

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22V-0517EG

IN THE MATTER OF THE JOINT PETITION OF ATMOS ENERGY CORPORATION, BLACK HILLS COLORADO ELECTRIC, LLC AND BLACK HILLS COLORADO GAS, INC. COLORADO NATURAL GAS, INC. ENERGY OUTREACH COLORADO AND PUBLIC SERVICE OF COMPANY OF COLORADO, FOR PARTIAL VARIANCE FROM RULE 1105 REGARDING THE DISCLOSURE OF PERSONAL INFORMATION TO SUPPORT IMPLEMENTATION OF THE LOW-INCOME ENERGY ASSISTANCE PROGRAM.

**COMMISSION DECISION GRANTING PETITION FOR
VARIANCE, IN PART, AND REQUIRING CONFERRAL
RELATED TO UTILITY PRACTICES, AND POTENTIAL
FILINGS**

Mailed Date: January 20, 2023

Adopted Date: January 11, 2023

I. BY THE COMMISSION

A. Statement

1. On November 17, 2022, Atmos Energy Corporation, Black Hills Colorado Electric, LLC, Black Hills Colorado Gas, Inc., Colorado Natural Gas, Inc, Energy Outreach Colorado (EOC), and Public Service Company of Colorado (collectively, Joint Petitioners), filed a petition seeking partial variance from Rule 1105, 4 *Code of Colorado Regulations* (CCR) 723-1, to allow the disclosure of certain customer account numbers to EOC to support EOC's administration of the Colorado Low-Income Energy Assistance Program (LEAP).

2. Considering the amended intervention filed by Staff of the Colorado Public Utilities Commission (Staff) and balancing the needs of continued donation processes and

concerns raised, we grant limited waiver for the current winter heating season for donations provided through March 31, 2023. We direct Staff to confer with EOC and the other Joint Petitioners regarding notice and processes related to the administration of LEAP, consistent with the discussion below. Joint Petitioners, upon further conferral, may file appropriate pleadings to initiate separate proceedings if necessary, including, for example, a request for rulemaking, should further filings be appropriate following conferral.

B. Discussion, Findings, and Conclusions

3. The Commission's electric and gas rules include provisions to implement LEAP pursuant to §§ 40-8.7-101 through 111, C.R.S. Colorado electric and gas utilities are required to provide an opportunity for their customers to contribute an optional amount to EOC through their monthly billing statement.

4. Under Rules 3411 and 4411,¹ utilities must provide EOC with all donating customer names, billing addresses, and monthly donation amounts. Joint Petitioners request the Commission waive Rule 1105 to allow disclosure of associated donor customer accounts to EOC. Joint Petitioners represent that it is unclear whether associated customer account numbers can be provided to EOC in combination with the names, addresses, and donation amounts permitted in Rules 3411 and 4411.

5. EOC explains that it uses a highly secure financial database to maintain donor information, following IRS guidelines to ensure compliance as a 501(c)(3) nonprofit. In order to track donations for the various utilities using its financial database, EOC claims that it uses the customer account numbers and, without both the name and account number, it is extremely

¹ See, 4 CCR 723-3-3411 and 4 CCR 723-4-4411 (corresponding gas and electric rule requirements regarding the implementation of LEAP).

cumbersome for EOC to ensure accuracy across its systems. Joint Petitioners therefore seek a waiver of the Commission's rules such that utilities can provide the associated account numbers for donors that opt in to providing LEAP donations to ensure ongoing facilitation of EOC's processing practices. The waiver is requested until rules can be updated.

6. The pleadings further request shortened notice, which the Commission granted, in part, though separate order. However, the Commission noted that the filing provided no support the expeditious timeline proposed, including a requested decision by December 18, 2022.

7. Staff filed a timely intervention of right and, through an updated intervention pleading filed on December 27, 2022, states that it does not oppose the relief requested in the petition for a limited time. However, Staff contends that the rules are clear: no customer account numbers may be disclosed to EOC under Rules 3411 and 4411. Staff agrees that a variance from Rule 1105 regarding the distribution of personally identifiable information would be necessary, but opposes a variance beyond 2022 donations, arguing that customer privacy and notice considerations should be further considered. Staff further claims that bill inserts already do not clearly advise donors that EOC receives customer names and addressing, and that granting an indefinite waiver to allow the provision of associated customer account numbers would further allow EOC to receive information without clear customer notice.

8. Staff recognizes that LEAP has been in place for 17 years and has concerns "regarding how EOC has handled difficulties it vaguely describes in the petition" and questions why it is only now that EOC requests customer account numbers. Staff argues that alternatives should be explored to resolve the difficulties raised by EOC and that Staff "wishes to explore whether there are such alternatives that may achieve a similar or better system of accounting for

donations that does not present a privacy risk to donors nor require waiver of the rules.” Staff seeks a hearing in this matter.

9. Staff’s intervention pleading, as updated, recognizes the importance of implementing LEAP. We agree with Staff’s updated filing that limited waiver here may be warranted to ensure continued facilitation of donations, particularly through the winter heating season to best ensure ongoing donations can be processed to support qualifying customers.

10. However, we disagree with Staff about the need for a hearing in this matter. While we appreciate Staff’s policy concerns, a hearing without further conferral will not efficiently foster the resolution of Staff’s concerns related to the Joint Petitioner’s requests. For example, Joint Petitioners seek, inappropriately, to waive rules indefinitely without proposing rule changes. Also, we agree with Staff that LEAP has been effectively managed by EOC for 17 years. There may be process or other clarifications that could help move discussions forward. We also note that many of Staff’s concerns regard notice under current rules and are not necessarily tied to the specific waiver requested here.²

11. Balancing these considerations, we find that waiver shall be granted through March 31, 2023, to permit provision of account numbers to EOC for customers that opt in to donating to LEAP, in addition to customer name, address, and donation amount information permitted to be provided through Rules 3411 and 4411.

² Staff’s pleading does not state specific violation of Commission rule or statute.

12. We direct the filing utilities and Staff to confer and, as appropriate, update customer notice language on customer opt in and donation information, consistent with current rule requirements. Staff is further directed to confer with the Joint Petitioners regarding EOC's practices and any potential rule changes to Rules 3411 and 4411, in addition to discussing any other process updates that may or may not require a rule update. If, after conferral, EOC or any of the Joint Petitioners continue to believe rule updates or other action is necessary to continue facilitation of LEAP donation processing, they may make an appropriate pleading with any proposed rule language, as necessary, for Commission consideration. Future filings, if any, shall include discussion of the outcome of conferral, including whether Staff continues to oppose any process or rule updates.

II. ORDER

A. The Commission Orders That:

1. The petition filed November 17, 2022, jointly by Atmos Energy Corporation, Black Hills Colorado Electric, LLC, Black Hills Colorado Gas, Inc., Colorado Natural Gas, Inc, Energy Outreach Colorado, and Public Service Company of Colorado (collectively Joint Petitioners), is granted, in part, through March 31, 2023, consistent with the discussion above.

2. Staff of the Colorado Public Utilities Commission is directed to confer with the Joint Petitioners, consistent with the discussion above.

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

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 11, 2023.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

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Commissioners