

Decision No. C23-0686

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, IN PART, AND
DENYING IN PART, JOINT MOTION**

Mailed Date: October 25, 2023

Adopted Date: October 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, 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) pursuant to §§ 40-8.7-101 through 111, C.R.S.

2. Through this decision, consistent with the discussion below, we grant in part and deny in part the Joint Motion filed September 27, 2023 (Joint Motion), following conferrals with Staff of the Colorado Public Utilities Commission. The process and remedies agreed to by

parties, including updated notice to customers and execution of a non-disclosure agreement (NDA) for each utility with EOC wherein EOC agrees to maintain reasonable data security procedures and practices, are accepted and appropriate without further rule changes, or waiver of prior decisions and rules.

B. Background

3. The Commission's electric and gas rules include provisions to implement the Low-Income Energy Assistance Act (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 Energy Outreach Colorado (EOC) through their monthly billing statement.

4. Under Rules 3411, 4 *Code of Colorado Regulations* (CCR) 723-3, and 4411, 4 CCR 723-4, utilities must provide EOC with all donating customer names, billing addresses, and monthly donation amounts. The concern here is whether the rules permit the utilities to also provide associated customer account numbers, which are classified as personally identifying information in Rule 1105, and not explicit in Rules 3411 and 4411 as "donation and related information" that must be provided to EOC.

5. In its initial waiver filing, EOC, Atmos, Black Hills, CNG, and Public Service jointly requested the Commission waive Rule 1105 to allow disclosure of associated donor customer accounts to EOC. Joint filers further sought a rule change to make clear that EOC can receive customer account information going forward. Staff intervened and opposed any rule waiver to provide associated customer account numbers raising concerns of customer privacy and notice.

6. Staff argued 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.”

7. Through Decision Nos. C23-0043 and C23-0427, the Commission granted a partial variance to allow disclosure of associated donor customer accounts to EOC and continue processes necessary to facilitate administration of LEAP. However, the Commission also balanced the importance of continuing LEAP funding as EOC had successfully done for two decades with concerns raised by Staff. The Commission rejected Staff’s request for hearing in this matter and ultimately allowed extension of limited waiver while Staff discussed its concerns with the utilities and EOC. Upon Conferral, Staff and the joint parties can provide an appropriate pleading(s) seeking rule revision, further waiver, or other necessary action, if any, regarding EOC’s processes and the specific customer account information is necessary to process donations, taking into account customer privacy.

8. On September 27, 2023, the utilities and EOC filed the Joint Motion. The Joint Motion explains that, following numerous conferrals with Staff, the joint petitioners propose two remedies that resolve Staff’s concerns:

- a) In collaboration with Staff, the utilities develop clear customer notification language that the utilities will incorporate into their respective monthly bills; and
- b) For each utility to execute an NDA with EOC wherein EOC agrees to maintain reasonable data security procedures and practices appropriate to the private nature of customer account information.

9. Although the Joint Motion states that no rule change is needed to accommodate this two-part process, including that Rule 1105 allows for NDAs such that utilities can work with

third parties to provide services, the filing nevertheless seeks “permanent” waiver of the Commission’s prior decision and waiver of Rule 1105.

C. Findings and Conclusions

10. The NDA process and updated notice are elegant solutions to Staff’s concerns. However, waiver of rules and Commission decision is not required in this limited circumstance.¹

11. Rule 1105(a) states that “[a] utility may only disclose personal information *as permitted by Commission rule* or as compelled by state or federal law.”² As the Joint Motion points out, Rule 1105(d) contemplates execution of an NDA with certain protections as to allow transfer of data from a utility to a third party to assist in the provision of regulated services. The definition of “contracted agent” is relatively broad in Rule 1004(1). While EOC is certainly a unique type of contracted agent, including obligations stemming from statute, EOC certainly assists in the provision of services by enabling those utility services to be more affordable to effected customers eligible for LEAP.

12. Further still the requested waiver of Paragraph 11 of Decision No. C23-0043 is also not needed. Paragraph 11 states in full:

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.

13. The limited waiver granted by the commission in Decision No. C23-0043 has passed, as did the subsequent extension of the waiver of Rule 1501(a) through late summer 2023.

¹ Notable as well is that the Commission disfavors “permanent” rule waivers. If parties seek to change a rule indefinitely, they should pursue requests for future rule changes as appropriate.

We find no need to further waive the Commission’s past order that permitted transfer of account numbers while Staff, EOC, and the utilities continued conferral.

14. We therefore accept the NDA and customer notice update processes as sufficient to continue EOC’s ability to receive customer account numbers, in addition to other relevant customer information listed in Rules 3411 and 4411. While our findings avoid the necessity of ongoing waiver requests and accept the processes proposed, parties, including Staff, are of course not precluded from seeking future rule changes that further clarify and include specific data permitted to be provided by the utility. To implement the processes agreed to here and development of more clear customer notification language, no rule changes are needed.

II. ORDER

A. The Commission Orders That:

1. The Joint Motion filed by 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, on September 27, 2023, is granted, in part, denied in part, consistent with the discussion above.

² Emphasis added.

2. This Decision is effective upon its Mailed Date.

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

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners