

## **COLORADO DEPARTMENT OF REGULATORY AGENCIES**

### **Public Utilities Commission**

#### **4 CODE OF COLORADO REGULATIONS (CCR) 723-3**

#### **PART 3 RULES REGULATING ELECTRIC UTILITIES**

##### **RENEWABLE ENERGY STANDARD**

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[indicates omission of unaffected rules]

##### **COMMUNITY SOLAR GARDENS**

###### **3875. Applicability.**

The following rules shall apply to all QRUs regarding community solar gardens (CSGs) developed pursuant to § 40-2-127, C.R.S. These rules shall not apply to cooperative electric associations or to municipally owned utilities.

###### **3876. Overview and Purpose.**

The purpose of this rule is to implement the development and deployment of CSGs: to provide opportunities to all utility customers to participate in solar generation in addition to on-site solar systems; to allow renters, low-income utility customers, and agricultural producers to own interests in solar generation facilities; to allow interests in solar generation facilities to be portable and transferrable; and to leverage solar generating capacity through economies of scale.

###### **3877. Definitions.**

The following definitions apply to rules 3877 through 3883. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) “Community solar garden” or “CSG” means a solar electric generation facility with a nameplate rating of five MW AC or less that is located in or near a community served by a utility where the beneficial use of the electricity generated by the facility belongs to the subscribers of the CSG. A CSG shall have at least ten CSG subscribers. A CSG shall be deemed to be located on the site of each subscribing customer’s facilities for the purpose of crediting the CSG subscribers’ bills for the electricity purchased from the CSG by the utility. The electricity generated by a CSG shall be sold only to the utility serving the geographic area where the CSG is located. The renewable energy generated by a CSG shall constitute retail renewable distributed generation under paragraph 3001(qq). More than one CSG, or a combination of CSGs may be interconnected at the same location as long as they do not cumulatively exceed five MW AC (or ten MW AC, as applicable), without regard to whether the CSGs are new or existing facilities. The utility or a developer may propose a CSG with a nameplate rating of up to ten MW AC or less will be allowed on or after July 1, 2023.
- (b) “CSG owner” means the owner of the solar generation facilities installed at a CSG that contracts to sell the unsubscribed electricity generated by the CSG to a utility. A CSG subscriber organization operating a CSG not owned by it will be deemed to be a CSG owner for purposes of these rules. A CSG owner may be the utility or any other for-profit or nonprofit entity or organization, including a CSG subscriber organization.
- (c) “CSG subscriber” means a retail customer of a utility who owns a subscription to a CSG and who has identified one or more premises served by the utility to which the CSG subscription shall be attributed.
- (d) “CSG subscriber organization” means any for-profit or nonprofit entity permitted by Colorado law and whose sole purpose shall be:
  - (I) to beneficially own and operate the CSG; or
  - (II) to operate the CSG that is built, owned, and operated by a third party under contract with such CSG subscriber organization.
- (e) “CSG subscription” means a proportionate interest in the beneficial use of the electricity generated by the CSG, including without limitation, the renewable energy associated with or attributable to the CSG.
- (f) “Eligible low-income CSG subscriber” means:
  - (I) a residential customer of a utility who has a household income at or below 185 percent of the current federal poverty level, as published each year in the federal register by the U.S. Department of Health and Human Services; or
  - (II) a residential customer of a utility who otherwise meets the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.
- (g) “Eligible low-income service provider” means:

- (I) an operator of affordable housing where at least 60 percent of the residents are either below the income level in this definition or meet the eligibility criteria in the rules promulgated under § 40-8.5-106, C.R.S. and the nonprofit or public housing authority operator provides verifiable information that these low-income residents are the beneficiaries of the CSG subscription(s); or
- (II) a non-profit corporation that is able to demonstrate that it provides essential services including, but not limited to, food, clothing, job training, housing, or medical services primarily to low-income recipients who meet the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.

**3878. CSG Subscriptions, Subscribers, and Subscriber Organizations.**

- (a) No CSG subscriber may own more than a 40 percent interest in the beneficial use of the electricity generated by the CSG, including without limitation, the renewable energy and RECs associated with or attributable to the CSG.
- (b) Each CSG subscription shall be sized to represent at least one kW AC of the CSG's nameplate rating and supply no more than 120 percent of the CSG subscriber's average annual electricity consumption at the premise to which the subscription is attributed, with a deduction for the amount of any existing retail renewable distributed generation at such premise. The minimum one kW AC sizing requirement herein shall not apply to subscriptions owned by an eligible low-income CSG subscriber.
- (c) The premise to which a subscription is attributed by a CSG subscriber shall be served by the utility. The CSG subscriber may change from time to time the premise to which the CSG subscription shall be attributed, so long as the premise is within the same service territory served by the utility.
- (d) No CSG subscriber organization may own more than a 40 percent interest in the beneficial use of the electricity generated by the CSG, including without limitation, the renewable energy and RECs associated with or attributable to the CSG, after the CSG has operated commercially for 18 months.

**3879. Share Transfers and Portability.**

- (a) A CSG subscription may be transferred or assigned to the associated CSG subscriber organization or to any person or entity who qualifies to be a subscriber in the CSG.
- (b) A CSG subscriber who desires to transfer or assign all or part of his subscription to the CSG subscriber organization, in its own name or to become unsubscribed, in compliance with the terms and conditions of the subscription, shall notify the CSG subscriber organization and the transfer of the subscription to the CSG subscriber organization shall be effective upon such notification, unless the CSG subscriber specifies a later effective date.
- (c) A CSG subscriber who desires to transfer or assign all or part of his subscription to an eligible utility customer desiring to purchase a subscription may do so only in compliance with the terms and conditions of the subscription and will be effective in accordance therewith.

- (d) If the CSG is fully subscribed, the CSG subscriber organization shall maintain a waiting list of eligible utility customers who desire to purchase subscriptions. The CSG subscriber organization shall offer the CSG subscription of the CSG subscriber desiring to transfer or assign their interest, or a portion thereof, on a first-come, first-serve basis to customers on the waiting list-, except that the CSG subscriber organization shall give a preference to eligible low-income CSG subscribers and, to the extent that the CSG subscriber organization has made any subscriber mix commitments, to any other categories of utility customers.
- (e) The CSG subscriber organization and the utility shall jointly verify that each CSG subscriber is eligible to be a subscriber in the CSG pursuant to rule 3878. The CSG subscriber roll shall include, at a minimum, the percentage share owned by the CSG subscriber, the effective date of the ownership of that percentage share, and the meters at the premises to which the CSG subscription is attributed for the purpose of applying billing credits. Changes in the CSG subscriber roll shall be communicated by the CSG subscriber organization to the utility, in a standard electronic form, as soon as practicable, but on no less than a monthly basis.
- (f) Prices paid for subscriptions in a CSG shall not be subject to regulation by the Commission.

**3880. Production Data.**

- (a) The CSG owner shall pay for the production meter to be used to measure the amount of electricity and RECs generated by each CSG whether installed by the utility or the CSG owner.
- (b) The owner of a CSG with a nameplate rating of one MW AC or greater shall register the CSG and report the CSG's production data to the WREGIS in accordance with paragraph 3658(j).
- (c) CSGs are required to provide real time reporting of production as specified by the utility. For CSGs greater than 250 kW AC, the CSG owner shall provide real time electronic access to production and system operation data. In the event that a CSG greater than 250 kW AC also collects meteorological data, the CSG owner shall provide, at the QRU's request, real time electronic access to the utility to such meteorological data. A utility may require different real time reporting for CSGs 250 kW AC and smaller.
- (d) Production from the CSG shall be reported by the CSG subscriber organization to its CSG subscribers at least monthly. To facilitate the tracking of production data by CSG subscribers, CSG owners or CSG subscriber organizations are encouraged to provide website access to subscribers showing real time output from the CSG, if practicable, as well as historical production data.

**3881. Billing Credits and Unsubscribed Renewable Energy.**

- (a) Compensation to the CSG subscriber for its share of the renewable energy generated by a CSG shall take the form of a billing credit paid to the CSG subscriber by the utility or, if authorized by the CSG subscriber, contributed to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory.
  - (l) The billing credit shall be calculated by multiplying the CSG subscriber's share as a percentage of the renewable energy generated by the CSG times the utility's total

aggregate retail rate of the subscriber's rate class, including all billed components except for the customer charge, demand side management (DSM), and RESA rate components, as charged to the CSG subscriber's class.

- (II) For the purpose of calculating the billing credit for a commercial or industrial customer on a demand tariff:
    - (A) the total aggregate retail rate shall be determined by dividing the total electric charges to be paid by the customer to the utility for the most recent calendar year (including demand charges) by the customers' total electricity consumption for that year for subscriptions to CSGs planned for purchases by the utility before January 1, 2016. In the event that the designated premises to which the CSG subscription is attributed has less than one year of billing history, an estimate of the total annual charges shall be made by the utility; or
    - (B) the total aggregate retail rate shall be determined using the average charges and usage for the subscriber's rate class for subscriptions to CSGs planned for purchases by the utility after January 1, 2016.
  - (III) Billing credits shall be reflected in the CSG subscriber's bill from the utility no later than the 60th day after the utility receives the information required to calculate the billing credit from the CSG subscriber organization.
  - (IV) The utility may assess a Commission-approved charge to cover the utility's costs of delivering to the CSG subscriber's premises the renewable energy 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. This charge shall be a fixed amount and shall not reflect costs that are already recovered by the utility from CSG subscribers through other charges. The utility may seek a revision of this charge no more frequently than once per year.
- (b) If, in a monthly billing period, the CSG subscriber's billing credit associated with a CSG subscription exceeds the customer's bill from the utility, the excess billing credit will be rolled over as a credit from month to month indefinitely until the customer terminates service with the utility, at which time no payment shall be required from the utility for any remaining billing credits associated with the customer's CSG subscription on an annual basis; however, nothing in this rule precludes the CSG subscriber or the utility from contributing the remaining bill credits to another utility account paid by the CSG subscriber to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory, where the utility has provided a program for such contributions in its Commission-approved RES compliant plan pursuant to paragraph (d).
  - (c) In lieu of the rolling over of billing credits from month to month pursuant to paragraph 3881(b), the CSG subscriber may contribute the excess 12 months net billing credit at the end of the April billing cycle to a third party administrator qualified and approved by the utility for the purpose of providing low-income energy assistance and bill reductions within the utility's service territory.
  - (d) A description of any proposed program to allow contributions of billing credits or excess billing credits to a third party administrator qualified and approved by the utility for the purpose of

providing low-income energy assistance and bill reductions within the utility's service territory, pursuant to paragraphs 3881(a), 3881(b), and 3881(c), shall be included in the utility's acquisition plan for purchases from CSGs. The description shall include the utility's proposed process for qualification and approval of third parties; the criteria a third party must meet to become qualified and approved; the method by which a utility will allocate billing credits, unsubscribed electricity to multiple third party administrators; the way in which the program will be marketed to low-income customers as a renewable program such that customers are made aware that a portion of the bill assistance they receive was derived from renewable energy resources; and a reporting methodology to be included in each RES Compliance Report. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the contributing CSG subscriber.

- (e) In its RES Compliance Report, the utility shall, at a minimum, provide the total number of CSG billing credits that were contributed to qualified third party administrator, pursuant to paragraphs 3881(a), 3881(b), and 3881(c).
- (f) For RECs purchased by the utility, the utility and the CSG owner shall agree on whether subscribers will be compensated by a credit on each CSG subscriber's bill from the QRU or by a payment to the CSG owner. If compensation will take the form of a credit on the CSG subscriber's bill, then the REC credit shall be listed as a separate line item on the bill and shall not be combined in a single line item with the bill credit that separately compensates the CSG subscriber for its share of the renewable energy generated by a CSG.
- (g) The utility shall purchase from the CSG owner the unsubscribed renewable energy and RECs at a rate equal to the utility's average hourly incremental cost of electricity supply over the immediately preceding calendar year. A utility may donate the purchased unsubscribed renewable energy to low-income CSG subscribers as kWh credits. Any billing credits shall be calculated and applied to a recipient's bill based on the total aggregate retail rate of the recipient's customer class.

**3882. Purchases from CSGs.**

- (a) The Commission shall establish the minimum and maximum purchases of renewable energy through approved utility procurements plans newly installed CSG generation (new CSGs) by the utility for each year in accordance with § 40-2-127(5)(a)(IV), C.R.S. The Commission shall establish such minimum and maximum levels of purchases in consideration of an acquisition plan for renewable energy or REC purchases from new CSGs filed by the utility pursuant to rule 3656 or rule 3603.
  - (I) The utility's acquisition plan shall include a proposed method for requiring CSG subscriber organizations to verify that the organization will sell and maintain CSG subscriptions resulting in at least 50 percent of the established minimum aggregate new CSG purchases correspond to residential, agricultural, eligible low-income, eligible low-income service providers, and small commercial customers.
  - (II) The utility may propose a standard offer pricing program in order to acquire CSG generation. The standard offer may be at a differing price that would enable the CSG subscribers to keep the RECs generated by the CSG.

- (III) As part of a standard offer, the utility may also include a price adder for the purchase of RECs from low-income residential, agricultural, and small commercial customers, or for the purpose of encouraging CSGs with certain beneficial characteristics or innovations.
  - (IV) To the extent it is shown necessary, the utility may also propose an incentive to be paid to the CSG subscriber organization for subscriptions offered to low-income, residential, agricultural, and small commercial customers. This may exist in addition to any standard offer price adder for the purchase of RECs.
- (b) All of the energy from a CSG acquired by a utility pursuant to a RES Compliance Plan approved by the Commission shall be sold and purchased by the utility. A utility shall not restrict or unreasonably delay any CSG that is approved pursuant to a Commission approved procurement plan from interconnecting to the utility's distribution or transmission system in accordance with the interconnection standards and procedures. The utility shall acquire electricity by entering into contracts with CSG owners as part of its RES Compliance Plan. The CSG subscriber organization shall state in its proposed contract with the utility whether the RECs will be retained by subscribers to the CSG or ownership of the RECs will be transferred to the utility. A CSG whose owner enters into a contract with the utility shall be deemed to be part of the utility's Commission-approved acquisition plan if the cumulative total of the nameplate capacity of the acquired new CSGs does not exceed the maximum purchases established by the Commission for that year.
- (c) The utility shall conduct due diligence on proposed contracts with new CSG owners to reasonably assure that the CSG owner and CSG subscriber organization have sufficient resources to successfully construct and commence operations of the CSG.
- (I) Except for CSGs owned by governmental, quasi-governmental, or non-profit entities, the utility shall be deemed to have conducted sufficient due diligence by requiring from the CSG owner documentation of escrowed funds of not less than \$100 per kW AC of the CSG's nameplate rating. The escrow shall be maintained by its terms until such time as the CSG owner makes an interconnection agreement deposit payment.
  - (II) If a CSG owner properly documents escrowed funds consistent with this paragraph, the utility may not refuse to enter into a contract with the CSG owner for failure to demonstrate sufficient resources to reasonably assure successful construction and commencement of CSG operations.
- (d) In each plan for purchases from CSGs, the utility shall reserve, to the extent there is demand for such ownership, at least ten percent of its electricity purchases from new CSGs for eligible low-income CSG subscribers.
- (I) CSG subscriber organizations and investor owned QRUs may rely on certification by the Colorado Department of Human Services for acceptance in the Colorado Low-Income Energy Assistance Program (LEAP) as evidence of eligibility as an eligible low-income CSG subscriber in a CSG or other reliable verification methods from low-income services and service providers.
  - (II) CSGs for eligible low-income CSG subscribers may be either dedicated low-income CSGs or low-income set asides within other CSGs.

- (III) The utility's CSG acquisition plan shall be designated to ensure reasonable access for low-income residential customers as distinct from low-income service providers.
- (e) For investments in a new CSG, the utility shall be eligible for the incentives in rule 3660 and be subject to the ownership limitations set forth in §40-2-124(1)(f)(I), C.R.S.; however such incentive payments shall be excluded from the retail rate impact under rule 3661. Notwithstanding the exclusion from the retail rate impact of such incentives, the acquisition of RECs from CSGs shall be subject to the retail rate impact under rule 3661. The acquisition of electricity shall be recovered through the ECA. Utility expenditures for unsubscribed energy and RECs generated by CSGs shall be included in the calculations of retail rate impact under that rule.

**3883. Financing and Operating CSGs.**

- (a) Contracts signed by utilities with CSG owners shall be a matter of public record and shall be filed with the Commission by the utility.
- (b) CSG subscriber organizations shall issue public annual reports as of the end of the calendar or other fiscal year containing, at a minimum, the energy produced by the CSG; audited financial statements including a balance sheet, income statement, and sources and uses of funds statement; and the management and ownership of the CSG and the CSG subscriber organization, if different. Individual subscribers shall receive, in addition to the annual report of the CSG subscriber organization, a report of the energy, multiplier (e.g., aggregate retail rate), eligible low-income customer bill savings, and net metering credits attributed to the CSG subscriber's account.
- (c) CSG subscriber funds, collected by the CSG in advance of commercial operation of the CSG, shall be held in escrow. The escrow shall be maintained by its terms until such time as the CSG commences commercial operation as certified by utility acceptance of energy from the CSG.

**3884. – 3899. [Reserved].**