

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 11R-110EG

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

ORDER ON EXCEPTIONS

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I. STATEMENT

1. This matter comes before the Commission for consideration of Exceptions to Recommended Decision No. R11-0606 filed on June 23, 2011 by Black Hills/Colorado Electric Utility Company, L.P., d/b/a Black Hills Energy (Black Hills), Energy Outreach Colorado (EOC) and Climax Molybdenum and CF&I Steel (collectively, Climax/CF&I). On July 7, 2011, EOC and the Office of Consumer Counsel (OCC) each filed Responses to Exceptions. Being fully advised in the matter, we address these exceptions in turn.

II. DISCUSSION AND FINDINGS OF FACT**A. Black Hills Energy****1. Commission Authority**

2. As a threshold matter, Black Hills questions the Commission's authority to promulgate rules that require jurisdictional electric and gas utilities to file low income energy assistance programs. In considering this argument below, the ALJ found

. . . the Commission has the power and authority to mandate such programs. This power comes both from § 40-3-102, C.R.S., and Article XXV of the Colorado Constitution. This Supreme Court in *Mountain States Legal Foundation [v. Public Utilities Commission]*, 197 Colo. 56, 590 P.2d 495 (1979), referred to the Commission's full legislative authority over public utilities granted by Article XXV, subject to legislative limitation. With the adoption of a revised § 40-3-106(1)(d)(I), C.R.S., the legislature has removed the limitation. The full legislative authority of Article XXV, as well as the power and authority to govern and regulate all rates and charges granted by § 40-3-102, C.R.S., fully empower and authorize the Commission to mandate low income energy assistance programs.

Recommended Decision No. R11-0606, at ¶ 8.

Black Hills disagrees with the ALJ's legal conclusions, relying on principles of statutory interpretation. Black Hills points out that the language of § 40-3-106(1)(d)(I), C.R.S., neither expressly requires nor specifically authorizes the Commission to mandate the establishment of low income assistance programs. In the absence of such an explicit declaration, Black Hills claims the limitation on the Commission's authority recognized by

Mountain States Legal Foundation, is still in partial effect. Black Hills argues this outcome is required by the canons of statutory interpretation. In other words, Black Hills believes the legislature, in enacting § 40-3-106(1)(d)(I), C.R.S., removed the limitation only insofar as that limitation restricted the Commission's authority to approve low income assistance programs, but the limitation is still in full force on the subject of mandating low income assistance programs. *See Black Hills' Exceptions*, at 1-9.

3. In its Response to Exceptions, EOC takes issue with Black Hills' legal reasoning. EOC generally agrees with the reasoning adopted by the ALJ in the Recommended Decision. In addition, the EOC argues that the rules of statutory interpretation support the ALJ's result. EOC argues that the Public Utilities Law gives the Commission broad authority to regulate the rates, services, and practices of jurisdictional utilities. As a result, EOC argues that where such utilities are permitted to exercise an option to be regulated are exceptions to the general rule, which are expressly set forth in statute. Citing § 40-2-112, C.R.S., as an example, EOC argues that, where the legislature intends to establish a voluntary regulatory environment, it explicitly does so. EOC goes on to point out that § 40-3-106(1)(d)(I), C.R.S., does not include any language expressly categorizing the establishment of low income assistance plan as voluntary. *EOC Exceptions*, at 1-4.

4. The OCC also disagrees with Black Hills and generally agrees with the reasoning contained in the Recommended Decision. *OCC Response to Exceptions*, at 3.

5. We agree with the EOC that § 40-3-106(1)(d)(I), C.R.S., does not contain language that expressly states the establishment of a low income assistance is voluntary on the part of the utility. Yet, we also agree with Black Hills that § 40-3-106(1)(d)(I), C.R.S., does not contain language expressly indicating that low income assistance programs must be mandatory.

In the presence of this lack of clarity, the Commission must undertake its own statutory interpretation. We agree with the ALJ that the purpose of the statute was to remove the legal limitations imposed by *Mountain States* in the context of low income customers. Further, while it appears the legislature did not intend that the statute itself would mandate any particular rates or programs, we believe it did intend to allow the Commission, as the expert agency, to mandate the establishment of low income assistance programs, at its discretion. As a result, we will deny Black Hills' Exceptions on this issue.

2. Process for Commission Consideration of Safe Harbor Filings

6. Black Hills requests that the Commission clarify the rules in order to provide additional guidance concerning the process by which the Commission will review applications that conform with the safe harbor option. Black Hills suggests that any filing to implement the safe harbor option should be subject only to a "plenary audit process" to verify that the proposed program does in fact comply with the safe harbor option as set forth in the Rules. To this end, Black Hills recommends that the following language be added to both Rule 3412(h) and Rule 4412(h):

Each utility electing the Safe Harbor Program option shall file a Notice pursuant to rules 1206 and 1210 applicable to tariff filings and applicable Tariff sheets describing the Safe Harbor Program. If after review the Commission verifies the Program is in compliance with rule 3412(h) [4412(h)], the Commission will deem the filing in compliance with rule 3412(h) [4412(h)], and approve the Safe Harbor Program without setting it for evidentiary hearing or otherwise subjecting the tariff filing to any further adjudicatory process.

Black Hills Exceptions, at 10.

7. The OCC strongly objected to this proposal in its Response to Exceptions, and argues it violates both the Public Utilities Law and existing Commission rules. The OCC argues that, in accordance with § 40-3-111(1), C.R.S., any tariff filing must be subject to a procedure

that provides for a hearing upon complaint or on the Commission's own motion. The OCC further points out that, under § 40-6.5-104, C.R.S., the OCC is charged with intervening in cases that affect rates, which it would be precluded from doing under Black Hills' proposal. Further, the OCC states Black Hills' proposal would violate Rules 1206(b), and 1210(a) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. OCC Response to Exceptions, at 4-7.

8. We agree with Black Hills that the scope of review concerning any program that complies with the safe harbor option should be limited. However, we also agree with the OCC that Black Hills' proposed procedure is too limited. Therefore, the Commission will grant Black Hills' Exceptions on this issue in part, by adding the following language to both Rule 3412(h) and Rule 4412(h):

Each utility electing the Safe Harbor Program option shall file a Notice pursuant to rules 1206 and 1210 applicable to tariff filings and applicable tariff sheets describing the Safe Harbor Program. Any hearing on the safe harbor program tariff sheets shall be limited in scope to evaluating compliance with this subparagraph (h).

3. Rules 3412(h)(II)(O) and 4412(h)(II)(O)

9. In its Exceptions, Black Hills also seeks clarification of the sentence in Rules 3412(h)(II)(O) and 4412(h)(II)(O), which read, "Nonpayment shall not result in the automatic removal of a participant from Safe Harbor." Black Hills believes this sentence suggests that a participant could default on payment yet continue to receive utility service and the Safe Harbor bill benefits. Black Hills argues this prohibits reasonable utility practices, including the termination of service for payment defaults. Black Hills suggests this sentence be changed to read: "Partial payment shall not result in the automatic removal of a participant from Safe Harbor." Black Hills Exceptions, at 10-11.

10. In its Response to Exceptions, the OCC agrees with Black Hills. The OCC believes customers who make no effort to make payments on their outstanding utility bill should not continue to receive utility service for free. However, the OCC suggests an alternative change to the Rule language, which would read: “Partial or late payment shall not result in the automatic removal of a participant from Safe Harbor.” OCC Response to Exceptions, at 8.

11. We agree with both Black Hills Energy and the OCC, and find Rules 3412(h)(II)(O) and 4412(h)(II)(O) should be clarified. These rules will be amended to read: “A single missed, partial or late payment shall not result in the automatic removal of a participant from Safe Harbor.”

4. Rules 3412(d)(I) and 4412(d)(I)

12. In its Exceptions, Black Hills seeks modification of the Rules 3412(d)(I) and 4412(d)(I), which currently state “Each utility shall file tariffs containing its proposed Program no later than March 19, 2012.” Black Hills argues more time is needed, in order to fully reap the benefits of the forthcoming report by Public Service Company of Colorado concerning its low income assistance pilot program. Black Hills therefore requests that the Commission amend the due date for the program tariff filings, in order to provide more than two months for the jurisdictional utilities to review the report and to adjust their own low-income energy assistance program designs, as necessary. Black Hills requests that the Commission modify Rules 3412(d)(I) and 4412(d)(I) to read as follows: “Each utility shall file tariffs containing its proposed Program no later than, May 31, 2012.” Black Hills Exceptions, at 11-12.

13. Given the length of time that has passed since EOC filed its original petition in this matter in Docket Nos. 10M-473E and 10M-475G and given the amount of

procedural interaction that has occurred among the parties in this matter, we are not persuaded by Black Hills' arguments on this issue. Therefore, we will deny Black Hills' Exceptions on this issue.

5. Rules 3412(e)(IV) and 4412(e)(IV)

14. In its Exceptions, Black Hills further expresses concern with Rules 3412(e)(IV) and 4412(e)(IV), which require the utility to apply all program expense reductions attributable to the low income assistance program as an offset to cost recovery. Black Hills Energy argues this language is not practicable. Black Hills believes a utility designing a low-income assistance program will not have observable data to attribute as offsets to a low income assistance program. Black Hills further states any offsets would be merely speculative, as the true impact of the program would not become proven or known until it had been implemented over many accounting periods. Black Hills therefore requests that Rules 3412(e)(IV) and 4412(e)(IV) be deleted. Black Hills Exceptions, at 12.

15. The OCC disagrees with Black Hills' Exceptions on this issue. The OCC points out that § 40-3-106(1)(d)(III), C.R.S., requires the Commission to consider the "...potential impact on, and cost-shifting to, utility customers other than low-income customers." The OCC believes that, by waiting until a utility files a rate case to capture the operational cost reductions associated with a low income program, a utility may collect costs from non-participating customers in excess of actually incurred costs. The OCC believes this would conflict with §40-3-106(1)(d)(III), C.R.S., because costs that are no longer being incurred would continue to be charged to non-participating customers until the utility's next rate case. OCC Response to Exceptions, at 9.

16. We agree with the OCC's arguments, as well as the reasoning of the Recommended Decision. We will therefore deny Black Hills' Exceptions on this issue. However, we will defer the requirement to submit required data concerning program expense reductions attributable to the low income assistance program until the utilities' electric and natural gas service low income programs become fully implemented during their phase III filings as determined in Rules 3412(c)(II)(B)(iii) and 4412(c)(II)(B)(iii).

B. EOC

1. Rules 3412(b)(I)(A) and 4412(b)(I)(A)

17. In Rules 3412(b)(I)(A) and 4412(b)(I)(A), an "eligible low-income customer" is defined as one with a household income at or below 185 percent of "the federal poverty level." The federal poverty level is annually computed and published by the U.S. Department of Health and Human Services (U.S. DHS). In the Recommended Decision, the ALJ incorporated this definition by setting forth the actual dollar values of the latest poverty levels, published in January 2011. Recommended Decision, at ¶ 23, n. 25.

18. In its Exceptions, the EOC disagrees with this methodology. Because the federal poverty levels change annually, the 2011 federal poverty level will not accurately represent the federal poverty level in years to come. The EOC believes this is problematic in the determination of Phase I, II, and III eligibility. EOC suggests that, as an alternative, the rules should require the Commission staff each year to compute and distribute to utilities the federal poverty level thresholds that are relevant to the rules, and then require utilities to issue tariffs containing the new thresholds (similar to the manner in which staff annually computes the interest rate required to be paid that year on utility customer deposits). EOC Exceptions, at 3-4.

19. The OCC, in its Response to Exceptions, agrees with EOC that the current rules will not represent the true federal poverty level calculations in future years. As a result, the OCC supports EOC's proposed solution.

20. We concur with the logic in the comments made by the EOC and OCC and will therefore accept the recommendation, changing the Rules to direct Staff to seek annual Commission authorization to obtain and distribute to utilities the most current federal poverty level income thresholds that are relevant to the Rules. Affected utilities will then be required to file updated tariff sheets containing the new household income thresholds.

2. Definition of "LEAP Participant"

21. In its Exceptions, the EOC suggests that "LEAP participant" should be defined. This is because the determination of eligibility for LEAP participation is a onetime decision based on a single application filed during the six-month heating season, November 1 through April 30. Applications for LEAP participation are not determined or reviewed outside those six months, and as a result no Department determinations of LEAP participation eligibility occurs from May 1 through September 30. If LEAP participation is a condition for participation in safe harbor programs, EOC believes the LEAP participation eligibility determination process needs to be harmonized with LEAP-based eligibility requirements. To this end, EOC suggests adding the following definition under Rules 3412(b) and 4412(b):

(IX) "LEAP participant" means a utility customer who at the time of applying to participate in a Program has been determined to be eligible for LEAP benefits by the Department during either (a) the Department's current six-month (November 1 – April 30) LEAP application period, if that period is open at the time the customer applies for Program participation; or (b) the Department's most recently closed six-month (November 1 – April 30) LEAP application period, if that period is closed at the time the customer applies to participate in the Program and the Department's next six-month (November 1 – April 30) LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under this clause (b) the utility customer must

apply to the Department during the Department's next six-month (November 1 – April 30) LEAP benefit application period and be determined eligible for such benefits.

EOC Exceptions, at 6-7.

22. We agree with EOC that the definition of LEAP participant should be added to Rules 3412(b) and 4412(b) and therefore grant EOC's Exceptions on this issue.

3. Zero Income Customers Minimum Payments

23. EOC proposes, in its Exceptions, that a minimum payment be required from customers with no income in the Safe Harbor program. This amendment would require electric heating program participants with zero income to make a minimum bill payment of \$20 per month, while electric non-heating program participants would make a minimum payment of \$10 per month. EOC suggests the following new provision be added as Rule 3412(h)(II)(B)(i)(3),

(3) Notwithstanding the percentage of income limits established in Rule 3412(h)(II)(B)(i)(1) and (2), a utility may establish minimum monthly payments amounts for Participants with household income of \$0, provided that:

(1) The Participant's minimum payment for an electric heating account shall be no more than \$20 per month; and

(2) The Participant's minimum payment for an electric non-heating account shall be no more than \$10 a month.

EOC Exceptions, at 7-8.

24. We agree with the arguments presented by EOC. We see value in a requirement that a minimum payment be required of each program participant. Therefore, we will accept the EOC's recommended solution. We further find such a change would benefit the natural gas rules, and therefore we will add a similar subparagraph to natural gas service low-income program rule.

C. Climax/CF&I**1. Rules 3142(h)(II)(G) and 4412(h)(II)(G)**

25. In its Exceptions, Climax/CF&I objects to the requirement, contained in Rules 3142(h)(II)(G) and 4412(h)(II)(G), that cost recovery under the safe harbor program be based on usage. Climax/CF&I argues the usage-based approach to cost recovery set forth in the safe harbor program requires large energy users and high load factor customers to pay a disproportionate share of the subsidies to eligible customers. Climax/CF&I argues this is inappropriate because there is no correlation between the cost of assistance to low-income customers and the amount of electricity or natural gas any particular customer uses. Further, Climax/CF&I argues the usage-based approach is inequitable because it places a financial burden associated with the program on large users, who are ineligible to benefit from the low income assistance program. As an alternative, Climax/CF&I suggests that cost recovery issues be decided on case-by-case basis, or based on a per-customer charge allocated by program costs within each rate class. Climax/CF&I Exceptions, at 2-4.

26. In its Response to Exceptions, EOC states usage-based cost recovery was well supported in the record. EOC further argues that Climax/CF&I's Exceptions should be rejected because, under the rules, each utility has a choice as to whether to choose the safe harbor program, with its associated cost recovery provisions, or to opt for another type of program, which may be very similar to the safe harbor program, but for an alternative method of cost recovery. EOC Response to Exceptions, at 5-6.

27. After reviewing Climax/CF&I's Exceptions, we find it is appropriate to revise the method for cost recovery contained within the safe harbor program. In so doing, we are attempting to balance equity concerns with ease of implementation and cost recovery and

tracking certainties. The difference in rate structures across the rate classes makes it hard to achieve these goals with a pure usage allocation.

28. We, therefore, will revise the safe harbor program's cost recovery provisions to allocate the costs of the program to each rate class, less transportation customers, on an equitable basis. We direct utilities to allocate the costs of the Safe Harbor program to each rate based on each rate class' share of the test year revenue requirement. Each utility will then collect those costs within the rate class on a fixed fee per customer basis. Each rate class in total will then bear an equitable percentage of the costs of the program, and a per-customer charge will allow for more certain cost recovery and easier cost recovery accounting.

29. Commission Decision No. C11-0154 that promulgated the NOPR of rules 3412 and 4412, indicated a maximum budget impact for non-participants whereby during the initial phase-in, an average electricity user (632 kWh/month) would pay \$0.50 per month. This rises to \$0.56 per month in the second phase, and to \$0.63 per month in the final phase. Similarly, an average gas user (68 therms/month) would pay an additional \$0.50, \$0.56, and \$0.63 per month during the phase in. The ALJ in his Recommended Decision R11-0606 in ¶17 was concerned that the proposed caps were too high and therefore he reduced them by 50 percent, or \$.25, \$.28, and \$.315 for each of the three phases for electric and natural gas customers. We make no change to the caps adopted by the ALJ.

30. However, we clarify the intent of the maximum budget impact sections of the safe harbor provisions found in rules 3412 (h)(II) and 4412 (h)(II). The safe harbor provisions require that the benefits to program participants as stated in rules 3412(h)(II)(M) and 4412 (h)(II)(M) shall not exceed the maximum budget impact to non-participants, as described in ¶29 above. Any deviation from the safe harbor provisions of rules 3412 (h) and 4412 (h) will be

classified as utility specific low-income assistance programs and therefore subject to greater Commission review and scrutiny.

D. Rules 3006 and 4006 Revisions by Commission's Own Motion

31. The Commission, on its own motion, will modify rules 3006 and 4006 adding the annual reports filing requirements of rules 3412 and 4412.

32. All other rules not discussed in this decision are adopted without change from Decision No. R11-0606, and as attached.

III. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R11-0606 (Recommended Decision) filed on June 23, 2011 by Black Hills/Colorado Electric Utility Company, L.P., d/b/a Black Hills Energy are granted, in part, and denied, in part, consistent with the discussion above.

2. The exceptions to the Recommended Decision filed on June 23, 2011 by Energy Outreach Colorado are granted, consistent with the discussion above.

3. The exceptions to the Recommended Decision filed on June 23, 2011 by Climax Molybdenum and CF&I Steel are granted in part, consistent with the discussion above.

4. The Commission modifies and adopts the electric service low-income program rules attached to this Order as Attachment A and natural gas service low-income program rules attached to this Order as Attachment B, consistent with the above discussion.

5. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

6. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

7. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in the Colorado Register. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

8. 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 Order.

9. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
AUGUST 11, 2011.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

MATT BAKER

Commissioners

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3 RULES REGULATING ELECTRIC UTILITIES

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to describe the electric service to be provided by jurisdictional utilities and master meter operators to their customers; to designate the manner of regulation over such utilities and master meter operators; and to describe the services these utilities and master meter operators shall provide. In addition, these rules identify the specific provisions applicable to public utilities or other persons over which the Commission has limited jurisdiction. These rules address a wide variety of subject areas including, but not limited to, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, master meter operations, flexible regulation, procedures for administering the Low-Income Energy Assistance Act, electric service low-income program, cost allocation between regulated and unregulated operations, recovery of costs, the acquisition of renewable energy, small power producers and cogeneration facilities, and appeals regarding local government land use decisions. The statutory authority for these rules can be found at §§ 29-20-108, 40-1-103.5, 40-2-108, 40-2-124(2), 40-3-102, 40-3-103, 40-3-104.3, 40-3-106, 40-3-111, 40-3-114, 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, 40-7-113.5, 40-7-116.5, 40-8.7-105(5), and 40-9.5-107(5), C.R.S.

* * * * *

[indicates omission of unaffected rules]

3006. Reports.

* * * * *

[indicates omission of unaffected rules]

- (f) Pursuant to subparagraph 3412(g)(I), a utility shall file with the Commission information concerning its electric service low-income program.
- (fg) Pursuant to rules 3252 and 3253, a utility shall file with the Commission a report concerning any major event.
- (gh) Pursuant to rule 3411(e)(IV), a utility shall file with the Commission a report concerning its fund administration of the Low-Income Energy Assistance Act.
- (hi) Pursuant to rules 3503(a), 3504(a), and 3503(i), a utility shall file with the Commission cost assignment and allocation manuals, fully-distributed cost studies, and required updates.

- (ij) Pursuant to rule 3617(a), a utility shall file with the Commission an annual progress report concerning the utility’s electric resource plan.
- (jk) Pursuant to rule 3617(b), a utility shall file with the Commission reports on competitive acquisition bidding of the utility’s electric resource plan.
- (kl) Pursuant to rule 3662, a utility shall file with the Commission its annual compliance report.
- (lm) A utility shall file with the Commission any report required by a rule in this 3000 series of rules.
- (mn) A utility shall file with the Commission such special reports as the Commission may require.

* * * * *

[indicates omission of unaffected rules]

BILLING AND SERVICE

3400. Applicability.

Rules 3400 through 341~~2~~⁴ apply to residential customers, small commercial customers and agricultural customers served pursuant to a utility’s rates or tariffs. In its tariffs, a utility shall define “residential,” “small commercial” and “agricultural” customers to which these rules apply. The utility may elect to apply the same or different terms and conditions of service to other customers.

* * * * *

[indicates omission of unaffected rules]

[new rules]

3412. Electric Service Low-Income Program.

(a) Scope and Applicability.

(I) Electric utilities with Colorado retail customers shall file with the Commission a proposal to provide low-income energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential low-income customers, as permitted by § 40-3-106, C.R.S.

(II) Rule 3412 is applicable to investor-owned electric utilities subject to rate regulation by the Public Utilities Commission of Colorado.

(b) Definitions. The following definitions apply only in the context of rule 3412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(I) “Eligible low-income customer” means a residential utility customer who meets the household income thresholds computed annually by the Staff of the Commission pursuant to subparagraph 3412(c)(II)(A).

- (II) “Non-participant” means a utility customer who is not receiving low-income assistance under rule 3412.
 - (III) “Participant” means an eligible low-income residential utility customer who is granted the reasonable preference or advantage through participation in an electric service low-income program.
 - (IV) “Program” means an electric service low-income program approved under rule 3412.
 - (V) “Percentage-of-income plan thresholds” means household income levels for different numbers of persons adjusted by the federal poverty levels specified in subparagraphs (1) and (2) of subparagraph 3412(h)(II)(B)(i) as calculated annually by the Staff of the Commission.
 - (VI) “Arrearage” means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.
 - (VII) “Fixed credit” means an annual bill credit established at the beginning of a participant’s participation in a program each year delivered as a monthly credit on each participant’s bill. The fixed credit is the participant’s full annual bill minus the participant’s affordable percentage of income payment obligation on the full annual bill.
 - (VIII) “Full annual bill” means the current consumption of a participant billed at standard residential rates. The full annual bill of a participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and (2) that portion of the bill that exceeds the affordable percentage of income payment.
 - (IX) “LEAP” means Low Energy Assistance Program, a county-run, federally-funded, program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.
 - (X) “LEAP participant” means a utility customer who at the time of applying to participate in a program has been determined to be eligible for LEAP benefits by the Department during either (1) the Department’s current six-month (November 1 – April 30) LEAP application period, if that period is open at the time the customer applies for program participation; or (2) the Department’s most recently closed six-month (November 1 – April 30) LEAP application period, if that period is closed at the time the customer applies to participate in the program and the Department’s next six-month (November 1 – April 30) LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under part (2) of this definition, the utility customer must apply to the Department during the Department’s next six-month (November 1 – April 30) LEAP benefit application period and be determined eligible for such benefits.
- (c) Program requirements.
- (I) Program components. A utility’s (I) proposed program, required by this rule, shall address the following four aspects of energy assistance.
 - (A) How it integrates with existing energy efficiency or DSM programs offered by the utility or other entity;

- (B) How it integrates with existing weatherization programs offered by the state of Colorado or other entities;
- (C) How it integrates with LEAP or other existing low-income energy assistance programs; and
- (D) Consideration of arrearage forgiveness for participants who enter the program. Arrearage credits shall be sufficient to reduce the pre-existing arrearage to \$0.00 over twenty-four months.

(II) Participant eligibility phase-in.

- (A) On or before March 1 of each year, the Staff of the Commission shall compute household income levels for households containing different numbers of persons for Phase I, II and III eligibility under subparagraph 3412(c)(II)(B), below. For this purpose the Staff shall obtain the most recent federal poverty level for households of different sizes from the federal poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2). For each size household, these federal poverty level incomes shall be multiplied by the federal poverty level percentages in subparagraph 3412(c)(II)(B), below. On or before April 1 of each year, the Commission shall send a letter to each utility subject to these rules stating the resulting subparagraph 3412(c)(II)(B) Phase I, II and III income eligibility thresholds for households of different sizes as computed by Staff. Annually following receipt of the Commission's letter, each utility shall file an advice letter or application, as appropriate, revising its tariffs effective on or before July 1 to show the same current Phase I, II and III income eligibility thresholds.
- (B) A utility's plan shall phase in the eligibility requirements over three years in accordance with the following schedule:
 - (i) Phase I: Eligible participants are limited to those with a household income at or below one hundred twenty-five percent of the current federal poverty level during the first year of operation of the program.
 - (ii) Phase II: Eligible participants are limited to those with a household income at or below one hundred fifty percent of the current federal poverty level during the second year of operation of the program.
 - (iii) Phase III: Eligible participants are limited to those with a household income at or below one hundred eighty-five percent of the current federal poverty level during the third and subsequent years of operation of the program.
- (C) Utilities that have implemented a low-income electric service pilot program prior to January 1, 2011 may continue to provide benefits to pilot program participants that are enrolled in the pilot program at the time of filing under subparagraph 3412(d)(I), regardless of the customer's level of poverty, so long as the customer's household income is at or below 185 percent of Federal Poverty Limits.

(III) Maximum impact on non-participant.

(A) The utility shall quantify the anticipated impact of its program on non-participants, for each phase identified in subparagraph 3412(c)(II)(B), as required by § 40-3-106(d)(III), C.R.S.

(B) If program cost recovery is a fixed fee, then the program's maximum cost impact on residential non-participant's are:

(i) Phase I: No more than \$0.25 per month;

(ii) Phase II: No more than \$0.28 per month; and

(iii) Phase III: No more than \$0.315 per month.

(C) If program cost recovery is usage-based, then the program's maximum cost impact on non-participant's volumetric rates are:

(i) Phase I: No more than \$0.0004 per kWh;

(ii) Phase II: No more than \$0.00045 per kWh; and

(iii) Phase III: No more than \$0.0005 per kWh.

(d) Program implementation.

(I) Each utility shall file tariffs containing its proposed program no later than March 19, 2012.

(II) At a minimum, the utility's filing shall include the following information:

(A) A tariff containing the rules that govern the operation of the program, including all of the requirements of paragraph 3412(c).

(B) A narrative description of the proposed program, including:

(i) An explanation of the manner and the extent to which the program operates in an integrated manner with other components of utility billing, credit and collection policies and programs, and usage reduction processes of the utility to accomplish the program goals.

(ii) A needs assessment identifying an estimate of the total number of low-income participants; the number of identified low-income participant accounts; and the projected program enrollment.

(C) A hard budget cap for each year the plan is in operation, including program administrative costs.

(D) The number of participants currently receiving low-income energy assistance from the utility; the average amount of base consumption that occurs in low-income homes; and the potential impact of energy efficiency/DSM upon average low-income consumption.

(E) Other information necessary to adequately support its proposal to the Commission.

(e) Cost recovery.

(I) Each utility shall address in its filing how costs of the program will be recovered.

(II) Each utility shall provide information regarding impacts on the various participant classes and on participants within a class.

(III) The following costs are eligible for recovery by a utility as program costs:

(A) Program credits or discounts applied against bills for current usage.

(B) Program credits applied against pre-existing arrearages.

(C) Program administrative costs.

(D) Other reasonable costs that the utility is able to demonstrate are attributable to its program.

(IV) The utility shall apply, as an offset to cost recovery, all program expense reductions attributable to the program. Program expense reductions include decreases in utility operating costs; decreases in the return requirement on cash working capital for carrying arrearages; decreases in the cost of credit and collection activities for dealing with low-income participants; and decreases in uncollectable account costs for these participants. The utility shall begin providing the offset to cost recovery expense reductions data by Phase III of program implementation pursuant to the timeline in subparagraph 3412(c)(II)(B)(iii).

(f) Energy assistance grants

(I) The utility shall apply energy assistance grants to the dollar value of credits granted to individual Program participants.

(II) A utility providing a program as a percentage of income plan shall apply any energy assistance grant to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.

(A) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:

(i) First, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding.

(ii) Second, to the account of the program participant as a benefit to the participant.

(B) No portion of an energy assistance grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.

(g) Annual report.

- (I) No later than May 31 each year, each utility shall file an annual report, based on the previous 12 month period ending March 31, containing the following information:
 - (A) Monthly information on the program including number of participants, amount of benefit disbursement, type of benefit disbursement, and revenue collection;
 - (B) The number of applicants for the program;
 - (C) The number of applicants qualified for the program;
 - (D) The number of participants;
 - (E) The average assistance provided, both mean and median;
 - (F) The maximum assistance provided to an individual participant;
 - (G) The minimum assistance provided to an individual participant;
 - (H) Total cost of the program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;
 - (I) The number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;
 - (J) An estimate of utility savings as a result of the implementation of the program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, etc.); and
 - (K) Recommended program modifications based on report findings.

(h) Safe harbor program option.

Paragraph (h) describes an option that each utility may propose as a low-income energy assistance program. The program detailed in this paragraph may be adopted by a utility in satisfaction of the requirements of this rule 3412 and, as such, constitutes a safe harbor for compliance. Each utility electing the safe harbor program option shall file a notice describing the safe harbor program pursuant to rules 1206 and 1210 of the Commission's rules of Practice and Procedure applicable to tariff filings. If, after review, the Commission verifies the program is in compliance with this paragraph (h), the Commission will deem the filing in compliance and approve the safe harbor program without setting it for evidentiary hearing or otherwise subjecting the tariff filing to any further adjudicatory process.

- (I) Customer eligibility for the safe harbor program shall be phased in as provided in subparagraph 3412(c)(II)(B).
- (II) Safe harbor design requirements. The following design requirements shall be included in the safe harbor tariff filing of a utility.

- (A) Safe harbor enrollment shall be limited to the utility's LEAP participants based on the three-year phase-in schedule contained in subparagraph 3412(c)(II)(B).
- (B) Payment plan proposal. Participant payments for electric bills rendered to safe harbor participants shall not exceed a percentage of the participant's annual income.
 - (i) Percentage of income plan. The total payment for all electric home energy under a percentage of income plan is determined based upon a percentage of the participant's annual gross household income. On or before March 1 of each year, the Staff of the Commission shall compute percentage-of-income plan thresholds for each percentage of the Federal Poverty Level indicated in subparts (1) and (2) of this subparagraph 3412(h)(III)(B)(i). For this purpose the Staff shall obtain the most recent federal poverty level for households of different sizes from the Federal Poverty Guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2). On or before April 1 of each year, the Commission shall send a letter to each utility subject to these rules that sets forth the resulting current percentage-of-income plan thresholds for subparts (1) and (2) of this subparagraph 3412(h)(III)(B)(i). Annually following receipt of the Commission's letter, each utility shall file an advice letter revising its tariffs to be effective on or before July 1 to show the same new percentage-of-income plan thresholds.
 - (1) For electric accounts for which electricity is the primary heating fuel, maximum participant payments shall be set at the following percentage of income burdens:
 - (a) Household income at or below 75 percent of Federal Poverty Level: four percent of income.
 - (b) Household income exceeding 75 percent but at or below 125 percent of Federal Poverty Level: five percent of income.
 - (c) Household income exceeding 125 percent but at or below 185 percent of Federal Poverty Level: six percent of income.
 - (2) For electric accounts for which electricity is not the primary heating fuel, maximum customer payments shall be set at the following percentage of income burdens:
 - (a) Household income at or below 75 percent of the Federal Poverty Level: two percent of income;
 - (b) Household income exceeding 75 percent but at or below 125 percent of the Federal Poverty Level: two and one-half percent of income; and
 - (c) Household income exceeding 125 percent but at or below 185 percent of the Federal Poverty Level: three percent of income.

- (3) Notwithstanding the percentage of income limits established in subparagraphs 3412(h)(III)(B)(i) (1) and (2), a utility may establish minimum monthly payment amounts for participants with household income of \$0, provided that:
- (a) The participant's minimum payment for an electric heating account shall be no more than \$20 a month.
- (b) The participant's minimum payment for an electric non-heating account shall be no more than \$10 a month.
- (ii) In the event that a primary heating fuel for any particular safe harbor participant has been identified by LEAP, that determination shall be final.
- (C) Full annual bill calculation. The utility shall be responsible for estimating a safe harbor participant's full annual bill for the purpose of determining the participant's fixed credit.
- (D) Fixed credit benefit delivery.
- (i) A utility shall, unless infeasible, deliver safe harbor benefits as a percentage of income-based fixed credit on a participant's bill.
- (ii) Fixed credits shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges, change to the extent that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.
- (iii) If a utility demonstrates that it is infeasible to deliver safe harbor benefits as a percentage of income-based fixed credits on a participant's bill, a participant's annual payment each year shall be calculated as a percentage of household income and converted to a percentage of the participant's full annual bill. A participant will pay that percentage of the total bill irrespective of the level of the full annual bill.
- (E) Levelized budget billing participation. A utility shall, unless infeasible, enroll safe harbor participants in its levelized budget billing program as a condition of participation in safe harbor. Should a safe harbor participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.
- (F) Arrearage credits.
- (i) Arrearage credits shall be applied to pre-existing arrearages.
- (ii) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to \$0.00 over twenty-four months.
- (iii) Application of an arrearage credit to a safe harbor account may be conditioned by the utility on one or more of the following:

- (1) The receipt of regular participant payments toward safe harbor bills for current usage; or
 - (2) The payment of a participant copayment toward the arrearages so long as the participant copayment does not exceed one percent of gross household income.
- (iv) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity while the customer is participating in the safe harbor program.
- (v) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills, if the participant enters into and maintains a levelized budget billing plan.
- (G) Cost recovery.
 - (i) Each utility shall include as part of its safe harbor the cost recovery requirements listed in paragraph 3412(e).
 - (ii) Safe harbor program costs shall be allocated to each retail rate based on each rate class's share of the test year revenue requirement. Cost recovery shall also be based on a fixed fee.
 - (iii) Each utility shall include as part of its safe harbor a hard budget cap for each year the program is in operation, including program administrative costs, that complies with subparagraph 3412(c)(III).
- (H) Energy assistance grants. The utility shall apply energy assistance grants to the dollar value of credits granted to the individual program participants as set forth in paragraph 3412(f).
- (I) Cost control features.
 - (i) A utility shall refer safe harbor participants who historically use 150 percent or more of the median use of its residential class participants to public or private usage reduction programs, including the utility's own demand-side management programs and the usage reduction programs of local weatherization agencies that provide free energy efficiency upgrades to income-qualified consumers based on availability of funding.
 - (ii) Households approved to receive a safe harbor benefit must agree to have their dwelling weatherized if contacted by a state-authorized weatherization agency. Failure to permit or complete weatherization may result in the denial of safe harbor benefits for the following year, subject to the following exceptions:

- (1) Households containing a member(s) whose mental or physical health could be jeopardized because of weatherization shall be exempt from this requirement. Such participants must provide a certificate of medical hardship which shall be in writing sent to the utility from the office of a licensed physician, and show clearly the name of the participant or individual whose health is at issue; the Colorado medical identification number, phone number, name, and signature of the physician or health care practitioner acting under a physician's authority certifying the medical hardship.
 - (2) A household whose landlord refuses to allow weatherization shall not have benefits denied.
 - (3) A household shall not have benefits denied for failure to provide matching funds for weatherization.
- (J) Targeted outreach. Within its residential customer base, a utility shall make special efforts to target safe harbor outreach to payment-troubled customers.
- (K) Portability of benefits. A safe harbor participant may continue to participate without reapplication should the participant change service addresses, but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the levelized budget billing amount to reflect the changed circumstances. A safe harbor participant who changes service addresses and does not remain within the service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.
- (L) Maximum cost impact on non-participants. The maximum cost impact to non-participants shall be no more than the limits established in subparagraph 3412(c)(III)(B).
- (M) Program requirements conflict. In the event there is a conflict between participant benefits in subparagraphs 3412(h)(III)(B) and (F) and non-participant impacts in subparagraph 3412(h)(III)(L), the non-participant impact limits shall not be exceeded.
- (N) Administrative program components. The safe harbor program administration shall include:
- (i) A written explanation of safe harbor provided to participants.
 - (ii) Consumer education programs that shall include information on the benefits of energy conservation, and that may include referrals to other appropriate weatherization and income supplement programs.
 - (iii) An annual process that verifies a participant's continuing income eligibility for benefits, provided that:

 - (1) A process through which a participant may reapply on a less frequent basis may be implemented for categories of participants that are not likely to experience annual fluctuations in income; and

- (2) A process through which a participant must verify income on a more frequent basis may be implemented for participants for whom the calculation of benefits is based on a \$0 income.
- (3) A utility shall notify the participant for whom the benefit is based on a \$0 income of the frequency with which income must be verified.
- (4) A utility must provide an income verification process for a participant for whom the benefit is based on a \$0 income.
- (5) A participant whose benefit is based on a \$0 income who fails to timely verify income shall be removed from safe harbor.
- (O) Payment default provisions. Failure of a participant to make his or her monthly bill payments will result in a utility placing the participant in its regular collection cycle. A single missed, partial or late payment shall not result in the automatic removal of a participant from safe harbor.

341~~32~~. – 3499. [Reserved].

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[indicates omission of unaffected rules]

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-4

PART 4 RULES REGULATING GAS UTILITIES

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to set forth rules describing the service to be provided by jurisdictional gas utilities and master meter operators to their customers and describing the manner of regulation over jurisdictional gas utilities, master meter operators, and the services they provide. These rules address a wide variety of subject areas including, but not limited to, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, master meter operations, transportation service, flexible regulation, procedures for administering the Low-Income Energy Assistance Act, gas service low-income program, cost allocation between regulated and unregulated operations, recovery of gas costs, appeals regarding local government land use decisions, and authority of the Commission to impose civil penalties on public utilities. The statutory authority for these rules can be found at §§ 29-20-108, 40-1-103.5, 40-2-108, 40-2-115, 40-3-102, 40-3-103, 40-3-104.3, 40-3-106, 40-3-111, 40-3-114, 40-3-101, 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, 40-7-117, 40-7-113.5, 40-7-116.5; and 40-8.7-105(5), C.R.S.

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[indicates omission of unaffected rules]

4006. Reports.

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[indicates omission of unaffected rules]

- ~~(f)~~ Pursuant to subparagraph 4412(g)(l), a utility shall file with the Commission information concerning its gas service low-income program.
- ~~(fg)~~ As required by rules 4503(a), 4504(a), and 4503(i), a utility shall file with the Commission cost assignment and allocation manuals, fully-distributed cost studies, and required updates.
- ~~(gh)~~ As required by rule 4609(b), a utility shall file reports providing GCA account 191 balance information.
- ~~(hi)~~ A utility shall file demand side management reports pursuant to rule 4754.
- ~~(ij)~~ A utility shall file reports required by rules 4910 through 4917.
- ~~(jk)~~ A utility shall file with the Commission any report required by a rule in this 4000 series of rules.

(k) A utility shall file with the Commission such special reports as the Commission may require.

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[indicates omission of unaffected rules]

BILLING AND SERVICE

4400. Applicability.

Rules 4400 through 441~~2~~⁴ apply to residential customers, small commercial customers and agricultural customers served pursuant to a utility's rates or tariffs. Rules 4400 through 4405 and rules 4407 through 441~~2~~⁴ shall not apply to customers served under a utility's transportation rates or tariffs. In its tariffs, a utility shall define "residential," "small commercial" and "agricultural" customers to which these rules apply. The utility may elect to apply the same or different terms and conditions of service to other customers.

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[indicates omission of unaffected rules]

[new rules]

4412. Gas Service Low-Income Program.

(a) Scope and Applicability.

(I) Gas utilities with Colorado retail customers shall file with the Commission a proposal to provide low-income energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential low-income customers, as permitted by § 40-3-106, C.R.S.

(II) Rule 4412 is applicable to investor-owned gas utilities subject to rate regulation by the Public Utilities Commission of Colorado.

(b) Definitions. The following definitions apply only in the context of rule 4412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(I) "Eligible low-income customer" means a residential utility customer who meets the household income thresholds computed annually by the Staff of the Commission pursuant to subparagraph 4412(c)(II)(A)."

(II) "Non-participant" means a utility customer who is not receiving low-income assistance under rule 4412.

(III) "Participant" means an eligible low-income residential utility customer who is granted the reasonable preference or advantage through participation in a gas service low-income program.

(IV) "Program" means a gas service low-income program approved under rule 4412.

- (V) “Percentage-of-income plan thresholds” means household income levels for different numbers of persons adjusted by the federal poverty levels specified in subparagraphs (1) and (2) of subparagraph 4412(h)(II)(B)(i) as calculated annually by the Staff of the Commission.
 - (VI) “Arrearage” means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.
 - (VII) “Fixed credit” means an annual bill credit established at the beginning of a participant’s participation in a program each year delivered as a monthly credit on each participant’s bill. The fixed credit is the participant’s full annual bill minus the participant’s affordable percentage of income payment obligation on the full annual bill.
 - (VIII) “Full annual bill” means the current consumption of a participant billed at standard residential rates. The full annual bill of a participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and (2) that portion of the bill that exceeds the affordable percentage of income payment.
 - (IX) “LEAP” means Low Energy Assistance Program, a county-run, federally-funded, program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.
 - (X) “LEAP participant” means a utility customer who at the time of applying to participate in a program has been determined to be eligible for LEAP benefits by the Department during either (1) the Department’s current six-month (November 1 – April 30) LEAP application period, if that period is open at the time the customer applies for program participation; or (2) the Department’s most recently closed six-month (November 1 – April 30) LEAP application period, if that period is closed at the time the customer applies to participate in the program and the Department’s next six-month (November 1 – April 30) LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under part (2) of this definition, the utility customer must apply to the Department during the Department’s next six-month (November 1 – April 30) LEAP benefit application period and be determined eligible for such benefits.
- (c) Program requirements.
- (I) Program components. A utility’s proposed program, required by this rule, shall address the following four aspects of energy assistance.
 - (A) How it integrates with existing energy efficiency or DSM programs offered by the utility or other entity;
 - (B) How it integrates with existing weatherization programs offered by the state of Colorado or other entities;
 - (C) How it integrates with LEAP or other existing low-income energy assistance programs; and
 - (D) Consideration of arrearage forgiveness for participants who enter the Program. Arrearage credits shall be sufficient to reduce the pre-existing arrearage to \$0.00 over twenty-four months.

(II) Participant eligibility phase-in.

- (A) On or before March 1 of each year, the Staff of the Commission shall compute household income levels for households containing different numbers of persons for Phase I, II and III eligibility under subparagraph 4412(c)(II)(B), below. For this purpose the Staff shall obtain the most recent federal poverty level for households of different sizes from the federal poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2). For each size household, these federal poverty level incomes shall be multiplied by the federal poverty level percentages in subparagraph 4412(c)(II)(B), below. On or before April 1 of each year, the Commission shall send a letter to each utility subject to these rules stating the resulting subparagraph 4412(c)(II)(B) Phase I, II and III income eligibility thresholds for households of different sizes as computed by Staff. Annually following receipt of the Commission's letter, each utility shall file an advice letter or application, as appropriate, revising its tariffs effective on or before July 1 to show the same current Phase I, II and III income eligibility thresholds.
- (B) A utility's plan shall phase in the eligibility requirements over three years in accordance with the following schedule:
- (i) Phase I: Eligible participants are limited to those with a household income at or below one hundred twenty-five percent of the current federal poverty level during the first year of operation of the program.
- (ii) Phase II: Eligible participants are limited to those with a household income at or below one hundred fifty percent of the current federal poverty level during the second year of operation of the program.
- (iii) Phase III: Eligible participants are limited to those with a household income at or below one hundred eighty-five percent of the current federal poverty level during the third and subsequent years of operation of the program.
- (C) Utilities that have implemented a low-income Gas service pilot program prior to January 1, 2011 may continue to provide benefits to pilot program participants that are enrolled in the pilot program at the time of filing under subparagraph 4412(d)(I), regardless of the customer's level of poverty, so long as the customer's household income is at or below 185 percent of Federal Poverty Limits.

(III) Maximum impact on non-participant.

- (A) The utility shall quantify the anticipated impact of its program on non-participants, for each phase identified in subparagraph 4412(c)(II)(B), as required by §-40-3-106(d)(III), C.R.S.
- (B) If program cost recovery is a fixed fee, then the program's maximum cost impact on residential non-participant's are:
- (i) Phase I: No more than \$0.25 per month;
- (ii) Phase II: No more than \$0.28 per month; and

(iii) Phase III: No more than \$0.315 per month.

(C) If program cost recovery is usage-based, then the program's maximum cost impact on non-participant's volumetric rates are:

(i) Phase I: No more than \$0.0037 per therm;

(ii) Phase II: No more than \$0.0041 per therm;

(iii) Phase III: No more than \$0.00465 per therm.

(d) Program implementation.

(I) Each utility shall file tariffs containing its proposed program no later than March 19, 2012.

(II) At a minimum, the utility's filing shall include the following information:

(A) A tariff containing the rules that govern the operation of the program, including all of the requirements of paragraph 4412(c).

(B) A narrative description of the proposed program, including:

(i) An explanation of the manner and the extent to which the program operates in an integrated manner with other components of utility billing, credit and collection policies and programs, and usage reduction processes of the utility to accomplish the program goals.

(ii) A needs assessment identifying an estimate of the total number of low-income participants; the number of identified low-income participant accounts; and the projected program enrollment.

(C) A hard budget cap for each year the plan is in operation, including program administrative costs.

(D) The number of participants currently receiving low-income energy assistance from the utility; the average amount of base consumption that occurs in low-income homes; the potential impact of energy efficiency/DSM upon average low-income consumption.

(E) Other information necessary to adequately support its proposal to the Commission.

(e) Cost recovery.

(I) Each utility shall address in its filing how costs of the program will be recovered.

(II) Each utility shall provide information regarding impacts on the various participant classes and on participants within a class.

(III) The following costs are eligible for recovery by a utility as program costs:

(A) Program credits or discounts applied against bills for current usage.

(B) Program credits applied against pre-existing arrearages.

(C) Program administrative costs.

(D) Other reasonable costs that the utility is able to demonstrate are attributable to its program.

(IV) The utility shall apply, as an offset to cost recovery, all program expense reductions attributable to the program. Program expense offsets include decreases in utility operating costs; decreases in the return requirement on cash working capital for carrying arrearages; decreases in the cost of credit and collection activities for dealing with low-income participants; and decreases in uncollectable account costs for these participants. The utility shall begin providing the offset to cost recovery expense reductions data by Phase III of program implementation pursuant to the timeline in subparagraph 4412(c)(II)(B)(iii).

(f) Energy assistance grants.

(I) The utility shall apply energy assistance grants to the dollar value of credits granted to program participants.

(II) A utility providing a program as a percentage of income plan shall apply any energy assistance grant to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.

(A) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:

(i) First, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding.

(ii) Second, to the account of the program participant as a benefit to the participant.

(B) No portion of an energy assistance grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.

(g) Annual report.

(I) No later than May 31 each year, each utility shall file an annual report, based on the previous 12 month period ending March 31, containing the following information:

(A) Monthly information on the program including number of participants, amount of benefit disbursement, type of benefit disbursement, and revenue collection;

(B) The number of applicants for the program;

(C) The number of applicants qualified for the program;

(D) The number of participants;

- (E) The average assistance provided, both mean and median;
- (F) The maximum individual assistance provided to an individual participant;
- (G) The minimum assistance provided to an individual participant;
- (H) Total cost of the program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;
- (I) The number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;
- (J) An estimate of utility savings as a result of the implementation of the program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, etc.); and
- (K) Recommended program modifications based on report findings.

(h) Safe harbor program option.

Paragraph (h) describes an option that each utility may propose as a low-income energy assistance program. The program detailed in this paragraph may be adopted by a utility in satisfaction of the requirements of this rule 4412 and, as such, constitutes a safe harbor for compliance. Each utility electing the safe harbor program option shall file a notice describing the safe harbor program pursuant to rules 1206 and 1210 of the Commission's rules of Practice and Procedure applicable to tariff filings. If, after review, the Commission verifies the program is in compliance with this paragraph (h), the Commission will deem the filing in compliance and approve the safe harbor program without setting it for evidentiary hearing or otherwise subjecting the tariff filing to any further adjudicatory process.

- (I) Customer eligibility for the safe harbor program shall be phased in as provided in subparagraph 4412(c)(II)(B).
- (II) Safe harbor design requirements. The following design requirements shall be included in the safe harbor tariff filing of a utility:
 - (A) Safe harbor enrollment shall be limited to the utility's LEAP participants based on the three-year phase-in schedule contained in subparagraph 4412(c)(II)(B).
 - (B) Payment plan proposal. Participant payments for gas bills rendered to safe harbor participants shall not exceed a percentage of the participant's annual income.
 - (i) Percentage of income plan. The total payment for all gas home energy under a percentage of income plan is determined based upon a percentage of the participant's annual gross household income. On or before March 1 of each year, the Staff of the Commission shall compute percentage-of-income plan thresholds for each percentage of the Federal Poverty Level indicated in subpart (1) of this subparagraph 4412(h)(III)(B)(i). For this purpose the Staff shall obtain the most recent federal poverty level for households of different sizes from the

Federal Poverty Guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2). On or before April 1 of each year, the Commission shall send a letter to each utility subject to these rules that sets forth the resulting current percentage-of-income plan thresholds for subparts (1) of this subparagraph 4412(h)(III)(B)(i). Annually following receipt of the Commission's letter, each utility shall file an advice letter revising its tariffs to be effective on or before July 1 to show the same new percentage-of-income plan thresholds.

(1) For gas accounts, maximum participant payments shall be set at the following percentage of income burdens:

(a) Household income at or below 75 percent of Federal Poverty Level: two percent of income.

(b) Household income exceeding 75 percent but at or below 125 percent of Federal Poverty Level: two and one-half percent of income.

(c) Household income exceeding 125 percent but at or below 185 percent of Federal Poverty Level: three percent of income.

(2) Notwithstanding the percentage of income limits established in subparagraph 4412(h)(III)(B)(i)(1), a utility may establish minimum monthly payment amounts for participants with household income of \$0, provided that the participant's minimum payment for a natural gas account shall be no more than \$10 a month.

(ii) In the event that a primary heating fuel for any particular safe harbor participant has been identified by LEAP, that determination shall be final.

(C) Full annual bill calculation. The utility shall be responsible for estimating a safe harbor participant's full annual bill for the purpose of determining the participant's fixed credit.

(D) Fixed credit benefit delivery.

(i) A utility shall, unless infeasible, deliver safe harbor benefits as a percentage of income-based fixed credit on a participant's bill.

(ii) Fixed credits shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges, change to the extent that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.

(iii) If a utility demonstrates that it is infeasible to deliver safe harbor benefits as a percentage of income-based fixed credits on a participant's bill, a participant's annual payment each year shall be calculated as a percentage of household income and converted to a percentage of the participant's full annual bill. A participant will pay that percentage of the total bill irrespective of the level of the full annual bill.

(E) Levelized budget billing participation. A utility shall, unless infeasible, enroll safe harbor participants in its levelized budget billing program as a condition of participation in safe harbor. Should a safe harbor participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.

(F) Arrearage credits.

(i) Arrearage credits shall be applied to pre-existing arrearages.

(ii) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to \$0.00 over twenty-four months.

(iii) Application of an arrearage credit to a safe harbor account may be conditioned by the utility on one or more of the following:

(1) The receipt of regular participant payments toward safe harbor bills for current usage; or

(2) The payment of a participant copayment toward the arrearages so long as the participant copayment does not exceed one percent of gross household income.

(iv) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity while the customer is participating in the safe harbor program.

(v) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills, if the participant enters into and maintains a levelized budget billing plan.

(G) Cost recovery.

(i) Each utility shall include as part of its safe harbor the cost recovery requirements listed in paragraph 4412(e).

(ii) Safe harbor program costs shall be allocated to each retail rate based on each rate class's share of the test year revenue requirement. Cost recovery shall also be based on a fixed fee.

(iii) Each utility shall include as part of its safe harbor a hard budget cap for each year the program is in operation, including program administrative costs, that complies with subparagraph 4412(c)(III).

- (H) Energy assistance grants. The utility shall apply energy assistance grants to the dollar value of credits granted to the individual Program participants as set forth in paragraph 4412(f).
- (I) Cost control features.

 - (i) A utility shall refer safe harbor participants who historically use 150 percent or more of the median use of its residential class participants to public or private usage reduction programs, including the utility's own demand side management programs and the usage reduction programs of local weatherization agencies that provide free energy efficiency upgrades to income-qualified consumers based on availability of funding.
 - (ii) Households approved to receive an safe harbor benefit must agree to have their dwelling weatherized if contacted by a state-authorized weatherization agency. Failure to permit or complete weatherization may result in the denial of safe harbor benefits for the following year, subject to the following exceptions:

 - (1) Households containing a member(s) whose mental or physical health could be jeopardized because of weatherization shall be exempt from this requirement. Such participants must provide a certificate of medical hardship which shall be in writing sent to the utility from the office of a licensed physician, and show clearly the name of the participant or individual whose health is at issue; the Colorado medical identification number, phone number, name, and signature of the physician or health care practitioner acting under a physician's authority certifying the medical hardship.
 - (2) A household whose landlord refuses to allow weatherization shall not have benefits denied.
 - (3) A household shall not have benefits denied for failure to provide matching funds for weatherization.
- (J) Targeted outreach. Within its residential customer base, a utility shall make special efforts to target safe harbor outreach to payment-troubled customers.
- (K) Portability of benefits. A safe harbor participant may continue to participate without reapplication should the participant change service addresses, but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the levelized budget billing amount to reflect the changed circumstances. A safe harbor participant who changes service addresses and does not remain within the service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.
- (L) Maximum cost impact on non-participants. The maximum cost impact to non-participants shall be no more than the limits established in subparagraph 4412(c)(III)(B).

- (M) Program requirements conflict. In the event there is a conflict between participant benefits in subparagraphs 4412(h)(III)(B) and (F) and non-participant impacts in subparagraph 4412(h)(III)(L), the non-participant impact limits shall not be exceeded.
- (N) Administrative program components. The safe harbor program administration shall include:
- (i) A written explanation of safe harbor provided to participants.
 - (ii) Consumer education programs that shall include information on the benefits of energy conservation, and that may include referrals to other appropriate weatherization and income supplement programs.
 - (iii) An annual process that verifies a participant's continuing income eligibility for benefits, provided that:
 - (1) A process through which a participant may reapply on a less frequent basis may be implemented for categories of participants that are not likely to experience annual fluctuations in income; and
 - (2) A process through which a participant must verify income on a more frequent basis may be implemented for participants for whom the calculation of benefits is based on a \$0 income.
 - (3) A utility shall notify the participant for whom the benefit is based on a \$0 income of the frequency with which income must be verified.
 - (4) A utility must provide an income verification process for a participant for whom the benefit is based on a \$0 income.
 - (5) A participant whose benefit is based on a \$0 income who fails to timely verify income shall be removed from Safe Harbor.
- (O) Payment default provisions. Failure of a participant to make his or her monthly bill payments will result in a utility placing the participant in its regular collection cycle. A single missed, partial or late payment shall not result in the automatic removal of a participant from safe harbor.

44132. – 4499. [Reserved].

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[indicates omission of unaffected rules]