Decision No. C16-0185

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.

DECISION GRANTING EXCEPTIONS TO RECOMMENDED DECISION NO. R15-0034 AND AMENDING RULES

Mailed Date: March 4, 2016
Adopted Date: February 24, 2016

I. BY THE COMMISSION

A. Statement

1. In this proceeding, the Colorado Public Utilities Commission (Commission) adopts rules regulating the providers of electricity service in Colorado.

2. This Decision grants exceptions to Recommended Decision No. R16-0034, filed by Energy Outreach Colorado and Jointly by Colorado Energy Office, Western Resource Advocates, and Colorado Rural Electric Association. On our own motion, we also edit several rules.

B. Background

3. On August 20, 2015, the Commission issued a Notice of Proposed Rulemaking (NOPR) to amend the rules regulating electric utilities contained in 4 *Code of Colorado Regulations* (CCR) 723-3, consistent 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.[1] The proposed rules also updated the low income rules, references to federal rules, and procedures for testing service meters upon a customer's request. Finally, the proposed rules incorporated recent changes to the Commission's rules of practice and procedure contained in 4 CCR 723-1.[2]

4. We referred this proceeding to an Administrative Law Judge. Throughout the proceeding written comments were filed 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), the Office of Consumer Council (OCC), Sunshare LLC (Sunshare), and Atmos Energy Corporation (Atmos). The Administrative Law Judge (ALJ) held a public comment hearing on October 19, 2015.

5. On January 15, 2016, the ALJ issued Recommended Decision No. R16-0034 adopting rules as attached to that decision.

6. On January 28, 1016, EOC filed Exceptions to the recommended decision. On January 29, 2016, Joint Exceptions were filed by CEO, WRA and CREA. No responses to exceptions were filed.

C. Rule 3412 Electric Service Low Income Program

7. The EOC in its exceptions, requests that the Commission modify rule 3412(c)(II) to serve low income customers at or below 185 percent of the current federal poverty level, rather than 165 percent as contained in the recommended decision.

[1] Decision No. C15-0905 in Proceeding No. 15R-0699E.
[2] *See* Proceeding Nos. 12R-500ALL and 14R-0419ALL.

8. The EOC states that Commission has correctly relied on § 40-3-106(I)(d)(II)(A), C.R.S. in its original implementation of a low income program. This statute includes the 185 percent threshold. The confusion arose when the Colorado LEAP program changed its eligibility cap to 150 percent and then 165 percent due to lower funding levels. However, the EOC states that utilities that do not use LEAP funds to offset their low income program costs should be permitted to serve customers at or below the statutory limit of 185 percent of federal poverty level.

9. We agree with the EOC and its exception. We adopt rule 3412(c)(II), as follows:

> Eligible participants are limited to those with a household income at or below 185 ~~165~~ percent of current federal poverty level, or, if the utility applies individual LEAP benefits to offset the costs of the costs of the unaffordable portion of the participating customer's utility bill, those with a household income at or below the percent of the current federal poverty level set by the Colorado Department of Human Services, Division of Low-income Energy Assistance for eligibility in the LEAP program.

D. Rule 3655 Renewable Distributed Generation

10. CEO, WRA, and CREA (Joint Commenters) argue in jointly-filed exceptions that the recommended decision and adopted rules failed to address an issue raised in written comments related to the use of Community Solar Gardens (CSG) in rule 3655(l). HB15-1377 allowed cooperative electric associations to comply with the retail renewable distributed energy requirement using any source of shared renewable energy, not just solar. However, the Recommended Decision adopts a rule that limits retail renewable distributed generation to CSGs. The Joint Commenters argue that retaining "CSG" in rule 3655(l) as set forth in the Recommended Decision is contrary to HB15-1377.

11. The Joint Commenters offer two options for the Commission's consideration. Option 1, as offered by WRA in its original comments would remove the term "CSG" throughout

the rule, leaving "subscriber" and "subscription," which are terms that could apply to facilities powered by any renewable technology. Option 2, as offered by CEO in its original comments would create a newly defined term to replace "CSG". CEO had originally suggested the term "Community Renewable Facility". Option 2 would also include the adoption of the new definition for community renewable facility and the replacement of "CSG" with "CRF" in rule 3655.

12. We agree with the Joint Commenters and approve Option 1 as offered. The deletion of "CSG" throughout rule 3655(l) more specifically and correctly aligns our rule with the statutory changes of HB15-1377. We adopt the following changes to rule 3655(l):

> For the purposes of a cooperative electric association QRU's compliance with paragraphs 3655(h), 3655(i), and 3655(j), an electric generation facility constitutes retail renewable distributed generation if it: is a renewable energy resource; has a nameplate rating of two MW or less; is located within the service territory of the cooperative electric association; generates electricity for the beneficial use of ~~CSG~~ subscribers who are members of the cooperative electric association; and has at least four ~~CSG~~ subscribers if the facility has a nameplate rating of 50 KW or less and at least ten ~~CSG~~ subscribers if the facility has a nameplate rating of more than 50 KW. A ~~CSG~~ subscriber's share of the production from the facility may not exceed 120 percent of the ~~CSG~~ subscriber's average annual electricity consumption at the premise to which the subscription is attributed. Each cooperative electric association may establish, in the manner it deems appropriate, the requirements and terms associated with the electric generation facilities: ~~CSG~~ subscriber; ~~CSG~~ subscription; pricing, including consideration of low-income members; metering; accounting; REC ownership; and other requirements and terms.

E. Changes to Additional Rules on the Commission's Own Motion

13. On our own motion we also make the following non-substantial changes to the rules adopted by Decision No. R16-0034.

14. In rules 3300-3309 regarding Meters, the rules originally proposed in this rulemaking changed "service meters" to "revenue meters" in many places. Through the course of the proceeding, the ALJ determined that this change was not appropriate. However, rather than

retaining "service meters" the adopted rules deleted both "service" and "revenue" leaving a more generic and general "meter". We replace instances of "service" as appropriate.

15. In rule 3411(c)(I) the following sentence should be deleted: "The utility shall provide a copy of such application to the Organization." The requirement for the application was deleted, therefore, the providing of a copy should be deleted as well. In addition, in rule 3411(c)(IV), the following sentence should not be stricken: "Such application shall meet the requirements of (d)(I)."

16. Finally, we retain the phrase "investor owned" in reference to the QRUs in rule 3665 – Community Solar Gardens. Unlike our previous discussion of rule 3655, rule 3665 is applicable only to investor owned utilities, and leaving in that phrase clarifies the applicability of the rule.

II. ORDER

A. The Commission Orders That:

1. The Exceptions of Energy Outreach Colorado, filed on January 28, 2016, are granted consistent with the discussion above.

2. The Joint Exceptions of Colorado Energy Office, Western Resource Advocates, and Colorado Rural Electric Association, filed on January 29, 2016, are granted consistent with the discussion above.

3. The rules in redline and strikeout format attached to this Decision as Attachment A, and in final format attached as Attachment B, are adopted and 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 or by searching the E-Filings system from https://www.dora.state.co.us/pls/efi/EFI.homepage..

4. 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. 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

5. 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.

6. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING February 24, 2016.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

JOSHUA B. EPEL

GLENN A. VAAD

ATTEST: A TRUE COPY

FRANCES A. KONCILJA

Commissioners

Doug Dean, Director