

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0352E

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION’S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, IN ORDER TO IMPLEMENT REVISIONS TO THE LIMITED EXEMPTION OF MASTER METER OPERATORS ENACTED BY SENATE BILL 21-261.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: August 15, 2022
Adopted Date: August 10, 2022

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

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to consider amendments to certain of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3, in order to implement the recent statutory changes enacted in Senate Bill (SB) 21-261, effective June 21, 2021, revising the statutory exemption of master meter operator configurations from Commission rate regulation.

2. Through this rulemaking, the Commission satisfies the legislature's requirement, codified at § 40-1-103.5(3)(b), C.R.S., that the Commission adopt, by December 31, 2022, implementing rules to 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.

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

4. The Commission will hold a remote public comment hearing on the proposed rules at 9:00 a.m. on October 20, 2022.

5. The proposed rule changes are set forth in legislative (*i.e.*, strikeout and underline) format in Attachment A to this Decision, and in final format in Attachment B to this Decision.

B. Senate Bill 21-261

6. On June 21, 2021, Governor Jared Polis signed SB 21-261, which enacts measures designed to increase the deployment of renewable energy generation facilities to meet

Colorado's energy needs including raising the allowable capacity of customer-sited renewable energy generation facilities and providing utility customers additional options for increasing the scale and flexibility of new installations.

7. As relevant here, the bill revises the conditions to exempt a "master meter operator," or "MMO," from Commission rate regulation to allow the MMO to modify the charge it assesses end users to account for adjustments attributable to the use of electricity generated from retail distributed generation. Under existing Colorado law, an MMO is a person who purchases gas or electric service from a regulated public utility for the purpose of delivering such service on to end users whose aggregate usage is measured by a master meter or other composite measurement device. Common master meter systems are multi-family housing units and mobile home parks.

8. Section 4 of the bill amends § 40-1-103.5(1)(a), C.R.S., to expressly allow "master meter operators," or "MMOs," to adjust what they charge to end users for electric service to account for refunds, rebates, rate reductions, net metering credits, or similar adjustments attributable to distributed generation that is located on property owned or leased by the MMO or by a customer served by the MMO. With the change, MMOs may now retain refunds, rebates, rate reductions, net metering credits, and similar reductions offered by the serving utility in its net metering program.

9. Section 4 also adds a statutory requirement, codified at § 40-1-103.5(3)(a), C.R.S., that the Commission to adopt implementing rules by December 31, 2022. Specifically, the bill directs the Commission to 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. The bill directs the Commission to consider this

State's greenhouse gas emission-reduction goals and the need to electrify buildings, transportation, and other commercial and industrial sectors to meet those goals. The bill further directs the Commission to 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.

C. Broader Follow-on Rulemaking Anticipated

10. The Commission fully recognizes that its current Renewable Energy Standard (RES) rules, comprising Rules 3650 through 3668 of the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3, require re-evaluation and update to account for recent changes in state policy and statute.

11. The Commission began this process in 2017 through an extensive rulemaking effort in Proceeding Nos. 17M-0694E and 19R-0096E but ultimately did not reach a final decision adopting new RES rules. *See* Proceeding No. 19R-0096E, Decision No. C20-0661-I, issued September 15, 2020 (severing the RES rules from the larger rulemaking proceeding) and Decision No. C21-0246, issued April 23, 2021 (closing rulemaking without amending the existing rules). The Commission has successfully adopted revisions to a subset of the prior RES rules, the rules governing Community Solar Gardens (CSGs), which both updated the CSG rules to reflect policy and statutory changes and moved the rules to a new standalone section within 4 CCR 723-3. *See* Proceeding No. 19R-0608E, Decision No. C20-0482, issued July 9, 2020 (addressing exceptions and adopting rules) and Decision No. C20-0628, issued August 28, 2020 (addressing applications for rehearing, reargument, or reconsideration). Since then, continual litigation of RES issues in ongoing adjudications before the Commission has prevented the Commission from finding an ideal time to launch a comprehensive review of the RES rules.

12. At this point, the Commission recognizes it must timely implement the specific statutory changes enacted in SB 21-261 that allow MMOs to adjust the charge to end users to account for adjustments attributable to distributed generation. We know more rulemaking is likely to be necessary due to statutory changes and those will be addressed in future decisions. In the meantime, the Commission will implement the legislation in ongoing proceedings related to the RES and Net Metering consistent with the enacted statutes.

13. Consequently, the Commission finds the best path forward to meet these objectives is to immediately open this relatively narrow rulemaking for the limited purpose of adopting rules to implement the statutory changes addressing MMO configurations enacted in SB 21-261, and to indicate the Commission expects to soon open a broader rulemaking to consider more comprehensive changes. The statutory changes enacted in SB 21-261 are now in effect and the Commission is mindful of its role in ensuring that utilities are complying with current law. The purpose of this rulemaking is to adopt rule revisions necessary to implement the change in law, with understanding that the Commission expects to soon explore a broader rulemaking to consider more comprehensive changes to the RES rules and promulgation of net metering rules.

D. Proposed Rule Changes

14. An overview of the changes proposed by the Commission fall into two general categories, described below. For each category, we identify and explain the proposed rule change, provide analysis of the change, and, as applicable, pose questions for comments by rulemaking participants.

1. Revisions to Existing MMO Rules

15. The Commission has rules in place implementing the statutory exemption of MMOs pursuant to § 40-1-103.5, C.R.S. These rules comprise Rules 3800 and 3803 of the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3.

16. As set forth in the existing rules, an MMO is a person who purchases electric service from a serving utility for the purpose of delivering that service to end-users whose aggregate usage is measured by a master meter. The meter reading is usually done under the property owner's account and the property owner then receives the bills measured through one electric meter for all the tenants. The master meter is usually installed in front of any sub-meter so that the energy which is supplied to the building flows through the master meter first. Utility submetering is the implementation of meter systems that allows the operator of a multi-unit property to bill each unit for individual utility usage through the installation of additional meters behind a utility meter.

17. We propose to revise the language in Rule 3803(a)(I) to reflect the change in law enacted in SB 21-261. This new language, underlined below, states as follows:

As part of its billing for utility service, the MMO shall charge its end-users only the actual cost billed to the MMO by the serving utility. The MMO shall not charge end-users for any other costs (such as, without limitation, the costs of construction, maintenance, financing, administration, metering, or billing for the equipment and facilities owned by the MMO) in addition to the actual costs billed to the MMO by the serving utility; except for refunds, rebates, rate reductions, net metering credits, or similar adjustments attributable to the use of electricity generated from retail distributed generation that is located on property owned or leased by the MMO or by a customer served by the MMO.

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

18. As explained above, we do not propose at this time further amendments to the rules governing MMO configurations in order to implement SB 21-261 through this rulemaking,

but we invite comment from participants on any revisions they believe are necessary at this time and cannot wait for a potential broader follow-on rulemaking.

2. Revisions to Existing Net Metering Rules

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

20. We propose to add a new paragraph to Rule 3664 to implement the principal changes enacted in SB 21-261. This new paragraph (i) states:

The investor owned QRU shall not prohibit customers who are end-users served by master meter operator as defined in paragraph 3801(c) from participating in the investor owned QRU's net metering programs.

21. The Commission proposes this straightforward rule change as an initial effort to implement the changes in SB 21-261 intended to facilitate greater participation in utility distributed generation programs by owners and customers of master meter configurations. To date, the Commission has not been made aware of any significant barriers or issues preventing MMOs from participation or received input on how to allocate net metering credits including whether such allocation should be by usage or demand. Accordingly, we believe the appropriate first step is to plainly prohibit discrimination against MMOs, which is accomplished by this proposed new rule language.

22. We also propose to add a new provision as subparagraph 3662(a)(XIX) to require reporting from utilities. This new subparagraph requires the utility's annual Renewable Energy Standard compliance report to include:

A summary of program participation by customers who are end-users served by a master meter operator as defined in paragraph 3801(c).

23. The Commission proposes this new requirement to ensure the Commission can start to collect more information about this segment of customers and inform future rulemaking and other agency actions. The Commission invites comment from participants on additions to this rule to specify the type of information to be included in the utility's required annual summary.

24. The Commission takes this limited approach to amending rules surrounding MMOs for several reasons. First, as discussed above, the Commission endeavors through this relatively narrow rulemaking to adopt revised rules implementing the principal changes in SB 21-261 to ensure current rules conform to current law and to meet the legislature's December 31, 2022 deadline to adopt implementing rules. As noted, the Commission intends to explore a more comprehensive rulemaking to consider broader revisions to its RES rules (and promulgation of net metering rules) that reflect current policy and conform to recent statutory changes including the provisions in SB 21-261.

25. Second, as discussed above, the Commission is still gathering information and input regarding potential barriers and issues relating to MMOs participating in these types of programs. To that end, the Commission invites comment from participants on suggested revisions to the proposed language in this NOPR, potential additional rule changes to accomplish in this rulemaking, and remaining issues to consider in a potential follow-on broader rulemaking.

E. Other Forms of Virtual Net Metering

26. The Commission understands that there exist many forms of "virtual" net metering, *i.e.*, a bill crediting system where utility customers can be credited for renewable energy generation produced off-site and delivered to the grid. The Commission further recognizes that SB 21-261 asks the Commission to consider rules that encompass other forms of

net metering, other than MMO configurations. The Commission is aware of these remaining considerations and requests comments from participants on how to solicit information and input on the scope and substance of rule changes that may be needed to accommodate all forms of virtual net metering.

F. Conclusion

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

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

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0352E

29. Initial written comments on the proposed rule changes are requested by September 8, 2022. Any person wishing to file comments responding to the initial comments is requested to file such comments by September 22, 2022. These deadlines are set so that the comments and responses may be considered at the public hearing, nonetheless, persons may file written comments into this Proceeding at any time. The Commission will consider all comments submitted in this Proceeding, whether oral or written.

30. The Commission prefers comments be filed using the Commission's E-Filings System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> under this Proceeding

No. 22R-0352E. Written comments will be accepted and should be addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B) shall be filed with the Colorado Secretary of State for publication in the September 10, 2022, edition of *The Colorado Register*.

2. A remote public hearing on the proposed rules and related matters shall be held as follows:

DATE October 20, 2022

TIME: 9:00 a.m.

PLACE: By video conference using Zoom at a link in the calendar of events on the Commission's website: <https://puc.colorado.gov/>

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

4. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than September 8, 2022, and that any pre-filed comments responsive to the initial comments be submitted no later than September 22, 2022. The Commission will consider all submissions, whether oral or written. The Commission prefers that comments be filed into this Proceeding using the Commission's E-Filings System at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 10, 2022.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN GILMAN

Commissioners