

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19D-0565EG

IN THE MATTER OF COLORADO ENERGY OFFICE’S PETITION FOR DECLARATORY ORDER TO CLARIFY THE PROCESS UNDER COMMISSION RULES 3412(K) AND 4412(K) FOR THE TRIENNIAL REVIEW OF UTILITIES’ LOW-INCOME PROGRAMS.

**INTERIM COMMISSION DECISION ACCEPTING
IN PART PETITION FOR DECLARATORY ORDER
AND SETTING NOTICE AND INTERVENTION PERIOD**

Mailed Date: October 30, 2019

Adopted Date: October 23, 2019

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I. BY THE COMMISSION**A. Statement**

1. This Decision accepts in part the October 17, 2019 petition for declaratory order filed by the Colorado Energy Office (CEO). It also grants CEO's request for a seven-day notice and intervention period.

B. Background

2. Adopted in their current form in 2017, Commission Rules 4 *Code of Colorado Regulations* (CCR) 723-3-3412(k) Rules Regulating Electric Utilities and 4 CCR 723-4-4412(k) Rules Regulating Gas Utilities and Pipeline Operators provide for a triennial review of qualifying retail utilities' low-income programs. During the 2016–17 rulemaking that resulted in these rules, CEO was “a significant proponent of the evaluation process . . . [and] offered to administer the triennial evaluation, including to procure a third-party vendor to conduct the evaluation of all the regulated gas and electric utilities.”¹ Pursuant to the Rules, the first review begins this year.

3. CEO filed this petition seeking clarification on two fronts: the evaluation timeline and vendor procurement.

4. The petition provides a triennial evaluation timeline and invites the Commission to clarify or adjust any part of the evaluation process. CEO points out that later change to the evaluation timeline could require CEO to renegotiate the contract with the evaluation vendor, which would potentially delay the evaluation. So, CEO pursues clarifications from the Commission before it begins contract solicitation.

¹ Petition, p. 4.

5. CEO also seeks clarification on its role in procuring an evaluation vendor. It perceives a conflict between Colorado's procurement code and the provision in Rules 3412(k) and 4412(k) that requires utilities—and not CEO—to pay the evaluation vendor. CEO proposes a different approach: Instead of the utilities directly paying the evaluation vendor, each utility would transfer its funds to CEO and then CEO would pay the vendor. In the alternative, CEO asks the Commission to waive the provisions requiring utilities to pay the evaluation vendor directly.

6. Finally, CEO asks the Commission to set a seven-day notice and intervention period.

C. Discussion

7. The Commission may entertain a petition for declaratory order if the petition meets two requirements: (1) resolving the question presented by the petition will terminate a controversy or remove an uncertainty affecting a petitioner; and (2) the uncertainty or controversy must be “with regard to any tariff, statutory provision, or Commission rule, regulation, or order.”² If the petition meets those requirements, we then exercise our discretion to accept or dismiss the petition.³

1. Evaluation Timeline and Process

8. We recognize that CEO is largely painting on a blank canvas as it develops the inaugural timeline for this triennial review. We also recognize that CEO's uncertainty arises from Rules 3412(k)(II) and 4412(k)(II), which require CEO to develop the evaluation vendor

² See Commission Rules of Practice and Procedure 4 CCR 723-1-1304(i)(II).

³ See Commission Rules of Practice and Procedure 4 CCR 723-1-1304(i)(III).

contract and request the Commission's approval of the contract. As CEO points out, later changes to the timeline could delay the evaluation.

9. We conclude that addressing the evaluation timeline and process will remove the uncertainty facing CEO and therefore exercise our discretion to accept the petition as it pertains to this issue.

2. Vendor Procurement Process

10. The Commission is perplexed by CEO's description of the vendor procurement process as well as its 11th hour request to alter that process significantly. It is surprising that a stakeholder that promoted the triennial review process, fully participated in the rulemaking, and offered to administer the evaluation is now, nearly three years later, asserting for the first time that it may be unable to play the role it shaped for itself. The reasoning behind both the conflict CEO perceives between the state procurement code and our rules, and the results of that conflict, is also confusing.

11. CEO does not articulate any legal support for its application of the procurement code to the theoretical contract between CEO and an evaluation vendor. Nor does it offer any legal support for the other difficulties it sees flowing from that application.

12. At any rate, we perceive no conflict between the procurement code and Rules 3412(k) and 4412(k). In our view, under the process provided by Rules 3412(k) and 4412(k) the procurement code would not apply to the contract between CEO and the evaluation vendor because the contract will be funded by money each utility has set aside; it is therefore not a "publicly funded contract." *See* § 24-101-105(1)(a), C.R.S. (limiting application of the procurement code to publicly funded contracts). Accordingly, we are unpersuaded that a

controversy or uncertainty exists with respect to the code or our rules and therefore decline to address this issue in a declaratory order.

13. The vendor procurement process shall proceed as designed under Rules 3412(k) and 4412(k).

3. Notice and Intervention Period

14. CEO also asks that we set the notice and intervention period to seven days. CEO states that it conferred with Staff of the Colorado Public Utilities Commission, Public Service Company of Colorado, Black Hills Colorado Electric, LLC, Black Hills Colorado Gas, Inc., Atmos Energy Corporation, Colorado Natural Gas, Inc., the Colorado Office of Consumer Counsel, Energy Outreach Colorado, and the Colorado Low-Income Energy Assistance Program and that each of these stakeholders supports the request to shorten the notice and intervention period.

15. Given the broad support we grant CEO's request to shorten the notice and intervention period. The period will run for seven days from the date this Decision mails.

II. ORDER

A. It Is Ordered That:

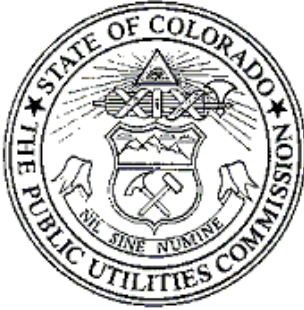
1. Consistent with the discussion above, the Petition for Declaratory Order filed by the Colorado Energy Office on October 17, 2019, is accepted in part. The Commission will address the proposed evaluation timeline and process.

2. The notice and intervention period is shortened to seven days from the date this Decision mails.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 23, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

Commissioners

COMMISSIONER FRANCES A. KONCILJA
ABSENT.