

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23R-0024E

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION’S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, TO IMPLEMENT NET METERING FOR INDIVIDUALLY METERED MULTI-UNIT PROPERTIES.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: January 13, 2023
Adopted Date: January 4, 2023

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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to consider amendments to certain of the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3. The purpose of this rulemaking is to implement rules to enable multi-unit buildings with individually-metered units and occupants of units in such multi-unit buildings to share in the production from an on-site net metered retail distributed generation installation.

2. The statutory authority for the proposed rules is found at § 40-1-103.5, C.R.S. (authorizing the Commission to promulgate implementing rules) and § 40-2-108, C.R.S. (authorizing the Commission to promulgate rules necessary to administer and enforce Title 40).

3. The Commission will hold a remote public comment hearing on the proposed rules at 11:30 a.m. on February 28, 2023.

4. 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.

B. Senate Bill 21-261 and Master Meter Operator Rulemaking

5. Senate Bill 21-261, effective June 21, 2021, enacts measures designed to increase the deployment of renewable energy generation facilities to meet Colorado’s energy needs including raising the allowable capacity of customer-sited renewable energy generation facilities and providing utility customers additional options for increasing the scale and flexibility of new installations. The bill revises the conditions to exempt a “master meter operator,” or “MMO,”

from Commission rate regulation to allow the MMO to modify the charge it assesses end users to account for adjustments attributable to the use of electricity generated from retail distributed generation. The bill required the Commission to adopt, by December 31, 2022, implementing rules to enable landlords of multi-unit buildings and tenants of multi-unit buildings to share in the production from a net metered retail distributed generation installation.

6. Through prior rulemaking, Proceeding No. 22R-0352E, the Commission satisfied this rulemaking requirement by adopting changes to the rules exempting a “master meter operator,” or “MMO,” from Commission rate regulation to expressly allow the MMO to modify the charge it assesses end users to account for adjustments attributable to the use of electricity generated from on-site retail distributed generation.

C. Request for Individually Metered Multi-Unit Property Rulemaking

7. In Proceeding No. 22R-0352E, the Colorado Solar and Storage Association and Solar Energy Industries Associations (filing together as COSSA/SEIA) recommended the Commission initiate a targeted rulemaking to implement net metering for individually metered multi-unit properties as soon as practical. COSSA/SEIA provided recommended rules for consideration.

8. Rulemaking participants generally supported COSSA/SEIA’s request for rulemaking in both written comments filed into the proceeding and oral comments provided at the October 20, 2022, rulemaking hearing.

9. Among other commenters providing input, Energy Outreach Colorado (EOC) stated it was aware of several multi-family, affordable housing projects that had to abandon on-site distributed generation project opportunities because of the uncertainty in the existing

rules concerning how individually metered buildings may share in the production of net metered solar. EOC stated such opportunities would have been funded by outside sources and had the potential to significantly reduce residents' overall electricity bills. EOC advocated that the Commission can, and should, expand options for income-qualified customers to participate in on-site solar generation.

10. Similarly, Trammel Crow Residential commented that apartment renters are perhaps the largest customer segment that is unable to benefit from on-site distributed generation. They maintain that building owners need a comprehensive net metering policy to make on-site distributed generation economically feasible. Group14 Engineering likewise commented rule amendments to make the economics feasible would be beneficial to many affordable housing developers and tenants. Ivy Energy agreed 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.

11. Several other developers explained in the hearing that there is a large opportunity for solar to benefit many customers. The City of Boulder noted that the Boulder Housing Authority has 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.

12. Both participating public utilities, Public Service Company of Colorado (Public Service) and Black Hills Colorado Electric, LLC (Black Hills) were amenable to considering COSSA/SEIA's proposed rules in a separate rulemaking, but not within

Proceeding No. 22R-0352E. Public Service supported vetting COSSA/SEIA's proposed rules through a separate rulemaking. Black Hills requested the scope of any follow-on 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 existing 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).

13. After considering these comments, the Commission agreed there was good cause to open a follow-on rulemaking to consider further revisions beyond those adopted in Proceeding No. 22R-0352E. The Commission directed Staff of the Commission to commence work on developing a proposal for consideration by the Commission as a separate rulemaking proceeding to implement net metering for individually metered multi-unit properties. At the December 28, 2022, Commissioners' Weekly Meeting, the Commission considered Staff's proposal, resulting in this Decision.

D. Proposed Rule Changes

14. The changes proposed by the Commission fall into two general categories: revisions to the existing net metering rules, and additions to the existing rules. For each category, we identify and explain the proposed rule change, provide analysis of the change, and, as applicable, pose questions for comments by rulemaking participants.

15. The Commission recognizes that it would be useful to increase access to net metering for on-site generation located in multi-unit buildings with individually metered units that previously may not have been able to directly benefit from a renewable energy system.

These proposed changes are expected to help occupants of multi-metered residential and commercial buildings receive direct benefits of the building's renewable energy system, rather than all the benefits going to a single meter. These changes are also proposed to improve the economy of scale of renewable energy systems by spreading the costs and benefits of larger systems among more beneficiaries.

1. Revisions to Existing Net Metering Rules

16. The Commission's existing rules implementing Colorado's Renewable Energy Standard include provisions governing net metering billing mechanisms. These rules comprise Rule 3664 of the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3.

17. Rule 3664(h) concerns the aggregation of meters for the purpose of implementing net metering.

18. We propose to revise the language in subparagraph (h)(I)(B) to allow electricity generated from a renewable energy system on a multi-family property to be allocated as kilowatt hour (kWh) credits to either common areas of the property or to individually metered occupant accounts, without requiring the system to be physically interconnected to each individual meter.

19. We propose to eliminate subparagraph (h)(I)(B) that states "each additional meter is used to measure only the customer's own electricity consumption." The purpose of this change is to allow meter aggregation across individual meters.

20. We propose to revise the language in subparagraph (h)(IV) that currently reads: "All meters aggregated pursuant to this paragraph must be on the same rate schedule." to instead read: "Meters aggregated pursuant to this paragraph may be on different rate schedules."

21. We solicit comment from participants on revisions and additions to this proposed language.

2. Additions to Existing Net Metering Rules

22. We propose to add a new paragraph to Rule 3664 to specifically allow owners or occupants of multi-unit properties to benefit from retail renewable distributed generation on their property that may not be physically interconnected to each unit's meter, to provide net metering credits to unit owners and lessees and common areas of multi-unit properties, and to provide opportunities for unit owners and lessees and multi-unit property owners to share in the benefit of retail renewable distributed generation. Under the proposed rules, multi-unit properties with separately metered units, including mixed-use buildings with units that take service on different utility rate schedules and common interest communities managed by unit owners' associations shall be eligible for net metering.

23. Proposed new paragraph (i) and its subparagraphs (I) through (III) state:

(i) Multi-unit properties with separately metered units, including mixed-use buildings with units that take service on different utility rate schedules and common interest communities managed by unit owners' associations shall be eligible for net metering. Multi-unit properties with a renewable system interconnected to a designated meter to allocate excess kilowatt-hour credits to any onsite meter(s) in accordance with a property owner defined system share for each additional meter so long as the annual energy production from the system share will supply no more than 120 percent of the additional meter's average annual electricity consumption. Participating on-site customer accounts must have an agreement with the investor owned QRU identifying the defined system share to participate in net metering.

(I) An investor owned QRU shall offset the retail electricity consumption of a individually metered utility customer account at a multiunit property that is not master metered with electricity produced by a generating account at the same multi-unit property consistent with the system share allocated to the benefitting account.

- (II) An investor owned QRU shall attribute electricity produced by the utility customer accounts with a retail renewable distributed generation customer to each customer account on a kilowatt-hour basis consistent with each individually metered utility customer account's system share. The QRU shall calculate and provide bill credits for each customer account at a multi-unit property based on the system share of the customer account and the retail rate schedule on which the customer account takes service.
- (III) If the electricity produced by a system share exceeds the consumption of the customer account associated with such system share during a month, the excess kilowatt-hours shall be carried forward from month to month and credited at a ratio of 1:1 against the customer account's retail kilowatt-hour consumption in subsequent months indefinitely until the unit or common area customer account terminates service with the investor owned QRU, at which time the QRU is not required to pay the customer for any remaining excess electricity supplied by the customer.

24. We solicit comment from participants on revisions and additions to this proposed language, and on how this Commission can start integrating storage alongside stand-alone solar projects as the highest summer loss-of-load probability hour continues to extend later in the day. Given broad-based affordability concerns associated with rising electric rates, we would also request that the investor-owned QRUs provide estimates (as best they can) of the number of buildings that could potentially be impacted by these rules, the likely mix of affordable housing versus other building types, the total MWs of virtual net-metered generation, and the resulting potential non-participant rate impacts.

E. Follow-on Rulemaking(s)

25. The Commission acknowledges that its current net metering rules, along with its current Renewable Energy Standard rules, comprising Rules 3650 through 3668 of the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3, may require re-evaluation and update to account for recent changes in state policy and statute. In Proceeding No. 22R-0352E, the Commission found a narrow rulemaking was appropriate in order to timely implement the

specific statutory changes enacted in Senate Bill 21-261 that allow MMOs to adjust the charge to end users to account for adjustments attributable to distributed generation. This follow-on rulemaking focused on individually metered multi-unit buildings was identified by participants as an important next step to increase access to renewable energy distributed generation.

F. Conclusion

26. Through this NOPR, the Commission solicits comments from interested persons on the amendments proposed in this Decision and its attachments. Interested persons may file written comments including data, views, and arguments into this Proceeding for consideration. The Commission also welcomes submission of alternative proposed rules, including both consensus proposals joined by multiple rulemaking participants and individual proposals. Participants are encouraged to provide redlines of any specific proposed rule changes.

27. The Commission refers this matter to an Administrative Law Judge (ALJ) for the issuance of a recommended decision. The ALJ will hold a hearing on the proposed rules at the below-stated time and place. In addition to submitting written comments, participants will have an opportunity to present comments orally at the hearing, unless the ALJ deems oral presentations unnecessary.

28. The proposed rules in legislative (*i.e.*, ~~strikeout~~/underline) format (Attachment A) and final format (Attachment B) are available through the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=23R-0024E

29. Initial written comments on the proposed rule changes are requested by February 10, 2023. Any person wishing to file comments responding to the initial comments is requested to file such comments by February 24, 2023. These deadlines are set so that the comments and

responses may be considered at the public hearing, nonetheless, persons may file written comments into this Proceeding at any time. The Commission will consider all comments submitted in this Proceeding, whether oral or written.

30. The Commission prefers comments be filed using the Commission’s E-Filings System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> under this Proceeding No. 23R-0024E. Written comments will be accepted and should be addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B) shall be filed with the Colorado Secretary of State for publication in the January 25, 2023 edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge (ALJ) for the issuance of a recommended decision.

3. A remote public hearing on the proposed rules and related matters shall be held before an ALJ, as follows:

DATE	February 28, 2023
TIME:	11: 30 a.m. until no later than 5:00 p.m.
PLACE:	By video conference using Zoom at a link in the calendar of events on the Commission’s website: https://puc.colorado.gov/pucalendar

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary.

5. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than February 10, 2023, and that any pre-filed comments responsive to the initial comments be submitted no later than February 24, 2023. The Commission will consider all submissions, whether oral or written. The Commission prefers that comments be filed into this Proceeding using the Commission’s E_Filings System at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING
January 4, 2023.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners