

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0133E

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION’S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, TO IMPLEMENT HOUSE BILL 23-1137 REGARDING COMMUNITY SOLAR GARDEN BILLING CREDITS.

**COMMISSION DECISION
ADOPTING RULES**

Issued Date: June 25, 2024
Adopted Date: June 17, 2024

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I. BY THE COMMISSION**A. Statement**

1. By Decision No.C24-0187, issued on March 22, 2024, the Colorado Public Utilities Commission issued a Notice of Proposed Rulemaking (NOPR) to amend the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules). The rulemaking is intended to implement House Bill (HB) 23-1137, signed into law on April 17, 2023, and codified as § 40-2-127, C.R.S. The legislation directs the Commission to adopt by June 30, 2024, rules that implement certain forms of billing credits paid to subscribers of a Community Solar Garden (CSG).¹

2. By this Decision, the Commission adopts modifications to Rule 3881 to include the new statutory provisions related to billing credits for CSGs. The adopted changes to the Electric Rules are set forth in attachments to this Decision in legislative (*i.e.*, *strikeout and underline*) format (Attachment A) and final format (Attachment B).

B. Background

3. Current law requires an electric retail utility (utility) to offer a billing credit as the means of purchasing output from a CSG located within the utility’s service territory and establishes the means of calculating the billing credit. HB23-1137 allows for billing credit amounts to take one of two forms: a bill credit amount that changes annually or a bill credit amount that remains fixed starting at the time the subscriber organization applies for or bids capacity into a utility CSG program. HB23-1137 also requires the Commission to allow a utility

¹ § 40-2-127(5)(b)(II)(E), C.R.S.

to recover costs incurred in implementing and maintaining the net metering credit billing systems.

4. HB23-1137 amends § 40-2-127(5)(b)(II), C.R.S., as follows.

5. Section 40-2-127(5)(b)(II)(B), C.R.S., requires that, for a subscriber organization that directs the qualifying retail utility to provide the subscriber organization's subscribers with a bill credit that changes annually, the credit is calculated by multiplying the subscriber's share of the electricity production from the CSG by the utility's total aggregate retail rate as charged to the subscriber, minus a reasonable charge as determined by the Commission. The charge will be used to cover the utility's costs of delivering to the subscriber's premises the electricity generated by the CSG, integrating the solar generation with the utility's system, and administering the community solar garden's contracts and net metering credits.

6. Section 40-2-127(5)(b)(II)(C), C.R.S., requires that, for a subscriber organization that directs the qualifying retail utility to provide the subscriber organization's subscribers with a fixed bill credit, the credit is calculated by multiplying the subscriber's share of the electricity production from the CSG by the utility's total aggregate retail rate as charged to the subscriber at the time the subscriber organization applies for or bids capacity into the utility's CSG program, minus a reasonable charge, as determined by the Commission at the time the subscriber organization applies for or bids capacity into a utility CSG program. The charge will be used to cover the utility's costs related to: (1) delivering to the subscriber's premises the electricity generated by the CSG; (2) integrating the solar generation with the utility's system; and (3) administering contracts and net metering credits for the CSG.

7. Section 40-2-127(5)(b)(II)(D), C.R.S., further requires that, for the purpose of applying the fixed bill credit to a subscriber's bill, the bill credit shall not be applied toward the following rate rider charges, unless the rate rider charges are included in the reasonable charge: rate rider charges that promote clean energy technologies, including beneficial electrification; rate rider charges that provide low-income bill assistance; or rate rider charges that provide other public benefits as determined by the Commission.

8. Section 40-2-127(5)(b)(II)(E), C.R.S., as previously noted, requires the Commission to adopt rules to implement the provisions in HB23-1137 by June 30, 2024.

9. Section 40-2-127(5)(b)(II)(F), C.R.S., requires that the Commission allow a utility to recover the costs incurred in implementing and maintaining billing systems for the various bill credit processes required pursuant to § 40-2-127(5)(b)(II), C.R.S.

10. Finally, § 40-2-127(5)(b)(II)(G), C.R.S., requires the Commission to ensure that the reasonable charge that the Commission determines pursuant to § 40-2-127(5)(b)(II)(B)-(C), C.R.S., does not reflect costs that are already recovered by the utility from the subscriber through other charges.

C. Procedural History

11. In accordance with the requested deadlines set forth in the NOPR, written comments on the proposed modifications to the Electric Rules were filed on May 1, 2024, by the Colorado Solar and Storage Association with the Solar Energy Industries Association (COSSA/SEIA) and jointly by the two Colorado investor-owned electric utilities—Public Service Company of Colorado and Black Hills Colorado Electric, LLC.

12. At the scheduled hearing on May 8, 2024, representatives from COSSA/SEIA and the utilities highlighted certain modifications they recommend to the proposed rules attached to the NOPR and generally indicated sufficient alignment in their views to warrant an attempt to file consensus rule changes after the hearing.

13. On May 29, 2024, COSSA/SEIA and the utilities jointly filed a set of consensus rules for the Commission’s consideration. While the consensus rules reflect agreement on several provisions governing CSG bill credits, the filing explains that their discussions “revealed that they did not fully appreciate each other’s different proposals for major concepts at issue in this rulemaking.”²

14. On June 5, 2024, COSSA/SEIA and the utilities filed a correction to their consensus rules, specifically addressing the Commission-approved delivery, integration, and administration charge that is subtracted from the utility’s total aggregate retail rate when calculating a CSG bill credit pursuant to §§ 40-2-127(5)(b)(II)(B) and (C), C.R.S.

D. Adoption of Rules

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

1. Rule 3881(b) – Annual Tariff Filings

16. The NOPR proposed a new provision in Rule 3881(b) that codified the current practice by which annual tariff filings are used to establish CSG bill credits for each utility.

² Post-Hearing Consensus Comments, p. 2.

The proposed rule requires advice letter filings on or before November 15 of each year for rates to become effective January 1.

17. In pre-hearing written comments and at the May 8, 2024 hearing, the rulemaking participants stated that more discussion by the Commission about the intended implementation of Rule 3881(b) would be useful. Nevertheless, the provisions that govern the tariff filing process as proposed in the NOPR are also included in the consensus rules without modification.

18. We adopt this addition to Rule 3881(b) and clarify its intended function.

19. Each year, the utility's November 15 tariff filing will set forth the CSG billing credits applicable in the following year. The bill credits that change annually will be updated based on estimated values of the total aggregate retail rates to be in effect in the coming year and the prevailing costs to the utility to deliver, integrate, and administer the CSGs. In addition to the annual bill credits, a fresh vintage of fixed bill credits to be made available in the following calendar year will also be set forth on the filed tariff sheets (*i.e.*, "The utility's tariff shall record the levels of fixed billing credit amounts established for CSGs over time.")

20. For example, the utility's November 15, 2024, filing will set the fixed bill credit available starting January 1, 2025, to be applied from that time forward, starting when a subscriber organization directs the utility to provide subscribers to a CSG with a fixed bill credit. That vintage of bill credits will apply for the full life of that CSG. Then, on or before November 15, 2025, the fixed bill credit to apply to elections made in the next year (*i.e.*, starting January 1, 2026) will be added to the tariff sheet and that new value of the fixed bill credit will be applied from that time forward. Hence, the CSG tariff sheets in effect on January 1, 2026, will show two sets of fixed bill credits: the 2025 vintage of fixed bill credits and the new 2026

vintage of fixed bill credits. Eventually the tariff sheet will show twenty or more vintages of fixed bill credits depending on the lives of the CSGs.

21. The intended design of the utility's tariff is the primary way the rules proposed in the NOPR address the requirement in § 40-2-127(5)(b)(II)(E), C.R.S., that the rules adopted by this Decision "consider the change of value to community solar garden customers of the fixed bill credit over time through rate adjustments or other mechanisms." As base rates, rate adjustments, and the utility's costs for the delivery, integration, and administration of CSGs change over time, such fluctuations are addressed each year through the annual tariff filing process.

22. As with many other rate adjustments implemented by the two utilities, the approximate six-week window between the filing date and the effective date of the CSG bill credits allows time for the stakeholders to address concerns prior to when the Commission will decide whether to set matter for hearing. There is generally a strong incentive to many stakeholders to avoid Commission action on a protest which could result in a suspension of the effective date of the updated tariff sheets. However, if there is a controversy the Commission must resolve, a hearing can support the establishment of just and reasonable rates.

2. Rule 3881(b)(I) – Annual Bill Credits

23. The NOPR largely retained the existing rule language governing the calculation of annual bill credits.

24. The consensus rules reflect agreement on retaining most of the existing rule provisions for annual credits but also agreement on adding requirements from HB23-1137 so that common provisions apply to both the annual and fixed varieties.

25. We agree that a common approach should apply to the calculation of the CSG bill credits, while also recognizing the differences between the annual and fixed options. A common approach also lends itself to simpler rules.

26. We thus adopt Rule 3881(b)(I) as shown in the attachments to this Decision. We agree with the provision in the consensus rules that the subscriber organization will direct the utility to provide a particular CSG's subscribers with either an annual or fixed bill credit. While we agree in principle with the proposed change from "the subscriber organization's subscribers" to "subscribers to a particular CSG," the phrase "CSG project" in the consensus rules can be replaced with simply "CSG," because CSG is a defined term that clarifies it is a CSG facility.

27. We further retain the existing requirements that the bill credit amount is calculated using the utility's total aggregate retail rate of the subscriber's rate class. We further adopt the consensus approach that the total aggregate retail rate will include all billed components. The bill credit will then equal that total aggregate retail rate minus the delivery, integration, and administration charge (*i.e.*, the "reasonable charge" in §§ 40-2-127(5)(b)(II)(B) and (C), C.R.S., and Rule 3881(b)(V), as explained below).

28. We also agree that, for billing purposes, both the annual and fixed bill credits will not be applied to certain types of riders as listed in HB23-1137. We further agree with the consensus rule filing that the specific riders will be identified in the utility's tariff, adjusted as needed in the annual tariff filings pursuant to Rule 3881(b). However, as discussed below, these provisions will be set forth in Rule 3881(b)(III).

3. Rule 3881(b)(II) – Fixed Bill Credits

29. The NOPR proposed new rule language governing the calculation of the fixed bill credit that closely follows the text in HB23-1137.

30. As discussed above, the consensus rules reflect agreement on harmonizing the calculation of the annual and fixed credits with respect to the new provisions in the statute.

31. We appreciate the consistency in the calculation and billing frameworks for both types of CSG billing credits and therefore adopt, in large part, the consensus rule for fixed bill credits in Rule 3881(b)(II). We also find good cause to adopt the proposed additions to Rule 3881(b)(II) that state: (1) the election of the fixed bill credit must be made before the commercial operation date of the CSG; and (2) the fixed bill credit applies to subscriptions for the life of the CSG (however, the phrase in the consensus rules where the fixed charge “shall not change for the life of the CSG” will instead read “the fixed bill credit shall apply for the life of the CSG”).

32. We also adopt the balance of the consensus rule with one additional minor modification. The phrase “as charged to the CSG subscriber’s class” will be retained as a clarification to the specific total aggregate retail rate to be used in the calculation of the bill credit.

4. Rule 3881(b)(III) – Non-Bypassable Charges

33. The consensus rules include essentially the same provisions under Rules 3881(b)(II) and 3881(b)(III) to implement the non-bypassable public benefit charges in accordance with HB23-1137.

34. We conclude that it is unnecessary to repeat these identical provisions and instead adopt the provisions in Rule 3881(b)(III) that will be common to both the annual and fixed bill credits.

5. Rule 3881(b)(V) – Delivery, Integration, and Administration Charge

35. The consensus rules propose modifications to the existing subparagraph under Rule 3881 that addresses the Commission-approved charge to cover the utility’s cost of delivering the electricity generated by the CSG, integrating the generation from the CSG into the utility’s system, and administering the contracts with CSG owners and billing credits.

36. Instead of using the phrase “reasonable charge” from §§ 40-2-127(5)(b)(II)(B) and (C), C.R.S., as proposed in the consensus rules, we modify in Rule 3881(b)(V) to include the term “a Commission-approved delivery, integration, and administration charge.”

37. We further agree with the consensus rules that this “reasonable charge” will include the utility’s applicable customer charge, its demand-side management cost adjustment (DSMCA or DSM rider), and its Renewable Energy Standard Adjustment (RESA).

6. Fixed Bill Credits Value Over Time

38. Section 40-2-127(5)(b)(II)(E), C.R.S., requires the Commission to “consider the change of value to community solar garden customers of the fixed bill credit over time through rate adjustments or other mechanisms.”

39. In its pre-hearing comments, COSSA/SEIA explained that the Commission could implement this requirement by “including some sort of ongoing adjustment to the fixed bill credit over time to ensure the credits value remains constant, accounting for inflation, such as adjusting fixed bill credits based on the annual percentage change of the consumer price index.”

COSSA/SEIA also stated that it would be helpful for the Commission “to introduce its thinking into the rulemaking record for clarity” or address this outstanding issue if it has not yet been satisfied.³

40. At the May 8, 2024 hearing, the utilities shared a similar interest regarding how the proposed rules in the NOPR implement § 40-2-127(5)(b)(II)(E), C.R.S., and the utilities and COSSA/SIEA also appeared willing to try to reach consensus regarding the implementation of this statutory provision.

41. Instead of proposing a specific form or type of adjustment to the fixed credits, however, the consensus rules propose the following process:

On or before June 1, 2025, and every four years thereafter, the Commission shall open a miscellaneous proceeding to consider the change of value to CSG subscribers of the fixed bill credit over time. In the miscellaneous proceeding, the Commission may consider whether adjustments to the fixed bill credits are necessary.

42. The utilities and COSSA/SEIA explain that at four-year intervals, the Commission will have sufficient data to assess how the value of the fixed CSG bill credit has changed over time and will be able to evaluate if the amount of the credit should be adjusted, and if so, by how much and by what mechanism.⁴

43. We decline to adopt this proposed addition to Rule 3881. We conclude that an additional series of proceedings is unnecessary, since the tariff filing approach explained above will provide an opportunity each year for the utility or a protesting party such as COSSA/SEIA to pursue a change in the applicable bill credits. Four years may also be too long of an interval for adjustments. Retail electricity rates and riders change in scope and levels much more frequently.

³ COSSA/SEIA Comments, pp. 4-5.

⁴ Post-Hearing Consensus Comments, p. 5.

44. Like the consensus rules, the rules we adopt by this Decision steer clear of a prescriptive approach to addressing “the change of value to community solar garden customers of the fixed bill credit.” The annual bill credit tariff filings are also flexible enough to accommodate multiple possible ways to establish the fixed bill credits in accordance with HB23-1137. For instance, the utility’s CSG bill credit tariff could specify an escalation rate for each vintage of credits as contemplated by COSSA/SEIA in its written comments.⁵ Alternatively, the fixed credits could be set forth in the tariff as a full schedule of amounts for each year the CSG serves subscriptions. The utility’s tariff might instead establish a fixed credit through a more complex determination—made when the subscriber organization applies for or bids capacity into a utility community solar garden program—of the Commission-approved charge for the delivery and integration of the CSG-produced energy, a charge that remains reasonable for 20 or more years, consistent with the life of the CSG.

45. Notwithstanding the flexibility afforded by these adopted rules to the establishment of any vintage of fixed billing credits, we clarify that the annual tariff filings are not occasions for subscriber organizations and CSGs to reopen the fixed bill credits. Fixed bill credits are instead predetermined and not subject to changes after they have been set. In accordance with the plain language of the statute, fixed is fixed.

E. Conclusion

46. The statutory authority for the adoption of rules can be found at § 40-2-127, C.R.S., (requiring the Commission to promulgate certain implementing rules) and § 40-2-108,

⁵ COSSA/SEIA Comments, pp. 4-5.

C.R.S., (requiring the Commission generally to promulgate rules necessary to administer and enforce Title 40).

47. The adopted amendments to the Electric Rules stem from the statutory authority under § 40-2-127(5)(b)(II), C.R.S.

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

II. ORDER

A. The Commission Orders That:

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

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0133E.

2. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding constitutionality and legality of the rules as finally adopted.

3. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State

4. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

5. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 17, 2024.**

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director