

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.

**COMMISSION DECISION GRANTING EXCEPTIONS
IN PART AND DENYING IN PART**

Mailed Date: March 7, 2024
Adopted Date: January 31, 2024

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I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission grants, in part, and denies, in part, the exceptions filed to Recommended Decision No. R23-0844, issued December 20, 2023, by Administrative Law Judge (ALJ) Alenka Han (Recommended Decision). The Recommended

Decision adopted rules regarding statutory changes to § 40-3-103.6, C.R.S. made pursuant to House Bill (HB)22-1018, addressing utility's practices concerning a customer's ability to pay their utility bills.

B. Background

2. In 2022, the Colorado General Assembly enacted HB22-1018, which concerned a customer's ability to pay utility bills. The legislation adopted numerous criteria limiting a utility's procedures for disconnecting service due to nonpayment. Additionally, HB22-1018 directed the Commission to commence a rulemaking proceeding to adopt standard practices for gas and electric utilities to follow when disconnecting services due to nonpayment.

3. The Commission initiated this proceeding by issuing a Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3, and the Rules Regulating Gas Utilities, 4 CCR 723-4. The NOPR proposed changes to the rules, established deadlines for initial written comments, and scheduled a remote public comment hearing for February 27, 2023. The rulemaking proceeding was referred to an Administrative Law Judge.

4. The Office of Utility Consumer Advocates (UCA), Energy Outreach Colorado (EOC), Public Service Company of Colorado (Public Service), Colorado Natural Gas, Inc. (CNG), Black Hills Colorado Electric, LLC, and Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (collectively, Black Hills), and Atmos Energy Corporation (Atmos) filed written comments. Four subsequent public comment hearings were held on April 4, 2023, May 15, 2023, July 18, 2023, and September 15, 2023, respectively.

5. During the course of the rulemaking proceedings, EOC and UCA (collectively, Joint Respondents), along with Public Service and Black Hills, advised the ALJ that they were

jointly drafting proposed consensus rule language. The proposed consensus rules (Consensus Rules) were filed prior to the public comment hearing held on July 18, 2023. The Proposed Consensus Rules recommended language for Rules 3407(h), (i), (j), and (k), 4 CCR 723-3, and Rules 4407(h), (i), (j), and (k), 4 CCR 723-4. The proposed rules further defined “qualifying communication” by specifying the circumstances by which a customer was deemed to have received a utility’s message and required each utility to advise the Commission in a tariff of the utility’s planned educational outreach to customers regarding disconnections and reconnections. Because of the delayed filing of the Consensus Rules, the rulemaking hearing was continued to September 15, 2023. Atmos and CNG filed Joint Comments responding to the Consensus Rules.

6. Consensus Rules 3407(i) and 4407(i) proposed requiring utilities to conduct at least one meeting with stakeholders and interested customers to solicit input on their customer education and outreach strategies regarding disconnections and reconnections. The results of these meetings and a summary of the outreach programs were proposed to be included in each utilities’ annual reports.

7. Rules 3407(j) and 4407(j) proposed reporting requirements for utilities to notify the Commission about their efforts and strategies to educate customers about disconnection and reconnection procedures. Utilities must also update their strategy reports to reflect these efforts every five years. Additionally, any electric utility employing AMI technology to remotely disconnect and/or reconnect customers must include an overview of its historical use of remote disconnections in its strategy report.

8. Consensus Rules 3407(k) and 4407(k) propose that utilities incorporate language into their tariffs that describe their individual education outreach and strategies by reporting on their five-year customer education and outreach strategies.

9. The ALJ found that including language in a tariff is the best means to ensure compliance with the new reporting requirements. The ALJ concluded that including Consensus Rules 3407(i), (j) and (k) as well as Consensus Rules 4407(i), (j) and (k) as part of the adopted rules was reasonable and appropriate.

C. Exceptions to the Recommended Decision

10. Pursuant to § 40-6-109(2), C.R.S., and 4 CCR 723-1-1505(a) of the Commission's Rules of Practice and Procedure, Atmos and CNG timely filed exceptions to the Recommended Decision. Joint Respondents timely filed a Joint Response to the exceptions.

1. Atmos Exceptions

11. Atmos takes issue with a legal finding by the ALJ. Atmos contends the Recommended Decision contains a legal error regarding the role of a "qualifying communication" under HB22-1018 and should be corrected. The Recommended Decision finds that HB22-1018 requires a qualifying communication to occur before a utility disconnects a customer for nonpayment. The ALJ clarifies that a utility must reconnect a customer without AMI technology the same day the customer requests reconnection unless the utility made a qualifying communication to the customer. In the event the utility sent the customer a qualifying communication, reconnection to a non-AMI-enabled property can occur the following day.

12. However, Atmos disagrees, arguing § 40-3-103.6 C.R.S., does not require a qualifying communication occur prior to disconnection. Atmos takes the position § 40-3-103.6(1.5)(b)(I), C.R.S. instead, provides an exception to the same day reconnection requirements. Atmos asserts under HB22-1018, a gas utility is required to reconnect a customer's service on the same day as the customer requests reconnection if the customer has requested reconnection of service prior to 12:59 p.m. However, the gas utility can reconnect the customer's

service on the day following disconnection if, prior to disconnecting the customer's service, the utility made a qualifying communication to the customer. Atmos contends that a gas utility can disconnect a customer without making a qualifying communication, but if the customer requests reconnection prior to 12:59 p.m., then the utility must reconnect the customer the same day, unless an emergency or safety event or circumstance arises after disconnection of service that renders the utility's staff temporarily unavailable to safely reconnect service.

13. Joint Respondents agree with Atmos' position. Joint Respondents agree that a utility has discretion over whether to make a qualifying communication to a customer and hold itself to same-day reconnections for all reconnections made in a timely manner. Joint Respondents request the Commission grant the limited exception of Atmos, noting that no rule language needs to be modified as part of the correction.

14. We agree with Atmos and the Joint Respondents. The ALJ erred in the interpretation of the term, "qualifying communication." We agree the proper interpretation would allow a gas utility to reconnect the customer's service on the day following disconnection if, prior to disconnecting the customer's service, the utility made a qualifying communication to the customer.

2. CNG's Exceptions

15. CNG's exceptions focus on Rules 4407(i)–(k), adopted by the ALJ from the proposed Consensus Rules. CNG notes that Rules 4407(i)–(k) were not part of the original draft rules that accompanied the Commission's NOPR or expressly mandated by HB22-1018. CNG takes the position it (and Atmos) is a smaller gas-only utility without AMI-capable meters or remote disconnection technology, to which the Consensus Rules were intended. CNG contends that, prior to the submission of the Consensus Rules, the plain focus and intent of the Commission's

proposed rules were related to the use of remote disconnection technology and there was no indication those rules would apply to utilities not using, or planning to use, that technology. Consequently, CNG requests that it be excepted from the various requirements of Rules 4408(i)–(k).

16. CNG claims that the multi-year plan best applies to utilities conducting remote disconnects and should only apply to those that employ AMI technology. CNG argues the focus and intent of the proposed rules, prior to the submission of the Consensus Rules, was related to the use of remote disconnection technology and there was no indication the rules would apply to utilities not using or planning to use this technology. CNG contends applying these Rules to the gas-only utilities that do not employ remote disconnect technology imposes a burdensome multi-year regulatory filing that may increase administrative and legal costs which would be spread over a very small customer base.

17. Joint Respondents acknowledge the adoption of the new customer education and outreach strategy rules are not required by HB22-1018; however, Joint Respondents argue the proposed Rules do not violate the Bill or any other statutory provision governing the regulation of utilities. Rather, Joint Respondents maintain the proposed Rules exceed current statutory requirements on disconnection and reconnection by educating utility customers on vital processes with the goal of avoiding disconnections altogether. Joint Respondents agree with CNG that the value of a customer education and outreach strategy will assist customers who may be new to remote disconnection and reconnection technology. However, Joint Respondents are convinced the educational outreach would be helpful to all customers, regardless of the technology used.

18. We agree with the findings of the ALJ and Joint Respondent's arguments that while the proposed Rules exceed current statutory requirements on disconnection and reconnection, they

nonetheless play an important role in educating utility customers on disconnection processes with the goal of avoiding disconnections altogether. We further agree with UCA that neither the Electric and Gas Rules, nor HB22-1018, are explicitly limited to remote disconnections and reconnections. We find merit in the argument addressing the scope of HB22-1018 which anticipates a utility's use of AMI and remote disconnection and reconnection technology but employs broader language applicable all disconnections. Given the prescriptive nature of § 40-3-103.6, C.R.S., we are convinced the intent of HB22-1018 is to educate customers about the disconnection and reconnection process, whether remote or not, in order for customers to understand their utility's processes to avoid disconnections when possible. Consequently, we deny CNG's exceptions on this point.

19. CNG disputes the need for additional customer communications regarding disconnections, as it contends, they are clearly defined in existing Gas Rules. These existing Rules at 4408 and 4409, according to CNG, establish customer notification steps that are required prior to disconnection and require, among other things, when and how notice is to be provided. CNG asserts requiring a small utility such as CNG to incur the administrative and legal costs associated with these additional requirements is not in the public interest.

20. While current rules do address disconnection processes, we do not believe they achieve the same purpose as the rules proposed here. For example, Rule 4408 addresses a utility's obligation to provide notice to customers prior to disconnections. Rule 4409 addresses time frames during which the utility must restore service to a disconnected customer. Notably, neither of these rules describes a process by which the utility performs outreach or educates customers on the reconnection and disconnection processes. We find these additional outreach processes to inform customers about a utility's disconnection and reconnection processes to inform customers about a

utility's disconnection and reconnection procedures are essential to customer education and thereby reducing disconnections. Accordingly, we deny CNG's exceptions on this issue.

21. CNG also takes issue with the annual reporting requirement in Rule 4407(j), arguing it is duplicative of existing reporting requirements and so is unnecessary. CNG submits that the bulk of the information being sought here is already included in the requirements found in current Rules 4407(g)(I) and (II) noting however, that those rules do not require tariffed provisions for disconnection and reconnection.

22. CNG maintains current Rule 4407(g)(II)(B), is more comprehensive than proposed Rule 4407(j), requiring utilities to provide information about how the utility is working to reduce delinquencies and disconnections, including actions being taken and a description of the efforts to identify efficiency and bill assistance resources. CNG contends it is neither administratively efficient nor in the public interest to require utilities, especially a small utility such as CNG with a small customer base, to duplicate reporting that is already required.

23. Joint Respondents acknowledge that the Commission recently worked with Public Service, Black Hills, Atmos and CNG to update the annual disconnection reporting requirements. However, Joint Respondents indicate it is their intention to have the customer education and outreach strategy reporting work alongside the existing obligations. Joint Respondents assert that the filing obligations CNG's exceptions describe are regulatory documents not easily available to customers facing a potential disconnection. Joint Respondents instead, view aspects of a utility's customer education and outreach strategy as a publicly available document posted on a utility's website, and potentially posted on the Commission's website as well. Moreover, Joint Respondents note the current requirements, such as numeric data on disconnections and

reconnections, do not provide any sort of narrative on customer education or outreach strategies that would be helpful to customers.

24. Joint Respondents continue that while HB22-1018 does not obligate the Commission to adopt these new customer education and outreach strategy rules, nothing there violates HB22-1018 or any statutory provision governing the Commission's regulation of utilities. Rather, it is Joint Respondent's position the proposed Consensus Rules exceed current statutory requirements on the disconnection and reconnection framework and serve the public interest by educating utility customers on utility processes with the goal of avoiding disruptive disconnections altogether. Joint Responders do not believe the size of a utility should be considered when educating its customer base. Joint Respondents conclude that a residential customer of CNG should have the same rights and information as a residential customer of Public Service or Black Hills.

25. We disagree with the contention Rules 4407(g)(I)(A)-(R) and (g)(II)(A)(i)-(ii) are duplicative of the proposed rules. Rather, we observe these existing requirements direct utilities to submit to the Commission, reports containing data on, among other things, the total number of customers served, the total number of disconnections notices sent, the total number of disconnections for nonpayment, and the total number of service restorations. We agree with Joint Respondents that these filings are merely empirical in nature and do nothing to educate customers on utility processes. The requirements set out in 4407(i)-(k) compel utilities to engage in customer outreach and develop strategies to ensure customers are aware of utility practices regarding disconnection procedures. We find the customer-oriented processes in the proposed Rules are in the public interest and do not impose undue burdens on smaller utilities such as CNG. We consequently deny CNG's exceptions on this issue.

26. CNG contends, on another point, the Commission completed a revision to the existing disconnection reporting requirements concurrent with this rulemaking in Proceeding No. 23M-0042EG, adopting several improvements, including disconnection reporting requirements. With the institution of the newly designed *Disconnections Annual Report*, monthly reporting of disconnection statistics, and the pre-existing reporting requirements, CNG asserts there is little reason to now require even more reporting.

27. Joint Respondents acknowledge the Commission has recently worked with all four utilities to update annual disconnection reporting. However, Joint Respondents maintain it was their intention to allow the Customer Education and Outreach Strategy reporting to work alongside existing reporting obligations. Joint Respondents envision aspects of a utility's Customer Education and Outreach Strategy as a publicly available document posted on a utility's website. They note these filings could also potentially be posted on the Commission's website available to the general public. Joint Respondents argue the existing filing obligations CNG's exceptions describe are actually regulatory documents not as easily available to customers facing a possible disconnection of service and seeking guidance. Joint Respondents again assert the monthly reports merely provide numeric data on disconnections and reconnections but fail to provide any sort of narrative of customer education or outreach strategies that would be helpful to customers.

28. We agree with Joint Respondents. We are satisfied a utility's Customer Education and Outreach Strategy is complementary to the empirical data reporting required under current Rules. These reports will serve as a useful guide to utility customers, especially those facing the possibility of disconnection. Therefore, we deny CNG's exceptions on this issue.

29. CNG additionally argues the stakeholder meeting requirement in Rule 4407(i) should either be combined with the standing low-income stakeholder meeting required by

Rule 4412(j) or eliminated. In CNG's view, the meeting requirements are similar in purpose so it is not necessary for the Commission to institute another stakeholder meeting requirement.

30. Joint Respondents agree that clarification is needed on this issue and state that it was always their intention that the stakeholder meetings in the new Rules could be combined with the existing low-income stakeholder meeting.

31. We agree with the parties that merging Rule 4407(i) stakeholder meetings with Rule 4407(j) low-income stakeholder meetings makes sense and we therefore grant CNG's exceptions on this point. We apply the same change to the Rules Regulating Electric Utilities to maintain consistency in these areas.

D. Findings and Conclusions

32. Consequently, we grant Atmos' exceptions and find a utility has discretion over whether to make a qualifying communication to a customer and hold itself to same-day reconnections for all reconnections made in a timely manner.as discussed above.

33. Additionally, we grant in part and deny in part CNG's exceptions as discussed above. As noted in deliberations, we find transparency and customer education beneficial to all utility customers regardless of size or use of technology. Disconnections are a significant issue and education of ratepayers is paramount to avoid disconnections in the first place, and certainly to ensure ratepayers are well aware of those processes. It is also important we have the proper information to track disconnections overall. We agree with EOC and UCA that it would be helpful to have some of this in a more public-facing format to ensure that all interested parties have access to it and can easily understand and digest the information. We do not find CNG's exceptions compelling to exempt it from these requirements because requiring such reporting would be expensive or difficult. Rather, we are not convinced any costs associated with these rules are

burdensome. We are convinced transparency is central to reducing disconnections through proper ratepayer education.

34. We adopt the rules shown in legislative (*i.e.*, strikeout/underline) format (Attachments A and C) and final format (Attachments B and D) attached to this Decision, consistent with the discussion above. The rule redlines are to the currently effective rules.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R23-0844 filed by Atmos Energy Corporation on January 9, 2024, are granted consistent with the discussion above.

2. The exceptions to Recommended Decision No. R23-0844 filed by Colorado Natural Gas, Inc. on January 9, 2024, are granted in part and denied in part consistent with the discussion above.

3. The stakeholder meetings required pursuant to Rules 4 CCR 723-4-4407(i) and 4 CCR 723-3-3307(i) shall be amended to merge with the current low-income stakeholder meetings pursuant to Rule 4 CCR 723-4-4412(j) and 723-3-3314(j), consistent with the discussion above.

4. The Rules Regulating Electric Utilities, 4 CCR 723-3, and the Rules Regulating Gas Utilities, 4 CCR 723-4, contained in legislative format in Attachment A and C to this Decision and final format in Attachment B and D to this Decision, are adopted. The attachments are publicly 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

5. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 31, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners