

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19R-0653EG

IN THE MATTER OF THE PROPOSED 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.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: November 27, 2019
Adopted Date: November 20, 2019

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I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to amend the rules governing low income programs offered by electric and natural gas utilities. After the Colorado Department of Human Services (DHS) changed its

Low-income Energy Assistance Program (LEAP) regulations in September, Rules 4 *Code of Colorado Regulations* 723-3-3412 (Rules Regulating Electric Utilities) and 723-4-4412 (Rules Regulating Gas Utilities and Pipeline Operators) referenced a metric that no longer existed. The Commission issued temporary rules to address that problem. These proposed rules make permanent the fix embodied in the temporary rules.

2. Through this NOPR, the Commission solicits comments from interested persons on these proposed amendments to the low-income rules.

3. The Commission refers this matter to an Administrative Law Judge (ALJ), who will hold a hearing on the proposed rules at the below-stated time and place. Participants may present comments orally at hearing unless the ALJ deems oral presentations unnecessary. The Commission will consider all comments, whether oral or written.

B. Background

4. In September, DHS promulgated emergency rules that, among other things, changed the metric that DHS uses to determine LEAP eligibility. As a consequence, two important eligibility provisions of our rules became outdated. Before, DHS' metric was a percentage of the federal poverty level. Our rules used 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. Suddenly, our rules referenced a non-existent metric to set eligibility for low-income programs.

5. We addressed the issue by promulgating temporary rules in October¹ that clarified the income-level for eligibility in low-income programs offered by electric and natural gas

¹ See Decision No. C19-0847 in Proceeding No. 19R-0564EG (issued October 18, 2019).

utilities. Consistent with § 40-3-106(1)(d)(II), C.R.S., eligible participants are those individuals with a household income at or below 185 percent of the current federal poverty level and who otherwise meet the eligibility criteria that the DHS sets forth. To further avoid confusion, the temporary rules also removed an outdated link to DHS' website.

6. Electric or natural gas utilities whose low-income program tariffs did not conform to the temporary rules were ordered to file on not less than two business days' notice both a conforming advice letter and a tariff with an effective date of November 1, 2019.

7. Commission Staff (Staff) discussed the DHS rule change and resulting issues with LIRAC, a low income stakeholder group that meets regularly to discuss low income program issues. Staff also conducted individual outreach to each of the utilities with low income programs prior to the temporary rulemaking, as well as after the utilities' updated advice letters and tariffs were filed.

8. The statutory authority for the rule amendments proposed here is found at § 40-3-106(1)(d)(II), C.R.S.

C. Proposed Amendments to the Low-Income Rules

9. The proposed amendments to the low-income rules are straightforward and aim to make permanent the changes made through the temporary rules this Commission put in place for the 2019 through 2020 heating season.

1. Rule 3412. Electric Service Low-Income Program

10. Proposed Rule 3412 is identical to the current temporary rule and is largely unchanged when compared to the prior version of the rule. When compared to the rule as it existed before the temporary fix, proposed subsection c, "Participant eligibility," removes outdated language that referenced the percentage of the current federal poverty level set by DHS.

It also removes a subsection that provided an outdated internet hyperlink to a DHS website. The income eligibility language in the proposed rule tracks the “low income utility customer” definition in § 40-3-106(1)(d)(II), C.R.S.

2. Rule 4412. Gas Service Low-Income Program

11. Proposed Rule 3412 is identical to the current temporary rule and is largely unchanged when compared to the prior version of the rule. When compared to the rule as it existed before the temporary fix, proposed subsection c, “Participant eligibility,” removes outdated language that referenced the percentage of current federal poverty level set by the DHS. It also removes a subsection that provided an outdated internet hyperlink to a DHS website. The income eligibility language in the proposed rule tracks the “low income utility customer” definition in § 40-3-106(1)(d)(II), C.R.S.

D. Conclusion

12. Interested persons may comment on these proposed amendments to the Low-income Rules. The Commission prefers comments in this Proceeding No. 19R-0653EG to be filed through the Commission’s E-Filings System available at:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>.

13. The proposed rules in legislative (*i.e.*, strikeout/underline Attachments A and C) format and final format (Attachments B and D) are available through the Commission’s Electronic Filings (E-Filings) System at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19R-0653EG

14. This Commission refers this Proceeding to an ALJ, who will hold a hearing on the proposed rules at the below-stated time and place. Interested persons may provide oral comments at the public hearing unless the ALJ deems oral presentations unnecessary.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the December 10, 2019, edition of *The Colorado Register*.

2. The Commission invites comments from interested persons on the proposed amendments to the rules governing low-income programs within the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, and the Commission's Rules Regulating Gas Utilities and Pipeline Operators, 4 *Code of Colorado Regulations* 723-4 as described in this Decision and its attachments. The Commission will consider all comments but requests that they be filed into this proceeding by January 27, 2020.

3. The hearing on the proposed rules and related matters shall be held before an Administrative Law Judge (ALJ) as follows:

DATE: February 10, 2020

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
Suite 250
1560 Broadway
Denver, Colorado

4. The ALJ may set additional hearings, if necessary.

5. At the time set for hearing, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 20, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners

CHAIRMAN JEFFREY P. ACKERMANN
ABSENT.