



May 4, 2023

Dear Holy Cross Directors and Staff,

As the president of the Colorado Solar and Storage Association (“COSSA”), I work with solar installers and developers both within the Holy Cross Energy (“HCE”) service territory and across the State. I am deeply concerned that HCE’s discriminatory rate plan violates Colorado net metering laws that have been in place and well understood since 2008. These laws provide for uniform net metering policies across utility territories to ensure that everyone has access to renewable, home-grown, sources of electricity, and to attract and support good jobs and a healthy solar industry. In addition to being illegal under net metering laws, I am concerned that HCE’s significant rate design changes, including the new residential and small commercial demand charges, will make it harder for HCE members to meet their clean energy and electrification goals.

As detailed in the legal analysis in the comments below, the history of the net metering laws in Colorado are well documented and explicit. Prior to 2008 all coops in the state were only required to offer solar customers compensation for excess solar at a rate more than or “equal to the electric utility's avoided cost.” Because of discrepancies among cooperative and municipal utilities across the State, in 2008 Colorado decided to adopt a uniform system of full retail rate net metering, referred to by many at the time as, “true net metering.”

HCE’s 2023 rate restructuring to unbundle its traditional kilowatt hour (“kWh”) “energy” charge into two new separate “energy” and “delivery” charges, and to compensate net metered customers only for a portion of kWh charges is a throwback to a rate design, which the legislature outlawed with the passage of House Bill 08-1160. Today, all coops in Colorado must offer full retail kilowatt hour compensation for all energy produced by an onsite solar, or solar plus storage, system. But, HCE’s proposal would not provide a one-to-one kWh credit for solar customers because it anticipates only providing credit for a portion of the total kWh charges (the energy charge). As is clear in the words of the lawmakers and stakeholders that negotiated the passage of HB08-1160, HCE cannot legally offer less than its full kWh retail rates for net metering.

Further, the law prohibits coops, like HCE, from rate discrimination against net metering customers. Because the unbundling of the kWh is only intended to illegally reduce full retail net metering compensation, the rate design is discriminatory in its impact. For two typical customers with the exact same usage patterns, a solar customer will experience a 421% increase in their bill, whereas a non-solar customer will experience a 4% increase. This discrepancy will not be offset by HCE’s legacy solar compensation options. Customers who chose Option 1 will still experience a 291% bill increase, and customers who choose Option 2 will likely expend their bill credit in 2-3 years.

Even if HCE's approved rate design were legal under Colorado law, certain elements should be reconsidered from a policy perspective. The new rate proposes a mandatory Demand Charge for residential customers based on their highest on-peak energy use during any 15-minute window between 4:00-9:00 p.m. throughout the month. Demand charges are hard for residential customers to understand, track, and respond to, and are the wrong tool to discourage peak use.¹ They penalize customers who generally avoid the peak throughout the month, and provide no disincentive to a customer to avoid using more electricity once they set their peak use. The new rate design is also inequitable. It penalizes low electric use customers, who will see an 18% increase in their bills, but rewards high-use customers, who will see an 18% decrease.

The new rate design does not align with ambitious decarbonization goals and Climate Action Plans for the communities served by HCE. Eliminating emissions from the transportation and building sectors is a key part of these plans, but the new rate makes achieving these goals harder. The Demand Charge makes it harder for customers to increase their electric load, discouraging the adoption of electric vehicles, electric resistance heating, and ground source heat pumps in the HCE territory. Devaluing PV solar changes the economics of installing a combined PV and heat pump system—an incredibly effective method of decarbonizing a building. At this critical climate moment, a utility's rate design should not be a barrier to achieving emissions reductions.

Since 2008, all coops in Colorado have a legal obligation to offer full retail rate net metering. HCE cannot and should not reinterpret the law and 15 years of Colorado solar policy without clear direction from the legislature. It should not adopt a new rate without a thorough study of its impacts on other HCE policy priorities. COSSA encourages the HCE Board to reconsider its January 2023 decision and the new rate design, and instead retain its existing rate design. In the future, any new rate changes should only be adopted after it is thoroughly vetted with members, and after the HCE Board confirms the rate complies with Colorado law, reflects sound energy policy, and is in the best interest of HCE's members.

Sincerely,



Mike Kruger,

President and CEO

Colorado Solar and Storage Association.

¹ <https://www.raponline.org/wp-content/uploads/2020/11/rap-lebel-weston-sandoval-demand-charges-what-are-they-good-for-2020-november.pdf>