

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-674E

IN THE MATTER OF PROPOSED AMENDMENTS TO THE RULES OF THE COLORADO PUBLIC UTILITIES COMMISSION PURSUANT TO (1) THE DEVELOPMENT OF SOLAR GARDENS AS REQUIRED BY HB10-1342, (2) COMMUNITY-BASED PROJECTS THAT QUALIFY FOR SPECIAL TREATMENT UNDER HB10-1418, AND (3) USE OF ELIGIBLE ENERGY RESOURCES TO OFFSET ELECTRICAL ENERGY CONSUMPTION OF THE DIVISION OF PARKS AND OUTDOOR RECREATION AS PER HB10-1349.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
ADOPTING RULES**

Mailed Date: July 25, 2011

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II. ORDER.....52

A. The Commission Orders That:52

I. STATEMENT

A. Background

1. The Commission issued a Notice of Proposed Rulemaking (NOPR) regarding the Renewable Energy Standard (RES) Rules and modifications thereto as required by: (1) House Bill (HB) 10-1342 (Community Solar Gardens (CSGs)); (2) HB 10-1349 (establishing the “Re-Energize Colorado” program in the Division of Parks and Outdoor Recreation in the Department of Natural Resources); and (3) HB 10-1418, which pertains to community-based projects that connect to transmission or distribution facilities owned by cooperative electric

associations or municipal utilities. *See* Decision No. C10-1061, mailed September 30, 2010. The NOPR commenced this rulemaking proceeding.

2. In Decision No. C10-1061, the Commission stated that additional time was being taken to develop proposed rules. Once developed, interested persons would have an opportunity to comment upon them, including data, views, or arguments, and to present these orally at hearing unless the Administrative Law Judge (ALJ) deems oral presentations unnecessary.

3. By Decision No. R10-1180-I, mailed November 1, 2010, a series of Commission-sponsored workshops on issues regarding this rulemaking were scheduled.

4. By Decision No. R11-0160-I, draft rules resulting from the workshop process were made available and comment was requested regarding those rules.

5. The basis and purpose of this rulemaking proceeding is to revise the current rules applicable to three separate aspects of the RES affected by HBs 10-1342, 10-1349, and 10-1418. HB 10-1342, codified at § 40-2-127, C.R.S., authorizes the creation of CSGs and requires the Commission to commence a rulemaking to implement that statute by October 1, 2010. HB 10-1349, codified at § 24-33-115, C.R.S., establishes the Re-Energize Colorado program, the goal of which is to utilize eligible energy resources to offset electrical energy consumption of the Division of Parks and Outdoor Recreation, Department of Natural Resources. It further states that the projects envisioned under the Re-Energize Colorado program would meet the definition of “Section 123 Resources” of § 40-2-123(1)(c), C.R.S. HB 10-1418, codified at § 40-2-124, C.R.S., modifies the definition of community based projects and authorizes a special treatment through a Renewable Energy Credit (REC) multiplier for projects that connect to transmission or distribution facilities owned by a cooperative electric association or municipal utility.

6. The City of Boulder; Crest Renewable Energy, LLC; R2E Partners, LLC; Black Hills/Colorado Electric Utility Company, L.P. (Black Hills); Charles Holum for Colorado Harvesting Energy Network (CHEN); Clean Energy Collectives, LLC (CEC); the Colorado Office of Consumer Counsel (OCC); Colorado Rural Electric Association (CREA); Colorado Solar Energy Industries Association (COSEIA); the Governor's Energy Office (GEO); Joseph Wiedman for IREC (IREC); Mesa State College; New Energy Development, LLC (New Energy); Peter Olmsted for Vote Solar Initiative; Public Service Company of Colorado (Public Service); R2E Partners, LLC, Scott Sarbaugh for PrairieStar Development Project (PrairieStar); the Solar Alliance (Alliance); and the Vote Solar Initiative (VSI) filed written comments.

7. Pursuant to Decision Nos. C10-1061 and R11-0044-I, ALJ G. Harris Adams conducted a hearing to accept oral comments on the proposed rules amendments on January 13, 2011 and March 18, 2011. The ALJ announced the March 18, 2011 date at the hearing held on January 13, 2011 and memorialized the same by decision.

8. The ALJ reviewed the record in this proceeding to date, including written and oral comments.

9. Except for stylistic, typographical, and grammatical changes incorporated into the redline version of the rules appended hereto that are recommended for adoption, the ALJ declines to adopt any specific recommendations made by interested parties that are not discussed below or otherwise incorporated into the redlined rules attached.

10. Being fully advised in this matter and consistent with the discussion below, in accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

B. Disparity in Subject Utilities

11. Black Hills generally requests that the Commission consider the differences between affected utilities implementing rules for CSGs, state park initiatives, and community based projects. It is requested that matters not be hard wired into the rules but, instead, be left to the utility-specific compliance plans.

12. While the undersigned is mindful of the request, it must be balanced against the burden of litigating matters of general applicability in multiple proceedings, including the potential for inconsistent outcomes. This balance is applied in rules recommended for adoption.

C. Rule 3000 – Applicability

13. Commentors propose that the reference to Rule 3665 of the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 in Rule 3000(b)(XII) should be changed to refer to Rule 3667 consistent with the renumbering scheme contained in the Draft Rules. The recommendation will be adopted and reference to prior Rule 3665 will be corrected to 3667.

D. Rule 3652(c) – Community-Based

14. The Alliance contends CSGs should not be defined as community based projects. Rather, applicable criteria should be applied on a project-by-project basis.

15. COSEIA comments that solar gardens should not be counted as community based projects, unless they meet the requirements of § 40-2-124(1)(c)(VI), C.R.S.

16. IREC agrees with the Alliance that CSGs may or may not qualify as “community-based projects.” However, proposed Rule 3652(e), does not propose otherwise.

17. Public Service comments that the Legislature has defined a community-based project. That definition can be applied to a CSG to determine whether the criteria are met without further definition.

18. The proposed rule will be adopted and the definition will be applied to CSGs based upon applicable facts and circumstances in order to determine whether a given CSG is a community-based project.

E. Rule 3652(e) – Definition of Community Solar Garden

19. IREC suggests removing the concept that renewable energy “belongs” to subscribers as this may not be true for all ownership models. Further, it is suggested that the limitation requiring a minimum number of subscribers should be relocated to the definition of a CSG, rather than the definition of a subscriber. VSI supports this proposal.

20. New Energy also comments on the term “belong,” proposing an alternative “is attributed to.”

21. Black Hills is concerned that this might be interpreted as allowing a CSG to be located outside the qualifying retail utilities’ (QRU) service territory. Black Hills requests that a sentence be added to the end of the definition of CSG providing that, “the output from a community solar garden shall be sold only to the qualifying retail utility serving the geographic area where the community solar garden is located.” Black Hills Comments at 3.

22. IREC counters Black Hills comment in recognition that H.B. 10-1342 permits a CSG to be located in the service territory of an adjacent QRU and interconnect with the QRU whose territory contains that CSG’s Subscribers. IREC contends this is an appropriate application of the geographic area reference that is more flexible than referencing the same service territory.

23. The OCC proposes a definition as Rule 3665(a)(I)(A). IREC comments as to the duplication of Rule 3652(e).

24. The statute clearly requires that subscribers own beneficial use of electricity generated by the CSG. § 42-2-127(2)(b)(I)(A), C.R.S. The provision will be clarified to apply belonging to beneficial use, rather than facility ownership.

25. The undersigned ALJ adopts the interpretation advocated by Black Hills. IREC contends the statute permits a CSG to be located in a different QRU's service territory from the CSG's subscribers. IREC argues the reference to geographic area in § 40-2-127(5)(b)(I), C.R.S., is more broad than requiring the same service area. Section 40-2-127(5)(b)(I), C.R.S., defines a geographic area where the CSG is located. This most plainly means the footprint of the facility and to interpret otherwise would set a slippery slope without any logical basis for distinction. Black Hills' clarifying addition to the proposed rule will be adopted.

26. Section 40-2-127(2)(b)(I)(A), C.R.S., deems a CSG to be located on the site of customer facilities. This provision is consistent with the express public policy goal to provide an opportunity for Colorado residents and commercial entities the opportunity to participate in solar generation like opportunities available to homes and businesses. Thus, to the extent permissible, those opportunities should be implemented consistently. The rule shall be adopted to recognize that a proportional subscribed interest shall be deemed the same as an on-site facility.

F. Rule 3657

27. Commentors propose additional program planning detail to assist eligible low-income customers in obtaining and maintaining subscriptions in a CSG. Such provisions are redundant as other rule modifications require applicants address programs submitted to the Commission for approval.

28. Black Hills contends that the OCC's proposed rule goes beyond statutory requirements and requests limiting the proposal to the statutory reference.

29. The Commission is to encourage CSG ownership by low-income customers. While a plan to comply may include assistance in obtaining and maintaining subscriptions, a plan need not necessarily do both in each year. Thus, the rule will be adopted with the statutory phase and implementation plans can be addressed when filed.

G. Rule 3662

30. Commentors propose additional disclosure regarding CSGs supporting rates of payment and utilization of available CSG subscriptions. The proposal is reasonable and will provide the Commission with information regarding demand for CSG subscriptions over time and will provide subscribers with information regarding rates of compensation for CSG production.

H. Rule 3664(i) – Meter Aggregation

31. IREC proposes modifications regarding meter aggregation to support the development of CSGs and other community-based projects in that it would accommodate customers, such as schools, that have multiple meters on one property. They propose a new Rule 3664(i).

32. VSI supports the proposal as meter aggregation is already offered voluntarily by utilities in Colorado and is reasonably in line with the intent of HB 10-1342 to broaden the participation in solar electric generation.

33. COSEIA supports IREC's comments. While utilities currently allow and employ meter aggregation, there are no clear rules in place for implementation of meter aggregation.

34. Public Service finds no statutory support for IREC's proposal and argues the matter is outside the scope of this rulemaking because the language would apply to on-site retail distributed generation.

35. The Commission gave notice that the RES Rules would be modified in this proceeding to implement HB 10-1342, HB 10-1349, and HB 10-1418. This issue arose during the course of the proceeding and all investor owned QRUs are participating in the proceeding and had an opportunity to comment on the matter. The proposed rule modifications permit, but do not require, customers to request modifications regarding meter aggregation. Thus, adoption of the reasonable proposed modifications is appropriate and will be adopted in this proceeding.

I. Rule 3665(a)(I)

36. Some confusion resulted in comments as a result of including some definitions in Rule 3665(a)(I) while others are in Rule 3662. The purpose of Rule 3662 being to provide definitions for terms applied through this section of rules, the definitions discussed herein will be relocated to Rule 3662.

1. (A) – Subscriber

37. IREC proposes modifications to Rule 3665(a) addressing sizing. IREC believes the 40 percent limitation is misplaced and should be added to the definition of "Community Solar Garden Subscriber Organization" in proposed Rule 3665(a)(I)(C).

38. PrairieStar contends there is no statutory basis for the proposed 40 percent limit on the size of a subscriber and it should be eliminated.

39. VSI supports IREC's proposal and contends this subscriber limitation seems misplaced and, as to the intent of HB 10-1342, seems more appropriately applied to the definition of Subscriber Organization (SO). As to limitation on the amount a SO may own in its own name, VSI contends that a 40 percent limitation could potentially overly restrict various ownership arrangements, especially in the case where a CSG is prebuilt with the expectation of soliciting subscribers at a later date.

40. New Energy proposes elimination of the 40 percent subscriber limitation as the concept of an anchor subscriber only advances the interest of the statute and should not be prohibited. It is also noted that anchor subscribers would remain subject to limitations of not more than 120 percent of their load and the requirement for a minimum of 10 subscribers.

41. CEC does not think it matters if the subscription amounts are limited and that ownership may be necessary in order to pass benefits to customers.

42. The OCC proposes adoption of the statutory definition of a CSG in the rules. IREC notes that the proposal duplicates the definition proposed in Rule 3652(e). In reply comments the OCC suggests a temporary waiver of the 40 percent limitation might be waived for a period of time to assist the financing and development of CSGs. For a subscription greater than 40 percent, the OCC proposes considering such excess as unsubscribed.

43. In reply comments, IREC contends that the limit applies to SOs and not individual subscribers. IREC believes that 40 percent is not a reasonable limitation on a SO's share of a CSG and is unduly restricted.

44. Black Hills does not object to IREC's proposed modification to the CSG definition to reflect the minimum number of required subscribers and deemed location.

45. Substantial comment was submitted regarding the proposed limitation on the maximum subscription size. Some Commentors propose eliminating the 40 percent limitation. They contend that the economic incentives will strongly motivate SOs to maximize subscription levels, rendering the provision unnecessary. Further, it is argued there is no statutory basis for application of the limitation as to Subscribers.

46. There are foundational considerations affecting this proposal. The Commission shall include a rule establishing the maximum amount a subscription organization may own at any time in its own name. This is distinguished from unsubscribed amounts addressed elsewhere.

47. Because a subscription represents beneficial use of the electricity generated, it truly comes to life with generation. Thus, by focusing upon the subscription context, size limitations are of a lesser concern through the development phase. Once the CSG begins commercial operation, the policy application of broadening opportunities for Colorado residents and commercial entities becomes more prominent.

48. The OCC proposes that a temporary waiver of the 40 percent limitation be available for a defined period, 12 or 18 months after the CSG goes online in order to address concerns affecting development potential. While accommodating development, more subscriber participation would also occur through the limitation. By limiting duration of the waiver, the SO would be incented to expand subscribership in order to avoid only being compensated at a lower rate for unsubscribed power.

49. The distinction between the SO holding a subscription in its own name as opposed to being unsubscribed renewable energy and RECs needs clarification.

50. The undersigned is satisfied by several comments that a SO will have a strong financial incentive to seek subscribers. While the statute guarantees some revenue, there is no comment suggesting that compensation for unsubscribed renewable energy and RECs at the QRU's average hourly incremental cost of electricity will allow a CSG to thrive, or perhaps even survive.

51. In light of this strong financial incentive, it is reasonable that there be no limitation on the amount of subscribed energy and RECs. This is somewhat of a practical necessity during the development and construction of a facility.

52. However, after operations commence, imposition of the limitation is appropriate to expand opportunities. Then, as suggested by the OCC, the limitations have a stronger policy priority. Limiting the size of subscription that may be held by the CSG SO in its own name becomes more important. Not as unsubscribed power, but as a qualifying subscriber, the SO can own a subscription in a CSG in its own name. In order to do so, it must meet all requirements applicable to a subscriber (*e.g.*, 120 percent of load limitation).

53. Clarifying these aspects will also provide assistance in later operations because the manner and amount of payment differs. Holding a subscription in its own name, the SO will be compensated in the same manner as any other subscriber through a bill credit. On the other hand, unsubscribed energy and RECs will be purchased by the QRU, as per statute.

54. The concept behind the OCC's proposal of treating excess subscription amounts as unsubscribed is consistent with this delineation of ownership. However, no subscriber will be permitted to own more than 40 percent of the CSG output. After a waiver for initial operations, subscription amounts would have to be modified into compliance resulting in a transfer or assignment to a new subscriber or the excess becoming unsubscribed.

55. Similarly, a new facility that is not fully subscribed, or a subscription owned by a subscriber that is no longer eligible, must result in a transfer or assignment to a new subscriber (which may be the name of the SO, if qualified) or the subscribed amounts become unsubscribed.

56. A proposal is made to clarify proposed language of “fully subscribed” by changing it to “assigned to a subscriber.” By clarifying that a subscription transferred or assigned to the SO either is no longer subject to an assignment (*e.g.*, unsubscribed) or as a subscription in its own name (subject to qualification), need for the new delineation becomes unnecessary.

57. While the Legislature specifically provided limits upon the SO’s subscription level, the statute does not require a rule as to any other subscriber. The original limitation proposed in the rules arose from discussions during workshops of a dominant owner circumventing other Commission processes. However, the purposes underlying HB 10-1342 cannot be restricted for the preservation of other processes.

58. On the other hand, the amount of newly installed CSG generation that QRUs must buy during the first three years is limited to six megawatts. The purpose of HB 10-1342 is also to broaden participation in solar electric generation and to expand opportunities for Colorado residents and commercial entities. By imposing reasonable limitations applicable to all subscribers, the Commission will further these purposes.

59. While Commentors raise concerns, the proposed rule will provide an opportunity to monitor the effect upon the market during the first years of CSGs. The limitation upon CSG subscribers will be retained.

60. Notably, the distinction between unsubscribed power and subscriptions in the name of SOs, along with a temporary waiver, will ensure the limitation is not applicable during initial construction and ownership of a CSG prior to full subscription.

61. Applying the limitation across the board also prevents an entity shell game to avoid the limitation. If the limitation were only applicable to SOs, then one need only create a wholly owned or controlled entity in the name of the QRU retail customer to circumvent limitations.

2. (B) – Subscription

62. IREC contends the last sentence in the § 40-2-127(2)(b)(II), C.R.S., definition of “Subscriber” regarding a subscriber’s ability to change his premises from time to time is not currently addressed in the proposed rules and suggests that it be included. This proposal is supported by VSI.

63. New Energy proposes that subscription be defined as “a proportional interest in a solar renewable energy generation facility that is a CSG, which proportional interest is deemed to be located on the property of the subscriber, together with the renewable energy credits associated with or attributable to such facilities under section 40-2-124.” New Energy Comments at 3. The proposal is based, in part, upon the statutory deeming as to the location of facilities.

64. Consistent with comments adopted focusing upon beneficial use rather than ownership in the definition of a CSG, corresponding modifications are necessary to the definition of a subscription.

65. New Energy also proposes reference to subscription, as opposed to shares, when referring to a subscription and supports flexibility for developing ownership models.

Specifically, New Energy contends the definition of a subscription should not inhibit the possibility of a third party owning the facility and leasing back an interest in the production of the garden.

66. PrairieStar proposes modifications to accommodate situations where historical usage is not available and the definition of a subscriber site. PrairieStar also contends the rules should provide for expansion of approved projects and not preclude more than one project on a plot of land.

67. New Energy comments that simple mechanisms should be available for estimated expected load from new construction of residential and non-residential properties, including expansion of existing facilities. Black Hills replies that there is no such simple solution.

68. Several parties suggest that the rules be modified to address estimation of annual consumption when actual usage is not available. It is noteworthy that the 120 percent limitation is currently applied by utilities in other net metering applications and they provide a means to establish annual consumption in administering programs where actual consumption is not known. Insufficient need has been shown to establish a unique application to CSGs that may ultimately differ from other net metering applications. Such matters may continue to be dealt with in QRU programs.

69. IREC also proposes that, in order to most closely replicate on-site situations, the SO, subscriber, and/or third-party CSG owner should be responsible for ensuring that subscriptions are appropriately sized.

70. Black Hills does not believe a QRU should be required to annually and jointly verify with the CSG owner that each subscriber's share of the CSG conforms to the

statutory 120 percent size limitation. Rather, the QRU should be able to rely upon contracting warranties of compliance by the CSG.

71. Contradicting such reliance, Black Hills also proposed that the QRU should have the sole right to reject a CSG application where subscriber(s) do not meet the 120 percent size limitation. Illustratively, Black Hills notes it is possible that a customer is a subscriber in more than one CSG. Thus, one CSG may or may not be aware of a potential subscribers' ownership in another CSG and the possibility that the subscriber's total subscriptions exceed the 120 percent size limitation. "The QRU would be better qualified to ensure a customer/subscriber has not exceeded the 120% size limitation." Black Hills Supplemental Comments at 4.

72. IREC also contends modifications clarifying the definition of community gardens are a more appropriate place to recognize the deemed location of facilities, rather than in the subscription definition proposed by New Energy.

73. New Energy generally supports IREC's comments as to the definition of a subscription and proposes its own definition.

74. Black Hills counters that the QRU has the right and responsibility to ensure appropriate sizing of facilities so that it knows what energy and RECs it is obtaining and the extent of Renewable Energy Standard Adjustment (RESA) funds being used to acquire the energy and RECs

75. As to compliance with 120 percent sizing requirements, Black Hills believes the QRU should require the CSG applicant to "flag" the new or expanded loads within its application, so that the QRU can review the estimated load potential for the purpose of the 120 percent size limitation. However, it should be the QRU's sole right to reject a CSG application where subscriber(s) do not meet the 120 percent size limitation, whether based

on actual historical consumption data or the QRU's evaluation in the case of new or expanded loads.

76. Public Service points out that both HB 10-1342 and proposed Rule 3665(a)(I)(A) address how a community garden subscriber can assign its share of the production from the CSG to more than one premise, and therefore to more than one meter.

77. The OCC contends that the QRU should be responsible for enforcing compliance with the 120 percent provision because a SO may have an incentive not to enforce the limitation.

78. Several parties comment on obligations to enforce limitations of 120 percent of annual consumption. On the one hand, the SO is sizing and selling subscriptions to subscribers. They clearly have the relationship and subscriber information. On the other hand, only the QRU has sufficient information to ultimately enforce the 120 percent limitation.

79. As noted by the OCC, the SO has strong incentives to maximize subscriptions, to others as well as in their own name. QRU enforcement responsibility provides a balance to this incentive and recognizes that the QRU owns and controls its meter. Further, it is clear that no subscriber is limited in the number of CSGs that they may subscribe. Thus, only the QRU is in position to ultimately enforce the 120 percent limitation dependent upon its meter. Thus, the proposed rules strike an appropriate balance in jointly allocating responsibility for compliance.

80. The OCC proposes an annual verification requirement for compliance with the 120 percent limitation. No other net metering application has required filing of annual verifications and no unique need for such requirement is shown present here. Attempting to mirror on-site programs, annual verification will not be mandated.

81. Public Service opposes allowing more than one project on a piece of land, contending that such modification would permit an end-run around the two megawatt limit on

the size of a CSG. So long as CSG is a separate identity or SO, with separate real time reporting metering and separate interconnection to a QRU's distribution system, there is no reasonable basis to artificially limit the number of CSGs that can be located on a parcel of property.

3. (C) – Subscriber Organization

82. A “subscriber organization” is described as follows in HB 10-1342:

The community solar garden may be owned by a subscriber organization, whose sole purpose shall be beneficially owning and operating a community solar garden. The subscriber organization may be any for-profit or nonprofit entity permitted by Colorado law. The community solar garden may also be built, owned, and operated by a third party under contract with the subscriber organization.

Section 40-2-127(3)(a), C.R.S.

83. The Alliance supports the proposed rules that permit a broad range of appropriate subscriber ownership structures.

84. New Energy likewise proposes eliminating “own and” so as not to interfere with commercial arrangements where the SO does not own the garden.

85. In reply comments, IREC suggests more broad language to address New Energy comments as to ownership.

86. While a CSG may be owned by a SO, it is not a necessary requirement of the statute. § 40-2-127(3)(a), C.R.S. However, if the SO owns the CSG the SO's sole purpose must be to beneficially own and operate a CSG. An exception to requiring CSG ownership is available if the organization contracts with a third party to build, own, and operate the CSG.

87. Thus, the statutory limitation upon the organization purpose of a SO owning a CSG cannot be eliminated, unless that SO does not own the facilities and contracts for the CSG

to be built, owned, and operated by a third party under contract. The adopted rule will be clarified to incorporate such exception.

4. (D) – Ownership Structures

88. IREC proposes modifications to clarify possible ownership arrangements.

89. VSI supports IREC’s proposal as it will provide maximum flexibility for CSG ownership and will clearly distinguish that third-party ownership of systems is permitted without the involvement of a subscription organization.

90. Rule modification adopted pursuant to discussion above resolves comment concerns regarding ownership structures.

J. Rule 3665(a)(II)(b) – Owner

91. Black Hills seeks clarification as to references to “owner,” particularly where a CSG might not be owned by the SO. Further, they suggest the QRU should only be obligated to deal directly with the owner, not individual subscribers. A definition of owner is proposed:

“Owner” means owner of the community solar garden which may be the qualifying retail utility or any other for-profit or nonprofit entity or organization, including a subscriber organization organized under this section, that contracts to sell the output from the community solar garden to the qualifying retail utility.

92. As to ownership of RECs, Public Service would prefer to pay the solar garden owner the monthly REC payments, as opposed to the individual subscribers, and plans to encourage solar garden owners to structure their businesses so that the owner is the entity which receives the monthly REC payment from Public Service. Public Service maintains this will be easier to administer.

93. The statute provides that the owner of the CSG contracts to sell the output from the CSG to the QRU. Owner is defined to include not only traditional owners, but SOs operating a CSG owned by a third party pursuant to contract. However, output is not defined.

94. While it is clear that the statute does not require a CSG to be owned by a SO, the statute becomes unworkable if a CSG is not operated by a SO. The SO is defined to play a central role in CSGs. Subscribers attribute premises to the subscriptions that are proportional interests in the beneficial use of electricity generated by the facility. It is the Subscriber that must be a retail customer of the QRU. It is the Subscriber's annual consumption that provides the comparison for the 120 percent limitation. If there is no SO to subscribe interests, there will never be retail QRU customers to subscribe and attribute premises subject to the 120 percent limitation. Subscriptions may be transferred or assigned to a SO, providing some level of liquidity for consumers. At best, without a SO one would be left with a fully unsubscribed CSG which would not further the public interest.

95. It is noteworthy that the statutorily-defined owner of the CSG is defined as the entity to contract to sell the output. However, the scope of involvement of the facility owner should not require expansion into all aspects of operations.

96. Particularly in light of the number of opportunities where the owner of facilities installed at a CSG may have nothing to do with operating the facility or any direct relationship with its subscribers, it is most appropriate that operations be managed by the SO rather than the owner of the facilities.

97. Thus, proposals to assign operational responsibility to owners of the solar generation facilities installed at a CSG, rather than SOs will be rejected. By integrating the SO into the operational structure of CSGs, the Legislature has provided a central point of contact

regarding operation of the facility even though contracts for output are entered into with the facility owner.

K. Rule 3665(a)(II) – Transfer of Shares

98. The Alliance supports the proposed rule and proposes that QRUs devise a simple transfer form for use by SOs.

99. IREC proposes modifications for flexibility of business models and to address transfers.

100. PrairieStar proposes that the rules require all transfers to go through the Subscription Organization for approval. In addition, the rules should permit a contractual limitation on the relocation of the subscription and/or to run with land. The ability of subscribers to transfer subscriptions to the subscriber without regard to an available buyer is opposed. PrairieStar proposes elimination of any reference to price or rate, including caps on fees.

101. PrairieStar further encourages the Commission to strike any monitored wait list. They propose flexibility remaining so that a SO can more freely manage subscribers and the incentive for full subscription renders the proposal unnecessary.

102. New Energy contends the SO should have the latitude to determine the effective date of the transfer or decline to permit the transfer until a more appropriate time.

103. New Energy proposes that any cap on fees for transfer fees be eliminated to be determined by the market.

104. Black Hills proposes that the QRU be given at least 30 days' advance written notice of any changes in the Subscriber rolls and that such changes not be effective until the first day of the calendar month that is at least 30 days after the QRU receives notice of such changes.

105. To reconcile differences as to the provision for transfers, Black Hills proposes that details covering details of transfers should be addressed as part of a compliance plan, rather than being specified in the rule.

106. IREC proposes that transfers become effective pursuant to the terms of their subscription agreement with the organization managing the CSG, not upon enrollment in the QRU's billing system for net metering credits.

107. IREC does not oppose explicitly permitting notification to occur in written or electronic form. However, IREC supports the proposed rule as a balance between utility burden and SO flexibility. Therefore, the 30-day period requested by Black Hills should not be accepted, unless it only addresses when customers can expect to see a credit on their bill.

108. The OCC contends that Black Hills' 30-day proposal is too long, but recommends a 15-day notice period and that the change takes effect on the subscriber's billing cycle following the expiration of the 15-day notice period.

109. Public Service does not believe a simple form can or should be required of QRUs to effectuate transfers as transfer requirements will be unique based upon specific owner structures. Public Service contends such matters should be left to the CSG for determination.

110. Commentors suggest pronouncement of a standardized form to effectuate transfer. However, the undersigned agrees such matters are better left to SOs to best address their needs and cannot be comprehensively addressed for all entities as proposed.

111. Commentors suggest elimination of subscriber waiting lists. It is suggested that the provision is unnecessary in light of SOs' incentive for full subscription. A minimal level of subscription liquidity is an important aspect of consumer protections afforded by these rules. Availability of a waiting list of those interested in subscribing facilitates transferability.

Particularly in light of the fact that the price paid for subscriptions will not be subject to regulation, efforts to promote marketability prevail over the concerns raised. In the event this interest should not prevail based upon particular facts and circumstances regarding a particular CSG, Rule 1003(a) of the Rules of Practice and Procedure, 4 CCR 723-1 affords appropriate relief.

112. Several comments address the manner of transfer of subscriptions. In order to facilitate transfers, and the integral nature of subscriptions in management of the beneficial use, the SO is in the best position to maintain subscriber records. The organization sells to original subscribers and must report the identity of subscribers to the QRU over time. Analogous to shareholder records of a corporation, the SO will be responsible for maintaining subscriber records.

113. Although the statute places ultimate responsibility for providing the QRU percentage shares used to determine the net metering credit on a monthly basis, this does not prohibit a managerial role of the SO. This further provides accommodation for situations where the owner of CSG plays no role in operations.

114. Several Commentors address the effective date of transfers or assignments of subscriptions. Based upon the statutory provision permitting transfer or assignment of subscriptions to the SO, and to facilitate transferability of subscriptions, it is important that subscribers be permitted to prospectively specify the effective date of the transfer. Further, upon disqualification of current subscribers, the SO must facilitate transfer or assignment of subscriptions. Comments suggesting that a subscriber must continue against its will are rejected.

115. Commentors argue that the effective date of transfers must be coordinated with resulting billing. Part of managing subscription records includes calculating the

percentage shares used to determine the net metering credit on a monthly basis. Thus, the owner is ultimately responsible for reporting the respective shares, including allocations for mid-cycle transfers. In turn, the QRU must incorporate such percentage into billing in the ordinary course of business.

116. Black Hills proposes a substantial delay in the process that would permit at least 30 days' notice before any change in subscriber roles. Such a provision is not reasonable and would result in a subscriber being deprived of beneficial use represented by the subscription. While addressing only the effective date, practical consideration of billing logistics and cycles are reasonable. It is appropriate that changes reported by the CSG to the QRU be incorporated in the next billing cycle. While only affecting the billing, but not the effective date, consideration is given to billing logistics, while preserving the benefits of subscription commencing on the effective date.

117. Remuneration for subscriptions transferred or assigned to the SO is proposed to be proportionate to the then-current rate that the SO is offering subscriptions. Notably, the OCC proposes deletion of the requirement to pay remuneration based upon the then-current subscription pricing. While the provision is intended to avoid unjust discrimination in treatment, establishing a minimum price is contrary to the Legislature's explicit determination that the Commission would not regulate the price. The provision will be deleted from the adopted rule.

118. The proposed rules incorporate a maximum transaction fee at 1 percent of the value of a subscription in calculating remuneration. Elimination of the remuneration will eliminate the cap.

L. Rule 3665(a)(III)(c) – Portability of Premise

119. The OCC proposes an addition to ensure that a Subscriber may transfer its subscription to another premise within a reasonable period. CREA joins in this suggestion in order to comply with § 40-2-127(3)(c), C.R.S. With this change, CREA believes this clarifies that a subscription may not be transferred to the service territory of a cooperative electric association. IREC supports the proposal as well and believes that the agreement between a subscriber and a subscription organization should be permitted to address the transfer of subscriptions.

120. Black Hills interprets the statute to mean that during this time lapse while moving, the right of the subscriber remains active during this time lapse and as such, the owner of the CSG cannot sell, transfer, or assign the subscription. However, this is distinguished from the associated bill credits. Black Hills contends the credit is not earned, and thus suspended, because the QRU's billing system no longer has the customer assigned to any premise to generate a bill credit. The following addition is proposed:

The bill credit shall be suspended by the QRU during the temporary period of time the Subscriber is not a billing customer of the QRU, and the QRU shall compensate the CSG Owner for the energy produced at the QRU's average hourly incremental cost of electricity per Rule 3665(c)(V).

121. The OCC opposes suspension, but proposes accumulation of the bill credit which would appear on the first billing statement for the newly designated premises. If a new premise is not timely designated, the credits would be forfeited and the SO would then get paid at the average hourly incremental cost.

122. Commentors propose explicit recognition that subscribers can change their premises from time to time. The proposal will be adopted.

123. Section 40-2-127(1)(c), C.R.S., permits a subscriber that ceases to be a QRU customer to become a customer of the QRU at another premise in the QRU's service territory that is still within the geographic area served by the CSG. The subscription continues with specified adjustments to reflect any differences between the new and previous premises' customer classification and average annual consumption of electricity.

124. By specifying continuance with specified adjustments, other adjustments advocated by Black Hills (*i.e.*, the credit is not earned due to lack of designated premise) conflict with the statutory provision. The Legislature afforded subscribers an opportunity to relocate their service within a reasonable period of time without affecting their subscription, other than premises' customer classification and average annual consumption. Thus, so long as a new premise is designated within a reasonable time, benefits continue, subject to statutory adjustments specified.

125. The OCC's approach for accumulation of benefit for a reasonable period of time will be adopted. If a subscriber ceases to be a QRU customer, and fails to designate a new qualifying premise with a reasonable time, the subscriber's qualification ceases effective when the customer ceased being a QRU customer. Any associated benefits accumulated will then be treated as being unsubscribed until the subsequent transfer to a new subscriber becomes effective (addressed elsewhere herein).

M. Rule 3665(b) (II) -- Real Time Reporting

126. Rule 3665(b)(II) requires real time reporting (ten seconds or less) to the utility from all solar gardens. Public Service suggests that this requirement may be too onerous and unnecessary for small gardens. While Public Service agrees that the rule should provide for

real time reporting, they recommend deferring determination of the specific level of real time reporting that will be necessary for various sizes of solar gardens.

127. Black Hills proposes modification to clarify a production meter is necessary and paid for by the owner of the CSG.

128. As to reporting requirements, Black Hills supports Public Service's proposal noting that Advanced Metering Infrastructure meters installed on its system report at 15-minute intervals. Requiring more frequent reporting would be cost prohibitive and unnecessary.

129. Other Commentors also request modification regarding metering requirements to provide flexibility in metering requirements based upon project size.

130. The requests are reasonable and unopposed. They will be adopted as reflected in Appendix A.

N. Rule 3665(c)(I) - Calculation of the Net Metering Credit

131. Several Commentors advocate an open, transparent process for determining the total aggregate retail rate, including stakeholder engagement.

132. The draft rule contemplates that the net metering credit provided to the subscribers of a solar garden will be calculated on a customer by customer and premise by premise basis. Public Service argues the rule is administratively unworkable because solar garden subscriptions are freely transferrable and the generation produced by the solar garden may be attributed by a single subscriber to one or more premises. Public Service argues this level of disaggregation of the net metering credit is not required by statute.

133. Section § 40-2-127(5)(b)(II), C.R.S., provides, in pertinent part, as follows:

The net metering credit shall be calculated by multiplying the subscriber's share of the electricity production from the community solar garden by the qualifying retail utility's total aggregate retail rate as charged to the subscriber, minus a reasonable charge

134. Public Service argues that the statute contemplates that the net metering credit will be based upon the QRU's total aggregate retail rate to the customer, not based upon each customer's actual prior individual usage. Public Service maintains that this statutory section contemplated that the QRU would set a net metering credit per kWh per rate class. This would provide a more administratively feasible means to credit solar garden subscribers with their proper credits over each of their premises.

135. The OCC does not oppose the concept of a kWh per rate class net metering credit, but contends the rules should provide guidance to the utilities that the credit would need to be updated as the associated riders for retail electricity prices (ECA, PCCA, etc.) change. Also for utilities with tiered rates, the rules should direct the utility to incorporate the higher retail rate value of a kWh in the higher priced tiers when a subscriber's kWh consumption is in the higher price tier.

136. New Energy proposes that payment for net metered power should either go as a credit to the subscriber or as a cash payment to the Subscription Organization, at the Subscription Organization's option.

137. Since solar generated electricity produces electricity at the time of day when the rates tend to be higher, New Energy proposes that solar power from subscriptions be credited at the higher rate for all usage at that higher tier and then at the lower rates for the remaining usage.

138. Black Hills suggests that the rules explicitly recognize that calculated credits will appear on subscribers' next regularly scheduled bill, as practicable, following the receipt and validation of the necessary monthly CSG production data and subscriber information from the CSG owner for the previous calendar month. This proposal is reasonable and will be incorporated into the adopted rule consistent with the discussion above.

139. Black Hills proposes modification of the rule explicitly providing for a dollar value net metering credit, rather than an in-kind credit. By specification of the components to calculate the credit, further modification is not necessary.

140. Black Hills contends that inclusion of demand charges in the total aggregate retail rate has no statutory basis and is inconsistent with the statute. A CSG is deemed to be located on the site of customer facilities. Commercial or industrial customers with on-site solar facilities may only reduce energy charged and may not reduce demand charges. It is argued that CSG subscribers should not be better off than other customers having on-site facilities. Black Hills argues the same is applicable to customer charges.

141. Black Hills proposes Rule 3665(c)(I)(B) be deleted in its entirety and that Rule 3665(c)(I)(A) be amended as follows:

The net metering credit to a residential customer shall be calculated by multiplying the subscriber's share of the electricity production from the CSG by the QRU's total aggregate retail rate as charged to the subscriber, minus a reasonable charge as determined by the Commission to cover the QRU's costs of delivering to the subscriber's premises the amount of energy equivalent to the subscriber's share of the electricity generated by the CSG. Details regarding how the QRU proposes to calculate the net metering credit for each customer class shall be included in the community solar garden proposals filed in the QRU's renewable compliance plans

142. Black Hills disagrees with OCC modifications to draft Rule 3665(c)(I)(A). It is recommended that the word “kWh” for credit should be deleted from the OCC’s proposed language.

143. IREC is concerned with the proposal to remove the term “total aggregate retail rate” and contends that rates should be the subject of a separate proceeding. IREC supports New Energy’s proposal for timing in light of inverted block rates and notes that California has adopted this approach.

144. Black Hills counters proposed crediting based upon inverted block rates as it does not have such rates and a Phase II rate case would be necessary to establish them. Like on-site solar customers, they propose that credits be based on existing rate structures that do not distinguish time of day or season of use.

145. Public Service agrees in principle with the concept that time differentiated rates or tiered rates need to be taken into account when developing the total aggregated retail rate, but recommends rejecting the proposal and deferring determination of the administratively feasible methods for setting the total aggregated retail rates in each utility's standard offer filings.

146. Public Service also opposes the OCC’s proposed modifications contending that the statute permits a net metering credit that is a dollar credit, rather than a kWh credit. Public Service also disagrees that an individual credit must be determined based upon each customer's usage, preferring a bill credit determined by the total aggregate retail rate for the service class of the subscriber's retail load, not the subscriber's prior year usage.

147. Commentors propose adoption of information sharing standards between SOs and the QRU. While some minimum requirements are addressed, the proposed level of detail will

not be adopted. Such matters are not of general applicability and are best left to the unique parties.

148. Some commentors proposed that all CSG subscribers on a project be required to be on the same billing cycle. Mandating this level of detail has not been shown to be necessary will be left to QRU program design.

149. Commentors propose adoption of rules specifying calculation of the total aggregate retail rate in an open, transparent process that includes stakeholder engagement. Such proposals will be adopted in part. It is found the rule reasonably specifies an amount that the calculation will be required as part of the utility application in lieu of proscriptive requirements herein. Language will also clarify that such retail rate shall be inclusive of all per kW charges.

150. All parties support a determination of rate impacts in an open and transparent process. This is only reasonable and is inherent in the proposed rules. Each QRU will have to establish rate-impacting elements through normal processes and rates will not be established herein.

151. Several comments address the QRU's "total aggregate retail rate as charged to the subscriber."

152. The statute defines that, through its contract, the QRU purchases the output of a CSG taking the form of a net metering credit. Further, a component of the calculation is statutorily defined to be the "total aggregate retail rate as charged to the subscriber."

153. Black Hills argues that inclusion of demand charges in the total aggregate retail rate is not appropriate in its service territory because participants in its on-site programs can only reduce consumption charges while demand charges are unaffected.

154. Generally, the total aggregate rate billed to a given customer may include fixed (*e.g.*, service and facility) and variable (per kWh) charges.

155. While Black Hills points out that the virtual net metering credit might prove more beneficial to some customers than if they participated in onsite programs, the Legislature's explicit departure by incorporating the total aggregate retail rate cannot be overlooked.

156. Public Service has seasonal tiered rates where Black Hills does not. Thus attempts to address the aggregate rate billed in a tiered rate environment would not apply to Black Hills. Public Service conceptually agrees that the total aggregate retail rate must be reflective of tiered seasonal rates. Thus, Public Service suggests that standard offer filings provide a more appropriate venue to consider the level of usage by rate class during such periods.

157. While the amount of the total aggregate retail rate will be set as part of utility filings, it is appropriate that the factors to develop the rate be generally established in the rule.

158. The OCC does not oppose the concept of a kwh per rate class net metering credit offered by Public Service, but seeks to ensure that the total aggregate rate applicable incorporate all riders (*e.g.*, ECA, PCCA, etc.). As components of the total aggregate rate charged, the OCC's suggestion is reasonable.

159. While mindful of the burden, the administrative convenience of averaging the total aggregate retail rate across commercial and industrial demand service classes of the QRU cannot be adopted. The statute requires application of the total aggregate rate "as charged to the Subscriber." § 40-2-127(b)(II), C.R.S. By limiting a subscriber's net metering credit based upon the average of the service class, the subscriber does not receive beneficial use represented by the subscription because the credit would not reflect the rate charged to the subscriber.

160. The OCC proposes modifications to the calculation to incorporate a rolling 12-month calculation of the total aggregate retail rates for commercial or industrial customers on a demand tariff. While the OCC proposal could potentially improve the level of accuracy in applying the aggregate rate charged to a customer, the proposed rule provides a reasonable approximation while mitigating burdens on the QRU.

161. Public Service total aggregate retail rate other than “as charged to the subscriber” must be rejected. Where the rate charge to a given subscriber is the same across service class, obviously Public Service’s proposal is a distinction without a difference. However, the proposed amendments for where the total aggregate rate charged to customers differs within a rate class must be rejected.

O. Rule 3665(c) (II) -- QRU Charges

162. Section § 40-2-127(5)(b)(II), C.R.S., permits the QRU to recover a reasonable charge from CSG subscribers to:

... cover the utility's costs of delivering to the subscriber's premises the electricity generated by the community solar garden, integrating the solar generation with the utility's system, and administering the community solar garden's contracts and net metering credits. The commission shall ensure that this charge does not reflect costs that are already recovered by the utility from the subscriber through other charges.

163. The Alliance contends that the significant demand charges already charged to commercial customers statewide are specifically designed to recover a comprehensive suite of fixed costs, including transmission and distribution. Accordingly, it is suggested that the surcharge be clarified not to provide for the recovery of any costs for construction or extension of transmission facilities.

164. CHEN contends that the utility is already fully compensated for the costs of delivering electricity to the subscriber’s premises subject to a demand charge.

Black Hills counters the accuracy of this comment stating that the demand charge recovers some, but not all, of the fixed costs incurred for commercial or industrial customers. The remaining portion is recovered in energy charges and/or customer charges.

165. Black Hills argues a QRU's RES compliance plan is the appropriate place to examine how the QRU's rates are designed.

166. COSEIA contends charges should be disallowed until a distributed generation study is completed to provide data informing such charges.

167. Several parties recommend an open and robust process to develop any QRU charges.

168. Public Service contends Rule 3665(c)(II) is incomplete because it does not include a charge for "the utility's costs of delivering to the subscriber's premises the electricity generated by the community solar garden." In reply comments, Public Service points out the possibility of uncompensated delivery charges.

169. PrairieStar proposes modifications to accommodate phased development over time.

170. Commentors propose limitations upon costs includable in QRU charges. As proposed, the Commission can determine the reasonableness of includable costs as presented by a unique QRU in such proceedings.

171. Providing an opportunity to recover costs provides no assurance that there are costs to recover. Public Service's proposed modification will be accepted. Inclusion of the opportunity affords reasonable protection of the right to recover costs, without harming others.

172. Public Service recommends the Commission not adopt a change in the rule, but that the issue should be based upon the individual utility costs as demonstrated in RES Compliance Plans. This proposal is reasonable and will be adopted.

P. Rule 3665(c)(IV) - Treatment of RECs

173. The draft rule permits the solar garden subscriber to retain the RECs. Public Service argues this provision is contrary to the statute. Section 40-2-127(5)(b)(I), C.R.S., provides as follows:

The output from a community solar garden shall be sold only to the qualifying retail utility serving the geographic area where the community solar garden is located. Once a community solar garden is part of a qualifying retail utility's plan for acquisition of renewable resources, as approved by the commission, the qualifying retail utility shall purchase all of the electricity and renewable energy credits generated by the community solar garden.

174. Public Service contends that all of the output (energy and RECs) must be sold to and purchased by the QRU in whose service territory the solar garden is located. They contend this is appropriate because the costs of the solar garden purchases are being funded through the RESA. The QRU must use the RESA funds to obtain RECs to comply with the renewable energy standard. The QRU is entitled to the RECs produced by the CSG and Public Service is reserving RESA funds for that purpose.

175. COSEIA criticizes Public Service's approach as a utility's acquisition of RECs from CSGs may not be funded solely through the RESA. Thus reservation should not grant monopoly rights.

176. Black Hills argues that once a CSG is part of a QRU's plan for acquisition of renewable resources, the REC belongs to the QRU and the QRU is dependent upon the RECs associated with the CSG output to meet RES requirements. Black Hills proposes deleting the first sentence of the proposed rule.

177. COSEIA supports the concept of the proposed rule. COSEIA also counters Public Service's comment that assumes that all CSGs will be a part of a utility's plan for acquisition of renewable resources. However, this will not always be true so CSGs should retain flexibility to operate outside QRU acquisition. If the CSG is not a part of a utility's renewable resource acquisition plan, the utility is not required to purchase the RECs from the CSG, and thus the CSG subscribers should have the option to dispose of the RECs as they see fit.

178. COSEIA distinguishes output and production in § 40-2-127(5)(b)(I), C.R.S., to make clear output means production and does not include RECs.

179. PrairieStar proposes that any rebates, RECs, or other incentives should be available on a per subscriber basis regardless of the size of the Subscription Organization or the CSG; rebates should not be calculated based on the size of the garden but on the size of each individual subscription. New Energy supports this comment.

180. New Energy proposes that payments for RECs either should be a credit to subscribers or as a cash payment to the SO, at the subscription organization's option.

181. Public Service first comments that there is no requirement in the statute to supply any rebate to a solar garden subscriber. Rather, the statute should be interpreted to mean the overall incentive paid for on-site solar - rebate plus REC price - is comparable to the prices offered by the QRU under Standard Offers Issued for On-Site Solar Generation.

182. Public Service also notes that the statute requires contracting with the CSG, not individual subscribers.

183. Understanding the proposed rule requires understanding of the life cycle of a REC and application of the statute to a CSG to determine ownership.

184. Initially, interpreting HB 10-1342 to mean that output includes both energy and RECs is rejected. There is no statutory definition of output. However, § 40-2-127(5)(b)(II), C.R.S., quantifies output in kW and compares pricing to on-site solar generation, which would be exclusive of RECs. In planning purchases of CSG output, § 40-2-127(5)(b)(II), C.R.S., specifies that QRU payment for output is via net metering bill credit that does not value the REC, only energy. After specifying payment via net metering credit, the statute explicitly facilitates payment for RECs through a different manner. Further, as commentators suggest, CSGs are not required to be a part of a utility's plan for acquisition of renewable resources. Finally, the statutory definition of a subscription includes RECs. Thus, it is not reasonable that RECs must only be sold to the QRU under all circumstances.

185. Outside of a QRU acquisition plan, CSGs are assured of revenue from mandated purchases by the QRU of unsubscribed energy and RECs. On the other hand, because the mandated purchase price is at the average hourly incremental cost of electricity supply over the immediately preceding calendar year, CSGs are incented to maximize subscription levels.

186. If the electricity output of the CSG is not fully subscribed, the QRU shall purchase the unsubscribed renewable energy and the RECs at a rate equal to the QRU's average hourly incremental cost of electricity supply over the immediately preceding calendar year. While obligating the QRU, this portion of the statute imposes no obligations on CSG owners, SOs, or subscribers.

187. Once the Commission approves the acquisition plan of renewable resources from a CSG, the QRU shall purchase all of the included electricity and RECs generated by the CSG. Further, the generated amount is to be measured by a production meter.

188. Thus, a REC generated by a CSG may have life outside of a QRU acquisition plan. When unsubscribed, it is sold to the QRU with the energy, at the statutorily mandated price. Once subscribed, the subscriber is not obliged to sell the REC to the QRU unless and until it is incorporated into an acquisition plan approved by the Commission and relied upon for compliance by the QRU.

Q. Rule 3665(c)(V) – Unsubscribed Renewable Energy and RECs

189. CEC requests clarification as to how unsubscribed production will be paid to project developers bidding in for over 500kW. As commented in reply, such projects are outside the scope of standard offers. The specifics of this contracting should be left to the utility and its CSG program, not hard-wired into the Commission's Rules.

190. CEC comments that due to SEC regulations and constraints on issuing capital leases a SO and/or its third-party developer must pre-build the entire system without taking full payment from subscribers. The SO may take a deposit. While this may not be the case for every ownership model, it will likely be the case for most solar garden projects. The practical impact that this may have is that the projects will likely be very small or very large, but the systems that fall between 150kW and 500kW will be difficult to finance, due to the restriction by the QRU to pay the "average hourly incremental cost" to the SO. For many projects the average hourly incremental cost will likely not cover finance charges for the project.

191. The draft rule allows the CSG to charge the QRU an extra amount for the RECs associated with the unsubscribed energy. Public Service contends this rule is contrary to the statute. The statute (§ 40-2-127(5)(d), C.R.S.) requires as follows:

If the electricity output of the community solar garden is not fully subscribed, the qualifying retail utility shall purchase the unsubscribed renewable energy and the renewable energy credits at a rate equal to the qualifying retail utility's average hourly incremental cost of electricity supply over the immediately preceding calendar year.

192. The statutory price is paid for "the unsubscribed renewable energy and the renewable energy credits." Public Service contends this interpretation is consistent with the safety net for CSGs.

193. The OCC contends the statute is clear that associated RECs are transferred to the QRU when it purchases unsubscribed energy from a SO at the average hourly incremental costs.

194. Black Hills comments that any REC payment owed for such RECs should not automatically be at the current payment made by the QRU under its largest standard offer program. The amount of any REC payments should not change merely because a CSG is not fully subscribed. The following is proposed:

(V) For output from a CSG that is not fully subscribed, the QRU shall purchase the unsubscribed renewable energy and the renewable energy credits at a rate equal to the QRU's average hourly incremental cost of electricity supply over the immediately preceding calendar year. ~~If the CSG is otherwise entitled to REC payments, the REC payments attributable to the unsubscribed output shall be paid to the Owner of the CSG while the output is unsubscribed. The RECs associated with the unsubscribed renewable energy may be claimed by the subscriber organization or sold to the QRU at a rate commensurate with the current payments made by the QRU under its largest standard offer program then in effect.~~

195. IREC acknowledges that § 40-2-127(5)(d), C.R.S., and proposed Rule 3665(c)(V) are not completely clear as to whom the QRU should pay for the unsubscribed output. Therefore, IREC recommends the revision to proposed Rule 3665(c)(V) to indicate that the QRU should pay the CSG owner.

196. Public Service's interpretation of the provision is adopted. By adopting the interpretation that the statutory payment includes the purchase of unsubscribed energy and

associated RECs, conflicting provisions of the proposed rule will be eliminated. While the CSG owner contracts with the QRU for the sale of unsubscribed energy and RECs, the terms of such contract may address means of payment arising therefrom. The rule will not limit the parties' ability to contract based upon unique facts and circumstances.

R. Rule 3665(d)

197. VSI proposes a clarifying Rule 3665(d)(I)(D) to recognize HB 10-1342's requirement to consider CSGs of different output capacity.

198. Black Hills recommends that the word "solar" be inserted between the words "onsite generation" so that it is clear that standard offers for onsite solar generation shall be the comparable basis for the QRU in issuing standard offers for CSGs.

199. The proposals are reasonable and will be adopted.

S. Rule 3665(d)(II) - Solar Garden Plans

200. Public Service recommends that a QRU's acquisition plan for solar gardens be presented with the periodic renewable energy standard compliance plans since all retail distributed solar acquisitions are competing for the same limited dollars available in the RESA fund. As such, this rule should be synched up with the timing of the filing of RES compliance plans, set forth in Rule 3657.

201. Black Hills believes that the filing of a second RES compliance plan for 2011 for CSGs should be optional under Rule 3665(d)(II)(A). OCC disagrees stating that the statute requires a compliance plan for 2011 in order to make standard offers available. Based on the estimated timeline, OCC suggests consideration of a new rule requiring a supplemental 2012 RES Compliance Plan filing because the estimated effective date of these rules would occur after the existing filing deadline for the 2012 RES Compliance Plan.

202. IREC recommends the Commission maintain Rule 3665(d)(II)(A) as proposed. However, if the Commission decides to move these first CSG compliance filings into the QRUs' RES Compliance Plan filings, IREC requests that the issues surrounding CSG plans be bifurcated.

203. The proposed rule will be adopted to implement that statutory language, while accommodating incorporation into the QRU's Compliance Plan filed under Rule 3657 in future years, as set forth in Appendix A.

T. Rule 3665(d)(V) – Preference Groups

204. CHEN suggests that the Commission require QRUs: (a) issue separate standard offers for residential, agricultural, and low-income customers; and (b) set an explicit “preference” in the reservation process outlined in proposed Rules 3665(d)(III) and (V), citing the new § 40-2-127(5)(a)(IV)(B), C.R.S. Further, that the reservation process should accommodate prioritization based upon such preferences.

205. The OCC suggests that a first-come-first-served approach may not be fair if there are more developer submissions for the standard offer than the set aside amount. A lottery system is suggested.

206. PrairieStar questions treatment of projects in excess of statutory caps CSGs and addresses deposits.

207. CEC requests that the under 500kW program be organized using a first-come, first-serve protocol, mirroring the existing Solar Rewards Standard Offer protocol. An acceptable exception to this policy would be to promote low-income or agricultural projects

208. Black Hills proposes that this rule be modified to make it clear that the owner of the CSG is the point of contact for the CSG's business transactions with the QRU.

209. IREC supports PrairieStar's comment that the deposit requirement in proposed Rule 3665(d)(III) should be more consistent with the deposits required of solar renewable energy credits (SO-RECs) applicants. Further, that a developer could apply for incentives in future requests for proposals (RFPs), regardless of whether the developer has already received incentives.

210. Public Service comments that segmentation will be problematic, particularly during the first three years. QRUs are required to use standard offers for half of its acquisition and Public Service suggests this is contrary to segmentation. Other comments on the topic rest upon language that has not yet kicked in and confuses "encourage" with a preference.

211. To the extent that segmentation is appropriate at all, Public Service proposes that it be addressed in a RES Compliance Plan filing. In general, Public Service supports a first-come, first-served protocol.

212. Public Service has raised no objection to the Commission establishing by rule how the utility can meet the low income preference that is set forth in the statute, since that is a mandated preference and the rule will provide guidance as to how the utility meets that statutory mandate.

213. CSGs are obviously new and experience will inform further implementation in the future. The undersigned is concerned with the number of carve outs proposed and is persuaded that too much segmentation, particularly at this early stage, complicates QRU compliance. It is not clear how proposed carve outs would impact consideration of proposed projects to be constructed prior to subscription and it is difficult to determine how a shortage of interest in one segment might be overcome. Particularly because statutory encouragement of segments other than for low-income customers is not implemented until 2014, other segments will be deferred to

RES Compliance plan filings for possible consideration in subsequent rulemaking. Low-income customers are addressed further, below.

U. Rule 3665(d)(IV) - Mandatory Due Diligence

214. The draft rule requires the utility to conduct "sufficient due diligence on applicants" to assure that the CSG SO has the resources and knowledge to construct and operate the CSG. Public Service objects to this position and contends it constitutes an unwarranted intrusion into the business affairs of the CSG. Based thereupon, the rule should be deleted.

215. Public Service points out that due diligence is conducted for larger power purchase agreements in order to protect the electric system and provide assurance as to the timely delivery of contracted power. These efforts are necessary to assure system reliability. However, CSGs are of insufficient size to warrant comparable efforts because system power supply or reliability is not dependent upon their development.

216. Public Service proposes imposing deadlines for achieving commercial operation in contracts to limit timeframes held for queue position. Also, it is proposed that due diligence is reasonable to assure that CSG interconnection can occur at the location chosen.

217. The Alliance recommends adding more guidance to ensure a fair playing field, or at least allowing potential solar garden SOs that were denied based on the utility's "due diligence" check, to be able to seek an appeal at the Commission.

218. The Alliance believes that the special purpose SO should be able to demonstrate adequate capitalization to be able to establish, operate, maintain, and administer the garden system over its lifetime, with a reasonable reserve for unforeseen events including reasonable levels of subscription "churn" or malfunction of the system, without resort to parent or affiliate organizations.

219. For solar gardens less than 500kW, the Alliance proposes the Commission require only that SOs demonstrate the availability of available cash or equivalents in the amount of \$20 per kilowatt per year and \$10 per subscriber per year for five years of facility operation (or, \$100 per kilowatt and \$50 per subscriber), plus a maintenance contingency of \$.50 per Watt (\$500 per kW). For solar gardens greater than 500kW, the Alliance proposes different requirements.

220. IREC acknowledges Rule 3665(e)(III) regarding holding funds in escrow is a sort of capitalization requirement, but is concerned that the rule does not explicitly set a minimum capitalization level. The Commission might consider setting a minimum capitalization on a per-subscriber or per-kilowatt basis.

221. CEC recognizes potential need for consumer protections but requests clarification of due diligence for a standard offer program. Confidentiality concerns are also noted.

222. Black Hills argues it is not appropriate for the rules to shift the burden of determining the sufficiency of the CSG owner's resources and other due diligence to the QRU and proposes that this provision of the proposed rules be deleted.

223. Public Service contends that § 40-2-127(3)(b)(I), C.R.S., requires the Commission to establish rules that set minimum capitalization requirements for CSGs. It does not impose this obligation on the utility.

224. The OCC opines that the statute is vague, but should be interpreted to ensure that a CSG will actually get built and, to a lesser degree, that it will continue to operate. As a result, OCC suggest an escrow fund which a developer must prefund as part of its application process. The OCC recommends that the escrow-funding requirement be set based on the kW size of a CSG. They recommend that the dollar deposit per kW should represent between 10 and 20 percent of the overall project costs, subject to refund upon commercial operation, plus a lower

amount deposited on a dollar per kW basis for capital replacement costs. The latter portion might be based upon certain parts of a CSG.

225. Concerns are expressed that QRU requirements of due diligence without standards warrant modification to the proposed rules. However, the Legislature's directive to include rules addressing minimum capitalization does not, and need not, totally eliminate QRU compliance obligations.

226. Commentors support adoption of explicit minimum capitalization requirements. Proposals for adoption of capital criteria based upon the number of subscribers will not be adopted. It is anticipated that some proposals will be subscribed prior to construction and that subscription levels need not be uniform. Thus, capitalization requirements will focus upon the constructed facility.

227. Some commentors suggest more invasive or life-cycle financing being demonstrated prior to commercial operations; however, such proposals are overly burdensome and unnecessarily restrict business operations in light of the Legislature's intent that CSGs not be subject to regulation. As commentors noted, CSG requirements to achieve commercial operation prior to accessing subscriber funds establishes some level of minimum capitalization. However, much more invasive regulation of the entity would be necessary to assure consumers are protected from construction cost overruns or failed operations. Illustratively, the Legislature does not seek regulation of CSGs to protect subscribers as to future financing or operating obligations. While delaying access to subscriber funds assures an operating CSG, there is no assurance that subscriber funds are sufficient to pay construction, maintenance, and operating expenses associated with the CSG.

228. In order to balance commentor concerns, the rules will be modified to provide a safe harbor that QRUs may include in competitive offerings and standard offer programs as well as to provide recourse in the event CSGs fail to meet minimum capitalization rule requirements.¹ The Commission will rely upon the escrow of subscriber funds as a means to demonstrate some minimum capitalization level as entities constructing CSGs will be required to provide or obtain capital to construct the facility. In addition to constructing the facility, a dollar per kW threshold will be adopted within the range proposed by commentors for an escrow to fund operations. The combination of these provisions meets statutory requirements to create rules regarding minimum capitalization and the Commission can monitor implementation and consider future modifications.

V. Rule 3665(d)(V) Low-Income Set Aside.

229. The OCC contends requiring QRUs to reserve at least 5 percent of their CSG acquisition budget on a kilowatt-hour basis for CSG subscriptions by eligible low-income subscribers is unclear and that more detail should be required about these plans.

230. CEC suggests exemption of the 1KW minimum purchase for low-income customers as a means to further the legislative intent. A set aside is not supported as they contend the 1kW minimum purchase is likely to be at least approximately \$3,500. Thus, broad participation is not seen without a means of additional funding.

231. Black Hills believes this proposal is inconsistent with the statute. Instead of hard-wiring a low income set aside in the rules, Black Hills proposes that this provision be

¹ It is also notable that Rule 1003 of the Rules of Practice and Procedure permits a waiver of Commission rules under an appropriate circumstance.

deleted and that a new provision which tracks the statutory language be inserted in the rules in lieu thereof.

232. The Legislature intended to provide an opportunity for low-income utility customers to participate in CSGs and mandated proposals for including low-income subscribers in CSGs. There is particular concern regarding the economic feasibility of encouraging low-income participation and it necessary to assure a funding source for same. In apparent recognition of associated challenges, preference is explicitly authorized for CSGs having low-income subscribers. Thus, standard offering requirements proposed will be implemented. Additionally, CEC's suggested waiver of the 1kW limitation of Rule 3665(a)(I)(B) applicable to subscriptions is reasonable and will be adopted. By reducing the size of subscription, it is reasonable that subscription costs may be made more affordable. By including a set-aside of funding, and adopting the waiver of subscription sizing requirements, the Legislative intent will be furthered and one carve out should not overly complicate QRU compliance obligations.

W. Rule 3665(d)(VI) QRU Ownership of Community Solar Gardens

233. The Alliance asks for a more public, transparent cost comparison of private versus utility-owned solar gardens as part of each utility's annual RES Plan, starting in 2012.

234. IREC recommends that the Commission require QRUs to lay out the projected megawatts of CSG capacity that they expect to build and own for each compliance year as part of their annual RES compliance plan.

235. VSI proposes that QRUs be required to lay out the projected Megawatts of CSGs that they plan to build and own for each compliance year as part of their annual RES Compliance Plan.

236. Public Service contends that the rule improperly ties the earning of a margin on CSG RECs to the QRU ownership of the CSG. The statute (§ 40-2-127(5)(f), C.R.S.) provides as follows:

Qualifying retail utilities shall be eligible for the incentives and subject to the ownership limitations set forth in section 40-2-124 (1) (f) for utility investments in community solar gardens and may recover through rates a margin, in an amount determined by the commission, on all energy and renewable energy credits purchased from community solar gardens. Such incentive payments shall be excluded from the cost analysis required by section 40-2-124 (1) (g).

237. Public Service comments that the utility "may recover through rates a margin, in the amount determined by the commission, on all energy and renewable energy credits purchased from community solar gardens." Public Service comments at 7. The utility only purchases energy and RECs if it does not own the CSG. If the utility owns the CSG, it is producing the energy and RECs, not purchasing them, and in such case is entitled to the incentives set forth in § 40-2-124(1)(f), C.R.S. - incentives that address utility ownership of eligible energy resources and that are based upon the net economic benefit provided to customers as a result of the utility ownership.

238. Public Service's distinction between production and purchase is adopted. A subscription is defined to include associated RECs. § 40-2-127(2)(b)(III), C.R.S. A CSG must have a minimum of ten subscribers. Thus, the owner of a CSG only owns RECs associated with unsubscribed energy production or to the extent the owner is a qualifying subscriber. To the extent RECs are associated with unsubscribed energy and the CSG owner is a QRU, Public Service's analysis is adopted that RECs are then being produced rather than purchased.

239. Commentors ask for a more public, transparent cost comparison of private versus utility-owned solar gardens as part of each utility's annual RES Plan, starting in 2012. The proposal will not be adopted as necessity for an independent filing has not been shown and

Commission rules no longer require annual RES plans. It is also noteworthy that QRU projects must already be proven cost competitive before being acquired. Such matters may be addressed in the acquisition process and need not impose upon all CSGs here effectively for discovery purposes.

X. Rule 3667 - Small Generation Interconnection Procedures

240. The proposed rules modify Rules 3667(c)(II)(A)(ix) and 3667(f)(IV)(D).

241. IREC contends the proposed rule is not clear as the terms “minor” and “interconnection facilities” are not defined.

242. IREC proposes: (1) the technical screen barring a system requiring any construction on a utility’s system from proceeding under Fast Track; and (2) public access to detailed distribution system information. Further modifications are sought; however, it is urged that action be taken through another proceeding.

243. CHEN proposes modifications to the highly seasonal screening.

244. Commentors propose various modifications to interconnection procedures either attempting to afford advantage to CSGs or to make modifications affecting a more broad scope of small generation at issue in the proceeding. In either event, it is not clear that the underlying purposes of the screening process are met by proposals. Such considerations are more appropriate in a proceeding of broader purposes.

245. CREA opposes IREC’s proposal as the modification would make a fundamental change to the small generator interconnection rules and would apply to all small generator interconnections, not just to CSGs. CREA contends the proposed modification is outside the scope of notice provided in this proceeding.

246. VSI supports IREC's proposal under Section III of their Reply Comments recommending that the Commission move CSG "interconnection issues in a separate docket or sub-docket with appropriate notice." VSI Reply Comments at 2.

247. Black Hills maintains that network information is protected information by the QRU and "NERC-bounded" information cannot be disclosed without security risks.

248. Public Service points out that twice in these draft rules, exceptions for solar gardens have been made to the interconnection requirements. Public Service sees no reason why these exceptions have been made. CSGs must meet the same interconnection standards as other distributed generation of their respective sizes in order to protect the QRU's system. Public Service recommends deletions of these exceptions.

249. Black Hills agrees with Public Service and points out that notwithstanding an intended focus upon implementing the CSG statute, IREC's proposal would affect all small generator interconnections governed by Draft Rule 3667. Notice concerns are also raised based thereupon.

250. In reply, IREC proposes that interconnection issues be handled separately from the within rules. A more general approach is warranted because interconnection standards are issued to simplify the interconnection process while maintaining the safety and reliability of the electrical grid, and are not dependent on the business model being utilized to finance or support the proposed generation.

251. Public Service recommends that revisions to the interconnection rules be considered in a separate rulemaking that addresses all retail distributed generation interconnections, not just solar gardens. Public Service recommends that Commission-led workshops, leading to proposed rules, would be the most effective way of evaluating changes to the Interconnection Rules.

252. Several parties suggest referral of interconnection issues into a new separately-noticed proceeding as the concerns and potential impacts go substantially beyond CSGs. This proposal is reasonable and the proposed modifications will be deleted from the proposed rules. Interested persons are invited to file a petition to initiate such a proceeding.

Y. Residential and Non-Residential Allocations

253. GEO argues that CSGs should be classified as non-residential retail distributed generation for the purposes of § 40-2-124(1)(g)(I)(C), C.R.S.

254. The Alliance contends that solar gardens funding should be utilized from residential and non-residential customers in the proportion to which solar gardens are subscribed by the entire pool of residential and non-residential customers.

255. The Alliance suggests that since the subscriber is the ratepayer, and the system is deemed to be equivalent to being on their facilities, the conclusion is unavoidably that the apportionment of funding should follow the same principle as when the system is physically located at the ratepayer facility.

256. In its reply comments, COSEIA contends that for purposes of determining RESA allocations when a utility incentivizes a CSG project, each CSG should be designated as residential or non-residential in amounts proportional to the corresponding makeup of residential versus non-residential subscribers within the CSG, as that allocation changes over time.

257. Although supporting deferring this issue to RES compliance filings, Public Service believes the most appropriate application of solar gardens energy in the context of § 40-2-124(3)(g)(I)(B), C.R.S., would be to count how much energy is attributed to residential loads and how much is attributable to non-residential loads on a monthly basis.

258. Because residential and non-residential customers are equally eligible to become subscribers in a CSG, and consistent with the subscriber interest in the CSG being deemed located on the customer premise, allocations of CSG for purposes of including RESA allocations can only reasonably be allocated based upon monthly subscribed energy reported by the CSG.

Z. Publishing Winning Bids

259. COSEIA recommends QRUs be required to public winning RFP bids to promote transparency and fairness, as well as to inform interested bidders so as to not waste resources submitting unrealistic bids. It also argues that disclosure will encourage competition.

260. For some time, Public Service has maintained that bid information is Highly Confidential. The Commission has generally supported the policy through its decisions affording Highly Confidential protections and COSEIA has not shown an adequate basis to justify departure from this policy.

II. ORDER

A. The Commission Orders That:

1. Commission Rules 3000 et. seq., 4 *Code of Colorado Regulations* 723-3, Rules Regulating Electric Utilities, contained in Attachment A to this Order are adopted consistent with the discussion above.

2. This Recommended Decision shall be effective on the day it becomes a Decision of the Commission, if that is the case, and is entered as of the date above.

3. Pursuant to § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the interested parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a person seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that person must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the Hearing Commissioner and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director