

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0557EG

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION'S RULES
REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3,
AND RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS
723-4, PURSUANT TO HOUSE BILL 22-1018.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: December 21, 2022

Adopted Date: December 14, 2022

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to consider amendments to certain of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules), and Rules Regulating Gas Utilities, 4 CCR 723-4 (Gas Rules), in order to implement the recent statutory changes enacted in House Bill (HB) 22-1018, effective April 21, 2022, regarding a state regulated utility's practices regarding a customer's ability to pay the customer's utility bill.

2. Through this rulemaking, the Commission satisfies the legislature's requirement, codified at § 40-3-103.6(1), C.R.S., that the Commission commence a rulemaking proceeding to adopt standard practices for gas and electric utilities to use when disconnecting services due to nonpayment.

3. The statutory authority for the proposed rules is found primarily at § 40-3-103.6, C.R.S. (requiring the Commission to promulgate certain implementing rules) and § 40-2-108, C.R.S. (requiring the Commission generally to promulgate rules necessary to administer and enforce Title 40).

4. The Commission will hold a remote public comment hearing on the proposed rules at **11:30 a.m. on February 27, 2023.**

5. The proposed rule changes are set forth in legislative (*i.e.*, strikeout and underline) format in Attachment A and C to this Decision, and in final format in Attachment B and D to this Decision.

B. Senate Bill 22-1018 and Proposed Rule Overview

6. On April 21, 2022, Governor Jared Polis signed HB 22-1018, which enacts measures regarding a state regulated utility's practices regarding a customer's ability to pay the customer's utility bill.

7. As relevant here, HB 22-1018 requires that the Commission commence a rulemaking to adopt standard practices for gas and electric utilities to use when disconnecting service due to nonpayment.¹ As amended in HB 22-1018, the statutory provisions require that Commission rules must address prohibiting shut off times during weekends, holidays, certain times of day, or during emergency or safety events or circumstances.² The Bill further requires

¹ § 40-3-103.6 (1), C.R.S.

² § 40-3-103.6(1)(b)(I)(A) through (C), C.R.S.

that rules address certain mandated reconnection requirements,³ and that the utility shall reconnect a customer's service on the same day requested in certain circumstances.⁴

8. In addition, the Bill further defines and requires terms throughout the statute, including "qualifying communications" required by the utility to inform a customer about a possible upcoming disconnection of service,⁵ and "utility assistance information" for the customer to contact to determine if the customer qualifies for utility bill payment assistance.⁶

9. In addition to revisions to § 40-3-103.6, C.R.S., HB 22-1018 revises § 40-3-106, C.R.S. to revise reference to "low income" to include and define "income-qualified utility customer" when referencing that, notwithstanding any provisions of articles 1 to 7 of Title 40 to the contrary, the Commission may approve any rate, charge, service, classification, or facility of gas or electric utility that makes or grants a reasonable preference or advantage to an income-qualified utility customer. The bill adds that the reasonable preference or advantage to the income-qualified utility customer can apply "even if the reasonable preference or advantage applies on a year-round basis."

10. The definition of "income-qualified utility customer" is included through the bill to mean a utility customer who the Department of Human Services; the organization defined in § 40-8.7-103 (4), C.R.S.; or the Colorado Energy Office has determined meets certain requirements including: (1) having a household income at or below 200 percent of the current federal poverty line; (2) having a household income at or below 80 percent of the area median income, as published annually by the United States Department of Housing and Urban

³ § 40-3-103.6(1)(b)(II), C.R.S.

⁴ § 40-3-103.6 (1.5), C.R.S.

⁵ § 40-3-103.6 (3)(c), C.R.S.

⁶ § 40-3-103.6 (3)(d), C.R.S.

Development; or (3) otherwise meets the income eligibility criteria set forth in rules of the Department of Human Services.

11. As required by § 40-3-103.6, C.R.S., requiring that the Commission commence rulemaking and adopt rules to effectuate certain customer protections, we include proposed rules addressing disconnection of service.

12. For purposes of implementing HB 22-1018 and changes made to § 40-3-106, C.R.S., we propose limited definitional and reference changes. While the Commission continues to propose and implement rule changes regarding “income qualified” and “low income” utility customer programs and needs, adjudications – including rate case proceedings – likely remain the best forums for the Commission to consider whether to approve any rate, charge, service, classification, or facility of gas or electric utility that makes or grants a reasonable preference or advantage to an income-qualified customer.

13. We propose limited definition updates that are consistent with near-final Gas Rule considerations⁷ in Proceeding No. 21R-0449G to be parallel and reference the updated statute in both Gas and Electric Rules. Determinations of eligibility for “income-qualified utility customer” in § 40-3-106, C.R.S. are made through sister-agency processes at the Department of Human Services, Energy Outreach Colorado, and the Colorado Energy Office. No further rule updates on eligibility definitions before this Commission are therefore included in the proposed rules.

⁷ See, Proceeding No. 21R-0449G. At the time of this NOPR, rules are not yet final in Proceeding No. 21R-0449G that focuses on extensive Gas Rule updates. Definitions regarding “income-qualified utility customers” in the Gas and Electric Rules are proposed to reference the statutes, consistent with near-final Gas Rules considered in Proceeding 21R-0449G. Through this rulemaking we propose limited definition and other revisions given HB 22-1018, which are not intended to override significant policy and other considerations made in Proceeding No. 21R-0449G. While final adopted rules in Proceeding No. 21R-0449G may require necessary updates to the Gas

14. We therefore include the limited revisions for consideration below for purposes of this limited rulemaking focused on implementation of HB 22-1018, recognizing that recent, current, and future rulemakings are best suited to address income-qualified and low-income considerations pertinent to this Commission's rules and processes.

C. Proposed Rule Changes

15. An overview of the changes proposed by the Commission fall into two general categories, described below. For each category, we identify and explain the proposed rule change, provide analysis of the change, and, as applicable, pose questions for comments by rulemaking participants.

1. Definitions

16. Corresponding rule revisions are proposed in both updated revisions to Rule 3001 of the Electric Rules, and Rule 4001 of the Gas Rules to add definitions consistent with HB 22-1018, including "advanced metering infrastructure," "emergency or safety event or circumstance," "qualifying communication," and "utility assistance information."

2. Discontinuance and Reconnection of Service

17. As required in § 40-3-103.6, C.R.S., revisions are proposed to Rule 3407 of the Electric Rules, and Rule 4407 of the Gas Rules regarding discontinuance of service. Specifically proposed Rules 3407(e) and corresponding Rule 4407(e) clarify that discontinuance shall not occur outside of certain hours, or on state or federal holidays, and that a utility shall postpone service discontinuance to a residential customer during an emergency or safety event or circumstance, as defined.

Rules being considered here, this proceeding is not intended to reconsider updates to the rules considering Senate

18. The proposed rules further include provisions requiring reconnection of a customer's service, consistent with statute, if payments are made and circumstances are met in Rules 3409 of the Electric Rules, and 4409 of the Gas Rules.

3. Income Qualified Reference

19. As revised, § 40-3-106, C.R.S. changes terminology from "low income" customers and, additionally provides the following definition of "income-qualified utility customer":

[A] utility customer who the Department of Human Services, created in section 26-1-105; the organization defined in section 40-8.7-103(4); or the Colorado Energy Office, created in section 24-38.5-101, has determined:

- (A) has a household income at or below two hundred percent of the current federal poverty line;
- (B) has a household income at or below eighty percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or
- (C) Otherwise meets the income eligibility criteria set forth in rules of the Department of Human Resources adopted pursuant to section 40-8.5-105.

20. The organization currently defined in § 40-8.7-103(4), C.R.S. is Energy Outreach Colorado, a Colorado nonprofit corporation formerly known as the Colorado Energy Assistance Foundation.

21. Current Rules 3412(c) and 4412(c) were recently revised through rule revisions in Proceeding No. 21R-0326EG to provide eligibility requirements for individuals in utility low-income programs. Language in those rules includes consistent percentages and statements as the updated § 40-3-106, C.R.S. for household income and other determinations. Through

proposed rules in this limited rulemaking, other than definitions discussed below, we do not propose changes to current Rules 3412(c) and 4412(c).

22. Further still, we do not propose additional rules regarding other entities' criteria or determinations. For purposes of reasonable preference determinations regarding rate, charge, service, classification, or facility considerations noted in § 40-3-106, C.R.S., the statutory language recognizes that determinations by the Department of Human Services, Energy Outreach Colorado, the Colorado Energy Office necessarily implicate an income qualified customer's eligibility. Because we propose that confirmation of those entities' determinations can most efficiently and appropriately be raised in the context of adjudication when the Commission considers reasonable preferences or advantages in context, we do not propose that rules are necessary regarding this language.

23. Given revisions in § 40-3-106, C.R.S., that changes "low-income" terminology to "income qualified" eligibility criteria, we propose revisions in the Gas Rules and Electric Rules to reference "income qualified customers," including for example to reporting requirements in proposed Rules 3407(g) and 4407(g), and references regarding electric and gas affordability programs in Rules 3412 and 4412. Notably, because statutory references regarding certain low-income offerings remain unchanged, including reference to the Low-Income Energy Assistance Program (LEAP), we do not propose revisions to references in rules specific to LEAP.

D. Conclusion

24. Through this NOPR, the Commission solicits comments from interested persons on the amendments proposed in this Decision and its attachments. Interested persons may file written comments including data, views, and arguments into this Proceeding for consideration. The Commission also welcomes submission of alternative proposed rules, including both

consensus proposals joined by multiple rulemaking participants and individual proposals. Participants are encouraged to provide redlines of any specific proposed rule changes.

25. The proposed rules in legislative (*i.e.*, strikeout/underline) format (Attachment A and C) and final format (Attachment B and D) are available through the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0557EG.

26. The Commission refers this matter to an Administrative Law Judge (ALJ) for a recommended decision. The ALJ will hold a hearing on the proposed rules at the below-stated time and place. In addition to submitting written comments, participants will have an opportunity to present comments orally at the hearing, unless the ALJ deems oral presentations unnecessary. The Commission will consider all comments submitted in this Proceeding, whether oral or written.

27. Initial written comments on the proposed rule changes are requested by **January 31, 2023**. Any person wishing to file comments responding to the initial comments is requested to file such comments by **February 14, 2023**. These deadlines are set so that the comments and responses may be considered at the public hearing conducted by the ALJ, nonetheless, persons may file written comments into this Proceeding at any time.

28. The Commission prefers comments be filed using the Commission's E-Filings System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> under this Proceeding No. 22R-0557EG. Written comments will be accepted and should be addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachments A, B, C and D) shall be filed with the Colorado Secretary of State for publication in the January 10, 2023, edition of *The Colorado Register*.

2. A remote public hearing on the proposed rules and related matters shall be held as follows:

DATE February 27, 2023

TIME: 11:30 a.m.

PLACE: By video conference using Zoom at a link in the calendar of events on the Commission's website: <https://puc.colorado.gov/>

3. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Administrative Law Judge deems oral comments unnecessary.

4. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than January 31, 2023, and that any pre-filed comments responsive to the initial comments be submitted no later than February 14, 2023. The Commission will consider all submissions, whether oral or written. The Commission prefers that comments be filed into this Proceeding using the Commission's E-Filings System at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 14, 2022.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners