Decision No. C20-0482

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.

DECISION ADDRESSING EXCEPTIONS TO DECISION NO. R20-0209 AND ADOPTING RULES

Mailed Date: July 09, 2020
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I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission grants, in part, and denies, in part the exceptions filed to Decision No. R20-0209, issued April 6, 2020, by Administrative Law Judge (ALJ) Robert Garvey (Recommended Decision). The Commission adopts revised rules governing Community Solar Gardens (CSG Rules), located within the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules) at 4 CCR 723-3-3875 *et seq*. The CSG Rules implement § 40-2-127, C.R.S. The adopted CSG Rules are attached to this Decision in legislative format (*i.e.*, strikeout/underline) as Attachment A, and in final format as Attachment B.

B. Background

2. On November 5, 2019, the Commission commenced this rulemaking through a Notice of Proposed Rulemaking (NOPR) issued as Decision No. C19-0900 in this Proceeding No. 19R-0608E. The current CSG Rules are located within the Renewable Energy Standard (RES) rules at 4 CCR 723-3-3650 *et seq*. (RES Rules). The NOPR proposed to move the CSG Rules to a new standalone section within the Electric Rules of 4 CCR 723-3, comprising new Rules 4 CCR 723-3-3875 *et seq*. The NOPR also proposed substantive changes to the provisions of the CSG Rules.

3. Prior to this rulemaking, the Commission first proposed changes to the CSG Rules through a NOPR issued as Decision No. C19-0197 in Proceeding No. 19R-0096E.[1] In that first

[1] Proceeding No. 19R-0096E, Decision No. C19-0197 (Feb. 27, 2019).

NOPR, the Commission proposed to amend the Electric Rules in six areas including Electric Resource Planning, the RES, Net Metering, Qualifying Facilities, and Interconnection as well as the CSG Rules. In the NOPR, the Commission proposed to move the CSG Rules to a new standalone section within the Electric Rules and proposed substantive revisions including to expand the definition of an eligible low-income subscriber and to allow a subscriber to contribute billing credits to assist low-income customers. In addition, the Commission solicited feedback on a new rule that would require at least half of new CSGs to target residential, agricultural, and small commercial customers.

4. In 2019, the Colorado General Assembly enacted the Community Solar Gardens Modernization Act, House Bill (HB) 19-1003, which Governor Polis signed into law May 30, 2019. This Act, effective August 2, 2019, amends § 40-2-127, C.R.S., by increasing the maximum size of a CSG from 2 megawatts (MW) to 5 MW, with the option for the Commission to, in rule, approve the formation of a CSG up to 10 MW beginning July 1, 2023; by removing the requirement that a subscriber's physical location be in the same or adjacent county as the CSG facility; and by establishing standards for construction and operation of CSGs. HB 19-1003 also requires the Commission to, in a new or active proceeding, determine whether the utility shall purchase all the electricity and renewable energy credits (RECs) generated by the CSG or whether a subscriber may, upon becoming a subscriber, choose to retain or sell the RECs to the utility.

5. After considering these statutory changes and the participant comments in Proceeding No. 19R-0096E, the Commission determined to sever the CSG Rules and commence a separate rulemaking. By Decision No. C19-0822-I,[2] the Commission concluded it had enough information to issue a new set of proposed CSG Rules that implement the statutory changes and

[2] Proceeding No. 19R-0096E, Decision No. C19-0822-I (Oct. 7, 2019).

respond to participant comments. The Commission concluded that a standalone rulemaking would allow amended CSG Rules to be implemented sooner than if they remained part of the broader rulemaking Proceeding No. 19R-0096E.

6. By Decision No. C19-0900, the Commission issued the NOPR initiating this Proceeding. Among other proposals, the NOPR proposed revisions to reflect the amendments in HB 19-1003 and proposed, for discussion, an "Open Market CSG" or "M-CSG" concept that would allow for CSGs to be developed outside of the utilities' Commission-approved RES compliance plans and for subscribers to retain the RECs. The Commission referred the rulemaking to an ALJ and scheduled a public hearing for participant comments.

7. After receiving initial and responsive comments from rulemaking participants, the ALJ held the scheduled rulemaking hearing on January 13, 2020. Based on written comments and the oral comments provided at the January hearing, the ALJ concluded no further hearing was necessary. Rulemaking participants filed closing comments after the rulemaking hearing. On April 6, 2020, the ALJ issued the Recommended Decision.

8. On April 27, 2020, the following rulemaking participants filed exceptions to the Recommended Decision: Public Service Company of Colorado (Public Service); Western Resources Advocates (WRA); Energy Outreach Colorado (EOC); Vote Solar; the Colorado Solar and Storage Association and the Solar Energy Industries Association (together referred to as COSSA/SEIA); Pivot Energy; and a collection of Solar Developers (including AES Distributed Energy, Grid Alternatives, Namaste Solar, Oakleaf Energy Partners, Pivot Energy, and SunShare).

9. On May 11, 2020, the following rulemaking participants filed responses to the exceptions: Black Hills Colorado Electric, LLC, d/b/a Black Hills Energy (Black Hills); Public Service; WRA; COSSA/SEIA; the Office of Consumer Counsel (OCC); and SunShare.

C. Exceptions to Recommended Decision

10. Below, we address the exceptions filed to the Recommended Decision, any responses, and the Commission's findings and conclusions granting or denying the exceptions.

1. <u>Rule 3876 - Overview and Purpose</u>

11. This rule incorporates language from the legislative declaration introducing the CSG statute, § 40-2-127(1), C.R.S. The Recommended Decision states this new rule clarifies and explains the purpose of the CSG Rules.

a. Exceptions

12. Public Service requests that the Commission add to this rule certain additional language from § 40-2-127(5)(a)(IV)(C), C.R.S., which instructs the Commission to implement policies that encourage "[t]he development of community solar gardens with attributes that the commission finds result in lower overall total costs for the qualifying retail utility's customers." Public Service argues that, without this additional language, the overview and purpose rule is "imbalanced" and fails to account for the cost impact to utility customers.

b. Responses

13. COSSA/SEIA respond that Public Service's proposed language is out of context since it does not derive from the legislative declaration section like the rest of the rule language. COSSA/SEIA contend, because the legislature did not include this cost language in the legislative declaration, it would be inappropriate to add it to this rule. COSSA/SEIA object, if Public Service's additional language is added, then all the factors from § 40-2-127(5)(a)(IV)(A) through (E), C.R.S., should be included to make clear that all the considerations in this section must be "simultaneously encouraged" under the terms of the statute.

c. Findings and Conclusions

14. We deny Public Service's exceptions. We agree with COSSA/SEIA that Public Service's proposed additional language would inconsistently mix language from the legislative declaration and other sections of the CSG statute. We also agree it would be incomplete to add just one of the factors from § 40-2-127(5)(a)(IV)(A) through (E), C.R.S.

2. Rule 3877(a) - Increase in Maximum CSG Size from 2 MW to 5 MW

15. To implement HB 19-1003, which increased the maximum size limit for CSGs from 2 MW to 5 MW, this rule revises the definition of a CSG to refer to a solar electric generation facility with a nameplate rating of 5 MW AC (alternating current) or less.

16. During the rulemaking, COSSA/SEIA advocated that the amended 5 MW size limit should apply universally on a prospective basis such that current 2 MW CSGs should be allowed to grow to 5 MW by co-locating with new projects. COSSA/SEIA argued, by changing the definition of a CSG without restriction to new CSGs, the legislature eliminated the 2 MW size restriction for all CSGs. COSSA/SEIA also urged that, as a policy matter, restricting existing sites to 2 MW would limit the availability of low-cost land with favorable interconnection and the potential for economies of scale.

17. The Recommended Decision adopts COSSA/SEIA's proposed language that clarifies:

> 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.

a. Exceptions

18. Public Service requests the Commission clarify that existing CSGs developed under the 2 MW size limit may grow to 5 MW *provided the enlargement of the facility is part of the utility's implementation of a future approved RES compliance plan*. Public Service states this

means the 5 MW size limit can be implemented by combining an existing 2 MW award with a new award from a 2020 or later request for proposal (RFP). Public Service contends this would constitute proper prospective application of the statutory amendment.

19. COSSA/SEIA request the Commission clarify that the separate "legal parcel" constraint in the Non-Unanimous Comprehensive Settlement Agreement in Proceeding No. 16A-0139E (Settlement), approved pursuant to Commission Decision No. C16-1075, is no longer applicable. The Settlement applies to Public Service's 2017-19 Renewable Energy Plan. COSSA/SEIA state the Settlement's co-location constraints "give effect to" the then-applicable 2 MW statutory size limit. COSSA/SEIA assert, in approving the Settlement, the Commission stated these constraints were consistent with the 2 MW statutory limit. COSSA/SEIA contend the Settlement no longer imposes a requirement that each CSG must be contained on its own legal parcel because the size limit has been increased. COSSA/SEIA conclude it is "absurd" to apply this constraint to CSGs that can now be co-located up to 5 MW.

b. Responses

20. COSSA/SEIA oppose Public Service's exceptions. They maintain co-location is allowed up to the current 5 MW size limit. Although they concede that contracts in place pursuant to past utility RES compliance plans will limit prior-awarded 2 MW projects from expanding to 5 MW, COSSA/SEIA counter that there is no statutory or policy basis to prohibit co-location up to the current 5 MW size limit. COSSA/SEIA argue that CSGs awarded in a past RFP should be permitted to co-locate on a single site so long as they are separately interconnected and metered, have individual producer agreements, and do not exceed an aggregate of 5 MW. COSSA/SEIA maintain that co-location will not increase the total megawatts awarded or contracted in past utility RFPs.

21. Public Service opposes COSSA/SEIA's exceptions. Public Service objects that COSSA/SEIA's requested clarifications exceed the scope of this rulemaking. Public Service notes that COSSA filed a separate petition for declaratory order in Proceeding No. 20D-0148E concerning the application of the statutory size limit change to awards subject to the Settlement.

c. Findings and Conclusions

22. We deny the requests of Public Service and COSSA/SEIA to add additional language to this rule. This issue has already been addressed by Decision No. C20-0406, issued May 29, 2020, in Proceeding No. 20D-0148E. In Proceeding 20D-0148E, the Commission found, for CSGs subject to Public Service's 2017-19 Renewable Energy Plan, current law allows commonly owned projects to co-locate up to 5 MW in total aggregate capacity. The Commission found, as a result, the Settlement approved through Decision No. C16-1075 does not prohibit a developer from relocating a project by co-locating multiple Public Service 2017-19 Renewable Energy Plan awards at the same site up to 5 MW in total aggregate capacity. The Commission's declarations in Proceeding No. 20D-0148E address the unique and limited circumstance that has arisen necessitating re-location of certain bids awarded in Public Service's 2017-19 Renewable Energy Plan. COSSA/SEIA concede that existing contracts in place pursuant to a past RES plan limit a prior-awarded 2 MW CSG from expanding. If a new and specific dispute arises with respect to this rule, affected parties can file a petition for a declaratory order or other relief.

23. We also deny COSSA/SEIA's request to make a determination regarding the separate "legal parcel" requirement in the Settlement. We find this request procedurally improper at this stage and, in any event, outside the scope of this rulemaking. The Commission already provided declaratory relief in Proceeding No. 20D-0148E regarding interpretation of the terms of the Settlement under the amended statute. Additional requests to resolve controversy or

uncertainty regarding the Settlement should have been made in that proceeding. Even if the Commission were to take up this issue in rulemaking, we find the request unsupported. COSSA/SEIA fail to sufficiently explain or support their argument that the legal parcel constraint is tied to the 2 MW statutory size. As noted above, if a specific issue arises concerning this rule, affected parties can file for appropriate relief.

3. Rule 3877(a) - Potential Increase in Maximum CSG Size to 10 MW

24. To implement HB 19-1003, which allows the Commission to, by rule, approve the formation of a CSG up to 10 MW on or after July 1, 2023, this rule provides that a utility or developer may propose a CSG with a nameplate capacity of up to 10 MW on or after July 1, 2023. WRA urged in the rulemaking that adopting a rule now to address the 10 MW size increase would eliminate the need to open a future rulemaking for this purpose in 2023.

a. Exceptions

25. WRA requests that the Commission strike the language in the recommended rule suggesting these larger projects "will be allowed." WRA urges this correction is necessary to avoid the interpretation that every 10 MW CSG proposed after July 1, 2023, will be allowed. WRA explains its intent in proposing this language was to permit in rule for larger projects to be proposed after July 1, 2023, but remain subject to review and vetting through the approved interconnection procedures and the utilities' RES compliance plan proceedings.

b. Responses

26. The OCC responds that it supports the permissive intent of the recommended rule but agrees with WRA that striking the words "will be allowed" is appropriate.

c. Findings and Conclusions

27. We grant WRA's exception and strike "will be allowed" from the recommended rule. We agree this provides more flexibility and clarity as to the intended treatment of future proposals for up to 10 MW CSGs.

4. Rule 3878(b) - Use of AC or DC Rating

28. This rule specifies that a CSG's capacity is measured in AC rating rather than DC (direct current). In the rulemaking, COSSA/SEIA advocated for this clarification. The Recommended Decision agrees with COSSA/SEIA that DC ratings are not representative of the maximum output capacity of a CSG system. The Recommended Decision concludes that capacity should be measured using the AC rating, as the AC rating is what determines how much electricity can be exported at any one time.

a. Exceptions

29. Public Service requests that the Commission retain the use of DC ratings. Public Service objects that solar programs have in the past been measured by DC, in part due to the variety of inverter power factor capabilities and settings. Public Service argues that mandating a change to AC will have system operations and administrative implications. Public Service states, due to losses from DC to AC conversions, changing size limits to AC will cause an approximate 20 percent increase of program capacity. Public Service states it has observed the negative real-world impacts of this conversion through operating an AC-sized program in its Minnesota territory. Public Service states facilities that originally were tested to perform with a maximum approved output later underwent inverter upgrades or setting changes that led to more AC production on the system than previously approved and tested. Public Service cautions this could adversely impact other customers on these lines.

30. Public Service suggests the Commission should seek to avoid adverse system impacts by imposing a maximum DC system size of 120 percent of AC capacity.

31. Finally, Public Service states the conversion to AC should not be retroactively applied to systems already operating in the queue or for bid projects already awarded.

b. Responses

32. COSSA/SEIA oppose Public Service's exceptions requesting the Commission retain the use of DC ratings. They respond the Recommended Decision correctly finds DC ratings do not represent the maximum output capacity and the AC rating is what determines how much electricity can be exported at any time. COSSA/SEIA contend the DC rating refers to the maximum potential output of the solar panels while the AC rating refers to the nameplate rating of the system's inverter(s), which delivers energy to the AC grid. They conclude the AC rating is thus more reflective of the actual energy the utility and its customers receive. They respond that Public Service complicates a simple issue by claiming the conversion could have dire results. COSSA/SEIA note that Public Service's grid runs on AC and all utility conventional and wind generation produce and deliver use AC. COSSA/SEIA add that Public Service already tracks its solar production facilities in AC output and uses AC ratings for evaluation of solar interconnection applications. They respond that Public Service's concern that AC ratings will necessitate additional monitoring and measurement to ensure inverter settings that limit the AC output to allowed capacity levels over time does not exceed the approved interconnection capacity makes little sense because Public Service already uses AC ratings for all conventional generation and solar interconnection reviews.

33. COSSA/SEIA object to Public Service's request to institute a maximum DC system size of 120 percent of AC capacity. They maintain this would serve no purpose other than to limit

the total amount of renewable energy that can be generated and exported to the grid. They assert a system with a maximum AC inverter rating of 5 MW cannot export more than 5 MW of energy at any given time because the inverter will not allow it. COSSA/SEIA explain, in sites where shading is an issue, however, it may make economic sense for a developer to oversize the DC panels beyond the inverter efficiency requirements. They explain while this may result in curtailment during peak production it could be net beneficial by ensuring more energy is produced and delivered during off peak production. COSSA/SEIA add that allowing developers flexibility in DC system sizing enables them to effectively account for production reductions due to lower power factor requirements.

34. COSSA/SEIA do not oppose Public Service's requested clarification that the conversion to AC is not "retroactively applied" and state they do not seek to void any previous contracts negotiated using DC. COSSA/SEIA urge the Commission also clarify that the 2020-2021 CSG capacity allocations are to be filled using AC capacity and any additional new requirements will be implemented upon adoption of the CSG Rules in this Proceeding.

c. Findings and Conclusions

35. We deny Public Service's exceptions requesting to retain the use of DC ratings. We find unpersuasive Public Service's concerns of system and administrative implications. Public Service claims that using AC ratings will necessitate additional monitoring and measurement but does not thoroughly explain how this will occur. As COSSA/SEIA respond, the use of AC ratings for CSG photovoltaic systems is consistent with other fossil-fueled generators on Public Service's system. Likewise, Public Service's claim that it has had negative experience with AC ratings in its Minnesota territory fails to fully explain the resulting administrative implications.

36. We also deny Public Service's exceptions requesting that the Commission institute a maximize DC system size of 120 percent of AC capacity. We find Public Service fails to make a compelling case for imposing this additional restriction. Conversely, we find persuasive COSSA/SEIA's response that this requirement would unnecessarily hinder developers in sizing their systems to account for production and power factor variables.

37. We grant Public Service's exceptions requesting the Commission clarify that the conversion to AC should not be retroactively applied to systems already operating in the queue or for bid projects that have already been awarded.

38. We grant COSSA/SEIA's exceptions requesting the Commission clarify that the 2020-21 CSG capacity allocations are to be filled using AC capacity and any additional new requirements shall be implemented upon finalization of the CSG Rules adopted in this Proceeding.

5. Rule 3879(d) - Preference for Certain Waitlist Customers

39. This rule requires the CSG subscriber organization to maintain a waiting list of customers who desire to purchase subscriptions and offer subscriptions of other subscribers desiring to transfer or assign their interest on a first-come, first-serve basis. Based on rulemaking participant comments received in Proceeding No. 19R-0096E, the Recommended Decision requires that the subscriber organization give preference to eligible low-income customers and, to the extent it has made any subscriber mix commitments, to any other categories of utility customers.

a. Exceptions

40. COSSA/SEIA request clarification in this rule that the subscriber organization must preference subscribers only to the extent their RFP bid specifies a plan to subscribe those customer segments. COSSA/SEIA explain, through the RFP process, a CSG subscriber organization submits

a bid at a price necessary to cover the costs of its subscriber development plan for this project, including the costs for subscriber outreach, education, and maintenance to the customer segments identified in the bid. COSSA/SEIA state each subscriber segment has different needs thus it is essential not to later upend the mix of planned customers. They suggest enabling the subscriber organization to carry out its subscription development plan that accords with its bid will ensure an appropriately diverse mix of subscribers consistent with the producer agreement for that CSG, per the terms of its award.

b. Findings and Conclusions

41. We grant COSSA/SEIA's exceptions and revise the language in this rule to specify the CSG subscriber organization shall give preference to the categories of customers in Rule 3882(a)(I), which are residential, small commercial, agricultural, and eligible low-income customers, and eligible low-income service providers, as set out in the RFP bid awarded for that CSG project.

6. <u>Rule 3880(a) - Production Meters</u>

42. In the NOPR commencing this rulemaking, the Commission noted that, in rulemaking Proceeding No. 19R-0096E, both utilities and non-utilities agreed that production meters should not be required for CSGs. The NOPR cites rulemaking comments from Public Service explaining that CSGs have minimal energy usage so there are only negligible differences between readings from a production meter and the meter used for net metering. In the NOPR for this Proceeding, the Commission acknowledged these comments but pointed out that the statutory language in § 40-2-127(5)(b)(I)(C), C.R.S., requires the electricity and RECs generated by a CSG to be determined by a "production meter."

43. In the rulemaking, Black Hills recommended adding the term "production" to the proposed rule to more clearly specify the CSG owner must pay for the production meter and any billing meter. COSSA/SEIA raised again that, for CSGs, a net meter can serve the same function as a production meter because there is no onsite load. The OCC suggested adding more description to the rule in order to outline the parameters of what is considered a production meter and specify when a production meter is required.

44. The Recommended Decision adopts the recommendation of Black Hills to add the term "production" to specify what is required to be paid by the CSG owner.

a. Exceptions

45. COSSA/SEIA request that the Commission revise this rule to specify there is no need for any additional meters beyond a typical net meter so long as the meter accurately captures production data for the CSG. COSSA/SEIA contend that any additional production metering would be duplicative and unnecessary. Citing the agreement among rulemaking participants in Proceeding No. 19R-0096E, COSSA/SEIA reiterate their position that there is no practical need for an additional separate "production meter" because CSGs have virtually no onsite load. COSSA/SEIA argue that where there is virtually no onsite load, a net meter can serve the same function as a production meter because it measures the flow of exported energy.

b. Findings and Conclusions

46. We grant COSSA/SEIA's exceptions and add language that specifies a net meter can serve as the production meter required by the statute in § 40-2-127(5)(b)(I)(C), C.R.S., where there is no material onsite load for the CSG. We find in these limited and specific circumstances a "net meter" that measures the flow of exported energy can serve as the required "production meter" since the onsite load is negligible.

7. Rule 3881(a)(I) - Calculation of CSG Billing Credit

47. This rule addresses calculation of the CSG billing credit allocated to the CSG subscriber for its share of the CSG's generation. Pursuant to § 40-2-127(5)(b)(II), C.R.S., 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 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 CSG's contracts and net metering credits.

48. The Recommended Decision adopts WRA's proposal to include demand side management (DSM) costs in the "reasonable charge" determined by the Commission as part of the utility's cost of delivering electricity to the CSG subscriber's premises. The ALJ finds this a reasonable change to the rule language that helps clarify calculation of the CSG billing credit.

49. WRA advocated in the rulemaking that the Demand Side Management Cost Adjustment (DSMCA) should be included as a bill component excluded from the CSG billing credit. WRA argued that this exclusion would ensure the CSG billing credit does not overinflate the total aggregate retail rate credit. WRA reasoned that all CSG subscribers can participate in DSM programs and all CSG subscribers benefit from the emission and cost reductions of those programs. WRA argued that CSG subscribers should be accountable for their share of the costs. CEO, Black Hills, and Public Service supported WRA's recommendation.

50. In its rulemaking comments, Vote Solar opposed WRA's position. Vote Solar objected that excluding DSM costs "would chip away the economic benefits of CSG subscribers."[3] Vote Solar contended there is no evidence the "very small" DMSCA rider overinflates the CSG

[3] Vote Solar Reply Comments p. 2-3 (Jan. 3, 2020).

billing credit.[4] Vote Solar also challenged WRA's contention that the DSMCA is a cost of delivering electricity. Vote Solar argued that CSGs are intended to be a substitute for rooftop solar. Vote Solar argued the CSG subscriber's billing credit is intended to include the full range of costs reflected in subscribers' electric rates, excluding the reasonable charge for delivery the CSG electricity to the subscriber. Vote Solar concluded that transmission and distribution costs can be considered these type of delivery costs, but not the DSMCA.

a. Exceptions

51. Vote Solar, COSSA/SEIA, and the Solar Developers request that the Commission reject WRA's proposal as unlawful and discriminatory.

52. Vote Solar argues that DSM costs, which relate to improving efficiency of appliances and lighting, weatherization, and related benchmarking, outreach, and administration, bear no relationship to the excludable costs under § 40-2-127(5)(b)(II), C.R.S. Vote Solar objects that excluding DSM costs is discriminatory because it would require CSG subscribers to pay proportionally more DSM costs than other customers for each kWh of energy purchased. Vote Solar explains that CSG subscribers would have to pay DSM costs based on the amount of electricity they purchase from the utility *and* the amount they reduce their purchases through their CSG subscription. Vote Solar objects that other customers may reduce their total purchased electricity through energy efficiency, fuel switch, rooftop solar, and battery efforts, but only CSG subscribers must "make up" the reduction. Vote Solar objects that requiring CSG subscribers to pay proportionally more DSM costs than other customers will erect a barrier to CSG development. Finally, Vote Solar contends that reducing the CSG billing credit with factors unrelated to CSG

[4] Vote Solar Reply Comments p. 3.

generation and delivery makes CSGs less comparable to rooftop solar because those customers receive full net metering credits for generation.

53. COSSA/SEIA argue that DSM costs, which are used to fund energy efficiency and demand response programs, cannot be included in the "reasonable charge" permitted in § 40-2-127(5)(b)(II), C.R.S., for the costs of delivering and administering CSG contracts and credits. COSSA/SEIA assert, if the legislature intended costs like DSM to be excluded, it would have so specified. They add that reducing the CSG billing credit to reflect DSM costs inappropriately diverges from the way on-site solar is treated for net metering.

54. The Solar Developers (AES Distributed Energy, Grid Alternatives, Namaste Solar, Oakleaf Energy Partners, Pivot Energy, and SunShare) object that excluding DSM charges is contrary to state law and policy. They claim that expanding the excluded delivery charge to include costs that are not related to the delivery of energy will destabilize the perception of the CSG billing credit calculation. They argue the billing credit is already a veiled and unpredictable element of the Colorado market and this change would add more confusion and volatility. They caution the proposal may seem a "small tweak,"[5] but it would create distrust for subscribers and owners and negatively impact perception of the Colorado market.

b. Responses

55. COSSA/SEIA support Vote Solar's exceptions. They caution that modifying calculation of the CSG billing credit would be a disruptive shift for customers and project financers by retroactively changing the expected compensation. They state this uncertainty will also negatively affect future projects by artificially inflating and complicating financing.

[5] Solar Developers Exceptions p. 1 (Apr. 27, 2020).

56. WRA, Black Hills, Public Service, and the OCC oppose Vote Solar's exceptions.

57. WRA responds that the language in § 40-2-127(5)(b)(II), C.R.S., is at best unclear. WRA maintains that nothing in the statute identifies with any specificity the riders to be subtracted. WRA concludes that identifying the "reasonable charge" associated with the cost of "delivering" electricity from the CSG is left to Commission determination. By way of example, WRA notes the deductible costs of "administering" CSG contracts and credits are not defined. WRA posits, in theory, utilities could perform a cost causation study examining the costs they incur administering CSG contracts and providing billing credits. WRA notes, instead, the Commission has determined to subtract the Renewable Energy Standard Adjustment (RESA) rider as a stand-in for these costs. WRA contends the Commission should broadly interpret the statutory term referring to costs of "delivering" electricity to the CSG subscriber. WRA states the programs supported by the DSMCA provide system-wide benefits to customers in the form of decreased electricity use (and costs) that impact customer bills, and in the availability of DSM programs and incentives. WRA suggests the DSMCA is thus a system-wide program associated with delivery of electricity to all customers. WRA contends CSG subscribers are distinguishable from rooftop solar or DSM participants because a CSG subscriber's use of electricity from the utility's system is not functionally impacted by its CSG subscription. WRA notes the utility must still deliver to the subscriber's premises all the electricity the subscriber consumes. WRA concludes it is thus reasonable these subscribers pay the DSM costs associated with the cost of delivering them energy from the utility's system.

58. Black Hills responds that deducting DSM costs is fair, reasonable, and rationally related to the delivery, integration, and administration of CSGs. Black Hills contends it would be inequitable for CSG subscribers to pay less DSM costs than other customers since CSG subscribers

can fully participate in DSM programs. Black Hills explains, because DSM costs are charged as a percentage multiplier to a customer's bill, lowering a CSG subscriber's bill will result in that customer paying less DSM costs than other customers. Black Hills adds that deducting DSM costs from the CSG billing credit will increase the total pool of contributions to DSM, which in turn will allow utilities to offer more DSM programs that save all customers money. Black Hills cites § 40-3.2-104(4), C.R.S., which directs the Commission to ensure that utilities develop and implement DSM programs that give "all classes of customers an opportunity to participate and shall give due consideration to the impact of DSM programs on nonparticipants and on low-income customers." Black Hills suggests, when reading this provision together with § 40-2-127(5)(b)(II), C.R.S., excluding DSM costs from the CSG billing credit will help ensure that CSG subscribers do not improperly shift costs of DSM programs to other customers. Black Hills also responds that CSG subscribers currently fail to pay their fair share of DSM costs. Black Hills reasons, because CSG subscribers offset their billed amount with their CSG credit, they are assessed lower DSM charges when the DSM charge is applied as a percentage multiplier to their bill. Finally, Black Hills challenges the comparison to net-metered customers. Black Hills states the rules applicable to net-metered customers are subject to revision in the ongoing separate rulemaking Proceeding No. 19R-0096E.

59. Public Service responds that deducting DSM costs is lawful and will not result in discriminatory rates. Like Black Hills, Public Service cites the statutory directive in § 40-3.2-104(4), C.R.S., to ensure utilities develop DSM programs that give all classes of customers opportunity to participate and give due consideration to the impact on other customers. Public Service contends that removing DSM costs from the CSG billing credit will help ensure CSG subscribers equitably contribute to DSM programs.

60. The OCC responds that it agrees DSM costs are reasonably part of the cost of delivering electricity to the subscriber. The OCC agrees excluding these costs from the CSG billing credit is reasonable and ensures CSG subscribers pay their fair share for DSM programs.

c. Supplemental Facts

61. On May 27, 2020, Vote Solar filed comments providing "supplemental facts" for consideration in this rulemaking. Vote Solar states that Public Service and Black Hills recently filed Transportation Electrification Plans (TEPs) in which the utilities propose to recover TEP costs through the DSMCA rider. Vote Solar contends these proposals demonstrate why the Commission should limit deductions to the CSG billing credit to the actual costs of delivering CSG electricity. Vote Solar argues, if the Commission were to allow the CSG billing credit to be reduced based on non-delivery costs, there would be no principled limit on the costs utilities may attempt to use to reduce the CSG billing credit. Vote Solar cautions this would conflict with statute and undermine the legislature's goal of ensuring broad access to CSGs. Vote Solar adds that developers may find it necessary to intervene in TEP proceedings to protect their interests.

62. On May 29, 2020, COSSA/SEIA filed comments responding to Vote Solar's filing. COSSA/SEIA urge it is important the Commission recognize utility bill riders are fluid, particularly as electrification, storage, demand reduction, and demand-side management programs emerge. COSSA/SEIA caution that approving WRA's proposal would give utilities incentive to increase spending through their riders and will put CSG interests in the position of having to oppose increased spending on carbon reduction policies.

63. On June 2, 2020, Black Hills and Public Service filed comments responding to Vote Solar's filing. They object that Vote Solar "erroneously" contends deducting TEP costs from the CSG billing credit will result in bad policy. They counter that CSG subscribers are eligible

participants in DSM programs, which justifies their contribution, and CSG subscribers will likewise be eligible participants in TEP programs. The utilities caution that shifting the costs of these programs to other customers would lower the pool of available funding and raise rates for remaining customers. They add that the utilities' TEP proposals remain subject to Commission decision. Finally, they respond, if CSG subscribers shift costs to other customers, those customers will have no ability to protect their interest in future DSM or TEP proceedings.

64. On June 2, 2020, the OCC filed a response stating it is premature to consider whether TEP costs should be funded through the DSMCA as the Commission has not yet approved the utilities' proposals in the TEP proceedings.

d. Findings and Conclusions

65. We deny the exceptions of Vote Solar, COSSA/SEIA, and the Solar Developers requesting the Commission reject WRA's proposal.

66. We agree with WRA that § 40-2-127(5)(b)(II), C.R.S., leaves discretion to the Commission in determining what comprises the "reasonable charge" to be deducted from the CSG billing credit. As WRA points out, the statute does not define what comprises the "utility's costs of delivery to the subscriber's premises the electricity generated by" the CSG. Thus, it is reasonable to conclude the Commission is left with discretion to determine what these costs include as part of its obligation under the statute to determine the total "reasonable charge" to be deducted.

67. We find it reasonable to conclude the DSMCA is a system-wide program that is associated with the delivery of electricity to all the utility's customers. We find compelling the point made by WRA and the utilities that the DSM programs funded by the DSMCA rider provide system-wide benefits to all customers in the form of decreased electricity use (and costs) that

impact customer bills, and in the availability of DSM programs and incentives. The intent of DSM programs is to benefit the system; this benefit is effected through individual customer participation in available programs. We also find persuasive WRA's argument distinguishing CSG subscribers from rooftop solar or DSM participating customers in that the utility still must deliver to the CSG subscriber's premises all the electricity the subscriber consumes. We thus agree it is reasonable that these subscribers pay the DSM costs for all the electricity delivered to them from the utility's system.

68. We find unsupported the claims from COSSA/SEIA, Vote Solar, and the Solar Developers that this modification of the CSG billing credit is significant enough to negatively affect the Colorado market. Although we understand and share the general concern with introducing change to calculation of the CSG billing credit, we find little support in the record for the contention that the modification for DSM costs that we adopt here will have real negative effects on the Colorado market.

69. To implement this change, Public Service and Black Hills shall file modifications to their tariffs once the CSG Rules adopted through this Decision become effective.

8. Rule 3881 (b) & (c) - Transfer of Excess CSG Billing Credits

70. These rules address treatment of a CSG subscriber's excess billing credits at the end of the billing cycle and when the subscriber terminates its utility service. As adopted in the Recommended Decision, Rule 3881(b) provides that excess CSG billing credits remaining when a subscriber terminates its utility service are forfeited to the utility or may be contributed by the subscriber or the utility "to another utility account paid by the CSG subscriber to a third party administrator" for low-income customer assistance. As adopted in the Recommended Decision, Rule 3881(c) provides that, in lieu of rolling over excess billing credits to the next year, the CSG

subscriber may elect to contribute the excess 12-months' net billing credit at the end of the billing cycle for low-income customer assistance.

a. Exceptions

71. EOC requests that the Commission move the option for a CSG subscriber to contribute excess billing credits from one account to another from Rule 3881(b) to Rule 3881(c), so that this is option at the end of each annual billing cycle, instead of when a subscriber terminates utility service, and limiting this option to public entity subscribers. EOC suggests it is likely when a subscriber terminates utility service that any other account it has with the utility would also terminate. EOC states it understood COSSA/SEIA's recommendation as intending to afford customers with multiple accounts, most often public entities, flexibility to spread credits across accounts. EOC explains it suggests limiting the multi-account option to public entities in order to avoid watering down the other new option in the rule for subscribers to donate excess billing credits to assist low-income customers.

72. WRA recommends revisions to Rule 3881(b) clarifying the terminating CSG subscriber's bill credits may be contributed to another utility account, with that donation paid by the CSG subscriber or the utility to a third-party administrator to assist low-income customers.

b. Responses

73. COSSA/SEIA do not object to EOC's exceptions. They agree this revision could ensure that customers with multiple accounts, such as municipalities, water districts, or school districts, can utilize bill credits across their accounts in the event the credits exceed the monthly usage of any single account.

c. Findings and Conclusions

74. We deny EOC and WRA's exceptions and adopt the recommended rule, with minor clarifying edits. We revise the rule to strike the phrase "on an annual basis" and we insert an "or"

between the rule language addressing contribution to another utility account and contribution for low-income customer assistance.

9. Rule 3882 - Purchases from CSGs

75. This rule addresses purchases from CSGs including Commission-established minimum and maximum acquisition levels of new CSGs, utility acquisition plans, treatment of RECs, interconnection, due diligence, and program targets.

76. In its rulemaking comments, WRA proposed, as an alternative to the M-CSG concept in the NOPR, that the Commission adopt a standard offer approach. WRA proposed requiring utilities to offer a first-come, first-serve CSG capacity program with standard terms and without an RFP that would set the REC prices at greater than zero and allow subscribers to retain RECs. The Recommended Decision finds, for utilities to meet RES compliance obligations, a low-cost RFP process continues to be appropriate. The Recommended Decision finds, however, there has been shown a high level of demand for CSG acquisition beyond RES compliance plan acquisitions. The Recommended Decision adopts WRA's proposed language except it declines to adopt WRA's proposal to replace the RFP process with a standard offer "only" approach.

77. In its rulemaking comments, WRA took the position that the generation of electricity, and the CSG billing credit paid to subscribers for that electricity, are distinct. WRA proposed the Commission clarify the utility does not have to purchase all the RECs generated by CSGs as part of its acquisition in a Commission-approved RES compliance plan. WRA suggested § 40-2-127(5), C.R.S., distinguishes between the purchase of electricity and RECs and thus does not mandate that the utility purchase RECs when it purchases electricity. WRA asserts the purchase of electricity and RECs from a CSG are separate transactions and should be

independently negotiated between the CSG subscriber organization and the utility, if appropriate. The Recommended Decision agrees with WRA's proposed language.

a. Exceptions

78. Public Service requests clarification of this rule. Public Service states the proposals in its 2020-21 RES Plan demonstrate that it is receptive to adjusting the total CSG capacity offered through a standard offer. Public Service notes it has implemented a standard offer for a portion of its CSG offering with the REC price informed by the RFP solicitations. Public Service recommends the standard offer be based on rates informed by competitive solicitations. Public Service contends this will balance the incentive with the most recent market price, rather than set an artificial incentive rate. Public Service opposes WRA's proposal to allow customers to keep the RECs while also receiving a REC incentive. Public Service states it understands certain customers desire RECs, but it is concerned that doing so uses RESA-funded RECs while also gaining savings via CSG subscription. Public Service argues the utility is disadvantaged because it is paying the same credit while not receiving the benefit of the REC. Public Service concludes the CSG billing credit must be re-evaluated where subscribers retain RECs. Public Service cautions, if RECs are provided to subscribers who also earn a REC incentive, all customers will have paid for an asset in the REC but will not receive its value. Public Service adds, if the utility later needs RECs to comply with state targets, then customers will be required to pay to acquire more RECs. Public Service contends it is a "flawed" concept to offer subscribers the potential for cost savings due to an above-market price via the CSG billing credit and to have the REC subsidized by RESA funds. Public Service recommends allowing the utility to adjust its pricing to reflect the loss of the REC. Public Service states this properly recognizes a REC as an asset

with value to some customers, and there is willingness of customers to pay for that asset through an incremental price.

79. WRA objects that the recommended rule does not resolve two critical issues. First, that there is no requirement for a utility to assign any percentage of its RES compliance plan capacity to standard offers instead of RFPs. And second, that an optional standard offer program will not guarantee the opportunity for customers to retain RECs. WRA concedes there could be value in retaining some form of an RFP process so long as it does not prevent the availability of standard offers and the ability for subscribers to retain RECs. WRA suggests past controversies over CSG acquisition demonstrate why the standard offer should be the default approach. WRA recommends replacing the term "purchases of renewable energy" with the term "acquisition of CSG," which WRA contends will better reflect the role of the RES compliance plan proceeding in acquiring CSG energy where the RECs are not necessarily acquired along with electricity. WRA also provides clarifying edits in Rule 3882(b) to specify the energy shall be acquired and distributed by the utility.

80. COSSA/SEIA recommend the Commission require both a RES compliance plan program and a mandatory market-based standard offer program. COSSA/SEIA question how subscribers will be able to retain RECs without a mandatory program. They note the current practice requires bidders to offer a REC "price" to secure a project, thus contractually committing the developer to selling the CSG's RECs to the utility. COSSA/SEIA recommend the RES compliance plan process continue to serve as the primary means for utilities to secure RECs for RES compliance and to achieve targets for policy-preferred subscribers. They suggest the standard offer program, which they propose to call the "Community Access Standard Offer Program," should function as a broader, less restrictive program that allows customer choice including REC

ownership. COSSA/SEIA propose, if a utility falls short on RECs under the RES compliance program, then the utility could offer an optional standard REC purchase offer to solicit RECs from customers participating in the standard offer program. COSSA/SEIA argue the CSG billing credits for the standard offer program must be consistent with the methodology set forth in § 40-2-127, C.R.S. COSSA/SEIA argues this will ensure the program is an appropriate alternative to on-site solar and provide consistency for subscribers. COSSA/SEIA argues the bill credit should be separate from other compensation that may be needed for utility compliance, such as standard REC purchase offers from subscribers.

81. EOC suggests minor revisions to the rule language for clarity.

b. Responses

82. Public Service challenges that COSSA/SEIA's "parallel framework" creating a Community Access Standard Offer Program primarily focused on subscriber REC retention will not achieve appropriate targets for customer segment participation. Public Service also raises concern that COSSA/SEIA's program assumes it should take a customer bill credit "as-is" without re-evaluation. Public Service also questions what constitutes "community access" for this offering. Public Service suggests the issue of a standard offer would be more effectively vetted through a separate investigatory proceeding. In addition, Public Service disagrees with COSSA/SEIA's proposal that any rule reference to the utility's electric resource plan should be removed.

83. Black Hills objects that COSSA/SEIA's exceptions raise new issues not discussed in the record. Black Hills suggests that developers would choose to pursue acquisitions through less restrictive standard offer rebates. Black Hills cautions the separate regimes will push CSG acquisitions to the standard offer, which will not involve the same policy outcomes, such as low-income subscription reservations, as RES compliance plan CSGs.

84. The OCC recommends denying WRA's exceptions that would establish the standard offer as the primary means for utilities to purchase CSG output. The OCC argues, until it can be demonstrated an insufficient capacity has resulted from an RFP process, mandating a standard offer will translate into additional profits to unregulated CSG developers at the expense of public utility ratepayers. The OCC responds that COSSA/SEIA's interest in this and other proceedings substantiates there is adequate developer interest for CSGs. The OCC reasons, where adequate developer demand exists, it is in the ratepayers' interest for competitive solicitations to achieve cost-effective acquisitions. The OCC notes the CSG statute identifies that successful financing and operation must be simultaneously considered with lower overall total costs for the utility's customers. Finally, the OCC asserts that COSSA/SEIA's proposal would implement a type of unregulated CSG program under the guise of a standard offer. The OCC cautions against implementing this type of unregulated concept without more information.

85. WRA responds that Public Service misunderstands its proposal. WRA maintains the CSG statute allows for energy and RECs to be acquired separately. WRA explains, under its approach, different standard offers could be developed for different types of CSG subscriptions. WRA suggests that standard offers that allow the subscriber to retain the RECs could be established at a lower price point, which, according to WRA, would avoid Public Service's concern with being subject to an "imbalanced transaction" where the utility pays the same level of billing credits to customers while receiving no benefit of the REC itself.[6]

86. COSSA/SEIA continue to propose the Commission utilize the standard offer model to provide subscribers with the option to retain the value of both the generation and the environmental attributes. Under this framework, COSSA/SEIA argue that subscribers in the

[6] WRA Response to Exceptions p. 3 (May 11, 2020) (citing Public Service Exceptions p. 14).

standard offer program choosing to retain RECs would only receive bill credits from the utility for the energy associated with their CSG subscriptions and not the environmental attributes.

c. Findings and Conclusions

87. After considering the participants' comments in the rulemaking and the issues raised in the exceptions and responses, we grant, in part, and deny, in part, the exceptions of Public Service, WRA, COSSA/SEIA, and EOC. We adopt a revised version of Rule 3882, as shown in the attachments to this Decision.

88. Consistent with the directive in HB 19-1003 requiring the Commission to, in a new or active proceeding, determine whether the utility shall purchase all the electricity and RECs generated by the CSG or whether a subscriber may, upon becoming a subscriber, choose to retain or sell the RECs to the utility, we consider in this Proceeding whether to implement changes that provide opportunity for a subscriber to retain the RECs. We adopt in Rule 3882 the requirement that the utility implement a standard offer program under which subscribers can elect to retain the RECs associated with the CSG generation.

89. As shown in the rule revisions in the attachments to this Decision, we require utilities to use a combination of one or more competitive solicitations and one or more standard offers to cause purchases of electricity from new CSGs over the period covered by the utility's Commission-approved RES compliance plan. We require the utility to propose a standard offer pricing program to acquire CSG generation. We specify in this new rule that the standard offer may be at a differing price that would enable the CSG subscribers to keep the RECs generated by the CSG rather than transfer ownership to the utility.

10. Rule 3882(b) - Interconnection to Transmission System

90. This rule specifies that the 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 Recommended Decision adopts COSSA/SEIA's proposal to add "or transmission" to this rule in order to specify that CSGs may interconnect at the transmission system level. In their rulemaking comments, COSSA/SEIA argued there is no statutory restriction of CSG transmission system level interconnections and suggested that opening interconnection sites to transmission system interconnection could solve a number of the interconnection problems at existing substations and provide new siting options.

a. Exceptions

91. Public Service requests that the Commission reject the proposal to specify that CSGs may interconnect at the transmission system level. Public Service cautions this change could lead to legal jurisdictional issues and introduce additional policy confusion. Public Service states that it currently has Open Access Transmission Tariffs (OATT) approved by the Federal Energy Regulatory Commission (FERC) that apply to transmission interconnections, which would apply to CSG transmission level interconnects. Public Service urges the Commission should recognize jurisdictional responsibilities and cross-jurisdictional limitations between distribution and transmission. In addition, Public Service objects that expanding the definition of a CSG to encompass transmission-level interconnection would be inconsistent with IEEE 1547, which it states is the primary industry technical standard for addressing interconnection requirements utilized within the interconnection technical review.

b. Responses

92. The OCC responds that it is also concerned that the impact of this change has not been adequately vetted. The OCC agrees with Public Service that connecting CSGs at the transmission level is different from the distribution level for the jurisdictional purposes raised by Public Service. In addition, noting that small scale solar developers already have opportunity to connect at the transmission level as qualifying facilities under federal law, the OCC contends that permitting CSGs to connect at the transmission level would be a windfall to CSG developers by providing opportunity to recover rates other than the wholesale avoided cost rate, with ratepayers paying the difference. The OCC also raises concern that the transmission system has a different interconnection process and tariffs than the distribution system, thus utilities would need to re-evaluate their approved tariffs and associated aggregate retail rates.

93. COSSA/SEIA respond that they proposed transmission level interconnection to solve a problem raised by Public Service regarding capacity at existing distribution substations. COSSA/SEIA argue that allowing CSGs to interconnect at the transmission level is one way to open more interconnection opportunities. COSSA/SEIA disagree with Public Service over concerns of FERC jurisdiction. COSSA/SEIA reason, because a CSG is a qualifying facility under federal law, and because it sells all its electricity to the utility, there is little risk FERC would have jurisdiction over a CSG interconnection, even at the transmission level. since the installation would meet the definition of a qualifying facility under federal law. They argue, even if there were increased regulatory burdens, those burdens would impact the developer rather than the utility or customers. COSSA/SEIA suggest that developers should have discretion to determine if the risk of FERC jurisdiction is worth to the ability interconnect at a suitable site on the utility's transmission system. COSSA/SEIA suggest, in the event the utility does not own the transmission

system delivering the CSG electricity, the developer could be required to pay for any incremental costs caused by their decision to interconnect on that transmission line. Finally, COSSA/SEIA argue that CSG billing credits, which subscribers receive for every kWh of CSG generation, are statutorily defined as the total aggregate retail rate minus the utility's costs of delivering the electricity. They suggest that, since the statute only states "delivery" and does not expressly state a CSG must connect to the distribution system, the deducted delivery costs can include both transmission and distribution costs.

94. SunShare opposes Public Service's exceptions. SunShare states there are currently no rules preventing a CSG from connecting to the transmission system and this issue was raised in this rulemaking simply as clarification.

c. Findings and Conclusions

95. We deny these exceptions and will adopt the change specifying that CSGs may interconnect at the distribution or transmission system level. Although we are mindful of the potential legal and technical issues raised by the utilities and the OCC in their exceptions, we find these concerns are insufficiently explained and supported to warrant the Commission reversing the ALJ's recommendation. We note that, if an actual legal or technical issue arises with respect to transmission-level interconnection of a CSG in the future, we can revisit this issue with the benefit of the specific facts and circumstances presented in that instance.

11. Rule 3882(e) - Utility Cost Recovery

96. In its rulemaking comments, WRA took the position that utility cost recovery through the Electric Commodity Adjustment (ECA) exceeds the statutory requirements in § 40-2-127(6), C.R.S. WRA asserted the utility's lost revenue due to CSG billing credits should instead be addressed holistically through a revenue decoupling adjustment. COSSA/SEIA supported

WRA, agreeing there is no statutory support for the current approach and arguing that recovering lost revenue through the ECA and RESA mechanisms drives up customer charges. COSSA/SEIA suggested, had the legislature intended CSG billing credits to be accounted for in the retail rate impact, it would have specified so in the statute.

97. In its rulemaking comments, Public Service argued that accounting for the CSG resource cost through the ECA and RESA is an established practice and has been vetted through several utility RES compliance plan proceedings to ensure compliance with statute and rule. Public Service claimed that WRA's proposal would materially change the economics of existing and future CSG transactions between the utility and its customers.

98. In the Recommended Decision, the ALJ declines to adopt WRA's position that the Commission should discontinue its existing practice of allowing utility cost recovery of CSG billing credits from the ECA and RESA. Instead, the ALJ recommends adding language in Rule 3882(e) to specify that the acquisition of electricity from a CSG shall be recovered through the ECA mechanism.

a. Exceptions

99. WRA renews its argument that the Commission should discontinue the practice of recovery through the ECA and RESA. WRA asserts this is a significant policy decision the Commission should weigh before it affirms that cost recovery from the ECA is appropriate. WRA argues the retail rate impact rule in § 40-2-124(1)(g), C.R.S., applies only to the purchase of unsubscribed energy and RECs. WRA posits the current approach allowing utilities to recover the costs associated with CSG billing credits from subscribed CSGs from the ECA and RESA is inconsistent with § 40-2-127(6), C.R.S. WRA also objects that this approach allows the ECA and RESA to finance a lost revenue adjustment mechanism. WRA notes this approach is different from

net metering, where only the REC incentive payment is recovered from ratepayers through the RESA. WRA contends this is a cost recovery policy decision that should be determined in an evidentiary proceeding such as a RES plan proceeding, a decoupling proceeding, or a rate case. WRA urges the Commission should weigh this policy decision before it affirms that allowing recovery from the ECA is appropriate, particularly now that other lost sales recovery mechanisms, specifically decoupling for the residential and small customer classes, are a reality in Public Service's territory. WRA recommends the Commission strike the ALJ's recommended language so that the Commission will not be limited in its future decisions on this issue.

b. Responses

100. Public Service opposes WRA's exceptions. Public Service asserts that WRA is attempting to materially change the economics of existing and future CSG transactions. Public Service states the CSG billing credit is the mechanism by which the utility pays for CSG generation and is effectively a similar arrangement as the utility would have for any other purchase power agreement. Public Service responds that WRA's proposal has not received serious vetting, would cause regulatory lag, and would shift costs to shareholders, effectively penalizing the utility for offering CSG options to its customers.

c. Findings and Conclusions

101. Through our revisions to Rule 3882, we strike the entire paragraph where the ALJ recommended adding language specifying that the acquisition of electricity from a CSG shall be recovered from the ECA. This, in part, addresses WRA's concern that the Commission should not codify in rule that recovery shall be through the existing mechanisms. That said, we find no merit on the record of this rulemaking proceeding to WRA's arguments that the existing practice is unlawful or inappropriate. We agree with Public Service the CSG billing credit, by which the

utility pays for CSG generation, is similar to the arrangement the utility would have for any other power purchase agreement. And we find concerning, as Public Service raises, that WRA's proposal could impose a significant penalty on shareholders and create a strong incentive against CSGs moving forward.

12. Rule 3883 - 25 Year Minimum Contract Term

102. In their rulemaking comments, COSSA/SEIA proposed that the Commission establish in this rule a minimum term of 25 years for the CSG contract. COSSA/SEIA suggested that formalizing a 25-year term for CSG contracts with the possibility for extension would provide regulatory certainty and transparency for the industry and better reflect the expected lifespan of a solar facility. They explained that many CSG subscribers choose to participate in order to help meet long-term renewable energy mandates, which do not expire after 20 years.

103. The Recommended Decision declines to adopt this proposal.

a. Exceptions

104. COSSA/SEIA renew their request that CSG contracts should be set to a minimum term of 25 years, with automatic extension for five years beyond that minimum term, if participants wish to continue. COSSA/SEIA contend that a term of 25 years is becoming increasingly standard across the country, in part based on performance of equipment and associated extensions of warranties. COSSA/SEIA state that a 25-year term is supported by multiple credible technical analyses, including the analysis of the National Renewable Energy Lab, which indicates that solar photovoltaic systems have a useful life of 25-40 years.

b. Findings and Conclusions

105. We deny these exceptions requesting that the Commission establish in rule a minimum contract term for CSGs of 25 years. We conclude that contract terms should remain

flexible and not be set by Commission rule. In addition, we have concern that increasing the minimum contract term may reduce the risk for CSG developers but would, in turn, shift that risk to ratepayers.

13. Open Market CSG Proposal

106. In their rulemaking comments, both Public Service and Black Hills opposed the NOPR's M-CSG proposal on grounds that it was unlawful. The utilities objected that this type of program would allow for a competitive retail choice market despite Colorado's vertically integrated construct. They objected that § 40-2-127(4), C.R.S., expressly states CSGs are not public utilities and not subject to Commission regulation. They objected that no provision in § 40-2-127, C.R.S., would permit a CSG to sell electricity to end-use customers within a Colorado public utility's service territory.

107. In its comments, the OCC agreed with the legal concerns raised by the utilities. The OCC agreed the inclusion of CSGs outside of a regulatory proceeding would conflict with the concept of regulated monopoly. The OCC cautioned that requiring regulated utilities to allow M-CSGs to interconnect, granting them access to regulated ratepayers, is contradictory to the doctrine of regulated monopoly because it allows a competing service provider to enter a regulated territory. The OCC also raised policy concern that the Commission already encourages high levels of CSG investment through establishing the minimum and maximum acquisition levels adopted in RES compliance proceedings. The OCC asserted that any additional CSG capacity beyond this maximum has already been deemed to not be in the public interest.

108. The Recommended Decision declines to adopt the proposed rule implementing an M-CSG program. The ALJ concludes that the Commission would need to address the many issues raised by the rulemaking participants before implementing this concept.

a. Exceptions

109. COSSA/SEIA request the Commission open a new proceeding to further consider the concept of an open market for CSGs. They request that the Commission open a proceeding within the next 120 days to consider the goals and parameters of an open market CSG program, and to develop applicable rules, with a targeted Commission decision by March 31, 2021.

110. Vote Solar likewise requests the Commission open an investigatory proceeding that will convene stakeholders to further explore and discuss a market CSG program.

b. Findings and Conclusions

111. We deny the exceptions requesting that the Commission decide at this time whether to open an investigatory proceeding to consider the issues raised in this rulemaking regarding the M-CSG proposal. As raised by the utilities and other rulemaking participants, there are both legal and technical challenges at this point to implementing this concept under current law and the regulatory framework in Colorado. Considering these challenges and the changes already made through this Decision to update and revise the CSG Rules, we find it unnecessary at this time to commit to opening a new proceeding to further explore the M-CSG concept proposed in the NOPR.

14. Use of Term "Renewable Energy"

112. In its exceptions, WRA request that the Commission strike the term "renewable energy" in certain instances in the CSG Rules and replace it with the term "electricity." We adopt this change in certain instances in the CSG Rules, but not in every instance requested by WRA. The Commission construes the general term "output" as used in § 40-2-127, C.R.S., to refer to both the electricity generated by the CSG and the associated RECs. We find this a reasonable conclusion since the legislature throughout § 40-2-127, C.R.S., uses the more specific terms "electricity," "electricity and renewable energy credits," "electrical output," "electricity production," and "electricity output" to refer more narrowly to the energy component of CSG

generation and to distinguish it from the RECs. The revisions that we adopt to correspond with this interpretation are shown in the attachments to this Decision containing the final adopted CSG Rules.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R20-0209, filed by Public Service Company of Colorado on April 27, 2020, are granted in part, and denied in part, consistent with the discussion above.

2. The exceptions to Recommended Decision No. R20-0209, filed by Western Resources Advocates on April 27, 2020, are granted in part, and denied in part, consistent with the discussion above.

3. The exceptions to Recommended Decision No. R20-0209, filed by Energy Outreach Colorado on April 27, 2020, are denied, consistent with the discussion above.

4. The exceptions to Recommended Decision No. R20-0209, filed by Vote Solar on April 27, 2020, are denied, consistent with the discussion above.

5. The exceptions to Recommended Decision No. R20-0209, filed by the Colorado Solar and Storage Association and the Solar Energy Industries Association on April 27, 2020, are granted in part, and denied in part, consistent with the discussion above.

6. The exceptions to Recommended Decision No. R20-0209, filed by AES Distributed Energy, Grid Alternatives, Namaste Solar, Oakleaf Energy Partners, Pivot Energy, and SunShare on April 27, 2020, are denied, consistent with the discussion above.

7. The Rules Implementing the Community Solar Gardens within the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, contained in legislative

(*i.e.*, strikeout/underline) format (Attachment A), and final format (Attachment B) are adopted, and are available through the Commission's Electronic Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0608E

8. 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.

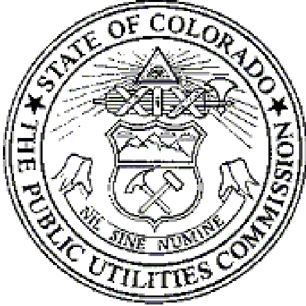
9. Public Service Company of Colorado and Black Hills Colorado Electric, LLC, d/b/a Black Hills Energy, shall file revised tariffs to implement the modified rules no later than 30 days after the revised rules adopted through this Decision become effective. The compliance tariff sheets shall be filed on not less than thirty days' notice. The advice letter and tariff sheets shall be filed as a new advice letter proceeding and shall comply will all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date.

10. 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.

11. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING June 17, 2020.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN GILMAN

Commissioners