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

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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