

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0326EG

IN THE MATTER OF THE PROPOSED RULES RELATING TO LOW INCOME
PROGRAMS FOR ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3
AND GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4.

**COMMISSION DECISION ADDRESSING EXCEPTIONS
TO DECISION NO. R22-0330 AND ADOPTING RULES**

Mailed Date: August 2, 2022
Adopted Date: July 27, 2022

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I. BY THE COMMISSION**A. Statement**

1. Through this Decision, the Commission addresses the exceptions filed to Decision No. R22-0330, issued June 1, 2022, by Administrative Law Judge (ALJ) Conor F. Farley (Recommended Decision). The Commission adopts revised rules governing low-income programs offered by electric and natural gas utilities, located within the Commission's Rules Regulating Electric Utilities at 4 *Code of Colorado Regulations* (CCR) 723-3-3412, and the Commission's Rules Regulating Gas Utilities at 4 CCR 723-4-4412. The adopted rules are attached to this Decision in legislative format (i.e., strikeout/underline) as Attachments A (electric) and C (gas), and in final format as Attachments B (electric) and D (gas).

B. Background

2. On July 15, 2021, the Commission commenced this rulemaking by a Notice of Proposed Rulemaking (NPR) issued as Decision No. C21-0408. Decision No. C21-0408 established deadlines for comments and response comments, scheduled a public comment hearing to be held on August 23, 2021, and referred this proceeding to an ALJ.

3. After receiving initial and responsive comments from rulemaking participants, the ALJ held the scheduled remote public comment hearing on August 23, 2021. At the end of the discussion, the ALJ posed several questions for the participants to answer in written comments and continued the remote public comment hearing to September 27, 2021. The ALJ continued the remote public comment hearing three additional times until October 19, 2021, then to December 21, 2021, and then to February 4, 2022. Rulemaking participants filed multiple rounds of comments during the proceeding. On June 1, 2022, the ALJ issued the Recommended Decision.

4. On June 21, 2022, Public Service Company of Colorado (Public Service), the Colorado Energy Office (CEO), and Black Hills Colorado Electric, LLC and Black Hills Colorado Gas, Inc., d/b/a Black Hills Energy (collectively Black Hills) filed exceptions to the Recommended Decision. On July 1, 2022, Colorado Natural Gas, Inc. (CNG) filed responses to CEO's exceptions, and on July 5, 2022, Black Hills filed responses to CEO's exceptions.

C. Exceptions

5. Below, we address relevant portions of the Recommended Decision, exceptions, any responses, and the Commission's findings and conclusions regarding the ALJ's adopted rules and the exceptions.

1. Rules 3412(b)/4412(b) – Levelized Budget Billing Definition

6. The current rules do not contain a definition of "levelized budget billing." Throughout the proceeding, CEO recommended that a definition be adopted to ensure that all utilities employ the same approach to that assistance program and to solve certain issues set forth in the triennial evaluation of utility affordability programs conducted pursuant to Rules 3412(k) and 4412(k). However, it did not propose a specific definition. Black Hills and Public Service proposed definitions, and Black Hills noted that utilities are required to include their levelized budget billing plans in tariffs approved by the Commission. CNG stated that it was not aware of any issues caused by the lack of a common definition across the utilities.

7. The ALJ was persuaded by the fact that utilities are required by Rules 3404(b)/4404(b) to have a budget or level-payment plan available for customers, that any differences between the utilities' levelized budget plans are contained in Commission-approved tariffs, and that no issues have been identified that would be solved by including a definition in the

rules. Therefore, the Recommended Decision did not adopt a definition for “levelized budget billing.”

8. In its exceptions, CEO states it continues to believe that a definition of the term is provided to provide clarity in the rules. CEO recommends that the Commission choose either of the definitions proposed by Black Hills or Public Service.

9. We agree with the ALJ’s reasoning and determination that including a definition of “levelized budget billing” is unnecessary. Therefore, we deny CEO’s exception on this point.

2. Rules 3412(c)/4412(c) – Specific Language Proposals

10. The Recommended Decision incorporated into Rules 3412(c)/4412(c) the new definition of low-income changed by House Bill (HB) 22-1018 and adopted in § 40-3-106(1)(d)(II), C.R.S. Therefore, in accordance with this new definition, the ALJ adopted rules to reflect that the Department of Human Services (DHS), Energy Outreach Colorado (EOC), and CEO will perform the income qualification for purposes of determining participant eligibility in the utilities’ low-income programs.

a. Exceptions and Responses

11. In their exceptions, Public Service and CEO highlight an inconsistency in the adopted rules. Electric Rule 3412(c)(II) reads: “the utility may obtain the determination of a participant’s eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office,” while Gas Rule 4412(c)(II) states that “the utility shall obtain the determination” from the three entities. Public Service recommends that both rules use “shall,” consistent with the ALJ’s intent, and CEO agrees. In its response, CNG recommends that the rules use “may.” CNG argues that the verification process is managed by the utilities and because CNG is concerned that the reference to only the Department of Humans Services (DHS), CEO, or Energy

Outreach Colorado (EOC) will conflict with its current practice of working with the Colorado Department of Human Services' Low Income Energy Assistance Program (LEAP) for income determination, and will limit utilities' ability to determine customer eligibility from another third party.

12. Additionally, CEO argues that the adopted rules' requirement that utilities "obtain" the determinations from DHS, EOC, or CEO imposes Commission requirements on entities that are not subject to the Commission's jurisdiction. CEO is concerned that it would be required to provide such determinations when asked. CEO therefore proposes the rules state "the utility shall accept the determination" regarding participant eligibility. CNG opposes this proposal, arguing that utilities shouldn't be required to accept, without question, determinations done by entities outside of the Commission's authority.

b. Findings and Conclusions

13. For Electric Rule 3412(c)(II), we will adopt the following: "the utility shall obtain the determination of a participant's eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office." Gas Rule 4412(c)(II) contains this language and will remain unchanged from the version adopted by the Recommended Decision. Statute now specifies that to be eligible for utility low-income programs, the customer must meet specified criteria as determined by DHS, CEO, or EOC. Therefore, it is logical that utilities be required to work with these three entities. Additionally, we are not persuaded by CNG's concern that it will not be able to continue working with LEAP, because LEAP is housed within DHS.

14. We reject CEO's proposal that utilities be required to "accept" eligibility determinations rather than to "obtain" eligibility determinations. The adopted rules require utilities

to obtain the eligibility determinations, and do not directly place any associated requirements on DHS, CEO, or EOC.

3. Rules 3412(c)/4412(c) – Funding Guarantee

15. Over the course of the rulemaking, utilities expressed concern that CEO and EOC could provide eligibility determinations without the guarantee of additional funding assistance. EOC argued that the Commission does not have jurisdiction over EOC and thus cannot require EOC to provide funding for a ratepayer that EOC determines is eligible for an energy assistance program.

16. The Recommend Decision recognizes that currently, the LEAP office provides funding to a ratepayer's utility when it determines the ratepayer is eligible for LEAP assistance, and that the LEAP office's funding is designed to cover the "unaffordable portion" of a ratepayer's heating costs as determined by the LEAP office. The ALJ also recognizes that the utilities' energy assistance programs have been used to provide financial support in addition to the support provided by LEAP, so that if EOC and CEO do not provide similar funding assistance, the utilities' funding for their energy assistance programs will be impacted. Despite these issues, the ALJ determined that because the Commission does not have jurisdiction over EOC or CEO, the Commission's rules cannot impose a requirement on EOC or CEO to guarantee funding for ratepayers those entities identify as eligible.

a. Exceptions

17. Black Hills filed an exception on this point, repeating the arguments made by utilities prior to the Recommended Decision. Black Hills states that the modifications in the adopted rules result in higher income levels for eligibility and additional entities verifying eligibility, but without the funding guarantee that is currently available. Black Hills states that

expanded participant eligibility, without guaranteed funding, will likely result in no support for some eligible participants.

18. Black Hills points to the new Energy Assistance System Benefit Charge (EASBC), which was established by HB 21-1105. The EASBC is to be included on each customer's monthly bill as a flat charge to "help finance the low-income energy assistance program."¹ Black Hills states that EOC, as a recipient of those funds, is required to utilize those funds to provide low-income energy assistance and help finance direct utility bill payment assistance. Black Hills argues that therefore, the EASBC should be used to help finance low-income energy assistance programs.

b. Findings and Conclusions

19. Despite the potential funding issues identified by the utilities, the Commission agrees with the ALJ's determination that a funding guarantee should not be included because we are not persuaded that our authority extends to the EOC's or the CEO's use of funds. We are also not persuaded that EOC's use of the EASBC created by HB 21-1105, which Black Hills points to, is subject to our oversight.² Therefore, we deny Black Hills' exception requesting the inclusion of a funding guarantee.

4. Rules 3412(e)(VI)/4412(e)(VI) – Levelized Budget Billing Opt-Out

20. Through the NOPR, we proposed that Rules 3412(e)(VI)/4412(e)(VI) allowing utilities to enroll participants in its levelized budget billing program as a condition of participation also require utilities to "allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits." During the proceeding, Black Hills stated that its automated billing system is not capable of accommodating an opt-out request, and it proposed that

¹ § 40-8.7-105.5(1)(a), C.R.S.

² See, e.g., § 40-8.5-103.5, C.R.S.

the opt-out requirement be applicable only to utilities with capable automated billing systems. Additionally, it proposed including in the rules that utilities “shall reasonable and prudently modify their systems to facilitate opt out of levelized budget billing.” CEO recommended that the Commission permit utilities up to one year to implement any billing system changes necessary to implement the opt-out requirement proposed by the NOPR.

21. The ALJ was persuaded by Black Hills’ concern that modification of its system could take time and financial resources, but he also recognized that an opt-out option is important. Therefore, the Recommended Decision adopted the language proposed in the NOPR, the language proposed by Black Hills, and additional language requiring utilities not accommodating participants’ opt-out requests to explain why such an accommodation is not reasonable and prudent.

a. Exceptions and Responses

22. CEO argues that the adopted rules do not go far enough to ensure that participants can opt out of a levelized budget billing plan. It proposes that utilities be required to modify their systems within one year of a request to opt out unless the Commission determines that such modification is not technically feasible. In its response to exceptions, CNG states it is not opposed to CEO’s proposed rule modification, but it suggests that the rule include a less uncertain timetable for such requests, for example within one year of the rule’s effective date.

b. Findings and Conclusions

23. We find that the ALJ appropriately addressed the balance of customers’ interests in the availability of different billing options and the concern regarding time and expense to implement such options. Therefore, we reject CEO’s exception on this point and uphold the determinations in the Recommended Decision.

5. Rules 3412(g)/4412(g) and Rules 3412(l)/4412(l) – Report Filing Dates

24. Adopted Rules 3412(g)(II)(D)(i)/4412(g)(II)(D)(i) require utilities, by December 15 of each year, to submit a report for annual low-income filings detailing the net difference between program cost recovery and program costs as of October 31 of each year. Adopted Rules 3412(l)/4412(l) require utilities, no later than December 31 of each year, to submit a report for annual low-income filings using the form available on the Commission's website based on each 12-month period ending October 31.

25. In its exceptions, Public Service requests that the filing deadline for the two reports referenced above be consistent, stating that it would be more efficient to have the same filing deadline for both reports. It recommends that the Commission revise the annual report deadline in Rules 3412(l) and 4412(l) from December 31 to December 15.

26. We grant Public Service's request in part and revise Rules 3412(g)(II)(D)(i)/4412(g)(II)(D)(i) so that the referenced reports must be filed no later than December 31 of each year.

6. Rules 3412(j)/4412(j) – Annual Meetings with Participants/Stakeholders

27. Rules 3412(j)/4412(j) require utilities to conduct annual meetings with "low-income stakeholders for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders." Over the course of the rulemaking, CEO proposed adding language so that utilities would be required to conduct annual meetings "with participants and low-income stakeholders," and that utilities be required to annually report on participant and low-income stakeholder outreach efforts. CEO argued that participants and low-income stakeholders should be considered two separate groups, implying that

utilities engage with certain organizations focused on low-income customers but not with actual participants in low-income programs.

28. The Recommended Decision rejected CEO's proposal that would explicitly require an annual participant meeting, reasoning that "participants" fall reasonably within the broader category of "low-income stakeholders," and noting that CEO's proposed changes were ambiguous. However, the ALJ did adopt CEO's recommendation that utilities be required to report on "participant outreach, education, and engagement efforts...."

a. Exceptions and Responses

29. In its exceptions, CEO argues that the addition of the word "participant" is necessary because utilities have seldom engaged participants in the past. CEO provides additional clarification regarding its proposal, recommending a separate and distinct process where utilities would engage with their customers regarding these programs. It states that its proposal is intended to increase participant awareness.

30. Black Hills and CNG responded in opposition to CEO's proposal. Black Hills states that the proposal is vague, not practicable, and would unnecessarily increase administrative costs that would be deducted from its program funding. CNG states it never contemplated that a participant would be excluded from its annual meetings with low-income stakeholders. It opposes a rigid separate process focused on participants that would potentially increase the utilities' administrative costs to comply with the rules.

b. Findings and Conclusions

31. We agree with the determination in the Recommended Decision that the term "low-income" is sufficiently broad to encompass participants, and we find it unnecessary to explicitly require annual meetings with participants. Therefore, we deny CEO's exception on this

point. We note that the ALJ did adopt CEO's proposal regarding annual reporting of participant engagement, and we will review such engagement efforts closely.

7. Rules 3412(l)/4412(l) – Dual Reporting by Heating Type

32. Rules 3412(l)/4412(l) require utilities to file annual reports for participant accounts and allow utilities to combine in one report accounts that use gas as the primary heating fuel and accounts that use a different type of heating fuel.

33. During the proceeding, CEO proposed that utilities be required to file separate reports for the two types of accounts. CEO maintained that separate reporting is appropriate because currently, the Commission cannot distinguish how many participants have electric heat, as compared to customers with electric service and another heating fuel. CEO argued that the utilities should report this information separately since the Commission determines an affordable bill for these customers differently under Rule 3412(e). Public Service, Black Hills, and CNG stated that they do not collect and/or track heating fuel type by customer. The ALJ was persuaded by the utilities' statements and declined to adopt CEO's proposed change in the Recommended Decision.

a. Exceptions and Responses

34. In its exceptions, CEO repeats its argument that the rules should require separate annual reports for participants based on their primary heating fuel type. CEO also states that this is necessary for the Commission to ensure that participants are paying an affordable bill for their heating and other fuel usage under Rules 3412(e)(I)/4412(e)(I), and that this issue will become increasingly important as customers transition from gas or propane heating to electric heating. CEO argues the Commission should require utilities to collect this data from their customers or to obtain it from LEAP or another third party that verifies participant eligibility.

35. Black Hills and CNG responded in opposition to CEO's request for separate annual reporting by heating fuel type. CNG is concerned that as a pure-play gas utility, it is unclear how a requirement for separate reporting would apply to its operations, and it states that there is nothing in the record confirming that LEAP or another third party actually has this information. Black Hills states that separate reporting would be burdensome and would reduce funding available for participant benefits.

b. Findings and Conclusions

36. We find that separate reporting is unwarranted at this time, particularly given that it appears the utilities do not collect and/or track heating fuel type by customer. We agree with the reasoning and determination in the Recommended Decision and reject CEO's exception on this point.

8. Rules 3412(m)/4412(m) - Dates

37. By statute, the EASBC is set at \$0.50 for electric service and \$0.50 for gas service between October 2021 through September 2022. For October 2022 through September 2023, the charges are set at \$0.75 for electric and gas services. Then, beginning October 1, 2023, the \$0.75 charge shall be adjusted in accordance with a specified consumer price index.³ Adopted Rules 3412(m)/4412(m) generally adopt this framework. However, the ALJ pushed back the dates by one year due to the expected effective date of the rules.

38. Black Hills filed an exception, stating that the dates in the adopted rules conflict with the dates set forth in statute. We grant Black Hills' exception on this point and modify the adopted rules so that the relevant dates conform with statute.

³ § 40-8.7-105.5, C.R.S.

9. Rules 3412(m)/4412(m) – Calculation of the EASBC

39. As set forth in § 40-8.7-105.5(1)(b)(III), C.R.S., the EASBC will be adjusted for inflation in accordance with changes in the United States Department of Labor's, Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood beginning on October 1, 2023. Adopted Rules 3412(m)/4412(m), as modified by this Decision, reflect this statutory requirement.

40. In their exceptions, Black Hills and Public Service express concern that the calculation for the index adjustment could be practiced differently by different utilities. For example, performing the calculation on different dates may result in different results. Both utilities request the Commission's rules include a process for adjusting the EASBC for inflation and suggest that Staff provide the calculated amount using a process similar to the process set forth in Rules 3403(o)(II)/4403(o)(II).

41. We grant the exceptions of Black Hills and Public Service on this issue. Thus, Rules 3412(m)/4412(m) shall include the following language: "Prior to October 1, 2023, and each year following, Commission staff shall compute the charge adjusted by the index and shall send a letter to each utility stating the charge to be paid by customers during the next calendar year."

II. ORDER**A. The Commission Orders That:**

1. The exceptions to Recommended Decision No. R22-0330 filed by Public Service Company of Colorado on July 21, 2022, are granted, in part, consistent with the discussion above.

2. The exceptions to Recommended Decision No. R22-0330 filed by Black Hills Colorado Electric, LLC and Black Hills Colorado Gas, Inc., d/b/a Black Hills Energy, on July 21, 2022 are granted, in part, and denied, in part, consistent with the discussion above.

3. The exceptions to Recommended Decision No. R22-0330 filed by the Colorado Energy Office on July 21, 2022, are denied, consistent with the discussion above.

4. Amendments to Rule 3412 within the Commission's Rules Regulating Electric Utilities, 4 Code of Colorado Regulations (CCR) 723-3, and amendments to Rule 4412 within the Commission Rules Regulating Gas Utilities, 4 CCR 723-4, contained in legislative (i.e., strikeout/underline) format as Attachments A (electric) and C (gas) and final format as Attachments B (electric) and D (gas) are adopted, and are available through the Commission's Electronic Filings system at:

https://www.dora.state.co.us/pls/efi/EFL.Show_Docket?p_session_id=&p_docket_id=21R-0326EG

5. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

6. 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.

7. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 27, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners