

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22R-0352E

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IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION’S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, IN ORDER TO IMPLEMENT REVISIONS TO THE LIMITED EXEMPTION OF MASTER METER OPERATORS ENACTED BY SENATE BILL 21-261.

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**COMMISSION DECISION  
ADOPTING RULES**

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Mailed Date: December 9, 2022  
Adopted Date: November 23, 2022

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**I. BY THE COMMISSION**

**A. Statement**

1. Through this Decision, the Colorado Public Utilities Commission amends certain of the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3, in order to implement the statutory changes enacted in Senate Bill (SB) 21-261 revising the statutory exemption of master meter operator configurations from Commission rate regulation.

2. As discussed below, we adopt rules with revisions as attached to this Decision in legislative format (Attachment A) and in final format (Attachment B).

**B. Background**

3. On August 15, 2022, the Commission issued a Notice of Proposed Rulemaking (NOPR) through Decision No. C22-0469, initiating this rulemaking Proceeding. Through the

NOPR, the Commission proposed amendments to certain of its Rules Regulating Electric Utilities, 4 CCR 723-3, in order to implement the recent statutory changes enacted in SB 21-261, effective June 21, 2021, revising the statutory exemption of master meter operator configurations from Commission rate regulation.

4. Through this rulemaking, the Commission satisfies the legislature's requirement, codified at § 40-1-103.5(3)(b), C.R.S., that the Commission adopt, by December 31, 2022, implementing rules to enable landlords of multi-unit buildings and tenants in multi-unit buildings to share in the production from a net metered retail distributed generation installation.

5. On September 6, 2022, the Colorado Rural Electric Association (CREA) filed comments. On September 8, 2022, the Colorado Solar and Storage Association and Solar Energy Industries Associations (filing together as COSSA/SEIA), and Black Hills Colorado Electric, LLC (Black Hills) filed comments. On September 22, 2022, Public Service Company of Colorado (Public Service), and Black Hills filed responsive comments. COSSA/SEIA filed supplemental comments on October 12, 2022.

6. A public comment rulemaking hearing was held on October 20, 2022, where participants had opportunity to provide oral comments on the proposed rules and the written comments in the rulemaking record.

7. Ivy Energy and Group14 Engineering filed comments on October 21, 2022. The City of Boulder filed comments on October 26, 2022. Final comments were filed on November 3, 2022, by Energy Outreach Colorado (EOC), COSSA/SEIA, and Black Hills. Trammell Crow filed comments on November 4, 2022.

8. The proposed rule changes are set forth in legislative (*i.e.*, ~~strikeout~~ and underline) format in Attachment A to this Decision, and in final format in Attachment B to this Decision.

### **C. Discussion of Adopted Rules**

9. In rendering this Decision, the Commission has carefully reviewed and considered all the comments filed in this Proceeding and provided at the public comment rulemaking hearing, even if this Decision does not specifically address every comment made, or every nuance of each comment.

#### **1. Rules 3803(a)(I), 3803(a)(II), and 3803(a)(III) - MMO Exemption Requirements**

10. As set forth in the Commission's existing rules, a "master meter operator" or "MMO" is a person who purchases electric service from a serving utility for the purpose of delivering that service to end-users whose aggregate usage is measured by a master meter. The meter reading is usually done under the property owner's account and the property owner then receives the bills measured through one electric meter for all the tenants. The master meter is usually installed in front of any sub-meter so that the energy which is supplied to the building flows through the master meter first. Utility submetering is the implementation of meter systems that allows the operator of a multi-unit property to bill each unit for individual utility usage through the installation of additional meters behind a utility meter.

11. The Commission has existing rules in place implementing the statutory exemption of MMOs pursuant to § 40-1-103.5, C.R.S. In the NOPR, the Commission proposed certain revisions to the rule language in subparagraph 3803(a)(I) to reflect the change in law enacted in SB 21-261.

**a. Participant Comments**

12. COSSA/SEIA believe the Commission's proposed amendment to Rule 3803(a)(I) is insufficient to accomplish the effect of the new language in § 40-1-103.5(1)(a), C.R.S., and that further changes are needed in other rules. They argue existing Rule 3803(a)(I) implements the statutory prohibition against an MMO charging its end-users more for utility service than the MMO is billed for utility service by the serving utility. COSSA/SEIA argue that Rule 3803(a)(I) is not the only rule that implements this prohibition. COSSA/SEIA state that the following rules also implement the prohibition by providing additional details and clarity on what this statutory prohibition means, in practice: 3803(a)(II), 3803(a)(III), 3803(b), 3803(c)(II), and 3804(a). COSSA/SEIA filed proposed changes to each rule. COSSA/SEIA explains the purpose of each of its proposed amendments is to ensure that, consistent with § 40-1-103.5(1)(a), C.R.S., as amended by SB 21-261, MMOs may retain all or a portion of the financial benefits that result from installing onsite distributed generation, just as other commercial customers that install onsite distributed generation retain the financial benefits of doing so.

13. Black Hills states it has a concern that landlords could seek to apply the statutory and proposed rule language in a one-sided way; that is, to charge tenants for the costs of retail distributed generation, but not apply the benefits of such generation to at least offset the costs. Black Hills argues the legislative intent in the governing statute is to share monetary benefits from retail distributed generation with tenants. Black Hills believes the proposed rules should be construed to encourage the MMO to share benefits received from distributed generation with its end-users, consistent with legislative intent. Black Hills argues this statutory provision is

specific to a landlord/tenant configuration in a multi-unit building and most, but not all, MMO configurations are similarly situated as multi-dwelling residential properties.

14. In its initial comments, Public Service argues that COSSA/SEIA's redline additions to Rules 3803(a)(II), 3803(a)(III), and 3804(a) should be rejected as further restricting the sharing of the monetary benefits by the MMO to the end-users. Public Service states that the Commission should encourage the sharing of these monetary benefits from these programs. They note that Black Hills added blueline language within Rule 3803(a)(I) which sets the bar for the MMO to, at a minimum, not charge its end-users above what is billed by the utility to the MMO. Public Service agrees with Black Hills' observations that there appears to be legislative intent to share the monetary benefits from participation in retail distributed generation programs. Public Service also shares the concern expressed by Black Hills that, without the requirement to share at least some of the monetary benefits from these programs, only the MMO is able to benefit, making it a one-sided transaction.

15. Black Hills reiterates in its reply comments that COSSA/SEIA's redlines could allow the cost burden to be shifted by the MMO to its end-users without at least offsetting the costs with equal or greater monetary benefits from distributed generation. Black Hills cautions, if this interpretation is allowed, end-users served by the MMO could potentially pay more than the billing amount from the serving utility. Black Hills requests the Commission should make clear that an end-user cannot be charged more by the MMO than the amount billed to the MMO by the utility after considering the adjustments described in the redline language.

16. At the public comment rulemaking hearing and in its post-hearing comments, COSSA/SEIA states that the intention behind the proposed amendments is not to allow MMOs to pass along the cost of the distributed generation system through utility charges but merely allow

MMOs to retain some of the operational savings and the net metering benefits of their capital investment. COSSA/SEIA states its proposed rule additions do not intend to allow an MMO to charge end-users directly for the cost of the distributed generation system. After questions from the Commissioners during the hearing, COSSA/SEIA as well as other participants all agreed that rule changes should not allow customers to be made worse off than they otherwise would have been before the distributed generation system is installed.

17. Black Hills also agrees with COSSA/SEIA (both at the hearing and its file post-hearing comments), that consensus was reached with hearing participants that MMOs should not be able to charge its end-users more than the actual costs billed to the MMO by the serving utility, after taking into account refunds, rebates, rate reductions, net metering credits, or similar adjustments attributable to the use of electricity generated from retail distributed generation that is located on property owned or leased by the MMO or by a customer served by the MMO.

18. COSSA/SEIA states that existing Rule 3803(a)(II) requires that the total amount an MMO bills its end-users for utility service not exceed the amount the utility bills the MMO. COSSA/SEIA states, by focusing on the sum of the amounts the MMO bills its end-users, the function of this rule is to describe how to determine whether an MMO is violating the general statutory prohibition against an MMO charging its end users more than what the utility bills the MMO. If Rule 3803(a)(II) is not amended, COSSA/SEIA believes an MMO that installed onsite distributed generation would not be able to retain the value of refunds, rebates, rate reductions, net metering credits, or similar utility bill adjustments attributable to the distributed generation. COSSA/SEIA states its proposed amendment to Rule 3803(a)(II) would clarify that the total amount an MMO bills its end-users may not exceed the amount the utility bills the MMO before

accounting for the financial benefits of onsite distributed generation. COSSA/SEIA concludes, in practice, this amendment would allow an MMO to disregard all bill adjustments attributable to generation from the distributed generation when determining the total amount that it may pass on to its end-users.

19. In its reply comments, COSSA/SEIA state that Rule 3803(a)(II) currently provides that the sum of the MMO's end-user billings cannot exceed the amount the MMO is billed by the utility. If unamended, the hypothetical MMO would violate this rule because the MMO's utility bill is now only \$600 per month but the total it collects from its end-users is \$1,000 (or \$800 if it shares the bill reduction benefits with end-users).

20. Existing Rule 3803(a)(III) requires an MMO to pass on to its end users all refunds the MMO receives from the utility. COSSA/SEIA states its amendment to Rule 3803(a)(III) would clarify that an MMO is not required to pass on to end-users the value of refunds, rebates, rate reductions, net metering credits, or other adjustments attributable to its distributed generation.

21. In its reply comments, COSSA/SEIA states that Rule 3803(a)(III) currently requires the MMO to pass on to its end-users all refunds the MMO receives from the utility. COSSA/SEIA explains the MMO's \$400 monthly *bill* reduction that is attributable to the distributed generation system could be considered a refund, especially if it comes in the form of net metering credits that are built up during the summer and applied to bills later in the year. COSSA/SEIA concludes, if unamended, the hypothetical MMO would violate this rule if it retains any portion of the \$400 monthly bill reduction that results from installing distributed generation.



**b. Commission Findings and Conclusions**

22. The Commission will adopt changes proposed by COSSA/SEIA and Black Hills for Rules 3803(a)(I), 3803(a)(II), and 3803(a)(III). At the public comment rulemaking hearing, Black Hills stated, and other participants agreed, that the MMO should be encouraged to share the monetary benefits of distributed generation with its end-users, consistent with the legislative intent. The MMO decides how much of the utility bill savings to share with the end-users, but the end-user should never pay more than the amount billed to the MMO in the net-meter bills.

23. For each of the changes in Rule 3803(a), the Commission reiterates what was agreed upon by the participants at the hearing. Costs to the end-user must not exceed what the gross bill amount would have been minus the deduction the MMO receives for net metering credits, refunds, or rebates.

**2. Rule 3803(b) - MMO Exemption Requirements****a. Participant Comments**

24. COSSA/SEIA states that Rule 3803(b) prohibits an MMO from reselling electricity for profit and states that doing so is grounds for revoking the MMO's exemption from rate regulation. While the concepts of resale and profit do not appear in § 40-1-103.5, C.R.S., COSSA/SEIA argues this rule is consistent with the statutory prohibition against an MMO charging its end-users more than the utility bills the MMO. COSSA/SEIA states its amendments to Rule 3803(b) would clarify that the prohibition against resale for profit applies to the resale of electricity provided by the utility and not the resale of electricity generated by the MMO's distributed generation. The proposed amendments further clarify that an MMO may retain all or a portion of utility bill reductions attributable to onsite distributed generation.

25. In its reply, COSSA/SEIA states that Rule 3803(b) currently provides that an MMO shall not resell electricity for profit and that resale is a basis for the Commission revoking an MMO's exemption from rate regulation. COSSA/SEIA states, if unamended, the hypothetical MMO would violate this rule because, by retaining any portion of a monthly bill reduction, the MMO would be profiting from reselling electricity to its end users.

**b. Commission Findings and Conclusions**

26. No participants oppose this clarifying language proposed by COSSA/SEIA; therefore, the Commission adopts the proposed language for Rule 3803(b).

**3. Rule 3803(c)(II) - Check-Meter Devices**

**a. Participant Comments**

27. COSSA/SEIA states Rule 3803(c)(II) imposes substantially the same requirement that appears in existing Rule 3803(a)(II) – that the sum of the MMO's charges to end users not exceed the amount the utility bills the MMO – for situations in which the MMO uses check-meter devices. For consistency and to ensure that MMOs can retain the financial benefits of distributed generation, COSSA/SEIA proposes to amend Rule 3803(c)(II) with the same language it proposed for Rule 3803(a)(II).

**b. Commission Findings and Conclusions**

28. The participants reached consensus on adding both COSSA/SEIA's changes as well as Black Hills proposed additions to Rules 3803(c)(II), therefore, Commission adopts the language proposed by COSSA/SEIA and Black Hills.

#### 4. Rule 3804(a) - Refunds

##### a. Participant Comments

29. COSSA/SEIA states Rule 3804(a) governs the process for an MMO passing on the value of any refunds the MMO receives from the utility. The requirement that an MMO pass along any refunds appears in Rule 3803(a)(III). COSSA/SEIA note that if Rule 3804(a) were not amended, it would be unclear whether refunds attributed to distributed generation would be subject to the process outlined in the rule for an MMO passing on the value of refunds to end-users. To ensure consistency among the rules, COSSA/SEIA proposes to amend Rule 3804(a) to clarify that the refund process described in the rule does not apply to a refund attributable to distributed generation.

30. Black Hills questions in its post-hearing comments whether Rule 3804(a) needs to include an exemption for MMOs, *i.e.*, that no notices of distributed generation-related refunds need to be provided to end-users. Black Hills states that while COSSA/SEIA is concerned about customer confusion, the term “refund” may be defined narrowly to only include special rebates or refunds that are not the monthly electric bill savings from distributed generation and limited to narrow cases. Black Hills notes that, given the legislative intent to encourage MMOs to share distributed generation benefits with end users, it may make sense for end users to receive notice of such narrowly defined refunds.

##### b. Commission Findings and Conclusions

31. Based on post-hearing comments and discussions at the hearing, the Commission determines that the term “refund,” which already appears in Rule 3804(a), is appropriate and we recommend keeping the concept of COSSA/SEIA proposed addition to this rule. However, we

find the proposed language could be improved by adding a clarification sentence at the end of Rule 3804(a), rather than COSSS/SEIA's proposed language modification that appears at the beginning of the rule. We adopt this change as shown in Attachments A and B to this Decision, which states, "No notification pursuant to this rule is required for a refund, benefit, or rate reduction attributable to retail renewable distribution generation."

#### **5. Rule 3662(a)(XIX) - Annual RES Compliance Report**

32. In the NOPR, the Commission proposed to add a new provision as subparagraph 3662(a)(XIX) to require additional reporting from utilities.

33. The NOPR explained that this new requirement to ensure the Commission can start to collect more information about this segment of customers and inform future rulemaking and other agency actions. The Commission invited comment from participants on additions to this rule to specify the type of information to be included in the utility's required annual summary.

##### **a. Participant Comments**

34. There is consensus among the participants that this proposed rule is problematic in its proposed form. In its post-hearing comments, Black Hills states it has no service agreements with end-users (they are not customers of the utility), and no visibility as to the identity of end-users behind an MMO. Black Hills states it cannot compel an MMO to identify end-users absent a legal mandate.

35. COSSA/SEIA notes that there is merit to requiring the utilities to track and report the number of MMOs that participate in net metering based on the new rules that will be promulgated in this proceeding. Accordingly, COSSA/ SEIA propose alternative rule language

for Rule 3662(a)(XIX), which is based on the Commission's proposal but refers to MMOs instead of end-users.

36. Black Hills states that it does not object to COSSA/SEIA's proposal to supplant the term "end-users" with "MMOs," but notes that it only knows of those MMOs which are net metered customers that participate in Black Hills' tariffed offerings under an approved renewable energy compliance plan (includes onsite net-metering, offsite net-metering, and community solar garden subscriptions). Black Hills states that it cannot report on other MMOs who do not participate.

37. CREA argue that the proposed change the creates a burden that is difficult or impossible to comply with, as such data is not available to cooperatives. CREA notes that cooperative electric associations have no contractual relationship with the end users served by an MMO (and are unlikely to know the identity of such end users) and have no ability to compel end users to divulge information regarding their consumption or participation in any program in which the MMO is involved.

38. Public Service states in its reply comments and at hearing that it does not distinguish between commercial customers that are, or are not, MMOs so requiring reporting is problematic and would create an administrative burden for Public Service. Public Service is already reporting on MMO participation in these programs as they are included amongst all the customer participation in these programs. Public Service recommends the reporting requirement for Rule 3662(a)(XIX) be stricken.

**b. Commission Findings and Conclusions**

39. As the Commission continues to request more transparency as well as more reporting from utilities and many areas, we believe that COSSA/SEIA modifications (eliminating the term “end-users”) clarify the Commission’s intent and that the utilities should begin to track MMO operators in its territory, especially in helping market renewable energy offerings, as well as potential focus on programs for disproportionately-impacted and income-qualified customers.

40. Black Hills clarified at hearing that the utility only knows about MMOs that participate in the utility’s tariff offerings, under an approved renewable energy standard compliance plan. Rule 3664(i) - Net Metering

41. In the NOPR, the Commission proposed adding a new paragraph to Rule 3664 to implement the principal changes enacted in SB 21-261. The Commission noted that to date, it has not been made aware of any significant barriers or issues preventing MMOs from participation or received input on how to allocate net metering credits including whether such allocation should be by usage or demand.

**a. Participant Comments**

42. COSSA/SEIA argue that the Commission’s proposed amendment to Rule 3664(i) stating that a utility may not prohibit an MMO end-user from participating in net metering is not necessary and could result in confusion. COSSA/SEIA believe the revisions to § 40-1-103.5(1)(a) and (3)(b), C.R.S., made by SB 21-261 evidence a clear intent that MMOs (along with other multi-unit buildings) be permitted to participate in net metering. COSSA/SEIA provided a modification to the Commission’s proposed language.

43. At the public comment rulemaking hearing and in its post-hearing comments, Black Hills states it opposes the proposed rule language as it does not have utility meters installed on end-users of MMOs. Black Hills argues that it can neither prohibit nor compel end-users of MMOs to participate in net metering. Further, Black Hills opposes COSSA/SEIA's proposal to substitute "end-users" with "master meter operators" as unnecessary. Black Hills states that MMOs are situated no differently than other customers regarding the company's obligation to comply with net metering statutory requirements, as well as the company's tariffs.

44. Public Service at hearing and in comments states that it inherently already complies as it provides retail distributed generation programs to all classes of customers it serves, including those commercial customers who are MMOs. They recommend the Commission strike the suggested redline for Rule 3664(i) as unnecessary.

#### **b. Commission Findings and Conclusions**

45. With a better understanding of the relationship between utilities, MMOs and end-users, the Commission agrees with the utilities that our proposed Rule 3664(i) is unnecessary to implement SB 21-261.

### **6. Individually Metered Multi-Unit Property Rulemaking**

#### **a. Participant Comments**

46. In its initial comments, COSSA/SEIA recommended that the Commission initiate a targeted rulemaking to implement net metering for individually metered multi-unit properties, as soon as practical, and provided recommended rules.

47. In its reply comments, Black Hills disagreed with COSSA/SEIA's proposed rules and also disagreed that SB 21-261 enables the Commission to consider these proposals either in

this proceeding or a follow-on proceeding. Black Hills states that COSSA/SIEA acknowledge that the rule changes they seek are based on the new statutory subsection added by SB 21-261, namely, § 40-1-103.5(3)(b), C.R.S. Black Hills argues that the landlords of multi-unit buildings and tenants of multi-unit buildings discussed in subsection (3)(b) are clearly a subset of MMOs, as the entirety of § 40-1-103.5 is limited to the subject of MMOs.

48. In its post-hearing comments, COSSA/SEIA continue to believe that there is an urgent need for a rulemaking to allow individually metered multi-unit buildings to participate in net metering. COSSA/SEIA notes that individually metered multi-unit buildings are perhaps the largest customer group that continues to face substantial obstacles to installing onsite distributed generation due to the split-incentive problem and current meter aggregation rules.

49. At the public comment rulemaking hearing and in written comments, representatives from Sunrun, Group 14 Engineering, Ivy Energy, King Energy, EOC, the City of Boulder as well as several real estate developers all identified a need to address individually metered multiunit net metering soon.

50. EOC stated that, due to the lack of certainty in the existing rules concerning how individually metered, tenant-occupied buildings (*i.e.*, not master metered) may share in the production of net metered solar, EOC was aware of several multi-family, affordable housing projects that had to abandon on-site distributed generation project opportunities. EOC believes such opportunities would have been funded by outside sources and would have provided significant reductions in residents' overall electricity bills.

51. EOC adds that, due to these complexities, one of the only long-term solutions to unlock the benefits of solar for many income-qualified customers has been offering donated capacity income-qualified community solar subscriptions. EOC argues that the Commission



now can, and should, expand options for income-qualified customers to participate in on-site solar generation, by opening a rulemaking on virtual net metering for individually metered units. EOC recommends this rulemaking regarding individually metered units commence as soon as possible..

52. Trammel Crow Residential notes that apartment renters are perhaps the largest customer segment that is unable to benefit from on-site distributed generation. They believe building owners need a comprehensive net metering policy to make on-site distributed generation economically feasible. Likewise, Group14 Engineering notes that a rulemaking around individual metering and solar to make the economics feasible would be beneficial to many affordable housing developers and tenants. Similarly, Ivy Energy states that many multi-unit buildings in Colorado are individually metered and a policy enabling net metered credit allocation and asset monetization by the property owners, for both individually metered buildings and those with master meters, is essential in closing the equity gap and letting renters access onsite solar benefits and savings.

53. Several other developers explained in the hearing that there is a large opportunity for solar to benefit many customers with an expedited rulemaking. The City of Boulder noted that the Boulder Housing Authority have been very aggressive in bringing solar to their residents and has installed solar on nearly all their MMO buildings but have had a hard time making it work for individually metered properties.

54. Public Service stated at the hearing that it is supportive of vetting COSSA/SEIA's proposed rules through a separate follow-on rulemaking. Public Service does not support the proposed rules in this rulemaking, as they do not believe COSSA/SEIA language has been properly vetted.

55. In its post-hearing comments, Black Hills requests that the scope of such rulemaking be narrowed to onsite net metering co-located at multi-unit buildings with individually metered tenants. Black Hills clarifies that “Onsite” means renewable distributed generation installed on the multi-unit building (*e.g.*, roof structure) or contiguous property (*e.g.*, parking garage or car port). Black Hills believes this will avoid potential confusion with its Commission-approved tariff for “Offsite” Net Metering, which could apply to multi-unit properties with tenants located on non-contiguous parcels of property (*e.g.*, RV Park Owner with mobile home tenants). Black Hills states it would like to avoid conflicts between Commission rules and the company’s Offsite Net Metering tariff regarding the sharing of net metering bill credits from an offsite distributed generation installation.

**b. Commission Findings and Conclusions**

56. Based on the numerous comments received on this issue, the Commission agrees there is good cause to open a follow-on rulemaking to consider further rule revisions beyond those adopted through this Decision. As COSSA/SEIA note, the State of Colorado is moving quickly toward building electrification and building performance standards, and markets need certainty. At hearing, COSSA/SEIA requested that the Commission not wait until a larger, more comprehensive rulemaking, and instead, open a dedicated rulemaking for discrete metered multi-unit buildings, and enable net-metering for those customers. COSSA/SEIA and other hearing participants agreed that the opportunity to bring on-site solar to individually metered multi-unit buildings is much larger and there is a lot of demand. COSSA/SEIA believes that this is probably the largest customer group, in Colorado, that still cannot take advantage of on-site net meters.

57. EOC noted at hearing that a follow-on rulemaking could have a large impact on the affordable housing market and that the organization has been part of working on affordable housing development, specifically in Colorado, and many projects have been unable to move forward with adding on-site and off-site distributed generation resources, because of the uncertainties and risks associated with not having clarity around the rules.

58. We therefore direct advisory staff of the Commission to commence work on developing a proposal for consideration by the Commission as a separate rulemaking proceeding at a future Commissioners' Weekly Meeting.

#### **D. Conclusion**

59. The statutory authority for the rules adopted by this Decision is found primarily at § 40-1-103.5, C.R.S. (requiring the Commission to promulgate certain implementing rules) and § 40-2-108, C.R.S. (requiring the Commission generally to promulgate rules necessary to administer and enforce Title 40).

60. We adopt the rule revisions shown in legislative (*i.e.*, strikeout/underline) format (Attachment A) and final format (Attachment B) attached to this Decision, consistent with the discussion above.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Rules Regulating Electric Utilities in 4 *Code of Colorado Regulations* 723-3, attached to this Decision in legislative/strikeout format as Attachment A, and in final format as Attachment B, are adopted, and are available in the Commission's Electronic Filing System at:

[https://www.dora.state.co.us/pls/efi/EFI.Show\\_Docket?p\\_session\\_id=&p\\_docket\\_id=22R-0352E](https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0352E).

2. 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.

3. 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

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  
November 23, 2022**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in black ink, appearing to read "G. Harris Adams".

G. Harris Adams,  
Interim Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ERIC BLANK

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JOHN GAVAN

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MEGAN M. GILMAN

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Commissioners

**COLORADO DEPARTMENT OF REGULATORY AGENCIES  
Public Utilities Commission**

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

**PART 3  
RULES REGULATING ELECTRIC UTILITIES**

**3662. Annual RES Compliance Report.**

- (a) Each investor owned and cooperative electric association QRU shall file an annual RES compliance report no later than June 1 to report on the status of the QRU's compliance with the RES for the most recently completed compliance year. Unless expressly noted otherwise, the annual RES compliance report of each investor owned and cooperative electric association QRU shall provide the following information for the most recently completed compliance year.

\* \* \* \*

[indicates omission of unaffected rules]

(XIX) A summary of program participation by master meter operators as defined in paragraph 3801(c).

\* \* \* \*

[indicates omission of unaffected rules]

**MASTER METERS**

**3800. Scope and Applicability.**

These rules are applicable to any person who purchases electric service from a utility for the purpose of delivery of that service to end-users whose aggregate usage is to be measured by a master meter or other composite measurement device.

**3801. Definitions.**

The following definitions apply to rules 3800 through 3805, unless a specific statute or rule provides otherwise. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) "Check-meter" means a meter or other composite measurement device which is used by a master meter operator, and which is used to determine electric consumption by end-users served by the master meter operator.
- (b) "Master meter" means a meter or other composite measurement device which a serving utility uses to bill a master meter operator.
- (c) "Master meter operator" or "MMO" means a person who purchases electric service from a serving utility for the purpose of delivering that service to end-users whose aggregate usage is measured by a master meter.
- (d) "Refund" means a refund, rebate, rate reduction, or similar adjustment.

- (e) "Serving utility" means the utility from which the master meter operator receives the electric service which the master meter operator then delivers to end-users.

**3802. Exemption from Rate Regulation.**

- (a) Pursuant to § 40-1-103.5, C.R.S., and by this rule, the Commission exempts from rate regulation under Articles 1 to 7 of Title 40, C.R.S., a master meter operator which is in compliance with rules 3803 and 3804.
- (b) A master meter operator which is not in compliance with rules 3803 and 3804 is subject to rate regulation under Articles 1 to 7 of Title 40, C.R.S., and shall comply with the applicable rules.

**3803. Exemption Requirements.**

- (a) In order to retain its exemption from rate regulation, a MMO shall do the following.
- (I) As part of its billing for utility service, the MMO shall charge its end-users only the actual cost billed to the MMO by the serving utility. The MMO shall not charge end-users for any other costs (such as, without limitation, the costs of construction, maintenance, financing, administration, metering, or billing for the equipment and facilities owned by the MMO) in addition to the actual costs billed to the MMO by the serving utility; except for refunds, rebates, rate reductions, net metering credits, or similar adjustments attributable to the use of electricity generated from retail distributed generation that is located on property owned or leased by the MMO or by a customer served by the MMO. After applying these adjustments, end users shall not be charged more than the actual cost billed to the MMO by the serving utility.
- (II) If the MMO bills its end-users separately for service, the sum of such billings shall not exceed the amount billed to the MMO by the serving utility before accounting for the value of refunds, rebates, rate reductions, net metering credits, or similar adjustments attributable to the use of electricity generated from retail renewable distributed generation that is located on property owned or leased by the MMO or by a customer served by the MMO. After applying these adjustments, end users shall not be charged more than the actual cost billed to the MMO by the serving utility.
- (III) If the MMO bills its end-users separately for service, the MMO shall pass on to its end-users all refunds the MMO receives from the serving utility or otherwise, except that the MMO is not required to pass on to end-users the value of refunds, rebates, rate reductions, net metering credits, or similar adjustments attributable to the use of electricity generated from retail renewable distributed generation that is located on property owned or leased by the MMO or by a customer served by the MMO. After applying these adjustments, end users shall not be charged more than the actual cost billed to the MMO by the serving utility.
- (IV) The MMO shall establish procedures for giving notice of a refund to those who are not current end-users but who were end-users during the period for which the refund is paid.
- (V) A master meter operator shall retain, for a period of not less than three years, all records of original utility billings made to the master meter operator and all records of billings made by the master meter operator to its end-users.
- (b) In order to retain its exemption from rate regulation, a MMO shall not resell electricity provided by the serving utility for profit, but may retain all or a portion of utility billing reductions attributable to the generation of electricity from retail renewable distributed generation that is located on property

owned or leased by the MMO or by a customer served by the MMO. Resale for profit of electricity provided by the serving utility is a basis for revocation of an exemption from rate regulation.

- (c) A MMO may check-meter tenants, lessees, or other persons to whom the electricity ultimately is distributed but may do so only if the following conditions are met:
- (I) the check-meter is used solely for the purpose of reimbursing the MMO by means of an appropriate allocation procedure; and
  - (II) the MMO does not receive more than the actual amount billed to the MMO by the serving utility before accounting for the value of refunds, rebates, rate reductions, net metering credits, or similar adjustments attributable of the use of electricity generated from retail renewable distributed generation that is located on property owned or leased by the MMO or by a customer served by the MMO. After applying these adjustments, end users shall not be charged more than the actual cost billed to the MMO by the serving utility.

#### **3804. Refunds.**

- (a) When a serving utility notifies a MMO of a refund or when a refund is otherwise made, a MMO shall notify its end-users of the refund and shall inform the end-users that they may claim the refunds within 90 days after receipt of the notice. The notification shall be made either by first-class mail with a certificate of mailing or by inclusion in any monthly or more frequent regular written communication. The MMO shall also notify former customers who were end-users during the period for which the refund is made. The MMO shall give the notice required by this paragraph within 30 days of notification about the refund or, if there is no prior notification, within 30 days of receipt of the refund. No notification pursuant to this rule is required for a refund, benefit, or rate reduction attributable to retail renewable distribution generation.
- (b) A MMO may retain any portion of a refund which rightfully belongs to the MMO.
- (c) If the aggregate amount of a refund which remains unclaimed after 90 days exceeds \$100, the MMO shall contribute that unclaimed amount to the energy assistance organization in accordance with ~~rules paragraphs~~ 3410(d), (f), and (g). If the aggregate amount which remains unclaimed after 90 days does not exceed \$100, the MMO may retain the aggregate amount.
- (d) A MMO shall pay interest on undistributed refunds in accordance with paragraph 3410(d).



**COLORADO DEPARTMENT OF REGULATORY AGENCIES**  
**Public Utilities Commission**

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

**PART 3**  
**RULES REGULATING ELECTRIC UTILITIES**

**3662. Annual RES Compliance Report.**

- (a) Each investor owned and cooperative electric association QRU shall file an annual RES compliance report no later than June 1 to report on the status of the QRU's compliance with the RES for the most recently completed compliance year. Unless expressly noted otherwise, the annual RES compliance report of each investor owned and cooperative electric association QRU shall provide the following information for the most recently completed compliance year.

\* \* \* \*

[indicates omission of unaffected rules]

- (XIX) A summary of program participation by master meter operators as defined in paragraph 3801(c).

\* \* \* \*

[indicates omission of unaffected rules]

**MASTER METERS**

**3800. Scope and Applicability.**

These rules are applicable to any person who purchases electric service from a utility for the purpose of delivery of that service to end-users whose aggregate usage is to be measured by a master meter or other composite measurement device.

**3801. Definitions.**

The following definitions apply to rules 3800 through 3805 unless a specific statute or rule provides otherwise. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) "Check-meter" means a meter or other composite measurement device which is used by a master meter operator, and which is used to determine electric consumption by end-users served by the master meter operator.
- (b) "Master meter" means a meter or other composite measurement device which a serving utility uses to bill a master meter operator.
- (c) "Master meter operator" or "MMO" means a person who purchases electric service from a serving utility for the purpose of delivering that service to end-users whose aggregate usage is measured by a master meter.
- (d) "Refund" means a refund, rebate, rate reduction, or similar adjustment.

- (e) "Serving utility" means the utility from which the master meter operator receives the electric service which the master meter operator then delivers to end-users.

**3802. Exemption from Rate Regulation.**

- (a) Pursuant to § 40-1-103.5, C.R.S., and by this rule, the Commission exempts from rate regulation under Articles 1 to 7 of Title 40, C.R.S., a master meter operator which is in compliance with rules 3803 and 3804.
- (b) A master meter operator which is not in compliance with rules 3803 and 3804 is subject to rate regulation under Articles 1 to 7 of Title 40, C.R.S., and shall comply with the applicable rules.

**3803. Exemption Requirements.**

- (a) In order to retain its exemption from rate regulation, a MMO shall do the following.
- (I) As part of its billing for utility service, the MMO shall charge its end-users only the actual cost billed to the MMO by the serving utility. The MMO shall not charge end-users for any other costs (such as, without limitation, the costs of construction, maintenance, financing, administration, metering, or billing for the equipment and facilities owned by the MMO) in addition to the actual costs billed to the MMO by the serving utility; except for refunds, rebates, rate reductions, net metering credits, or similar adjustments attributable to the use of electricity generated from retail distributed generation that is located on property owned or leased by the MMO or by a customer served by the MMO. After applying these adjustments, end users shall not be charged more than the actual cost billed to the MMO by the serving utility.
  - (II) If the MMO bills its end-users separately for service, the sum of such billings shall not exceed the amount billed to the MMO by the serving utility before accounting for the value of refunds, rebates, rate reductions, net metering credits, or similar adjustments attributable to the use of electricity generated from retail renewable distributed generation that is located on property owned or leased by the MMO or by a customer served by the MMO. After applying these adjustments, end users shall not be charged more than the actual cost billed to the MMO by the serving utility.
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  - (IV) The MMO shall establish procedures for giving notice of a refund to those who are not current end-users but who were end-users during the period for which the refund is paid.
  - (V) A master meter operator shall retain, for a period of not less than three years, all records of original utility billings made to the master meter operator and all records of billings made by the master meter operator to its end-users.
- (b) In order to retain its exemption from rate regulation, a MMO shall not resell electricity provided by the serving utility for profit, but may retain all or a portion of utility billing reductions attributable to the generation of electricity from retail renewable distributed generation that is located on property

owned or leased by the MMO or by a customer served by the MMO. Resale for profit of electricity provided by the serving utility is a basis for revocation of an exemption from rate regulation.

- (c) A MMO may check-meter tenants, lessees, or other persons to whom the electricity ultimately is distributed but may do so only if the following conditions are met:
  - (I) the check-meter is used solely for the purpose of reimbursing the MMO by means of an appropriate allocation procedure; and
  - (II) the MMO does not receive more than the actual amount billed to the MMO by the serving utility before accounting for the value of refunds, rebates, rate reductions, net metering credits, or similar adjustments attributable of the use of electricity generated from retail renewable distributed generation that is located on property owned or leased by the MMO or by a customer served by the MMO. After applying these adjustments, end users shall not be charged more than the actual cost billed to the MMO by the serving utility.

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- (a) When a serving utility notifies a MMO of a refund or when a refund is otherwise made, a MMO shall notify its end-users of the refund and shall inform the end-users that they may claim the refunds within 90 days after receipt of the notice. The notification shall be made either by first-class mail with a certificate of mailing or by inclusion in any monthly or more frequent regular written communication. The MMO shall also notify former customers who were end-users during the period for which the refund is made. The MMO shall give the notice required by this paragraph within 30 days of notification about the refund or, if there is no prior notification, within 30 days of receipt of the refund. No notification pursuant to this rule is required for a refund, benefit, or rate reduction attributable to retail renewable distribution generation.
- (b) A MMO may retain any portion of a refund which rightfully belongs to the MMO.
- (c) If the aggregate amount of a refund which remains unclaimed after 90 days exceeds \$100, the MMO shall contribute that unclaimed amount to the energy assistance organization in accordance with paragraphs 3410(d), (f), and (g). If the aggregate amount which remains unclaimed after 90 days does not exceed \$100, the MMO may retain the aggregate amount.
- (d) A MMO shall pay interest on undistributed refunds in accordance with paragraph 3410(d).