan if the cumulative total of the nameplate capacity of the acquired new CSGs does not exceed the maximum purchases established by the Commission for that year.

(d) The utility shall conduct due diligence on proposed contracts with new CSG owners to reasonably assure that the CSG owner and CSG subscriber organization have sufficient resources to successfully construct and commence operations of the CSG.

(I) Except for CSGs owned by governmental, quasi-governmental, or non-profit entities, the utility shall be deemed to have conducted sufficient due diligence by requiring from the CSG owner documentation of escrowed funds of not less than $100 per kW AC of the CSG's nameplate rating. The escrow shall be maintained by its terms until such time as the CSG owner makes an interconnection agreement deposit payment.

(II) If a CSG owner properly documents escrowed funds consistent with this paragraph, the utility may not refuse to enter into a contract with the CSG owner for failure to demonstrate sufficient resources to reasonably assure successful construction and commencement of CSG operations.

(e) In each acquisition plan for purchases from new CSGs, the utility shall reserve, on a program-wide basis and to the extent there is demand for such ownership, at least ten percent of its electricity purchases from new CSGs for eligible low-income CSG subscribers.

(I) CSG subscriber organizations and utilities may rely on certification by the Colorado Department of Human Services for acceptance in the Colorado Low-Income Energy Assistance Program (LEAP) as evidence of eligibility as an eligible low-income CSG subscriber in a CSG or other reliable verification methods from low-income service providers.

(II) CSGs for eligible low-income CSG subscribers may be either dedicated low-income CSGs or low-income set asides within other CSGs.

(III) The utility's CSG acquisition plan shall be designated to ensure reasonable access for low-income residential customers as distinct from low-income service providers.

3883. Financing and Operating CSGs.

(a) Contracts signed by utilities with CSG owners shall be a matter of public record and shall be filed with the Commission by the utility.

(b) CSG subscriber organizations shall issue public annual reports as of the end of the calendar or other fiscal year containing, at a minimum, the energy produced by the CSG; audited financial statements including a balance sheet, income statement, and sources and uses of funds statement; and the management and ownership of the CSG and the CSG subscriber organization, if different. Individual subscribers shall receive, in addition to the annual report of the CSG subscriber organization, a report of the energy, multiplier (e.g., aggregate retail rate), eligible low-income customer bill savings, and net metering credits attributed to the CSG subscriber's account.

(c) CSG subscriber funds, collected by the CSG in advance of commercial operation of the CSG, shall be held in escrow. The escrow shall be maintained by its terms until such time as the CSG commences commercial operation as certified by utility acceptance of energy from the CSG.

3884. – 3899. [Reserved].