

Decision No. R23-0612

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
ADOPTING RULES**

Mailed Date: September 15, 2023

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I. STATEMENT

A. Background

1. On January 13, 2023, the Colorado Public Utilities Commission initiated this proceeding by issuing a Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Electric Utilities.¹ As stated in the NOPR, “[t]he 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” (On-Site Multi-Unit Net Metering).² Towards that end, the Commission proposed significant changes to the aforementioned rules, described those changes in detail and the justification therefor, attached the Rules in legislative (i.e., strikeout/underline) format and in a clean version, established deadlines of February 10, 2023 and February 24, 2023 for initial comments and response comments concerning the proposed rules, respectively, and scheduled a remote public comment hearing for February 28, 2023, at 11:30 a.m. for oral comments regarding the proposed rules. The Commission also stated in the NOPR as follows:

Given broad-based affordability concerns associated with rising electric rates, we would also request that the investor-owned [Qualifying Retail Utilities (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.³

¹ Decision No. C23-0023 (NOPR).

² *Id.* at 2 (¶ 4). *See also id.* at 5 (¶ 12) (“Black Hills requested the scope of [this] 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).”).

³ *Id.* at 8 (¶ 24).

Finally, the Commission referred this proceeding to an Administrative Law Judge (ALJ).⁴ The proceeding was subsequently assigned to the undersigned ALJ.

2. On January 25, 2023, the Colorado Solar and Storage Association (COSSA) and the Solar Energy Industries Association (SEIA) filed a Joint Motion to Reschedule the February 28, 2023 Public Comment Hearing (Joint Motion).

3. On February 10, 2023, Black Hills Colorado Electric, LLC (Black Hills) and Public Service Company of Colorado (Public Service) filed joint initial comments, COSSA and SEIA filed joint initial comments, and the City of Boulder (Boulder) filed initial comments.

4. On February 21, 2023, the ALJ issued Decision No. R23-0114-I that denied the Joint Motion because the public comment hearing had already been noticed by publication in the Colorado Register. However, the ALJ recognized the importance of COSSA to this rulemaking and, as a result, stated that the public comment hearing on February 28, 2023, would be convened for the sole purpose of continuing it to a future date to accommodate the participation of COSSA and any other public commenters who participated in COSSA's Solar Power and Energy Storage Mountain West Conference.

5. On February 24, 2023, Black Hills and Public Service and COSSA and SEIA each filed Joint Response Comments.

6. The ALJ convened the remote public comment hearing on February 28, 2023, at 11:30 a.m. Based on input from the participants at the February 28, 2023, remote public comment hearing, the ALJ continued the hearing until April 14, 2023, at 11:30 a.m.

⁴ *Id.* at 10 (Ordering ¶ 2).

7. On March 3, 2023, the ALJ issued Decision No. R23-0157-I that scheduled the continued remote public comment hearing as stated above.

8. On March 31, 2023, COSSA and SEIA filed Joint Supplemental Comments to which they attached proposed changes to the revised rules proposed by the Commission in the NOPR.

9. On April 7, 2023, Black Hills and Public Service filed Joint Reply Comments to the Joint Supplemental Comments of COSSA and SEIA.

10. On April 11, 2023, COSSA and SEIA filed Joint Additional Comments to address comments made in the Joint Reply Comments of Black Hills and Public Service.

11. On April 14, 2023, the ALJ convened the continued remote public comment hearing. The following individuals provided oral comments: Bronte Payne on behalf of SunPower, Cathy Boies and Scott Dunbar on behalf of COSSA and SEIA, Sarah Hong on behalf of Group 14 Engineering, Steve Daniel on behalf of Blueline Equity Partners, Tim Beal on behalf of Boulder Housing Partners, Austin Kane, Mike Lane on behalf of Wing Seven Capital, LLC, Gregory Sopkin and Devin Moeller on behalf of Black Hills, Tyler Mansholt and Neil Cowman on behalf of Public Service, and Scott Bechler on behalf of Ivy Energy. After conferring with the participants, the ALJ continued the hearing until June 15, 2023, at 11:30 a.m. The ALJ also set the following deadlines for any further written comments, particularly regarding the data requested in the NOPR⁵: on June 1, 2023 for additional initial comments, and June 9, 2023 for additional response comments. The ALJ memorialized both decisions in Decision No. R23-0331-I that issued on May 19, 2023.

⁵ See NOPR at 8 (¶ 24).

12. On June 1, 2023, Black Hills and Public Service each filed Supplemental Comments addressing the data requested in the NOPR, as highlighted at the April 14, 2023 remote public comment hearing and in Decision No. R23-0331-I.

13. On June 9, 2023, COSSA and SEIA filed Joint Final Response Comments addressing the Supplemental Comments filed on June 1, 2023.

14. On June 15, 2023, at 11:30 a.m., the ALJ held the second continued remote public comment hearing. The ALJ took more comments from the participants and then adjourned the hearing.

II. QRUS' ESTIMATES OF RULES' IMPACT

15. As noted above, the NOPR requested QRUs to provide “estimates . . . 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.”⁶ Black Hills and Public Service provided the requested estimates in their comments filed on June 1, 2023.

16. Black Hills’ estimates were based on the number of multi-unit buildings within Pueblo County provided by the Pueblo County Assessor’s Office (1,866), an average count of residential customers in each multi-unit building (5.72), an average multi-unit residential usage (619 kWh/month), and an estimated potential total MWs of net-metered generation on Black Hills’ system of 47.7 MW.⁷ From those numbers, Black Hills calculated annual lost sales of 79,037,602 kWh, and \$11,738,665 in lost revenue. Black Hills labeled these numbers

⁶ NOPR at 8 (¶ 24).

⁷ Supplemental Comments of Black Hills at 1-2 (filed on June 1, 2023).

“conservative.”⁸ Black Hills further stated that it “does not have access to sufficient information to determine the likely mix of affordable housing versus other building types.”⁹

17. At the outset of its Supplemental Comments, Public Service “reiterate[d] the difficulty associated with providing accurate and representative estimates of the requested information.” Public Service’s calculations are based on estimates of the number in its service territory of multi-family premises (531,989), income-qualified residential multi-family residential premises (44,023), multi-unit commercial premises (70,067), system sizes on a per-unit basis (2.0 kW), the capacity factor of the solar systems (12 percent),¹⁰ an assumed value for avoided costs based on “the average retail rate and the tariff rates applicable for payment of small Qualifying Facilities with a PV Fixed system (Tariff Sheet No. P7).”¹¹ The total potential annual cost calculated by Public Service is \$105,238,859 and the total solar production from all participating units is 1,118,453 MWh.

18. In response, COSSA and SEIA state that “there is no evidence that any reduction in revenue that a utility experiences as a result of a multi-unit building installing on-site solar will have any impact on nonparticipating customers or is accurately characterized as a utility cost.”¹² Further, COSSA and SEIA assert that the assumptions used by Black Hills and Public Service in their calculations are “unsupported and unrealistic.”¹³ Specifically, according to COSSA and SEIA, Black Hills and Public Service’s assumption that 100 percent of eligible multi-unit buildings will participate in net metering and the value of net metering credits they

⁸ *Id.* at 2.

⁹ *Id.* at 1.

¹⁰ Supplemental Comments of Public Service at 3-4 (filed on June 1, 2023).

¹¹ *Id.* at 4.

¹² Joint Final Response of COSSA and SEIA at 3 (filed on June 9, 2023).

¹³ *Id.* at 4.

employ are not based on reality.¹⁴ For these reasons, COSSA and SEIA recommend that the Commission “disregard both Public Service’s and Black Hills’ estimates of the potential impacts of multi-unit net metering on non-participating customers.”¹⁵

III. DISCUSSION OF PROPOSED RULE CHANGES

A. Introduction

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

B. Statutory Background:

20. Senate Bill 21-261, which Governor Jared Polis signed on June 21, 2021, amended Title 40 of the Colorado Revised Statutes as follows (with all-caps indicating new material and strikethrough indicating deleted material):

¹⁴ *Id.* at 5-6.

¹⁵ *Id.* at 7.

§ 40-1-103.5

....

(3)(b): NO LATER THAN DECEMBER 31, 2022, THE COMMISSION SHALL ADOPT NEW OR AMENDED RULES THAT WOULD 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. IN ADOPTING RULES, THE COMMISSION SHALL CONSIDER COLORADO'S GREENHOUSE GAS EMISSION-REDUCTION GOALS AND THE NEED TO ELECTRIFY BUILDINGS, TRANSPORTATION, AND OTHER COMMERCIAL AND INDUSTRIAL SECTORS TO MEET THOSE GOALS. THE COMMISSION SHALL ALSO CONSIDER RULES THAT WOULD ENCOURAGE LANDLORDS TO BEAR THE ATTENDANT COSTS AND TO RETAIN AT LEAST A PORTION OF THE RESULTING BENEFITS IN ADDITION TO ANY OTHER INCENTIVES THE COMMISSION FINDS APPROPRIATE.

§ 40-2-124:

(1) In accordance with article 4 of title 24, the commission shall revise or clarify existing rules to establish the following:

(a)

(IV.5) “OFF-SITE” MEANS LOCATED ON NONCONTIGUOUS PROPERTY OWNED OR LEASED BY A CUSTOMER OF A QUALIFYING RETAIL UTILITY.

....

(VIII) EXCEPT AS PROVIDED IN SUBSECTION (1)(c)(II)(D) OF THIS SECTION WITH RESPECT TO COOPERATIVE ELECTRIC ASSOCIATIONS, “retail distributed generation” means a renewable energy resource OR RENEWABLE ENERGY STORAGE that is located on ~~the site of a customer’s facilities~~ ANY PROPERTY OWNED OR LEASED BY THE CUSTOMER WITHIN THE SERVICE TERRITORY OF THE QUALIFYING RETAIL UTILITY and is interconnected on the customer's side of the utility meter. In addition, retail distributed generation shall provide electric energy primarily to serve the customer's ~~load~~ LOADS and shall be sized to supply no more than ~~one~~ TWO hundred twenty percent of the REASONABLY EXPECTED average annual TOTAL consumption of electricity ~~by the customer at that site. For purposes of this subparagraph (VIII), the customers “site” includes all contiguous property owned or leased by the customer without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-~~

~~of way, or utility rights-of-way~~ AT ALL PROPERTIES OWNED OR LEASED BY THE CUSTOMER WITHIN THE UTILITY'S SERVICE TERRITORY.

(e) A REQUIREMENT THAT EACH QUALIFYING RETAIL UTILITY, EXCEPT FOR COOPERATIVE ELECTRIC ASSOCIATIONS AND MUNICIPALLY OWNED UTILITIES, MAKE AVAILABLE TO THEIR CUSTOMERS A standard rebate offer ~~program~~ AND NET METERING SERVICE, under which:

(I)

(C) FOR RETAIL DISTRIBUTED GENERATION THAT IS USED TO MEET LOADS OF A NONCONTIGUOUS PROPERTY OWNED OR LEASED BY THE CUSTOMER, A QUALIFYING RETAIL UTILITY'S NET METERING PROGRAM MUST PROVIDE THE CUSTOMER A NET METERING CREDIT MINUS A REASONABLE CHARGE, AS DETERMINED BY THE COMMISSION, TO COVER THE UTILITY'S COSTS OF DELIVERING TO THE CUSTOMER'S PREMISES THE ELECTRICITY GENERATED BY THE RETAIL DISTRIBUTED GENERATION AND OF ADMINISTERING THE OFF-SITE NET METERING CREDITS. THE REASONABLE CHARGE SHALL BE FIXED FOR THE TERM OF THE INTERCONNECTION AGREEMENT PERTAINING TO THE RETAIL DISTRIBUTED GENERATION FACILITIES AND SHALL BE DETERMINED BY A UTILITY TARIFF FILING, WHICH MAY BE UPDATED ONCE ANNUALLY. THE COMMISSION SHALL ENSURE THAT THIS CHARGE DOES NOT REFLECT COSTS THAT ARE ALREADY RECOVERED BY THE UTILITY FROM THE CUSTOMER THROUGH OTHER CHARGES. IF, AND TO THE EXTENT THAT, A CUSTOMER'S NET METERING CREDIT EXCEEDS THE CUSTOMER'S ELECTRIC BILL IN ANY BILLING PERIOD, THE NET METERING CREDIT SHALL BE CARRIED FORWARD AND APPLIED AGAINST FUTURE BILLS.

(j) RULES TO ACCOMMODATE AGGREGATION AND INTERCONNECTION OF RETAIL DISTRIBUTED GENERATION, INCLUDING:

(I) ALLOWING ELECTRICITY GENERATED FROM A SINGLE RENEWABLE RETAIL DISTRIBUTED GENERATION RESOURCE ON A MULTI-UNIT

PROPERTY TO BE ALLOCATED AS NET METERING CREDITS TO EITHER COMMON AREAS OF THE PROPERTY OR TO INDIVIDUALLY METERED ACCOUNTS WITHOUT REQUIRING THE RESOURCE TO BE PHYSICALLY INTERCONNECTED WITH EACH OWNER'S OR LESSEE'S METER;

21. The foregoing statutory changes contained in SB 21-261 went into effect on June 21, 2021.

C. Proposed Rule Changes

1. Rule Numbering

22. In the NOPR, the Commission proposed the new rules to be incorporated into existing Rule 3664 entitled “Net Metering.” The Commission stated that the proposed changes consisted of both revisions of, and additions to, the existing rules.¹⁶

a. Comments

23. In the first round of comments, COSSA and SEIA asserted that the Commission should promulgate on-site net metering rules for multi-unit properties as a standalone section in the Commission’s Electric Rules.¹⁷ As justification, COSSA and SEIA stated that “there are many permutations of ownership, occupancy, housing stock, building types, rate schedules, and interconnection arrangements for individually metered multi-unit properties.”¹⁸ Including such rules in a standalone section dedicated solely to net metering at multi-unit properties “will provide better clarity and organization for this complex topic.”¹⁹ Conversely, “[e]mbedding net metering [rules] . . . for multi-unit properties within the existing net metering Rule 3664 . . . will

¹⁶ *Id.* at 5 (¶ 15).

¹⁷ Joint Initial Comments of COSSA and SEIA at 4-6 (filed on February 10, 2023).

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 5.

lead to confusion and further stall the development of programs for multi-unit properties, many of whom are low-income customers.”²⁰

24. The Joint Utilities (Black Hills and Public Service) opposed the creation of a stand-alone section, stating that the new rules “should comport with – and therefore be placed within – the Commission’s rules for net metering at Rule 3664.”²¹ Subsequently, COSSA and SEIA dropped their proposal “in order to reduce the number of contested issues in this rulemaking.”²² Instead, COSSA and SEIA proposed to implement the new “net metering at multi-unit properties” rules in a new subparagraph (i) in existing Rule 3664 and “through the addition of several new defined terms in existing Rule 3652.”²³

b. Analysis

25. The ALJ finds and concludes that incorporating the new rules governing net metering at multi-unit properties into existing Rule 3664, which is entitled “Net Metering,” makes the most sense and eliminates any possible confusion given that Rule 3664 is entitled “Net Metering.”

2. Proposed Rule 3652

26. Rule 3652 includes definitions necessary to understand and implement the rules in the “Renewable Energy Standard” section of the Commission’s Rules Regulating Electric Utilities (Rules 3650 to 3668). In the NOPR, the Commission did not propose to add any new definitions to Rule 3652.

²⁰ *Id.*

²¹ Joint Response Comments of Black Hills and Public Service at 1 (filed on Feb. 24, 2023).

²² Joint Supplemental Comments of COSSA and SEIA at 3 (filed on March 31, 2023).

²³ *Id.*

a. Comments

27. In their comments, COSSA and SEIA proposed to add the following new definitions to Rule 3652:

- (b) “Benefiting meter” means a utility meter serving a unit or a common area in a multi-unit property that receives a system share of retail distributed generation. Benefiting meters that receive a system share of retail distributed generation located on a multi-unit property may be on different rate schedules and need not be physically interconnected with the retail distributed generation system. A multi-unit property owner or unit owners’ association may be the customer of record for more than one benefiting meter at a multi-unit property.

...

- (q) “Generation meter” means a utility production meter or production meters that measure the output of a retail distributed generation system that is allocated to benefiting meters. The retail distributed generation system may be owned by the owner of the multi-unit property, a unit owners’ association, or a designee of the owner or unit owners’ association of the multi-unit property. A retail distributed generation system located on a multi-unit property may have more than one point of interconnection and the total output of such a system shall be measured by aggregating the output of each production meter.

...

- (s) “Multi-unit property” means a property, including two or more contiguous parcels under common ownership, divided into at least two non-residential or two separate residential units, or both, including common interest communities without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way;

...

- (kk) “System share” means the percentage of the output of a retail distributed generation system or systems associated with a generation meter to which a benefiting meter is allocated. The system share of a generation meter allocated to each benefiting meter shall be determined by the multi-unit property owner, their designee, or the unit owners’ association and provided to the QRU on a designated form provided by the QRU.

...

- (ll) “Unit owners’ association” shall have the same meaning as in § 38-33.3-103, C.R.S.²⁴

28. As support for these definitions, COSSA and SEIA state that net metering in a multi-unit setting “is largely a billing exercise, such that a retail [Distributed Generation (DG)] system can be installed on-site at a property (the generation meter) and be deemed to offset unit owners’ or lessees’ utility bills (the benefiting meters) consistent with an agreed-upon percentage share of the retail DG’s output (system share).”²⁵ As a result, definitions of these concepts are crucial to rules that will govern on-site net metering in a multi-unit property setting. According to COSSA and SEIA, their proposed definitions “adopt[] language from the guiding statutes, the NOPR’s draft rules, and California’s experience with virtual net metering.”²⁶

29. Black Hills, Boulder, and Public Service support the definitions above proposed by COSSA and SEIA.²⁷ Black Hill’s support for the definition of “multi-unit property” is based on its understanding that the definition “is unrelated to the Joint Utilities’ proposal to impose a charge on customers that participate in net metering at a multi-unit property.”²⁸ No other participant has expressed opposition to the foregoing definitions proposed by COSSA and SEIA.

²⁴ Joint Supplemental Comments of COSSA and SEIA, Attach. E at 1 (filed on March 31, 2023).

²⁵ Joint Initial Comments of COSSA and SEIA at 6-7 (filed on February 10, 2023).

²⁶ *Id.* at 7.

²⁷ Draft Transcript of April 14, 2023 Remote Hearing (Part 1) at 40:2-42:9 (Black Hills); 68:10-13 (Public Service); COSSA and SEIA’s Joint Supplemental Comments at 2 (filed on March 31, 2023) (COSSA and SEIA “are authorized to report that Boulder supports these rules and recommend that the Commission adopt them.”). Boulder has not indicated that it opposes the language added to the definition of “multi-unit property” by COSSA and SEIA in their April 11, 2023 Comments.

²⁸ Joint Additional Comments of COSSA and SEIA at 4 (filed on April 11, 2023).

b. Analysis

30. The ALJ agrees that the proposed definitions accurately describe the concepts encapsulated in the proposed rules and that they are necessary to an accurate understanding of the rules. Accordingly, the foregoing definitions proposed by COSSA and SEIA will be adopted.

3. Proposed Rules 3664(i)

31. In the NOPR, the Commission proposed changes designed to “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.”²⁹ The proposed rule included a limitation on the size of a retail distributed generation system of 120 percent of average annual consumption. The proposed rule is as follows:

- (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 an individually metered utility customer account at a multi-unit 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

²⁹ NOPR at 7 (¶ 22).

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.

a. Comments

(1) COSSA and SEIA

32. In their comments, COSSA and SEIA propose to modify the Commission's proposed additions to Rules 3664(i) as follows (the redlining shows the Commission's proposed changes in the NOPR and the blue lining shows the additional changes proposed by COSSA and SEIA):

- (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 retail distributed generation system interconnected to a designated generation meter ~~to~~ may allocate excess kilowatt-hour credits to any onsite benefiting 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~~200 percent of the additional benefiting meter's reasonably expected 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 an individually metered utility customer account a benefiting meter at a multi-unit property that is not master metered with electricity produced by the

generation from a ~~generating account~~ generation meter at the same multi-unit property consistent with the system share allocated to the benefitting ~~account~~ meter.

- (II) An investor owned QRU shall attribute electricity produced by the ~~utility customer~~ generation meter 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~~ benefitting meter's system share. The QRU shall calculate and provide ~~bill~~ kilowatt-hour credits for each benefitting meter at a multi-unit property based on the system share of the ~~customer account~~ benefitting meter and the retail rate schedule on which the ~~customer account~~ benefitting meter takes service. For any benefitting meter that takes service on a time-varying rate schedule, the investor owned QRU shall track the time period during which energy was produced at the generation meter (e.g., on-peak, shoulder, or off-peak, as applicable) and apply kilowatt-hour credits to each benefitting meter at the corresponding time period (e.g., on-peak, shoulder, or off-peak, as applicable).
- (III) If the electricity produced by a system share from the generation meter exceeds the consumption of the ~~customer account~~ benefitting meter associated with such system share during a month, the excess kilowatt-hours shall be carried forward from month to month and credited based on the time period during which the kilowatt-hours were produced at a ratio of 1:1 against the benefitting meter's ~~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~~. On an annual basis the benefitting meter may roll-over no more than 100% of the reasonably expected annual usage of the benefitting meter and any excess above 100% may, at the customer's election in writing, be cashed-out to the benefitting meter at the investor owned QRU's average hourly incremental cost. When the benefitting meter terminates service, any excess shall be applied to a common area benefitting meter that is designated by the property owner.
- (IV) The multi-unit property owner or unit owners' association must provide the system share allocated to each designated onsite benefitting meter to the investor owned QRU on a designated form, which may be updated no more than four

times per year. The QRU shall implement changes to the allocation of system shares among benefitting meters within 30 days after a multi-unit property owner or unit owners' association submits the designated form to the QRU.

(V) A multi-unit property owner or unit owners' association must give at least 60 days' notice to the QRU to request net metering at a multi-unit property. The generation meter, each benefitting meter, and the system share of each benefitting meter must be identified at the time of request. The QRU must begin billing and crediting each benefitting meter at the retail rate schedule on which each benefitting meter takes service within 60 days of a completed request.³⁰

33. Black Hills and PSCo agree with the changes proposed by COSSA and SEIA with two exceptions. The remainder of the participants in the Rulemaking agree, or do not object, to the foregoing changes proposed by COSSA and SEIA.

(2) Black Hills and Public Service – Stricter Limit on Changes to Share Allocations

34. The first disagreement by Black Hills and PSCo with the changes proposed by COSSA and SEIA concerns the provision in Rule 3664(i)(IV) that allows multi-unit property owners or unit owners' associations to change the allocation of system shares to each onsite benefitting meter up to four times per year.³¹ Black Hills and Public Service do not have a problem with allowing multi-unit property owners or unit owners' associations to change the allocation of system shares to each onsite benefitting meter, but they contend that allowing them to do so four times a year "is administratively burdensome for" QRUs such as themselves.³² To

³⁰ Joint Supplemental Comments of COSSA and SEIA, Attach. E at 4-5 (filed on March 31, 2023).

³¹ Joint Reply Comments of Black Hills and Public Service at 1-2 (filed on April 7, 2023).

³² *Id.* at 3.

reduce the burden, Black Hills and Public Service propose to limit the number of changes to two per year.³³

(3) Black Hills and Public Service – Reasonable Charge for Administering On-Site Multi-Unit Net Metering

35. Black Hills and Public Service also propose that the rules permit “utilities to recover a reasonable charge for the various services that are required to provide [On-Site] Multi-Unit Net Metering to participating customers.”³⁴ Those “various services” include: (a) “measur[ing] and track[ing] the output from a retail distributed generation system based on hour of production;” (b) “apply[ing] shares of the production from the retail distributed generation system to benefitting meters of various types of rate schedules (some of which are time-varying);” and (c) “manag[ing] the shares of the retail renewable generation for the multi-unit property owner. . . . [by] revising the share amounts . . . [and] allocating shares to other accounts for new or terminating customers.”³⁵ The reasonable charge would recover the QRU’s cost of providing those services.³⁶

36. Black Hills and Public Service assert that § 40-2-124(1)(e)(I)(C), C.R.S., allows QRUs to charge a reasonable charge for On-Site Multi-Unit Net Metering. Black Hills, Public Service, COSSA, and SEIA agree that Section 40-2-124(1)(e)(I)(C), C.R.S. governs “Off-Site Net Metering,” which is the delivery by QRUs of electricity generated at one location to one or more customers located at one or more other non-contiguous locations based on “the subscribed share of the retail distributed generation system’s output to each customer.”³⁷ In that scenario,

³³ *Id.* at 3-4.

³⁴ Joint Reply Comments of Black Hills and Public Service at 4 (filed on April 7, 2023).

³⁵ *Id.*

³⁶ Joint Response Comments of Black Hills and Public Service at 3 (filed on February 24, 2023).

³⁷ Joint Reply Comments of Black Hills and Public Service at 5 (filed on April 7, 2023). *See also* Joint Reply Comments of COSSA and SEIA at 3-4 (filed on Feb. 24, 2023) (same).

§ 40-2-124(1)(e)(I)(C), C.R.S. expressly allows QRUs to collect “a reasonable charge . . . to cover the utility’s costs of delivering to the customer’s premises the electricity generated by the retail distributed generation and of administering the off-site net metering credits.”

37. Black Hills and Public Service also contend that § 40-2-124(1)(e)(I)(C), C.R.S. allows QRUs to charge a reasonable charge for administering On-Site Multi-Unit Net Metering. According to Black Hills and Public Service, in most if not all On-Site Multi-Unit Net Metering scenarios the PV system “is connected to the distribution system and the distribution system is connected to the individual unit customer.”³⁸ In other words, as in the Off-Site Net Metering scenario, “the PV system” in the On-Site Multi-Unit Net Metering scenario “is not touching . . . the individual unit customer.”³⁹ As a result, On-Site Multi-Unit Net Metering is effectively the same to administer by QRUs as Off-Site Net Metering and, consequently, § 40-2-124(1)(e)(I)(C), C.R.S. allows QRUs to charge a reasonable charge for their costs of administering the net metering that takes place.

38. Even if § 40-2-124(1)(e)(I)(C), C.R.S. does not apply to On-Site Multi-Unit Net Metering, Black Hills and Public Service assert that QRU’s should be permitted to charge a reasonable charge for On-Site Multi-Unit Net Metering because QRU’s will incur the same types of costs as in the Off-Site Net Metering. Black Hills and Public Service argue that SB 21-261 and § 40-2-124(1)(j)(I), C.R.S. do not prohibit QRU’s from recovering the reasonable cost of administering On-Site Multi-Unit Net Metering. As a result, Black Hills and Public Service assert that the rules – at a minimum – should not prohibit QRU’s from collecting a reasonable charge for their administration of On-Site Multi-Unit Net Metering. Prohibiting QRU’s from

³⁸ Joint Initial Comments of Black Hills and Public Service at 3 (filed on February 10, 2023).

³⁹ *Id.*

recovering their administration costs of On-Site Multi-Unit Net Metering will lead to “non-participants . . . paying for system costs resulting in subsidizations.”⁴⁰

b. Analysis

(1) Reasonable Charge for Administering On-Site Multi-Unit Net Metering

39. The ALJ disagrees with Black Hills and Public Service that § 40-2-124(1)(e)(I)(C), C.R.S. allows QRUs to charge a reasonable charge for their costs of administering On-Site Multi-Unit Net Metering. Instead, the ALJ concludes that § 40-2-124(1), C.R.S., read as a whole, does not allow QRUs to impose such a charge on the owners of On-Site Multi-Unit Net Metering.

40. The goal of statutory interpretation is to give effect to the intent of the General Assembly. The language of the statute must be read and considered as a whole, and it should be construed to give consistent, harmonious, and sensible effect to all its parts.⁴¹ Words and phrases must be given their plain and ordinary meaning.⁴² Where statutory language is unambiguous, resorting to other rules of statutory interpretation is unnecessary and the language is applied as written.⁴³

41. If the statutory language is ambiguous, however, additional tools of statutory construction are employed.⁴⁴ These tools include the consequences of a given construction, the end to be achieved by the statute, and the circumstances surrounding the statute’s adoption.⁴⁵

⁴⁰ Joint Reply Comments of Black Hills and Public Service at 5 (filed on April 7, 2023).

⁴¹ *Safehouse Prog. Alliance for Nonviolence, Inc. v. Qwest Corp.*, 174 P.3d 821, 826 (Colo. App. 2007).

⁴² *In re Miranda*, 289 P.3d 957, 960 (Colo. 2012).

⁴³ *Foiles v. Whittman*, 233 P.3d 697, 699 (Colo. 2010).

⁴⁴ *Larrieu v. Best Buy Stores, L.P.*, 303 P.3d 558, 561 (Colo. 2013).

⁴⁵ *Bostelman v. People*, 162 P.3d 686, 690 (Colo. 2007); *Williams v. Kunau*, 147 P.3d 33, 36 (Colo. 2006).

One of the best guides is the context in which the statutory provisions appear.⁴⁶ A statute is ambiguous if it is reasonably susceptible to multiple interpretations that lead to different results.⁴⁷ “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.”⁴⁸

42. In the process of interpreting a statute, “[t]he legislative choice of language may be concluded to be a deliberate one calculated to obtain the result dictated by the plain meaning of the words.”⁴⁹ Consequently, “[w]hen the General Assembly includes a provision in one section of a statute, but excludes the same provision from another section, [it is appropriate to] presume that the General Assembly did so purposefully.”⁵⁰ In other words, the “absence of specific provisions or language in a statute” that is found elsewhere in the same Title, Article, and Part of the Colorado Revised Statutes “is not an error or omission, but a statement of legislative intent.”⁵¹ Under such circumstances, it is inappropriate to “read into” a section of a statute language found elsewhere in the same statute.⁵²

43. Here, the ALJ concludes that § 40-2-124(1), C.R.S. permits QRUs to charge a “reasonable charge” for administering Off-Site Net Metering, but not for On-Site Multi-Unit Net

⁴⁶ *St. Vrain Valley Sch. Dist. RE-1J v. A.R.L.*, 325 P.3d 1014, 1019 (Colo. 2014).

⁴⁷ *See A.M. v. A.C.*, 296 P.3d 1026, 1030 (Colo. 2013).

⁴⁸ *People v. Diaz*, 347 P.3d 621, 625 (Colo. 2015).

⁴⁹ *Hendricks v. People*, 10 P.3d 1231, 1238 (Colo. 2000) (quoting *City & Cty. of Denver v. Gallegos*, 916 P.2d 509, 512 (Colo. 1996)).

⁵⁰ *Well Augmentation Subdistrict of Cent. Colo. Water Conservancy Dist. v. City of Aurora*, 221 P.3d 399, 419 (Colo. 2009); accord *U.S. v. Pauler*, 857 F.3d 1073, 1076 (10th Cir. 2017) (Where the legislature “includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that [it] acts intentionally and purposely in the disparate inclusion or exclusion.” (quoting *Russello v. U.S.*, 464 U.S. 16, 23, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983))).

⁵¹ *Well Augmentation Subdistrict of Cent. Colo. Water Conservancy Dist.*, 221 P.3d at 419 (quoting *Romer v. Bd. of County Comm'rs of County of Pueblo*, 956 P.2d 566, 567 (Colo. 1998)).

⁵² *Id.* See also *Educ. Reenvisioned Boces v. Colo. Springs Sch. Dist. 11*, 524 P.3d 324, 327 (Colo. App. 2022) (declining to “read . . . into” one statutory section a grant of authority found in another statutory section).

Metering. Section 40-2-124(1)(e)(I)(C), C.R.S. applies to “retail distributed generation that is used to meet loads of a noncontiguous property owned or leased by the customer.” For such Off-Site Net Metering, § 40-2-124(1)(e)(I)(C), C.R.S. requires QRUs to provide “the customer a net metering credit minus a reasonable charge . . . to cover the utility’s costs of delivering to the customer’s premises the electricity generated by the retail distributed generation and of administering the off-site net metering credits.” Finally, § 40-2-124(1)(a)(IV.5), C.R.S. defines “off-site” as “located on noncontiguous property owned or leased by a customer of a qualifying retail utility.”

44. The ALJ concludes that the reference to “loads of a noncontiguous property” clearly and unambiguously means that the property served by the retail distributed generation is separate from, and not contiguous with, or adjacent to, the property housing the retail distributed generation. Any doubt concerning this conclusion is dispelled by the reference to “offsite net metering credits” later in the section, which, as noted, is defined as “located on noncontiguous property owned or leased by a customer of a qualifying retail utility.” Section 40-2-124(1)(e)(I)(C), C.R.S. thus applies solely to Off-Site Net Metering and only allows a QRU to charge a reasonable charge for the administration of net metering for the owners of the noncontiguous properties.

45. In contrast, § 40-2-124(1)(j)(I), C.R.S. applies to “a single renewable retail distributed generation resource on a multi-unit property” that serves the load of “either common areas of the property or [] individually metered accounts without requiring the resource to be physically interconnected with each owner’s or lessee’s meter.” The reference to “the property” makes clear that both the “single renewable retail distributed generation resource,” and the “common areas” and/or the “individually metered accounts” must be on the same property. In

addition, § 40-2-124(1)(j)(I), C.R.S. does not mention, or otherwise reference, any type of charge by the QRU. Section 40-2-124(1)(j)(I), C.R.S. thus applies to On-Site Multi-Unit Net Metering and does not expressly authorize the QRU to impose a charge for administering net metering for such net metering.

46. That the “the PV system” in both the Off-Site Net Metering and the On-Site Multi-Unit Net Metering systems are not directly “touching” the meters of the “individual unit customers” is inconsequential.⁵³ Black Hills and Public Service employ this argument as support for the conclusion that QRU’s should be permitted to include a reasonable charge for the administration of net metering in both scenarios because they are functionally the same. However, as noted above, the statute addressing Off-Site Net Metering expressly permits QRU’s to impose a reasonable charge for their administration of net metering, but the statute addressing On-Site Multi-Unit Net Metering does not. Significantly, both statutes were promulgated in SB-21-261. Accordingly, this is not a situation in which the General Assembly enacted different statutes at different times and in different contexts, which could militate against the presumption that the General Assembly knowingly omitted language contained in the earlier enacted statute from the later-enacted but related statute. Under these circumstances, the ALJ must conclude that the General Assembly knew what it was doing when it included language in § 40-2-124(1)(e)(I)(C), C.R.S. permitting QRU’s to impose a reasonable charge for administering Off-Site Net Metering, but excluded any such language from § 40-2-124(1)(j)(I), C.R.S. governing On-Site Multi-Unit Net Metering.

47. The decision in *Well Augmentation Subdistrict of Cent. Colo. Water Conservancy Dist. v. City of Aurora*, 221 P.3d 399 (Colo. 2009) is instructive on this point. There, certain

⁵³ Joint Initial Comments of Black Hills and Public Service at 3 (filed on February 10, 2023).

appellants challenged the standard of review employed by a District Court, Water Division 1, Colorado, in reviewing a decision of the State Engineer approving substitute water supply plans (SWSP). The District Court reviewed the State Engineer's decision *de novo*, but the appellants contended that the Administrative Procedures Act's (APA) more deferential standard of review applied.⁵⁴

48. The statute under which the State Engineer rendered the SWSP decision was § 37-92-308(4), C.R.S. Section 37-92-308(3) & (11), C.R.S. "clearly designate a [*de novo*] standard of review applicable to appeals of the State Engineer's approval or denial of subsection (3) and (11) SWSPs." In contrast, § 37-92-308(4), C.R.S. does not include the same language and, in fact, does not specify any standard of review.

49. Nevertheless, the appellees argued that the standard of review for decisions made pursuant to § 37-92-308(4), C.R.S. is *de novo*. The appellants countered that the APA's standard should apply because § 37-92-308(4), C.R.S. does not specify a standard of review and the APA's "provisions apply to agency actions unless they conflict with a specific provision of the agency's statute or another statutory provision preempts the provisions of the APA."⁵⁵ Because there was no such conflict, and no statutory provision concerning the standard of review of decisions made pursuant to § 37-92-308(4), C.R.S. preempts the APA, the appellant concluded that the APA's more deferential standard of review of agency actions applies.

⁵⁴ The APA's standard of review requires a court to affirm an agency decision unless it finds that the agency action is, among other things, "arbitrary and capricious, . . . an abuse or clearly unwarranted exercise of discretion, [or] based upon findings of fact that are clearly erroneous . . . when the record is considered as a whole."

⁵⁵ *Id.* at 417.

50. In its ruling, the Colorado Supreme Court cited the principles of statutory construction summarized above, including that the “absence of specific provisions or language in a statute ‘is not an error or omission, but a statement of legislative intent,’”⁵⁶ and then stated:

the General Assembly chose to include a specific statement regarding the applicable standard of review in subsections (3) and (11), but did not include such a statement in subsection (4)(c). Based on our rules of statutory construction, we must presume that the General Assembly purposefully chose not to include the language contained in subsections (3) and (11) requiring de novo review in subsection (4)(c) because it intended that a different standard of review apply. Since no specific standard of review is provided for in subsection (4)(c), presumably, the General Assembly intended that appeals of subsection (4) SWSPs be conducted pursuant to the APA.⁵⁷

....

Based on our canons of statutory construction and the plain language of the statute, we presume the General Assembly intended section 37-92-308(4) SWSPs to be reviewed under a standard different than that provided for in subsections (3) and (11) and did not fail to include language requiring de novo review, as it did with subsections (3) and (11), as an oversight. While this presumption is clear enough from the plain language of section 37-92-308 and our rules of statutory construction, it is less clear why the General Assembly chose to implement a scheme in section 37-92-308 under which certain SWSPs are reviewed under different standards than others. However, we cannot re-draft the language of section 37-92-308.⁵⁸

The Colorado Supreme Court thus concluded that the APA’s deferential standard of review, rather than the *de novo* standard required by Section 37-92-308(3) & (11), C.R.S., applies to decisions made pursuant to § 37-92-308(4), C.R.S.

51. Here, as in *Well Augmentation Subdistrict*, § 40-2-124(1)(e)(I)(C), C.R.S. expressly allows QRUs to impose a reasonable charge for administering Off-Site Net Metering, but excludes any such language from § 40-2-124(1)(j)(I), C.R.S. governing On-Site Multi-Unit Net Metering. Based on the rules of statutory construction summarized above, the ALJ must

⁵⁶ *Id.* (quoting *Romer v. Bd. of County Comm'rs of County of Pueblo*, 956 P.2d 566, 567 (Colo. 1998)).

⁵⁷ *Id.* at 419.

⁵⁸ *Id.* at 419, 421.

presume that the General Assembly purposefully omitted the reasonable charge in § 40-2-124(1)(e)(I)(C), C.R.S. from § 40-2-124(1)(j)(I), C.R.S. For the reason stated above, this conclusion is reinforced by the fact that the General Assembly promulgated both § 40-2-124(1)(e)(I)(C) and § 40-2-124(1)(j)(I), C.R.S. in the same legislation. Further, because the “absence of specific provisions or language in a statute ‘is not an error or omission, but a statement of legislative intent,’”⁵⁹ the ALJ must conclude that the General Assembly intended that QRUs not be permitted to recover their reasonable charges of administering net metering in the On-Site Multi-Unit Net Metering context. Accordingly, the ALJ will not incorporate language approving such a charge into Rule 3664(i).

(2) Limit on Changes to Share Allocations

52. As noted above, Black Hills and Public Service request to limit the number of times multi-unit property owners or unit owners’ associations can change the allocation of system shares to each onsite benefiting meter to two per year to limit the QRUs’ administrative expense of administering On-Site Multi-Unit Net metering.⁶⁰ The ALJ finds and concludes that the proposal by Black Hills and Public Service is just and reasonable. Such an outcome is a reasonable compromise in light of the decision above not to allow QRU’s to charge an administrative fee for administering On-Site Multi-Unit Net Metering.⁶¹

4. Analogous Rule to Rule 3803(a)(II)

53. Rule 3803(a)(II) states:

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

⁵⁹ *Id.* (quoting *Romer*, 956 P.2d at 567).

⁶⁰ *Id.* at 3.

⁶¹ See Draft Transcript of April 14, 2023 Remote Hearing (Part 2) at 3:14-5:11 (attorney for COSSA and SEIA stating that such a compromise would likely be acceptable to COSSA and SEIA).

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.

The Commission instituted Rule 3803(a)(II) in Decision No. C22-0789. The language of Rule 3802(a)(II) includes changes proposed by COSSA/SEIA and Black Hills that the Commission adopted. In so doing, the Commission “reiterated” the agreement reached by the participants in that rulemaking that: (1) “the MMO should be encouraged to share the monetary benefits of distributed generation with its end-users, consistent with the legislative intent;” (b) “[t]he 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;”⁶² and (c) “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.”⁶³

a. Comments

(1) Black Hills and Public Service

54. Initially, Black Hills and Public Service proposed to adopt a rule for multi-unit property owners analogous to Rule 3802(a)(II). As justification, Black Hills and Public Service stated that such a rule is necessary to ensure that “[n]o individual unit property owner or lessor should have to pay more for their utility bills as a result of new net metering rules for multi-unit building property owners.”⁶⁴ Black Hills and Public Service thus believe that an owner of a

⁶² Decision No. C22-0789 issued on December 9, 2022 in Proceeding No. 22R-0352E at 9 (¶ 22).

⁶³ *Id.* at 9 (¶ 23).

⁶⁴ Joint Reply Comments of Black Hills and Public Service at 7 (filed on February 24, 2023).

multi-unit property that takes advantage of these new net metering rules should not be allowed to “markup” the amount paid by the downstream benefiting meters.⁶⁵

(2) COSSA and SEIA

55. COSSA and SEIA responded that applying Rule 3802(a)(II) to multi-unit property owners is “unworkable” for three reasons.

56. First, “the Commission does not have jurisdiction over multi-unit property owners, so any rule limiting property owners’ ability to recover the cost of a DG system they install would be unenforceable.”⁶⁶

57. Second, in contrast to MMOs that own or lease the DG system and send electricity bills to its end users, multi-unit property owners do not have access to the utility bills of their tenants and thus cannot “know the precise value of the credit each tenant receives as a result of their system share in a given month.”⁶⁷ As a result, “whenever a property owner owns the DG system, it would be impossible to determine whether the property owner has ‘marked up’ the cost of the system through a monthly fee to its tenants.”⁶⁸

58. Finally, COSSA and SEIA believe that many multi-unit property owners will recover the cost of their DG systems not through a separately charged fee, but through increased rents. COSSA and SEIA assert that “[i]n such circumstances, it would be impossible to tell if the

⁶⁵ *Id.*

⁶⁶ Joint Additional Response Comments of COSSA and SEIA at 6 (filed on April 11, 2023).

⁶⁷ *Id.* at 6-7.

⁶⁸ *Id.* at 7.

property owner were ‘marking up’ the cost of the DG” system.⁶⁹ For this reason, “the Joint Utilities’ proposed rule is likely to serve no effective purpose.”⁷⁰

(3) April 14, 2023 Continued Public Comment Hearing

59. At the April 11, 2023 continued public comment hearing, Black Hills and Public Service withdrew their request to adopt a rule analogous to Rule 3802(a)(II) for multi-unit property owners. In its place, Black Hills and Public Service requested a policy statement from the Commission that any benefits from installing DG systems on multi-unit properties be shared between the property owners and their tenants/end users such that there will be a “net benefit” to the tenants/end users. At a minimum, Black Hills and Public Service do not want to see the electric bills of tenants/end users increase as a result of the installation of DG systems on multi-unit properties because the owners retain the benefits of the DG system while imposing the costs thereof on their tenants. The other participants at the April 11, 2023 continued public comment hearing agreed with the request of Black Hills and Public Service for such a “policy statement.”

b. Analysis

60. In SB 21-261, the General Assembly ordered the Commission to implement new or amended rules that “would 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.”⁷¹ In implementing those new or amended rules, the General Assembly directed the Commission to consider: (a) “Colorado’s greenhouse gas emission-reduction goals and the need to electrify buildings, transportation, and other commercial and industrial sectors to meet those

⁶⁹ *Id.* at 8.

⁷⁰ *Id.*

⁷¹ § 40-1-103.5(3)(b) (implemented in SB 21-261).

goals;” and (b) “rules that would encourage landlords to bear the attendant costs and to retain at least a portion of the resulting benefits in addition to any other incentives the commission finds appropriate.”⁷²

61. By their plain language, the foregoing considerations indicate that the Commission’s rules should “encourage” multi-unit property owners to install DG systems on their multi-unit properties and pay the costs of those systems themselves without transferring the costs to their tenants. The second consideration further indicates that the Commission’s rules should incentivize multi-unit property owners to do so by allowing them to “retain at least a portion of the resulting benefits” of the DG systems. The reference to “at least a portion of the resulting benefits” indicates that the General Assembly recognized that there may be one or more scenarios in which it would be appropriate for multi-unit property owners to retain all of the “resulting benefits” of the DG system. For example, it may be that there are circumstances in which retention of all such benefits is necessary to incent a multi-unit property owner to install a DG system in the first place, which would be consistent with “Colorado’s greenhouse gas emission-reduction goals.”⁷³ Obviously, in such a situation, the benefits of the DG system would not be shared with the tenants of the multi-unit property.

62. Here, the ALJ finds and concludes that the record in this proceeding does not support the adoption of a rule for multi-unit property owners that is analogous to Rule 3802(a)(II). In so doing, the ALJ reiterates the direction provided by the General Assembly stated above, and the agreement by the participants at the April 14, 2023 continued public comment hearing that: (a) any benefits from a DG system installed on a multi-unit property be

⁷² *Id.*

⁷³ *Id.*

shared between the property owner and the tenants/end users such that there will be a “net benefit” to the tenants/end users; and (b) the bills of tenants/end users should not increase as a result of the installation of DG systems on multi-unit properties because the owners of the multi-unit properties retain all of the benefits of the DG systems, but recover the costs thereof from their tenants.

D. Deadline to File Tariff

63. COSSA and SEIA originally proposed that QRUs be required to file an On-Site Multi-Unit Net Metering tariff consistent with these rules within 60 days of the implementation of these rules. After listening to the concerns of Black Hills and Public Service regarding a 60-day deadline, COSSA and SEIA agreed to a 90-day deadline. According to COSSA and SEIA, “[a] tariff filing deadline is essential to ensure that residents of multi-unit properties can begin enjoying the benefits of onsite DG in a reasonable timeframe.”⁷⁴ No other participant disagreed with a 90-day deadline for the filing of On-Site Multi-Unit Net Metering tariffs or made a different proposal.

64. The ALJ finds and concludes that requiring QRUs be required to file an On-Site Multi-Unit Net Metering tariff consistent with these rules within 90 days of the implementation of these rules is in the public interest. Accordingly, a 90-day deadline will be adopted.

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

⁷⁴ Joint Supplemental Comments of COSSA and SEIA at 11 (filed on March 31, 2023).

IV. ORDER**A. The Commission Orders That:**

1. The Rules Regulating Electric Utilities attached to this Recommended Decision are adopted.

2. The rules in redline legislative format (showing changes to current rules) are attached to this Recommended Decision as Attachments A (electric). The rules in final format are attached to this Recommended Decision as Attachments B (electric). They are also available in the Commission's E-Filings system at:

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

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 made available to all parties in the proceeding, 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.

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

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director