Decision No. R16-0034

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 15R-0699E

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE RULES REGULATING ELECTRIC UTILITIES 4 CODE OF COLORADO REGULATIONS 723-3, INCLUDING AMENDMENTS TO THE RULES IMPLEMENTING THE RENEWABLE ENERGY STANDARD PURSUANT TO SENATE BILLS 15-046 AND 15-254 AND HOUSE BILLS 15-1284 AND 15-1377.

RECOMMENDED DECISION
OF ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
AMENDING RULES

Mailed Date: January 15, 2016

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I. STATEMENT

1. On August 20, 2015, the Colorado Public Utilities Commission (Commission) issues the Notice of Proposed Rulemaking (NOPR) to amend the rules regulating electric utilities contained in 4 *Code of Colorado Regulations* (CCR) 723-3. *See* Decision No. C15-0905. By that decision the Commission ordered that notice of a proposed rulemaking be filed with the

Secretary of State for publication in the September 10, 2015 edition of *The Colorado Register*. The matter was referred to and administrative law judge (ALJ) to hold a public hearing on October 19, 2015.

2. The purpose of the proposed amendments to the rules is to maintain consistency with Senate Bills (SB) 15-046 and 15-254 and House Bills (HB) 15-1284 and 15-1377, which modify the renewable energy statute, § 40-2-124, C.R.S., and the statute authorizing community solar gardens, § 40-2-127, C.R.S. The proposed rules also update the low income rules, references to federal rules, and procedures for testing revenue meters upon a customer's request. Finally, the proposed rules incorporate recent changes to the Commission's rules of practice and procedure contained in 4 CCR 723-1.[1]

3. The hearing on October 19, 2015, was held as scheduled to consider oral and written data, views and arguments. At the conclusion of the hearing, the matter was taken under advisement.

4. Throughout the proceeding written comments were filed with the Commission by Energy Outreach Colorado (EOC), Western Resource Advocates (WRA), Public Service Company of Colorado (Public Service), Colorado Energy Office (CEO), Colorado Rural Electric Association (CREA), Office of Consumer Council (OCC), Sunshare LLC (Sunshare), and Atmos Energy Corporation (Atmos).

5. 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.

[1] *See* Proceeding Nos. 12R-500ALL and 14R-0419ALL.

II. FINDINGS, DISCUSSION, AND CONCLUSIONS

6. The statutory authority for the rules adopted here is found at §§ 24-4-101, et seq., 40-1-101, et seq., 40-2-108, 40-2-124, 40-2-127, 40-3-102, 40-3-110, 40-4-101, and 40-4-108, C.R.S.

7. The undersigned ALJ has reviewed and considered the record in this proceeding to date, including written and oral comments. All modifications to the rules are not specifically addressed herein. This Recommended Decision generally focuses on contested issues addressed during the course of the proceeding. Changes incorporated into the rules attached hereto are recommended for adoption. Many comments and proposed changes clarify the rules, eliminate duplication, or address corrections for accuracy and internal consistency. Those changes are reasonable and will be adopted without specifically being addressed herein. Any specific recommendations made by interested parties that are not adopted below or otherwise incorporated into the redlined rules attached are not adopted.

1. Revenue Meter and Revenue Meter Testing

8. The proposed rules incorporate the concept of a revenue meter. Comment contends that "revenue meter" does not accurately depict the purpose of a meter in rule or tariff. Revenues are determined by numerous factors, not just the meter – kWh usage or kW demand. The comments are well taken and the proposed modifications are not necessary. The concept will not be adopted.

9. Rule 3305 requires utilities to test a customer meter upon the customer's request. If the customer continues to dispute the accuracy of a meter after the utility tests it, the customer can submit a request and have the meter tested by an independent testing facility. Comment requests recognition and acceptance of using standardized testing equipment capable of

being used in the field, as opposed to requiring shop testing. The proposal is reasonable and will be adopted. Comment suggests substituting the phrase "out of compliance" for the word "faulty." The proposal is reasonable and will be adopted.

2. Low-Income Energy Assistance Act

10. The NOPR included several proposed modifications regarding low income assistance. Some modifications are incorporated and recommended for adoption to implement existing practice and improve the rules. Illustratively, consistent with current waivers granted by the Commission and coordinated programs, eligibility for energy assistance will be provided at 165 percent of the federal poverty level, rather than 18 percent. However, as commenters suggest, most substantive provisions will not be modified at this time.

3. Medical Exemption from Tiered Rate Plans

11. Rule 3413 makes alterative rate plans available to except specific persons from tiered rate plans. Specifically, household income must be less than or equal to 250 percent of federal poverty guidelines and a member of the household must either have a qualifying medical condition or rely upon life support equipment.

12. A broad set of comment proposed modifications to requirements to ease continuation of eligibility following the initial one-year qualification period. Generally, once accepted into the program, continued eligibility could be documented without requiring additional doctor visits for this purpose. The burden will be mitigated particularly as to those having chronic conditions. It is notable that the program benefits a very narrow group of customers and is actively and effectively monitored against abuse. The proposal is reasonable in narrow circumstances applicable under Rule 3413.

4. Rules Implementing the Renewable Energy Standard

13. S.B. 15-046 amended §40-2-124 to allow cooperative electric associations to purchase retail distributed generation for RES compliance from CSGs. H.B. 15-1377 amends §40-9.5-119 C.R.S. to broaden the scope of retail distributed generation available for obtaining renewable energy credits to comply with the RES. The proposed rules amend Rule 3655(k) and (m), respectively, to implement SB 15-046 and 3655(l) to implement HB 15-1377.

14. Comment addresses included legislative history. Previously, a portion of the legislative history was removed. The NOPR proposes eliminating the remainder here. Notably, removing the legislative history has no substantive impact upon the rules. Insufficient need has not been shown for a preference to retain the existing language. Rather than leaving a portion of the history, Staff's recommendation will be adopted.

15. All aspects of a community solar garden were previously defined in terms of an investor-owned qualifying retail utility. Comment contends that the rules are unduly restrictive in light of statutory amendments. Illustratively, current language would effectively bar cooperative electric associations from using CSGs to meet retail distributed generation requirements of the RES. Additionally, comment contends that the current definition precludes other allowable renewable energy sources from being used to meet the retail distribution requirement. Notably, §40-2-127(7) remains, which provides that §40-2-127 shall not apply to cooperative electric associations or to municipally owned utilities.

16. H.B. 15-1377 amends §40-2-124 C.R.S., but does not change what is a community solar garden. Rather, it expands the scope of qualifying renewable distributed generation beyond CSGs. Thus, comments proposing changes based upon a contention that CSGs have more broadly changed will not be adopted.

17. The proposed rules are reasonable and will be adopted to incorporate the new statutory amendments without further expansion or application at this time.

18. Proposed modifications to Rule 3665(D)(I) clarify that planned acquisition of renewable energy and RECs from CSGs are to be part of RES compliance plans. Comments suggesting that the provision rests upon recent legislative amendments are rejected. The basis of the proposal currently exists in Rule 3657 and is incorporated here to clarify existing requirements.

III. CONCLUSION

19. Attachment A to this Recommended Decision represents the rule amendments adopted by this Decision with modifications to the prior rules being indicated in redline and strikeout format (including modifications in accordance with this Recommended Decision).

20. Attachment B to this Recommended Decision represents the rule amendments adopted by this Decision in final form.

21. It is found and concluded that the proposed rules as modified by this Recommended Decision are reasonable and should be adopted.

22. Pursuant to the provisions of § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

IV. ORDER

A. The Commission Orders That:

1. The Rules Regulating Electric Utilities, 4 Code of Colorado Regulations 723-3, contained in redline and strikeout format attached to this Recommended Decision as Attachment A, and in final format attached as Attachment B, are adopted.

2. Attachments A and B are available through the Commission's Electronic Filings (E Filings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=15R-0699E.

3. 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.

4. 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 Commission can review if exceptions are filed.

c) 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.

5. 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director