

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 COLOADO REGULATIONS 723-3,
AND RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS
723-4, PURSUANT TO HOUSE BILL 22-1018.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
ADOPTING RULES**

Mailed Date: December 20, 2023

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I. STATEMENT

A. Background

1. In 2022, the Colorado General Assembly enacted House Bill (HB) 22-1018. HB 22-1018, made effective April 21, 2022, addressed “A Customer’s Ability to Pay” utility bills. The legislation adopted numerous criteria limiting a utility’s procedures for disconnecting service due to nonpayment.

2. In addition, HB 22-1018 directed the Colorado Public Utilities Commission (PUC or Commission) to commence a Rulemaking Proceeding to adopt standard practices for gas and electric utilities to follow when disconnecting services due to nonpayment. The legislation identifies specific practices to incorporate limitations affecting the times and days during which disconnections can be initiated for nonpayment and aligns with prior work by the Commission to consider such practices more broadly as directed by Senate Bill 20-030 which was, implemented in Proceeding No. 20R-0349EG. HB 22-1018 was a narrowly-focused effort to reduce disruptions caused by service disconnections precipitated by nonpayment. Legislation addressing other areas of utility service may be proposed during future General Assembly sessions.

3. On December 21, 2022, the Commission initiated this proceeding by issuing a Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Electric Utilities (Electric Rules), 4 *Code of Colorado Regulations* (CCR) 723-3, and the Rules Regulating Gas Utilities (Gas Rules), 4 CCR 723-4 (collectively the Electric and Gas Rules).¹ The NOPR proposed changes to the aforementioned rules, established deadlines for initial written

¹ Decision No. C22-0815, issued Dec. 21, 2022.

comments, and scheduled a remote public comment hearing for February 27, 2023 at 11:30 a.m. The NOPR also referred this proceeding to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

4. The Office of the Utility Consumer Advocate (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 all filed written comments prior to the February 27, 2023 public comment hearing, as permitted by Commission Decision No. C22-0815.

5. The undersigned ALJ held the initial remote public comment hearing as scheduled on Monday, February 27, 2023, at 11:30 a.m. Based on the written comments submitted prior to the hearing, and the verbal comments received during the hearing, the ALJ scheduled a second public comment hearing for April 4, 2023.² Black Hills, Public Service, UCA, and EOC filed comments in advance of the April 4, 2023 public comment hearing. UCA's comments included a proposed amendment to the revised rules which would require any utility adopting remote disconnection procedures to include in its tariff procedures a multi-year transition plan that addresses how the utility will educate customers about the conversion to advance metering infrastructure (AMI) that enables remote disconnection and reconnection; explains methods the utility will employ to advise its customers of impending disconnections; and describes its timeline for contacting customers.³

² See Decision No. R23-0169-I, issued March 9, 2023.

³ See Reply Comments of the Utility Consumer Advocate, filed Mar. 28, 2023.

6. The second public comment hearing was held as scheduled on Tuesday, April 4, 2023, at 11:30 a.m. At the public comment hearing, participants engaged in a robust conversation about the proposed rules, the necessity of remote disconnection and reconnection, as well as the benefits and drawbacks of UCA's proposed amendment.

7. Based on the written and verbal comments received before and during the April 4, 2023 public comment hearing, by Decision No. R23-0259-I, issued April 20, 2023, the ALJ scheduled a third public comment hearing to be held on May 15, 2023, at 4:00 p.m. The third public comment hearing was held as scheduled.

8. The robust discussion during the May 15, 2023, public comment hearing, and the written comments received prior to that public comment hearing prompted the ALJ to hold a fourth public comment hearing. By Decision No. R23-0366-I, issued May 31, 2023, the ALJ scheduled a fourth public comment hearing, to be held on July 18, 2023, at 11:30 a.m.

9. On June 9, 2023, the EOC and the UCA jointly advised the undersigned ALJ that they, along with Public Service and Black Hills were actively drafting proposed consensus rule language.⁴ On June 23, 2023, the same interested entities filed a Second Notice advising the undersigned ALJ that their discussions pertaining to customer education and outreach continued, but that they had not yet reached a consensus.⁵

⁴ See Joint Notice of Conferral on Consensus Proposed Rules Regarding Customer Outreach and Education, filed Jun 9, 2023.

⁵ See Second Joint Notice of Conferral on Consensus Proposed Rules Regarding Customer Outreach and Education, filed June 23, 2023.

10. The morning of the continued public comment hearing held on July 18, 2023, EOC, UCA, Public Service, and Black Hills jointly filed their Proposed Consensus Rules.⁶ These entities proposed language for Rules 3407(h)⁷, (i), (j), and (k), 4 CCT 723-3, and Rules 4407(h), (i), (j), and (k), 4 CCR 723-4. The Proposed Consensus 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.⁸

11. Because the Proposed Consensus Rules were filed just minutes before the commencement of the July 18, 2023 public comment hearing, representatives of CNG and Atmos requested an opportunity to review the Proposed Consensus Rules and provide responsive comments to them. The ALJ agreed that further discussion and additional written comments analyzing the proposed language would be beneficial and were warranted. The ALJ therefore continued the public comment hearing once more and scheduled a fifth public comment hearing for Friday, September 15, 2023, at 1:30 p.m.

12. On August 11, 2023, Atmos and CNG filed Joint Comments responding to the Proposed Consensus Rules. In their Joint Comments, Atmos and CNG urged the Commission to distinguish between utilities that employ remote disconnection and reconnection with those — like Atmos and CNG — that do not. They suggested that imposing additional outreach

⁶ See Proposed Consensus Rules of Energy Outreach Colorado, the Office of the Utility Consumer Advocate, Public Service Company of Colorado, and Black Hills Energy, filed July 18, 2023.

⁷ Note: The Proposed Consensus Rules incorrectly numbered the subparagraph that has been adopted at Rules 3407(h) and 4407(h) as 3407(f) and 4407(f). For clarity’s sake, the provision in question will be referred to as Rules 3407(h) and 4407(h) in this Decision.

⁸ Proposed Consensus Rules of Energy Outreach Colorado, The Office of the Utility Consumer Advocate, Public Service Company of Colorado, and Black Hills Energy, filed July 18, 2023.

and advising requirements on utilities that do not employ AMI technology would be overly burdensome and unproductive.⁹

13. The ALJ held the fifth public comment hearing on September 15, 2023, as scheduled. At the close of the September 15, 2023 public comment hearing, the undersigned ALJ concluded that sufficient comments were received addressing the proposed changes to the Electric Rules and Gas Rules and took the matter under advisement.

B. Transmission of Record and Decision

14. 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.

II. DISCUSSION, FINDINGS AND CONCLUSIONS

A. Introduction

15. In rendering this Decision, the undersigned ALJ has carefully reviewed and considered all comments filed in this Proceeding and provided at the five public comment hearings, even if this Decision does not specifically address every comment, or every nuance of every comment.

B. Jurisdiction

16. HB 22-1018 directed the Commission to conduct a Rulemaking Proceeding to implement the provisions the legislature enacted governing utilities' disconnection and reconnection procedures.¹⁰ Section 40-3-103.6(1), C.R.S., mandates that the revised Electric

⁹ Joint Comments of Colorado Natural Gas, Inc. and Atmos Energy, filed Aug. 11, 2023.

¹⁰ § 40-3-103.6(1), C.R.S.

Rules and Gas Rules “address the following subjects.” As detailed below, the revised Electric and Gas Rules incorporate the directives enacted by the legislature.

17. In addition, § 40-2-108, C.R.S., grants the Commission general authority to “promulgate such rules as are necessary for the proper administration and enforcement of” Title 40.

18. The Commission thus acted under both an express directive from the General Assembly to convene a Rulemaking Proceeding to implement the newly-enacted provisions governing disconnection and reconnection of gas and electric service, and under its general statutory authority to promulgate rules under Title 40 of the Colorado Revised Statutes.

C. General Comments

19. The Commission received written comments from numerous stakeholders including Public Service, Black Hills, CNG, Atmos, UCA, and EOC. Representatives of these entities also appeared at most, if not all, of the five public comment hearings.

20. Comments pertaining to specific provisions of, or proposed changes to, the Electric and Gas Rules will be addressed below in conjunction with the Rule to which the comments apply. Some comments, though, were of relevance to the Electric Rules and the Gas Rules generally.

21. The Proposed Consensus Rules filed on July 18, 2023, represent the agreement of four entities participating in this Rulemaking Proceeding. Importantly, the consensus was reached between divergent groups representing the interests of different stakeholders in this proceeding. Notably, entities representing consumers’ interests — UCA and EOC — successfully reached this consensus with representatives of some of the largest utilities in the State — Public

Service and Black Hills. Thomas Dixon, speaking on behalf of UCA at a public comment hearing, stated that UCA supports the agreed-upon consensus rules.

22. Early in this Rulemaking Proceeding, the stakeholders were divided over the concept of remote disconnection by which utilities could initiate a disconnection without physically accessing a meter at the customer's premises. UCA firmly opposed remote disconnection, submitting several studies — some of which were ten years old — purporting to show that when remote disconnection was allowed the number of disconnections increased. Stakeholders on the utility side countered that remote disconnection saved ratepayers money because the per disconnection cost is substantially lower than disconnecting each overdue customer by “truck roll” to the affected property at a cost of “roughly \$65 to \$75 per truck roll to do in person.” In addition, they noted, in-person disconnection posed inherent risks to utility workers who would have to enter a customer's property to speak to the customer, exposing the workers to potentially volatile situations such as vicious dogs or hostile customers.

23. However, as the hearings and discussions progressed, UCA withdrew its opposition to remote disconnection and changed its focus to ensuring customers are well-informed about utilities' disconnection procedures and resources available to customers facing disconnection and/or struggling with utility bills. The Proposed Consensus Rules grew out of UCA's refocused priorities.

24. UCA's sentiment was echoed by Emily Tracy, councilwoman with the Cañon City City Council, who offered her comments at the April 4, 2023 public comment hearing. Ms. Tracy emphasized the importance of “spelling out” the procedures for disconnection and reconnection “very clearly and completely,” particularly in an area such as Cañon City and “south central Colorado” where there is “a very high poverty rate.” She expressed her concern

and desire that, because residential gas and electric service “is such a basic fundamental need,” a utility should engage in “full communication and dialogue” with the customer to ensure the customer is aware of a pending disconnection as well as available assistance options before the customer’s service is disconnected.

D. Proposed Changes to the Electric and Gas Rules

25. Changes to the Electric and Gas Rules are parallel to each other. In other words, with few exceptions, the Electric and Gas Rules are duplicative of each other, and changes made to one set of Rules were also made to the other. Consequently, unless otherwise indicated, the changes discussed below apply to both the Gas and the Electric Rules.

26. With one exception, the changes to the Electric and Gas Rules will be discussed in numerical order, in the order the changes appear in the Rules.

27. Minor changes to numbering or lettering of the Rules brought about by the inclusion of new regulatory provisions in the Electric and Gas Rules will not be separately discussed in this Decision. Changes in the numbering and lettering of the 3001 and 4001 Definitions required corresponding corrections to citations in other rules. Those changes appear in the red-lined versions of the amended Rules. All changes to numbering and lettering can be observed by reviewing the red-lined versions of the amended Electric and Gas Rules appended as Attachments A and C to this Decision. Likewise, noncontroversial or minor edits to the language of the Electric and Gas Rules necessitated by the incorporation of new regulatory provisions will also not be discussed in this Decision but can be reviewed in Attachments A and C.

1. Low Income to Income-Qualified

28. The proposed amendments to the Electric and Gas Rules incorporate a language change throughout, updating the formerly used term “low income” to the less divisive “income qualified.” This change appears in several Rules, including Rules 3001 and 4001; 3403 and 4403; 3407 and 4407; 3411 and 4411; 3412 and 4412; and 4753. The change is intended to bring the Rules’ language in line with language adopted by the legislature in HB 22-1018. HB 22-1018 amends § 40-3-106, C.R.S., to substitute the formerly used “low income” for the preferred vernacular “income-qualified.” This amendment to the Electric and Gas Rules mirrors the changes to the statutes.

29. No commenters objected to this change in the Electric and Gas Rules; indeed, no comments were received addressing this change.

30. Accordingly, the ALJ finds the language revision from “low income” to “income qualified” reasonable and appropriate.

2. Rules 3001 and 4001 – Definitions

31. Several revisions and additions have been incorporated into the definitional sections of the Electric and Gas Rules. Each of these changes and additions will be discussed in turn.

a. Rule 3001(a) and 4001(a) – Advanced metering infrastructure

32. The revised Electric and Gas Rules incorporate a new definition for the term “advanced metering infrastructure” (AMI). AMI refers to the technology that enables a utility to remotely disconnect and reconnect customers. As discussed above, UCA initially objected to permitting the use of this technology, arguing that remotely disconnecting and reconnecting

customers increased the number of disconnections and exposed indigent consumers to a greater likelihood of disconnection. However, as also set out above, UCA no longer opposes remote disconnection or AMI technology.

33. AMI is defined by and included in HB 22-1018.¹¹ Prior versions of the statute did not incorporate the term; rather, it was a new definition first added to § 40-3-103.6 by HB 22-1018. The General Assembly's inclusion of the term in the definitions governing disconnection strongly suggests that the legislature anticipated and contemplated that remote disconnection and reconnection would be available to utilities and their customers.

34. Including a definition of the term in the Electric and Gas Rules ensures that the Rules mirror the applicable statute and decreases discrepancies that might otherwise lead to confusion.

35. Beyond UCA's initial challenge to the provision, no commenters have objected to the inclusion of a definition of AMI in the Electric and Gas Rules. Given that the legislature anticipated and provided for the deployment of remote disconnection and reconnection by incorporating the term into HB 22-1018, the ALJ finds and concludes that the inclusion of a definition of AMI in the Electric and Gas Rules is reasonable and appropriate.

b. Rule 3001(m) and 4001(w) – Emergency or safety event or circumstance

36. The amended Electric and Gas Rules add a definition for the term “emergency or safety event or circumstance.” The term was included in the definitional section of the Electric and Gas Rules to mirror the new definition of the term added to the statute by HB 22-1018. Its inclusion in the Electric and Gas Rules is intended to ensure the Rules mirror the statute, which,

¹¹ See § 40-3-103.6(3)(a), C.R.S.

in turn, decreases the potential for confusion between the Electric and Gas Rules and the statute by eliminating a discrepancy that would otherwise exist between the Rules and statute.

37. The definition specifies conditions which could delay a utility's ability to address a disruption in service. Such conditions include circumstances that make "travel to or work at" the affected site unsafe; "severe weather event[s]"; and staffing issues. The proposed changes to the Rules duplicate the language and conditions incorporated into § 40-3-103.6(3)(b) by HB 22-1018.

38. No commenters objected to the inclusion of a definition of "emergency or safety event or circumstance" in the Electric and Gas Rules.

39. The ALJ therefore finds and concludes that the inclusion of a definition of "emergency or safety event or circumstance" in the Electric and Gas Rules is reasonable and appropriate.

c. Rules 3001(s) and 4001(z) – Income qualified utility customer or low-income customer

40. References to "income qualified customers" are sprinkled throughout HB 22-1018. Likewise, and as noted above, the term "income qualified customers" appears in several Electric and Gas Rules. And, prior to the incorporation of the amendments to the Electric and Gas Rules brought about by this Proceeding, the Rules referred frequently to "low-income customers."

41. However, HB 22-1018 does not define "income qualified customers." Nevertheless, a definition of the term is necessary to establish which customers fall within the category. Under Rules 3412 and 4412, the Commission requires utilities to provide "energy assistance" to customers experiencing financial difficulties with their utility bills. The programs

are designed to minimize disconnections and ensure customers are not deprived of crucial energy to maintain their homes. But if “income qualified customers” were not defined by the Electric and Gas Rules, there would be no clarity in the industry as to which customers qualify for the requisite assistance. Moreover, failing to define the term could result in discrepancies and disparities among utilities as to how Rules 3412 and 4412 are implemented. In Proceeding No. 21R-0449G, the Commission adopted definition 4001(w)¹² for “income-qualified utility customer” or “low-income customer”.¹³

42. No commenters objected to the inclusion of a definition of “income qualified customer or low-income customer” in the Electric Rules. Further, no commenters addressed the scope or language of the proposed definition.

43. Accordingly, the ALJ finds and concludes that incorporating a definition of “income qualified customer or low-income customer” in the Electric Rules to mirror the definition in the Gas Rules is reasonable and appropriate.

d. Rules 3001(hh) and 4001(tt) – Qualifying communication

44. HB 22-1018 introduced the concept of a qualifying communication. Under § 40-3-103.6(3)(c), C.R.S., a “qualifying communication” is either a personal visit, telephone call, text message, or email message from the utility to the customer. HB 22-1018 mandates that a “qualifying communication” occur before a utility disconnects a customer for nonpayment.

45. It is crucial to clarify which communications are “qualifying” under HB-22-1018

¹² Now codified at Rule 4001(z).

¹³ See Decision No. C23-0117 in Proceeding No. 21R-0449G. These adopted Rules became effective on May 15, 2023.

because, under § 40-3-103.6(1.5)(b), C.R.S., 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.

46. The definition set forth in § 40-3-103.6(3)(c) is mirrored in Rules 3001(hh) and 4001(tt). Similarly, the procedures detailed in § 40-3-103.6(1.5)(b) are mimicked in Rules 3409(c) and 4409(c). The Electric and Gas Rules thus track and adhere to the procedural structure envisioned by HB 22-1018.

47. However, the definition of “qualifying communication” drew significant comments. Many commenters, particularly representatives of the various stakeholder utilities, expressed concern that portions of the definition were unclear. Notably, HB 22-1018 defines a “qualifying communication” as a “telephone call, text, or e-mail” from the utility to the customer “in which” a representative of the utility either “speaks directly with the customer . . . or the customer receives the utility representative’s text or e-mail.”¹⁴ (Emphasis added.) Without exception, utility representatives pointed out that the term “receives” is undefined by the statute and could have multiple meanings. They questioned the scope of “receives,” opining that the term “was vague and ambiguous” and theorizing that it could mean an e-mail message has not “bounced back,” or that a voice mail message was left but not returned, or, at the opposite end of the spectrum, could require that a utility representative actually speak with a customer to confirm the customer “received” the message. They argued that such uncertainty concerning the scope of “receives” was untenable and unworkable.

¹⁴ § 40-3-103.6(3)(c)(II)(B) (emphasis added).

48. Stakeholders considered changing the language of the Electric and Gas Rules to eliminate the definitional reference to “receives.” For example, it was suggested that the definition of “qualifying communication” in the Electric and Gas Rules be amended to include any message left by a utility representative “via voice mail, answering machine, text, or email at the customer’s last-known telephone number or email address on file with the utility” which does not bounce back.

49. In the end, such a rewrite of the definition was rejected by the stakeholders because it strayed from the statutory definition and no longer paralleled § 40-3-103.6(3)(c)(II)(B). Instead, the stakeholders who crafted the Proposed Consensus Rules suggested adding a clarification of the term “receives” to Rules 3407(h) and 4407(h). That clarification provides that a utility customer “receives” a text or e-mail if the message is sent to an e-mail or text address provided by the customer to the utility and “the utility does not subsequently receive a ‘bounce back’ or other message indicating” that the text or e-mail address is invalid.

50. Written comments from Atmos and CNG initially indicated that they objected to the Proposed Consensus Rules, including the clarification of “receives.” However, at the public hearing held in September 2023, after submission of the Proposed Consensus Rules, representatives of Atmos and CNG explained that they wanted to ensure the “intent of the original rules” was maintained but that they “supported the clarification on this issue in the Consensus Rules.”

51. Based on these comments, the ALJ finds and concludes that it is reasonable and appropriate to include a definition of “qualifying communication” in the Electric and Gas Rules. Further, the ALJ finds and concludes that the clarification of the definition — spelling out the

meaning of “receives” in Rules 3407(h) and 4407(h) — is also reasonable and appropriate. The definition, along with the clarification in Rules 3407(h) and 4407(h), shall be adopted.

e. Rules 3001(ww) and 4001(mmm) – Utility assistance information

52. Like the definitions of “advanced metering infrastructure” and “emergency or safety event or circumstance,” the newly-added definition of “utility assistance information” tracks the definition adopted by HB 22-1018 verbatim. The definition of “utility assistance information” is codified at § 40-3-103.6(3)(d).

53. Including a definition of the term in the Electric and Gas Rules was necessary for clarity, cohesiveness, uniformity, and completeness. Ensuring the Electric and Gas Rules parallel HB 22-1018 lessens the likelihood of discrepancies between the Rules and the applicable statutes, which, in turn, decreases confusion amongst those implementing the Rules and statutes.

54. No comments were received objecting to the inclusion of this definition in the Electric and Gas Rules.

55. The ALJ therefore finds and concludes that including a definition of “utility assistance information” in the Electric and Gas Rules is reasonable and appropriate.

3. Rules 3407 and 4407 – Discontinuance of Service

56. The proposed amendments to the Electric and Gas Rules include several impactful changes to the Rules 3407 and 4407 which govern the discontinuance of utility services. Notably, as is discussed more fully below, the additions to the Rules suggested by the Proposed Consensus Rules are incorporated into Rules 3407 and 4407. Other changes mirror amendments adopted by HB 22-1018.

a. Rule 3407(e) and 4407(e) – Timing of disconnection

57. HB 22-1018 set guardrails restricting the timing of disconnection of utility services. As now codified at § 40-3-103.6(1)(b), utilities are prohibited from disconnecting customers on Fridays, Saturdays, Sundays, or holidays, and are strongly encouraged “to the greatest extent practicable,” to avoid all disconnections after 11:59 a.m. on Mondays through Thursdays that are not holidays.

58. The changes to Rules 3407(e) and 4407(e) mirror and expand upon the statutory amendments. Building off the parameters currently established in the Electric and Gas Rules, Rules 3407(e) and 4407(e) prohibit disconnections — unless there is a safety concern or exigent circumstance — outside the hours of 8:00 a.m. and 4:00 p.m. Monday through Thursday (*i.e.* no disconnections are permitted except for safety reasons or exigent circumstances from 4:00 p.m. until 8:00 a.m. the following day from Monday through Thursday). By exclusion, disconnections are thus prohibited on Fridays, Saturdays, and Sundays.

59. In addition, Rules 3407(e) and 4407(e) expand upon the statutory prohibition against disconnections on holidays by specifying that no disconnections are permitted from noon the day before a holiday through 8:00 a.m. the day after a holiday. As well, Rules 3407(e) and 4407(e) incorporate the strong statutory encouragement to always avoid disconnection after 11:59 a.m. “to the greatest extent practicable.”

60. Finally, Rules 3407(e) and 4407(e) adopt the statutory prohibition against disconnecting utility services “during an emergency or safety event or circumstance impacting the local area.” This language slightly narrows the scope of the statutory prohibition in response to comments received from utility stakeholders. In particular, the utilities pointed out that in a State the size of Colorado, while weather events in one area may create a local weather

emergency situation, the same may not necessarily be true for other corners of the State. Per their suggestion, and with the expressed agreement of opposing stakeholders, including UCA and EOC, the phrase “impacting the local area” has been added to Rules 3407(e)(VII)(C) and 4407(e)(VII)(B).

61. The ALJ finds these amendments and additions to Rules 3407(e) and 4407(e) reasonable and appropriate.

b. Rules 3407(h) and 4407(h) – Receipt of qualifying communication

62. The addition of Rules 3407(h) and 4407(h) is addressed above in conjunction with the discussion of the addition of a definition of “qualifying communication.” For the reasons discussed above, the addition of Rules 3407(h) and 4407(h) to clarify and define the scope of “receiving” a “qualifying communication” is reasonable and appropriate and is adopted.

c. Rules 3407(i) and 4407(i) – Customer education and outreach strategy

63. Like the addition of Rules 3407(h) and 4407(h), Rules 3407(i) and 4407(i) were additions to the Electric and Gas Rules suggested by the Proposed Consensus Rules. Under the proposed subsection, utilities will be required to conduct “at least one meeting with stakeholders and interested customers” to solicit input on their customer education and outreach strategies addressing disconnections and reconnections. This proposed educational initiative was first proposed by UCA and EOC as a means of educating the utility-consuming public about the steps and procedures utilities will take before disconnecting a customer for nonpayment, as well the steps customers must take to get their utility service reconnected. The results of these meetings and a summary of the outreach programs will be included in each utilities’ annual report, the first of which is due March 1, 2024.

64. CNG and Atmos objected to the inclusion of this provision in the Electric and Gas Rules. They argued that neither of them employs AMI technology to remotely disconnect or reconnect their customers. Therefore, they asserted, there was no need for them to engage in educational outreach about disconnection and reconnection. Moreover, they pointed out, they already provide their customers with detailed information about the disconnection and reconnection process. They maintain that requiring additional reporting and educational outreach would be burdensome on them as they are both small utilities.

65. Although the ALJ is sympathetic to CNG's and Atmos's arguments, the ALJ is persuaded by UCA's comments on this issue. UCA pointed out — correctly — that neither the Electric and Gas Rules nor HB 22-1018 are limited to *remote* disconnections and reconnections. Certainly, HB 22-1018 anticipates utilities' use of AMI technology and, thus, remote disconnections and reconnections, but HB 22-1018 employs broader language applicable to *all* disconnections. And, the ALJ notes, whether a customer is served by an AMI meter or requires a truck roll to be disconnected and reconnected, the impact of disconnection is equally disruptive to the customer. Consequently, the ALJ is persuaded that educating customers about the disconnection and reconnection process, as well as way to *avoid* disconnection altogether, can benefit all customers regardless of the type of metering in service at their property.

66. Accordingly, the ALJ finds and concludes that adding Rules 3407(i) and 4407(i) to the Electric and Gas Rules is reasonable and appropriate.

d. Rules 3407(j) and 4407(j) – Customer education and outreach multi-year strategy reporting

67. As with Rules 3407(i) and 4407(i), Rules 3407(j) and 4407(j) are additions to the Electric and Gas Rules suggested with the Proposed Consensus Rules propounded by UCA, EOC, Public Service and Black Hills. Rules 3407(j) and 4407(j) impose reporting requirements

on utilities to inform the Commission about utilities' efforts and strategies to educate their customers about disconnection and reconnection procedures. Subsection (j) also mandates that utilities update their strategy reports "every five years on March 1 of the relevant year." In addition, any electric utility employing AMI technology to remotely disconnect and/or reconnect customers must include in its strategy report "an overview of its historical use of remote disconnections."

68. CNG and Atmos contend that these reporting requirements are overly burdensome on them because they are small gas utilities that do not employ AMI technology and therefore neither remotely disconnect nor reconnect their customers. Yet, as noted above, the statute applies to disconnections generally, not just to remote disconnections. Customers should be aware of disconnection and reconnection procedures regardless of the method by which the disconnection or reconnection occurs. Finally, the ALJ notes, the portion of Rule 3407(i) requiring electric utilities to provide data with their reports summarizing their "historical use of remote disconnections and reconnections" does not apply to Atmos or CNG because they are gas utilities, not electric utilities.

69. Accordingly, the ALJ finds and concludes that the addition of Rules 3407(j) and 4407(j) is reasonable and appropriate.

e. Rules 3407(k) and 4407(k) – Tariff

70. Rules 3407(k) and 4407(k), incorporated into the Electric and Gas Rules as part of the Proposed Consensus Rules, provide the avenue by which utilities will file their reports describing their educational outreach and strategies by mandating that the utilities incorporate language into their tariffs requiring them "to report on [their] five-year customer education and outreach strategy."

71. Commenters debated whether incorporating language into a tariff was the most efficient way to impose the reporting requirements of Rules 3407(i) and (j) and 4407(i) and (j). In particular, it was noted that including language in a tariff will necessitate the opening of new proceedings before the Commission.

72. While the ALJ is sensitive to any additional burden imposed on the Commission, the ALJ agrees with UCA and EOC that including language in a tariff is the best vehicle to ensure compliance with these new reporting requirements. Further, the ALJ is not persuaded that any additional workload imposed on smaller utilities such as CNG and Atmos to update their tariffs will be unduly burdensome.

73. The ALJ therefore finds and concludes that including Rules 3407(k) and 4407(k) in the Electric and Gas Rules is reasonable and appropriate.

f. Adoption of Changes

74. The changes proposed to Rules 3407 and 4407 are thus adopted. The Proposed Consensus Rules shall be made part of the Electric and Gas Rules.

4. Rules 3409 and 4409 – Restoration of Service

75. The amendments to Rules 3409 and 4409 were precipitated by changes made to section 40-3-103.6, C.R.S., by the adoption of HB 22-1018. As detailed below, the changes to the Electric and Gas Rules mirror the amendments enacted through HB 22-1018.

a. Rules 3409(c) and 4409(c) – Reconnection

76. HB 22-1018 incorporates specific measures governing how and when a utility must reconnect a customer whose service has been disconnected. Section 40-3-103.6(1.5), C.R.S., provides that the utility must reconnect a customer the same day the customer requests

reconnection if the customer has AMI technology at the affected property and made the request at least one hour “before the close of business.”¹⁵ Under the statute, a customer lacking AMI technology “or a gas utility customer” may still be reconnected the same day as making the reconnection request if the request was made before 12:59 p.m. and the utility failed to send the customer a “qualifying communication” alerting the customer about the impending disconnection prior to disconnecting the customer.

77. Rules 3409(c) and 4409(c) closely track the statutory language. Including a subparagraph similar to the provision adopted by HB 22-1018 is necessary to ensure the Electric and Gas Rules do not conflict with the amended statute. If subparagraph (c) were not added to Rules 3409 and 4409, discrepancies between the statute and the Electric and Gas Rules would likely lead to confusion. Amending Rules 3409 and 4409 to incorporate this provision minimizes the risk of confusion between the statute and the Electric and Gas Rules.

78. Moreover, incorporating subparagraph (c) into Rules 3409 and 4409 also realizes the legislature’s vision of mandating that reconnections occur as quickly as possible.

79. No commenters objected to the addition of subparagraph (c) into Rules 3409 and 4409. To the contrary, stakeholders worked to clarify the language and never suggested it be changed or eliminated. The language defining “receipt” of a “qualifying communication” — now incorporated at Rules 3407(h) and 4407(h) — is aimed squarely at pinpointing the circumstances under which a “qualifying communication” is received to eliminate confusion as to when utilities can take advantage of the additional time to reconnect a customer granted by § 40-3-103.6(1.5)(b)(I), C.R.S., and Rules 3409(c)(II)(A) and 4409(c)(II)(A).

¹⁵ § 40-3-103.6(1.5)(a), C.R.S.

80. Accordingly, the ALJ finds and concludes that adding Rules 3409(c) and 4409(c) to the Electric and Gas Rules is reasonable and appropriate.

b. Rules 3409(d) and 4409(d) – Restoring service generally

81. The current and prior versions of the Electric and Gas Rules require that utility service be resumed and a customer reconnected within 12 or 24 hours if the customer meets criteria set forth in Rules 3409(b) and 4409(b) (*i.e.* pays the balance due in full; pays reconnection fees and enters an installment payment plan; presents a medical certificate; or, in circumstances other than nonpayment, demonstrates that the cause for the discontinuance of service has been cured).

82. However, the prior iteration of Rules 3409(d) and 4409(d)¹⁶ included an admonishment that utilities “must exercise” their “best efforts” to reconnect customers “on the same day of a service discontinuance.” That phrase has now been deleted from the Electric and Gas Rules. It is no longer necessary to incorporate this phrase because, with only a few exceptions, § 40-3-103.6(1.5), C.R.S., essentially mandates same-day reconnection. Consequently, an admonishment to “exercise . . . best efforts” is superfluous.

83. Having agreed to the reconnection language in Rules 3409(c) and 4409(c), no commenters objected to the deletion of the superfluous language in Rules 3409(d) and 4409(d).

84. The ALJ therefore finds and concludes that the deletion of the admonishment to “exercise . . . best efforts” to reconnect customers the same day is reasonable and appropriate.

¹⁶ Note: The subsection in question was previously codified at Rules 3409(c) and 4409(c). It is now codified at Rules 3409(d) and 4409(d).

c. Adoption of changes to Rules 3409 and 4409

85. The proposed changes to Rules 3409 and 4409 are thus adopted.

E. Conclusion

86. Attachment A to this Recommended Decision represents the rule amendments to the Electric Rules adopted by this Recommended Decision, with modifications to the prior rules being indicated in red-lined and strikeout format (including modifications in accordance with this Recommended Decision).

87. Attachment B to this Recommended Decision represents the amendments to the Electric Rules adopted by this Recommended Decision in final form.

88. Attachments A and B are available through the Commission's E-Filings system in this proceeding (22R-0557EG at:

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

89. Attachment C to this Recommended Decision represents the rule amendments to the Gas Rules adopted by this Recommended Decision, with modifications to the prior rules being indicated in red-lined and strikeout format (including modifications in accordance with this Recommended Decision).

90. Attachment D to this Recommended Decision represents the amendments to the Gas Rules adopted by this Recommended Decision in final form.

91. Attachments C and D are available through the Commission's E-Filings system in this proceeding (22R-0557EG at:

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

92. It is found and concluded that the proposed Electric and Gas Rules, as modified by this Recommended Decision, are reasonable and should be adopted.

93. Pursuant to the provisions of § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

I. ORDER

A. It Is Ordered That:

1. The Commission's Rules Regulating Electric Utilities (Electric Rules), 4 *Code of Colorado Regulations* (CCR) 723-3, contained in red-lined and strikeout format, attached to this Recommended Decision as Attachment A, and in final format, attached as Attachment B, are adopted.

2. The Commission's Rules Regulating Gas Utilities (Gas Rules), 4 CCR 723-4, contained in red-lined and strikeout format, attached to this Recommended Decision as Attachment C, and in final format, attached as Attachment D, are adopted.

3. Proceeding No. 22R-0557EG is closed.

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

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon interested persons, 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 party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party 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 administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. 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

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director