

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0564EG

IN THE MATTER OF TEMPORARY RULES CLARIFYING PARTICIPATION IN
LOW-INCOME PROGRAMS OFFERED BY ELECTRIC AND NATURAL GAS UTILITIES
PURSUANT TO 4 CODE OF COLORADO REGULATIONS 723-3-3412 AND 723-4-4412.

DECISION ADOPTING TEMPORARY RULES

Mailed Date: October 18, 2019
Adopted Date: October 16, 2019

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission to consider two temporary rules that make minor updates to the rules governing low income programs offered by electric and natural gas utilities. Rules 4 *Code of Colorado Regulations* 723–3–3412 (Rules Regulating Electric Utilities) and 723–4–4412 (Rules Regulating Gas Utilities and Pipeline Operators) both reference a metric that became outdated when the Colorado Department of Human Services (DHS) changed its Low-income Energy Assistance Program (LEAP) regulations in September. This Decision makes a reciprocal change to the Commission’s rules and provides guidance to affected utilities so that low-income programs are not disturbed at a critical time for these programs—heating season—rapidly approaches.

2. In September, DHS promulgated emergency rules that, among other things, changed the metric that DHS uses to determine LEAP eligibility.¹ As a consequence, two

¹ See Colorado Secretary of State Tracking Number 2019-00485 modifying 9 *Code of Colorado Regulations* 2503-7.

important eligibility provisions of our rules became outdated. Before, DHS' metric was a percentage of the federal poverty level.² Our current rules use that metric ("the percent of the current federal poverty level set by [DHS]") as an eligibility criterion for low-income programs. But with its September switch from federal poverty level to state median income level, DHS stopped setting a percentage of federal poverty level that our rules could reference for eligibility. In short, our rules now reference a non-existent metric to set eligibility for low-income programs.

3. The Commission may adopt temporary rules without engaging in the processes required for a permanent rule "only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with [permanent rulemaking] requirements . . . would be contrary to the public interest." § 24-4-103(6)(a), C.R.S.

4. These matters require our immediate attention in order to protect public health, safety, and welfare. Promulgating these temporary rules will restore clear eligibility guidelines for Coloradans who may qualify for low income energy assistance programs. This will reduce the chance that individuals are told they qualify even though they do not, and it will increase the chance that qualifying individuals will be able to obtain energy assistance through the winter. All told, these temporary rules will minimize the impact on low-income Coloradans and will help ensure that low-income energy assistance programs continue to provide assistance to those who need it this winter.

5. The heating season begins November 1. We find that the time necessary to conduct a permanent rulemaking on this issue would result in confusion this winter surrounding

² Federal poverty level is a measure of income issued every year by the U.S. Department of Health and Human Services.

eligibility for low-income energy assistance. This would risk disrupted or improperly-denied energy assistance which would post a risk to the health, safety, and welfare of LEAP-eligible Coloradans. Therefore, we find that immediate adoption of temporary rules addressing the gap in low-income energy assistance eligibility is imperatively necessary to preserve public health, safety, and welfare, and that complying with the longer permanent rulemaking timeline provided by § 24-4-103, C.R.S., would be contrary to the public interest.

6. We therefore adopt the following temporary rules:

a) Rules clarifying the income-level for eligibility in low income programs offered by electric and natural gas utilities. These temporary rules clarify that, consistent with § 40-3-106(a)(d)(II), C.R.S., eligible participants are those individuals with a household income at or below 185% of the current federal poverty level and who otherwise meet the eligibility criteria that the Colorado Department of Human Services sets forth. To further avoid confusion, the temporary rules also remove an outdated link to DHS' website.

7. We take this action in accordance with §§ 40-2-108(2) and 24-4-103(6), C.R.S., and soon expect to undertake a permanent rulemaking to implement the minor changes these temporary rules contain.

8. The temporary rules shall become effective immediately and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

9. The temporary rules for electric utilities 4 CCR 723-3 in legislative (strikeout/underline) format and the temporary rules in final version format (Attachments A and B) and the temporary rules for gas utilities 4 CCR 723-4 in legislative (strikeout/underline)

format and the temporary rules in final version format (Attachments C and D) are available through the Commission's E-Filings system³ at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0564EG

10. Electric or natural gas utilities whose low-income program tariffs do not conform to these temporary rules shall file on not less than two business days' notice both a conforming advice letter and a tariff with effective dates of November 1, 2019.

II. **ORDER**

A. **The Commission Orders That:**

1. The rules in final version format available in this proceeding through the Commission's E-Filings system are hereby adopted as temporary rules consistent with the discussion above.

2. The temporary rules shall be immediately effective.

3. Electric or natural gas utilities whose low-income program tariffs do not conform to these temporary rules shall file on not less than two business days' notice both a conforming advice letter and a tariff with effective dates of November 1, 2019.

4. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

5. This Decision is effective upon its Mailed Date.

³ From the *Electronic Filings* (E-Filings) system page (<https://www.dora.state.co.us/pls/efi/EFI.homepage>), the rules can be accessed by selecting "Search" and entering this proceeding number (19R-0564EG) in the "Proceeding Number" box and then selecting "Search".

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 16, 2019.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners