

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0608E

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGULATING
ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, RELATING TO
COMMUNITY SOLAR GARDENS.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: November 5, 2019
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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to amend the rules governing Community Solar Gardens (CSG Rules) within the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3. The Commission’s CSG Rules implement § 40-2-127, C.R.S. The CSG Rules are presently located within the Renewable Energy Standard Rules (RES Rules) at 4 CCR 723-3-3650 *et seq.* This NOPR proposes to move the CSG Rules to a new standalone section

within 4 CCR 723-3, comprising Rules 4 CCR 723-3-3875 *et seq.* This NOPR also proposes substantive changes to the CSG Rules, as described in this Decision and its attachments.

2. Through this NOPR, the Commission solicits comments from interested persons on the proposed amendments to the CSG Rules. The Commission welcomes the submission of alternative proposed rules, including both consensus proposals joined by multiple stakeholders and individual proposals. Participants are encouraged to provide redlines of specific proposed rule changes for comment and consideration.

3. The Commission refers this matter to an Administrative Law Judge (ALJ), who will hold a hearing on the proposed rules at the below-stated time and place. In addition to submitting written comments, participants will be able to present comments orally at hearing unless the ALJ deems oral presentations unnecessary. The Commission will consider all comments, whether oral or written.

B. Background

4. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*, 40-2-108, and 40-2-127, C.R.S.

5. This NOPR is the second NOPR issued by the Commission proposing amendments to the CSG Rules. The Commission first proposed amendments through a NOPR issued by Decision No. C19-0197, issued February 27, 2019, in Proceeding No. 19R-0096E. That NOPR proposed substantive amendments to revise the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3, in six areas: electric resource planning, the RES, net metering, utility purchases from qualifying facilities, interconnection procedures and standards, and CSGs. Prior to commencing the rulemaking in Proceeding No. 19R-0096E, the Commission conducted

a robust stakeholder outreach effort through Staff of the Colorado Public Utilities Commission in Proceeding No. 17M-0694E (Stakeholder Outreach Proceeding).¹

6. The proposed amendments to the CSG Rules in the first NOPR, issued in Proceeding No. 19R-0096E, would move the CSG Rules to a standalone section in the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3.² In addition, the amendments propose to expand the definition of an eligible low-income subscriber to include not only residential customers but also operators of affordable housing. The amendments propose to add various new provisions to the CSG Rules to allow a CSG subscriber to contribute billing credits to a low-income customer energy assistance organization. In addition, the Commission solicited feedback on a new provision that would require at least half of the new CSGs to target residential, agricultural, and small commercial customers consistent with the legislative declaration in § 40-2-127(1), C.R.S.

7. After issuing the NOPR in Proceeding No. 19R-0096E and receiving initial written comments, the Commission held a rulemaking hearing on April 30, 2019, for public comment on the amendments to the CSG Rules proposed in the NOPR.

8. Shortly after that rulemaking hearing, two bills enacted by the 2019 General Assembly made substantive changes to state law governing CSGs. First and most significantly, House Bill (HB) 19-1003 modified § 40-2-127, C.R.S., by increasing the size limit permitted for CSGs, expanding the options for locating CSGs eligible to provide service to utility customers, and allowing for further consideration of the treatment of the renewable energy credits (RECs) at

¹ For purposes of § 24-4-103(2), C.R.S., pre-rulemaking stakeholder outreach was conducted through the Stakeholder Outreach Proceeding preceding issuance of the NOPR in Proceeding No. 19R-0096E. Service of this CSG-specific NOPR will be provided to all current participants in Proceeding No. 19R-0096E.

² Attachment E to Decision No. C19-0197 in Proceeding No. 19R-0096E shows the proposed CSG Rules in their new location with redlining to indicate changes compared to the existing provisions.

the time they are generated by the CSGs. Second, Senate Bill (SB) 19-236 struck § 40-2-124(f)(I), C.R.S., which had allowed utilities to rate-base certain new renewable energy resources but also imposed ownership limitations on those resources. Post-hearing comments filed by participants acknowledged that some of the energy-related bills from the 2019 General Assembly required further modification to provisions of the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3, already subject to review in Proceeding No. 19R-0096E. Although some participants provided high-level comments about the statutory changes, there were no significant submission of proposed rule revisions to implement these changes.

9. After considering the statutory changes enacted by the 2019 General Assembly, and the participants' comments to date in Proceeding No. 19R-0096E, the Commission determined at its September 25, 2019, Commissioners' Weekly Meeting to sever the CSG Rules from the larger ongoing rulemaking. Thus by Decision No. C19-0822-I, issued October 7, 2019, in Proceeding No. 19R-0096E, the Commission severed the CSG Rules from the rulemaking in Proceeding No. 19R-0096E. The Commission found it had sufficient information to issue a new set of proposed CSG Rules to implement the recent statutory changes and to respond to suggestions and criticisms in participant comments. The Commission concluded a separate, standalone rulemaking for the CSG Rules would allow for rule changes to implement the new statutory provisions to take effect sooner than if the CSG Rules remained part of the broader rulemaking in Proceeding No. 19R-0096E. The Commission indicated it would issue a separate NOPR for CSG Rules in order to focus and expedite adoption of revised CSG Rules, resulting in this Decision and NOPR.

C. Stakeholder Comments in Prior Proceedings**1. Stakeholder Outreach Proceeding No. 17M-0694E**

10. During the Stakeholder Outreach Proceeding that preceded Proceeding No. 19R-0096E, utilities and other stakeholders provided the following comments regarding potential changes to the Commission's existing CSG Rules:

11. Public Service Company of Colorado (Public Service) stated that its current practices regarding CSGs under the existing CSG Rules align well with the diverse statutory objectives for CSG development. Public Service reported that, for instance, its recent competitive solicitation awarded projects that included a total of seven MW dedicated to low-income customers. Despite its general support for Existing Rule 3665, Public Service objected to at least two proposals from stakeholders. First, Public Service opposed rule changes that it perceived would reduce or eliminate negative payments associated with RECs generated by CSGs. Public Service argued the Commission already addressed this issue in Proceeding No. 17D-0082E. (*See* Decision No. C18-0149, issued March 1, 2018, Proceeding No. 17D-0082E (finding Public Service may lawfully accept bids with negative REC prices.)) Public Service also contended there would be little downside for CSG and non-CSG customers in continuing the practice of allowing RECs to be negatively priced within a compensation bundle that is overall positive. Public Service warned that moving away from competitive bidding would result in higher customer costs. Second, Public Service objected to calls for the Commission to "uncap" CSG development. Public Service responded this would be counter to the statutory language of § 40-20-127(5)(a)(IV), C.R.S., pursuant to which the Commission establishes maximum acquisition levels for each compliance year, and would cause significant cost shifts to ratepayers.

12. Energy Outreach Colorado (EOC) proposed modifying Existing Rule 3665 to allow CSG subscribers to contribute billing credits, and to allow utilities to contribute unsubscribed renewable energy and RECs, to a third party administrator qualified and approved by the utility to provide energy assistance and bill reductions to low-income customers. EOC revised its proposal over the course of the proceeding and eventually reported that its low-income CSG solar credit donation proposal had widespread support.

13. GRID Alternatives Colorado, Inc. (GRID) proposed the Commission increase the overall low-income customer participation target to 20 percent for the utility's entire CSG program. In addition, GRID supported creation of a third party program administrator to manage CSG billing credits donated to support low-income utility customers. GRID also proposed creation of incentives for low-income and affordable housing customer participation in CSGs.

14. The Colorado Energy Office (CEO) initially expressed concern about the proposals from EOC and GRID, but later reported that through workshop and direct discussions, CEO was prepared to support rule language that incorporated EOC's proposal with additional provisions clarifying certain details could be evaluated through the utility's RES compliance plan process.

15. Black Hills Colorado Electric, LLC (Black Hills) advocated that certifications for low-income customer participation in CSGs should be provided by the Colorado Department of Human Services or other qualified organizations.

2. NOPR Issued in Proceeding No. 19R-0096E

16. Following the Stakeholder Outreach Proceeding, the Commission issued a NOPR in Proceeding No. 19R-0096E, commencing a rulemaking to consider changes to the

Commission's Rules Regulating Electric Utilities, 4 CCR 723-3, including amendments to the CSG Rules. Participants provided the following comments regarding the proposed amendments to the CSG Rules:

17. Public Service commented that it supports the effort in the proposed amendments to further develop the statutory framework in § 40-2-127, C.R.S., specifically the targeted nature of the revisions. Public Service proposes some additional changes, aimed at helping improve administration and operation. Public Service supports Proposed Rule 3882(a), which would target residential, agricultural, and small commercial customers by apportioning 50 percent of the new CSG additions to those groups. Public Service supports that this direction gives utilities numerical target guidance but does not statutorily require certain numbers.

18. CEO's comments reiterate that the intent of the General Assembly in passing the Community Solar Garden Act was to promote broader participation in renewable energy by encouraging the development and deployment of CSGs, citing specifically to § 40-2-127(1)(b), C.R.S. CEO further points out that § 40-2-127(5)(a)(IV), C.R.S., directs the Commission to formulate and implement policies that simultaneously encourage: (1) ownership by customers of subscriptions in CSGs and other distributed generation; (2) ownership in CSGs by residential retail customers and agricultural producers, including low-income customers; (3) development of CSGs with attributes that result in lower overall costs for utility customers; (4) successful financing and operation of CSGs owned by subscriber organizations; and (5) achievement of the goals and objectives of the RES.

19. In their comments, Colorado Solar and Storage Association (COSSA) and the Solar Energy Industries Association (SEIA) support the Commission's intent to ensure CSG subscriptions are available to traditionally underserved residential, agricultural, and small

commercial customers. They express concern, however, that a requirement alone, without corresponding market reform, would have the unintended effect of severely damaging Colorado's CSG market, making CSGs more expensive, harder to finance, less competitive with similar utility offerings, and ultimately less available for all classes of customers.

20. Vote Solar also focuses its comments on developing economic incentives as a tool for overcoming the additional customer acquisition and management costs for these types of customers. Vote Solar also addresses the proposed rule changes for low-income customers, contending Public Service's current 5 percent CSG availability for low-income customers is insufficient to adequately reduce low-income customers' energy burden.

21. Western Resource Advocates (WRA) filed comments generally supporting the proposed rules, but offering additional changes for clarity and to help meet the goals of § 40-2-127, C.R.S. WRA states that its proposed changes attempt to clarify that RECs produced by a subscribed CSG are part of the CSG subscriber's subscription, but may be separately sold or transferred by contract. In addition, WRA proposes to allow for CSG interconnection outside of a utility's approved RES compliance plan. WRA advocates that, just as customers with rooftop solar are permitted to interconnect and net meter outside of a RES compliance plan, customers should be allowed to subscribe to a CSG that interconnects outside of a RES compliance plan and receive the bill credits available in accordance with § 40-2-127(5)(b)(II), C.R.S.

22. Oak Leaf Partners (Oak Leaf) filed comments opposing the proposal to allocate half of all future CSG projects to projects that target residential, agricultural, and small commercial targets. Oak Leaf argues this would be overly proscriptive and ignores the realities of Colorado's CSG market.

23. SunShare, LLC (SunShare) filed comments addressing questions posed by the Commission during the rulemaking hearing as well as supporting the positions of COSSA and SEIA. SunShare supports an expedited rulemaking for the CSG Rules, the request for uniformity to avoid customer and developer confusion, the suggested approach regarding REC ownership, and shifting to a queued standard rebate offer.

24. Grid Alternatives focused its comments on the CSG Rules affecting low-income customers. Grid Alternatives contends the proposed rules inadequately address low-income customers' direct access to the myriad benefits of renewable energy.

25. The City of Boulder filed comments generally supporting the proposed rules and offering several clarifications and additions to the proposed rule language.

26. Walter Sharp provided a perspective on economic incentives, or adders, which could apply to both CSG as well as wholesale distributed generation.

27. Finally, Black Hills, CEO, EOC, Pivot Energy, and Public Service jointly filed post-hearing comments regarding low-income customers. They recommend the Commission undertake a "holistic review" of low-income customer renewable energy and begin by identifying this population and its needs, such as energy burden and market access, among others, and reviewing current services and offerings to begin working towards greater integration and coordination.

D. Proposed Amendments to the CSG Rules

28. The proposed amendments to the CSG Rules described below include proposals initially made in the NOPR issued in Proceeding No. 19R-0096E, modifications to those initial proposals, and new changes based on the recent statutory changes and the participant comments

to date in Proceeding No. 19R-0096E. The proposed amendments are described as changes to the existing CSG Rules located within the RES Rules, at 4 CCR 723-3-3650 *et seq.*

29. The CSG Rules are proposed to be moved out of the RES Rules, at 4 CCR 723-3-3650 *et seq.*, and into a new section within the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3. The CSG Rules would become Rules 4 CCR 723-3-3875 *et seq.*

30. Where applicable, cross-references in the proposed rules have been updated to correspond to the rule changes proposed in the NOPR issued in Proceeding No. 19R-0096E.

31. All proposed changes to the CSG Rules are incorporated in Attachments A and B to this Decision. Because the rule changes involve both relocating the rules and making substantive changes, the redline shows a strikeout of the existing rules and replacement with the proposed rules.

1. Rule 3875. Applicability

32. Proposed Rule 3875 describing the applicability of the CSG Rules is identical to the language in the beginning of Existing Rule 3665.

2. Rule 3876. Overview and Purpose

33. This is a new rule that incorporates language from the legislative declaration in § 40-2-127(1), C.R.S. We add this new rule language to better clarify and explain the purpose of the CSG Rules.

3. Rule 3877. Definitions

34. The CSG-related definitions currently located in the RES Rules at 4 CCR 723-3-3650, *et seq.* are moved into Proposed Rule 3877. Most of the definitions are not substantively modified, except those identified below.

a. Rule 3877(a) “Community Solar Garden”

35. Recently enacted HB 19-1003 increases the maximum allowable size of a CSG from two MW to five MW, effective immediately. In addition, the statute allows that the Commission may, in rules, approve the formation of a CSG of up to ten MW on or after July 1, 2023.

36. To implement these recent statutory changes, Proposed Rule 3877(a) replaces “two” with “five” in the maximum nameplate rating for a CSG. The Commission proposes this size increase should apply to *existing* CSGs as well as new CSGs. This would allow existing CSGs developed under the prior two MW restriction to grow to five MW, provided the enlargement of the facility is part of the utility’s implementation of a future approved RES compliance plan. Our concern is that restricting existing CSGs to their current two MW size, even if a developer can win additional capacity in a utility program, could have the negative effect of limiting the availability of low-cost land with an existing quality interconnection on which to develop CSGs.

37. Proposed Rule 3877(a) also provides that a CSG with a nameplate rating of up to ten MW will be allowed on or after July 1, 2023. We seek comments from participants on implementation of this recent statutory change, including whether the Commission should adopt rules implementing this change in this or a future rulemaking, and what requirements or considerations any such rules should entail for CSGs of this larger size.

b. Rule 3877(f) “Eligible Low-Income CSG Subscriber”

38. Based on comments received in the Stakeholder Outreach Proceeding, Proposed Rule 3877(f) expands the definition of an eligible low-income CSG subscriber to include not only residential customers but also operators of affordable housing. “Affordable housing” as

used in this rule means at least 60 percent of the residents are either below 165 percent of the current federal poverty level or meet the eligibility criteria in Colorado Department of Human Services rules adopted pursuant to § 40-8.5-105, C.R.S., and the operator provides verifiable information that these low-income residents are the beneficiaries of the CSG subscription(s).

4. Rule 3878. Subscriptions, Subscribers, and Subscriber Organizations

39. Proposed Rule 3878 describes the requirements and restrictions applicable to CSG subscribers, CSG subscriptions, and CSG subscriber organizations. This rule derives from Existing Rule 3665(a)(I) with the one substantive modification identified below.

a. Rule 3878(c) Location of Subscriber

40. Recently enacted HB 19-1003 expands the availability of CSG subscribers for a particular CSG by eliminating the requirement that a CSG subscriber's premise must be located in the same county or an adjacent county to the physical CSG; however, the CSG still must be located within the service territory of the same utility.

41. To implement this statutory change, Proposed Rule 3878(c) strikes the language in the Existing Rule 3665(a)(I)(C) requiring the CSG subscriber's premise must be located in the same county or an adjacent county to the CSG.

5. Rule 3879. Share Transfers and Portability

42. Proposed Rule 3879 concerning transfer or assignment of CSG subscriptions derives from Existing Rule 3665(a)(II). No modifications were initially proposed to this rule in the NOPR issued in Proceeding No. 19R-0096E. However, based on comments subsequently received in Proceeding No. 19R-0096E, we propose through this NOPR to incorporate preferences for offering subscriptions to low-income customers and other categories of utility customers.

a. Rule 3879(d) Waiting List to Purchase Subscriptions

43. Proposed Rule 3879(d), like Existing Rule 3665(a)(II)(D), requires the CSG subscriber organization to maintain a waiting list and offer subscriptions that existing subscribers wish to transfer or assign on a first-come, first-serve basis. We propose to modify this rule to require that the CSG subscriber organization give a preference to eligible low-income CSG subscribers and, to the extent the CSG subscriber organization has made any subscriber mix commitments, to any other categories of utility customers.

6. Rule 3880. Production Data

44. Proposed Rule 3880 derives from Existing Rule 3665(b). This rule requires utility access to production, system operation, and meteorological data for certain CSGs. The cross reference to Existing Rule 3656(l) in Existing Rule 3665(b)(III) is struck in Proposed Rule 3880(c). Proposed Rule 3880(d) now incorporates language from Existing Rule 3656(l) to address utility access to production, system operation, and meteorological data.

45. In comments filed in Proceeding No. 19R-0096E, both utilities and non-utilities agreed that production meters should not be required for CSGs. Public Service explains that CSGs have minimal energy use such that there are only negligible differences between readings from a production meter and readings from the meter used for net metering. Although we acknowledge these concerns, we find the statutory language in § 40-2-127(5)(b)(I)(C), C.R.S., requires the electricity and renewable energy credits generated by a CSG be determined “by a production meter” installed by the utility or third-party system owner and paid for by the owner of the CSG. Therefore, we propose to retain the requirement for a production meter in our rules.

7. Rule 3881. Billing Credits and Unsubscribed Renewable Energy

46. The provisions in Proposed Rule 3881 derive from Existing Rule 3665(c), with the modifications described below.

a. Rule 3881(a) Payment of Billing Credit

47. Based on comments received in the Stakeholder Outreach Proceeding and in Proceeding No. 19R-0096E, Proposed Rule 3881(a) allows a CSG subscriber to contribute their billing credits to an unspecified, third party administrator qualified by the utility to provide low-income energy assistance and bill reductions within the utility's service territory. This rule is deliberately broad in order to potentially allow for a third party administrator other than EOC to provide this service.

b. Rule 3881(a)(I) Calculation of Billing Credit

48. Based on comments received in the Stakeholder Outreach Proceeding, we clarify in Proposed Rule 3881(a)(I) that transmission, distribution, and Renewable Energy Standard Adjustment rate components are not included in the utility's total aggregate retail rate.

c. Rule 3881(a)(II) Credit for Subscribers on Demand Tariff

49. We propose changes in Rule 3881(a)(II) to update the determination of billing credits for non-residential CSG subscribers who are on demand rates. These changes conform to the waivers granted to Public Service in Proceeding Nos. 13A-0836E³ and 16AL-0048E.⁴

d. Rule 3881(a)(IV) Revisions to Billing Credit

50. Rule 3881(a)(IV) retains the existing prohibition of changing a CSG billing credit level more than once per year. However, we strike the provision in Existing Rule 3665(c)(II) that

³ Decision No. C16-0747, issued August 12, 2016, Proceeding No. 13A-0836E.

⁴ Decision No. C16-1075, issued November 23, 2016, Consolidated Proceeding Nos. 16AL-0048E, 16A-0055E, and 16A-0139E.

requires such change in the billing credit to be sought in conjunction with the utility's acquisition plan for CSGs.

e. Rule 3881(b) Excess Billing Credit

51. Similar to the changes in Proposed Rule 3881(a) allowing contribution of billing credits for low-income energy assistance, we add new provisions in Proposed Rule 3881(b) that would allow billing credits remaining when a customer terminates service with the utility to be contributed to a third party administrator qualified by the utility to provide low-income energy assistance and bill reductions within the utility's service territory.

f. Rule 3881(c) Monthly Billing Credit

52. Similar to the changes in Proposed Rules 3881(a) and (b), we add new provisions in Proposed Rule 3881(c) that would allow a CSG subscriber to contribute its excess monthly billing credit to low-income energy assistance instead of rolling the billing credit over as a credit from month to month.

g. Rules 3881(d) and (e) Utility Billing Credit Donation Program

53. In order to track and evaluate the new rules allowing contribution of billing credits to low-income energy assistance organizations, Proposed Rules 3881(d) and (e) require utilities to include in their CSG acquisition plans a description of any proposed program to allow contributions of billing credits to a third party administrator qualified by the utility to provide low-income energy assistance and bill reductions within the utility's service territory. We require this description to include the proposed process for qualification of third parties; the criteria to become qualified; the method for allocating billing credits, unsubscribed renewable energy, and RECs to multiple third party administrators; how the program will be marketed to low-income customers; and a reporting methodology to be included in the utility's RES compliance report.

h. Rule 3881(f) REC Purchases

54. We propose to strike the first sentence of Existing Rule 3665(c)(IV) from Proposed Rule 3881(f). This sentence requires the utility to purchase all of the renewable energy and RECs generated by a CSG if the utility enters into a contract with the CSG owner pursuant to a Commission-approved CSG acquisition plan. We find this sentence redundant with Proposed Rule 3882(b), which already specifies that all of the renewable energy and associated RECs from a CSG acquired by a utility pursuant to an approved RES compliance plan shall be sold and purchased by the utility. Proposed Rule 3882(b) requires the utility to acquire the renewable energy and associated RECs by entering into contracts with CSG owners as part of the utility's RES compliance plan.

i. Rule 3881(g) Unsubscribed Renewable Energy

55. We propose in this rule to add language that would allow a utility to donate its purchased unsubscribed renewable energy to low-income CSG subscribers as kWh credits. As many participants suggested in Proceeding No. 19R-0096E, this is an opportunity to provide low-income energy assistance and bill reductions within the utility's service territory.

8. Rule 3882. Purchases from CSGs

56. Proposed Rule 3882 derives mainly from Existing Rule 3665(d). We propose several substantive changes, as described below.

a. Rule 3882(a) Minimum and Maximum Acquisition Levels

57. In Proposed Rule 3882(a), we eliminate the outdated statutory reference to the six MW ceiling for CSG purchases, which applied only the first three compliance years. We instead directly reference § 40-2-127(5)(a)(IV), C.R.S., which allows the Commission to determine the minimum and maximum acquisition levels.

58. In addition, we add a provision that would require at least half of the new CSGs to target residential, agricultural, and small commercial customers consistent with the legislative declaration in § 40-2-127(1), C.R.S. We further propose to allow the utility to establish a standard offer price for the purchase of RECs. Our intent is this will serve as a tool for supporting the availability of CSG subscriptions to residential, agricultural, and small commercial customers.

59. Based on comments received in Proceeding No. 19R-0096E, we propose to further modify Rule 3882(a) to clarify that the Commission will address its obligations pursuant to § 40-2-127(5)(a)(IV), C.R.S., exclusively in a RES compliance plan proceeding filed by the utility. We view the RES compliance plan process as the best opportunity for participants to evaluate a proposed standard rebate offer adder and to determine whether the incentive will meet the objective of ensuring at least half of new CSG subscriptions are from residential, agricultural, and small commercial customers, consistent with the stated intent of the CSG statute in § 40-2-127(1), C.R.S.

60. In this NOPR, we clarify that the provision for half of new subscribers in certain segments is intended to be an acquisition target rather than a mandate. We propose this based on comments from Public Service explaining the utilities function in the CSG market as program administrator and are limited to seeking new CSG projects that would achieve the target, thus meeting the target depends on whether the unregulated CSG developers offer relevant projects.

61. In addition, while we do not propose a specific rule, we expressly encourage interested parties including utilities, CSG developers, and other stakeholders collaborate prior to the utilities' next RES compliance plan filings to attempt to reach agreement on incentives and

other CSG program details that would further promote participation by residential, agricultural, and small commercial customers.

62. We also note that “negative RECs” and low subscriber levels for residential, agricultural, and small commercial customers have historically been a controversial issue. We are hopeful that the proposed amendments in this NOPR will incent and provide opportunity for rulemaking participants to agree upon an initial adder for each customer category. The Commission would then be able, when considering subsequent utility RES compliance plans, to evaluate any needed changes to the standard REC purchase offer, depending on how well the adders have helped increase participation by residential, agricultural, and small commercial customers.

b. Rule 3882(b) Purchase of Renewable Energy and RECs through Contract

63. In this rule, we clarify that all of the renewable energy and associated RECs 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. The utility is to acquire the energy and RECs by entering into contracts with CSG owners as part of its RES compliance plan. We make this clarification in order to clearly meet the intent of § 40-2-127(5)(b)(I)(B), C.R.S., which requires, once a CSG is part of a utility’s approved RES compliance plan, the Commission is to determine whether the utility shall purchase all of the electricity and RECs generated by the CSG or whether a subscriber may choose to retain or sell to the utility the subscriber’s RECs.

c. Rule 3882(d) 5 Percent Reservation for Low-Income Subscribers

64. In this rule, we retain the required 5 percent set aside for CSG subscriptions for low-income customers. Based on comments in the Stakeholder Outreach Proceeding, we add a

provision to allow the utility to use other low-income status verification methods from low-income service and service providers, in addition to using Low-Income Energy Assistance Program acceptance.

d. Rule 3882(e) Utility Investment Incentives

65. Proposed Rule 3882(e) derives from Existing Rules 3665(d)(V), (VI), and (VII). We strike the outdated reference in this rule to the ownership limitations in § 40-2-124(f)(I), C.R.S., to reflect repeal of this provision by SB 19-236.

9. Rule 3883. Financing and Operating CSGs

66. Proposed Rule 3883 derives from Existing Rule 3665(e). These provisions are not substantively modified.

10. Rule 3884. Market Community Solar Gardens

67. HB 19-1003 modifies § 40-2-127(5), C.R.S., to require the Commission to determine whether the utility shall purchase all of the electricity and RECs generated by a CSG acquired pursuant to an approved RES compliance plan or whether a CSG subscriber may, upon becoming a subscriber, choose to retain or to sell to the utility the associated RECs. In addition, several participants in Proceeding No. 19R-0096E suggested adding a provision to the rules permitting acquisitions of CSGs outside of a utility's RES compliance plan.

68. In consideration of this statutory change and the comments received in Proceeding No. 19R-0096E, we propose for discussion and comment Proposed Rule 3884. This rule proposes a new program that would allow CSGs to be developed outside of the utilities' approved RES compliance plans. Under this program, RECs would be retained by the CSG subscriber. The rule refers to this concept as an "Open Market CSG Program" or "M-CSG".

69. The proposed rule caps the total of M-CSGs to 3 percent of the utility's retail sales, an amount equal to the minimum requirement for retail renewable distributed generation for investor owned utilities beginning in 2020.

70. With respect to this proposed rule, we seek comment from participants on the following questions, in addition to other substantive or legal points that participants may wish to raise for consideration:

How can Proposed Rule 3884 offer adequate ratepayer safeguards, as the M-CSGs would be developed outside of an approved RES compliance plan and would not be subject to the maximum purchases established by the Commission pursuant to § 40-2-127(5)(a)(IV), C.R.S.?

Should the Commission allow M-CSGs to interconnect at the same point as existing CSGs, provided that generation does not exceed five MW from the additional project(s)?

E. Conclusion

71. The Commission invites comments from interested persons on these proposed amendments to the CSG Rules. The Commission prefers and encourages that comments be filed in this Proceeding No. 19R-0608E through the Commission's Electronic Filings (E-Filings) System at:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>.

72. 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=19R-0608E

73. This Commission refers this Proceeding to an ALJ, who will who will hold a hearing on the proposed rules at the below-stated time and place. Interested persons may provide oral comments at the public hearing unless the ALJ deems oral presentations unnecessary.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the November 25, 2019, edition of *The Colorado Register*.

2. The Commission invites comments from interested persons on the proposed amendments to the rules governing Community Solar Gardens (CSG Rules) within the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, as described in this Decision and its attachments. The Commission will consider all comments, whether oral or written.

3. Comments from interested persons on the proposed amendments to the Rules Governing CSG Rules shall be due on or before December 6, 2019 and reply comments are due no later than January 3, 2020.

4. The hearing on the proposed rules and related matters shall be held before an Administrative Law Judge (ALJ) as follows:

DATE: January 13, 2020

TIME: 9:00 a.m.

LOCATION: Commission Hearing Room
Suite 250
1560 Broadway
Denver, Colorado

5. The ALJ may set additional hearings, if necessary.

6. At the time set for hearing, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 25, 2019.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners