

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20R-0349EG

IN THE MATTER OF THE PROPOSED RULES REGARDING IMPLEMENTATION
OF SENATE BILL 20-030 AND THE REVISION OF DISCONNECTION STANDARDS
FOR ELECTRIC AND GAS UTILITIES PURSUANT TO 4 CODE OF COLORADO
REGULATIONS 723-3 AND 723-4.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: August 27, 2020
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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 Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules) and Rules Regulating Gas Utilities and Pipeline Operators, 4 CCR 723-4 (Gas Rules). The proposed amendments revise the Billing and Service sections of the Electric and Gas Rules as they relate to the conditions under which customers can be disconnected for nonpayment, including the disconnection process, disconnection notice, payment plans, and reconnection process. The proposed amendments also impact Electric Rule 3413, on medical exemptions from tiered electric rate plans.

2. This rulemaking satisfies the requirements of Senate Bill (SB) 20-030, codified at § 40-3-103.6, C.R.S., that the Commission commence by September 1, 2020, a rulemaking to consider standard practices for electric and gas utilities to apply when discontinuing service due to nonpayment. SB 20-030 also codified changes to § 40-3-103.5, C.R.S., on medical exemption rate programs, § 40-3-106, C.R.S., on revenue neutrality, and § 40-3-110, C.R.S., on reporting requirements, that are addressed within this NOPR.

3. The proposed changes to the Electric Rules are set forth in legislative (*i.e.*, ~~strikeout~~ and underline) format (Attachment A) and final format (Attachment B). Changes to the Gas Rules are also set forth in legislative format (Attachment C) and final format (Attachment D).

4. By this Decision, the Commission solicits comments on possible changes to the Electric Rules and Gas Rules as described here and in Attachments A through D, and schedules a rulemaking hearing. Interested persons will have opportunities to submit written comments on the proposed rules and to provide oral comments at the scheduled hearing. The Commission welcomes the submission of alternative proposed rules and/or additional related rules, including both individual proposals and consensus proposals joined by multiple stakeholders. Participants are encouraged to provide redlined rules. The Commission also seeks further information from regulated utilities on their disconnection practices and further comments from all participants on the topics outlined in Section E of this Decision.

5. 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**1. Senate Bill 20-030**

6. On June 29, 2020, Governor Jared Polis signed into law SB 20-030. The short title of the act is “Consumer Protections for Utility Customers.” SB 20-030 established a series of consumer protection requirements that affect the billing and services provided by investor-owned electric and gas utilities to their customers. The legislation specifically requires that, by September 1, 2020, the Commission “commence a rule-making proceeding to adopt standard practices for gas and electric utilities to use when disconnecting service due to nonpayment.” SB 20-030 prescribed a nonexclusive list of subjects that the Commission should address in amending its Electric Rules and Gas Rules related to disconnection of service for nonpayment, including, but not limited to, prescribed terms and conditions for payment plans; prohibitions on disconnections during particular seasons or weather events; referrals to energy assistance programs; reporting of relevant data; and prohibitions on remote disconnection without a reasonable attempt to contact the customer of record.

7. The legislation also included modifications related to medical exemptions from tiered electric rate plans and reporting requirements. Furthermore, SB 20-030 added language that requires rate design changes approved after September 1, 2020, to achieve a “revenue-neutral outcome,” and states that “[r]ate designs that disproportionately negatively impact low-income residential customers . . . are presumed to be contrary to the public interest.”

2. Proceeding No. 20M-0267EG: Implementation of SB 20-030 and COVID-19 Economic Recovery Opportunities

8. On June 19, 2020, the Commission initiated a miscellaneous proceeding, Proceeding No. 20M-0267EG, for the purpose of collecting feedback from participants on the implementation of SB 20-030. By its decision opening the proceeding, Decision No. C20-0452,

issued June 19, 2020, the Commission sought comment on currently effective disconnection practices and how to implement the legislation. The Commission further requested comments related to regulated utilities' activities associated with responding to the ongoing coronavirus (COVID-19) pandemic.

9. Initial written comments were submitted by Atmos Energy Corporation (Atmos), Black Hills Colorado Electric, LLC / Black Hills Colorado Gas, Inc. (Black Hills Energy), Colorado Natural Gas (CNG), Natural Resources Defense Council (NRDC), Public Service Company of Colorado (Public Service), and the Sierra Club.

10. In their initial comments, the regulated utilities provided background on their current disconnection and reconnection practices. The comments revealed that regulated utilities often treat the currently effective rules as minimum standards, resulting in variations in the speed with which a notice of discontinuance is issued and which fees customers are assessed during the disconnection process. Each utility provided information on its payment plan options and on its referral practices for residential and small business customers seeking bill assistance. Additionally, Public Service and Black Hills Energy recommended continuing to apply a means test for their medical exemption rate plans.

11. In their initial comments, NRDC and Sierra Club raised concerns about COVID-19 economic impacts increasing the risk of disconnections for residential customers, and that this may disproportionately impact low-income residents and residents who identify as Black, Indigenous, and People of Color. These participants recommended expanding consumer protections related to COVID-19, including lengthening disconnection moratoriums, waiving fees, enhancing payment plan options, increasing bill assistance and energy efficiency funding, barring reporting to credit bureaus, and enhancing reporting requirements related to delinquencies and disconnection.

12. At its Commissioners' Weekly Meeting (CWM) on July 22, 2020, the Commission determined that it would bifurcate the issues included in the initial decision to the extent possible, such that Proceeding No. 20M-0267EG would address SB 20-030 implementation only until such time as this NOPR is issued, and that options for continuing the discussion related to COVID-19 would be evaluated in a separate CWM.

13. On July 29, 2020, the Commission held a Commissioners' Information Meeting (CIM) in which participants in Proceeding No. 20M-0267EG provided comments in response to questions about three key issues in the legislation: medical exemption from tiered electric rate plans, disconnection standards, and revenue neutrality for alternative rate designs. Participants included entities which provided initial written comments, as well as the Colorado Office of Consumer Counsel (OCC) and Energy Outreach Colorado (EOC). Participants indicated an openness to collaborate around areas like referrals to energy assistance organizations and reporting requirements, and EOC stated that conversations around appropriate referrals are already underway. However, participants also raised some challenges around the prescriptiveness of rules and how effectively practices can be standardized across electric and gas utilities. Among these challenges are the need for regulated utilities to retain flexibility in engaging customers around payment options; how to align fees and charges given they may be set using a cost basis or below; and the merits of disconnection moratoriums based on seasons or weather conditions. No participants proposed specific rule language.

14. Subsequent to the CIM, Atmos, Black Hills Energy, and Public Service filed supplemental comments that included additional information on their disconnection practices. Among other comments, these utilities indicated that they implement temperature-based restrictions on disconnections, in addition to taking other actions that are more protective than the current requirements of the Electric Rules and Gas Rules.

3. Proceeding No. 20M-0013EG: Triennial Report on Rule 3412 Programs

15. In Proceeding No. 16R-0607EG, the Commission promulgated changes to Rule 3412, the Electric Service Low-Income Program, and Rule 4412, the Gas Service Low-Income Program. Changes to rules made in that Proceeding require the Colorado Energy Office (CEO) to oversee a third-party evaluation of utility programs implemented under Rule 3412, beginning in 2019. This Triennial Report is anticipated to be submitted in Proceeding No. 20M-0013EG later this year. Rule 3412 programs are diverse and include percentage of income payment plans, arrearage credits, energy assistance grants, as well as coordination with energy efficiency and weatherization efforts. They may also include other utility-specific low-income programs. While SB 20-030 requires the Commission to consider prescribed terms and conditions for payment plans, this Proceeding evaluates that issue from a rules perspective, rather than from a sufficiency or design perspective. Accordingly, this NOPR does not propose changes to Rule 3412 (Electric Rules) or Rule 4412 (Gas Rules).

4. Other Proceedings

16. By this Decision, the Commission also takes administrative notice of three existing proceedings in which regulated utilities file or have filed periodic reports related to the subjects of SB 20-030.

a. Proceeding No. 08M-305EG: Repository for Utility Disconnection Reports

17. Beginning with a letter issued on July 18, 2008, the Commission requested that all regulated and unregulated electric and natural gas utilities voluntarily submit quarterly residential delinquency and disconnection reports into a repository proceeding, Proceeding No. 08M-305EG, using a template provided by the National Association of Regulatory Utility

Commissioners. These disconnection reports provide over a decade of data that is reasonably standardized across utilities.

b. Proceeding Nos. 17M-0848E and 19M-0240E: Medical Exemption Rate Program Annual Reports

18. Current Rule 3413(i) requires that electric utilities offering medical exemption rate plans submit annual reports to the Commission, on or before December 15. In Proceeding No. 17M-0848E, Public Service submitted an annual report for 2017 on December 15, 2017. In Proceeding No. 19M-0240E, Public Service submitted annual reports for 2018 and 2019 on December 17, 2018 and December 23, 2019, and Black Hills Energy submitted an annual report for 2019 on December 16, 2019. These reports discuss the utilities' current practices around program eligibility and enrollment.

C. Discussion

19. Section 40-3-103.6, C.R.S., requires the Commission's rules to address a series of topics related to disconnection of service due for nonpayment. The legislation treats the list of subjects the rules must address as a floor, not a ceiling, in the course of adopting standard practices.

20. We do not, in this NOPR, propose to add new rules, but we do propose amendments to existing rules that result in new or reordered paragraphs or subparagraphs. In rare situations, we offer options for participants to consider. We also include minor edits for punctuation or grammar that are not explicitly called out in Section D. Where rules are described as "current," they refer to the currently effective rules prior to proposed amendments. "Proposed" rules refer to proposed changes, including new or reordered paragraphs, or revisions to language.

21. This NOPR recommends amendments to the following rules:

i. Electric Rules

1. Rule 3403. Applications for Service, Customer Deposits, and Third-Party Guarantee Arrangements.
2. Rule 3404. Installment Payments.
3. Rule 3407. Discontinuance of Service.
4. Rule 3408. Notice of Discontinuance of Service.
5. Rule 3409. Restoration of Service.
6. Rule 3413. Medical Exemption from Tiered Rate Plans.
7. Rule 3976. Regulated Electric Utility Rule Violations, Civil Enforcement, and Civil Penalties.

ii. Gas Rules

1. Rule 4403. Applications for Service, Customer Deposits, and Third-Party Guarantee Arrangements.
2. Rule 4404. Installment Payments.
3. Rule 4407. Discontinuance of Service.
4. Rule 4408. Notice of Discontinuance of Service.
5. Rule 4409. Restoration of Service.
6. Rule 4976. Regulated Gas Utility Rule Violations, Civil Enforcement, and Civil Penalties.

22. The relevant Electric Rules and Gas Rules largely parallel each other, both currently and with regard to proposed amendments, except where changes are driven by operational differences or legislative requirements. Accordingly, they are presented together below, first the relevant Electric Rule and then the parallel Gas Rule.

23. This Decision does not propose rules associated with the implementation of § 40-3-106, C.R.S., related to revenue neutrality. Participants in Proceeding No. 20M-0267EG and the corresponding CIM opined that rules were not required to implement the legislation. The Commission does not conclude otherwise, and omits a proposal for rule changes related to revenue neutrality related to this NOPR.

24. This Decision also does not propose rules associated with the implementation of § 40-3-110, C.R.S., related to the requirement for an oath or affirmation to accompany a report, as this reflects existing practices.

25. By this Decision, the Commission welcomes comments on the proposed rules as presented in Section D and Attachments A through D. The Commission also requests comments on the questions laid out in Section E, which include information requests to regulated utilities and additional questions for all participants.

D. Proposed Amendments to the Electric and Gas Rules

1. Electric Rule 3403. Applications for Service, Customer Deposits, and Third-Party Guarantee Arrangements.

26. Current Rule 3403 establishes the Commission's requirements for when utilities may collect cash deposits from new customers, existing customers, and customers seeking to restore service after a discontinuance. Section 40-3-103.6(1), C.R.S., requires this rulemaking to address the following subjects which are relevant to current Rule 3403:

- (e) for each utility, standardized methodology to be used in determining reconnection fees and deposit requirements for reconnection.

27. We propose an amendment to current paragraph (a) to clarify the definition of nondiscriminatory criteria. Based on this clarification, we delete the current prohibition on undue discrimination in proposed paragraph (c) as duplicative.

28. We revise the order of paragraphs to clarify upfront that utilities shall offer at least one non-cash alternative to a cash deposit that does not require the use of a customer's Social Security Number. This moves current paragraph (e) to proposed paragraph (b), and adjusts the numbering accordingly.

29. Proposed paragraph (e) precludes a utility from requiring a cash deposit from an applicant for new service, or restoration of service, when it knows that individual to be a

recipient of public assistance (*e.g.*, the Supplemental Nutrition Assistance Program, Colorado Works, Old Age Pension). This would also include bill assistance provided under Rule 3412 low-income programs. Customers who are eligible for income or bill assistance may not have access to savings that could pay for deposits which may be held by utilities for 12 months.

30. To create consistency in how deposits are funded, proposed paragraph (j) allows a customer to pay a cash deposit in installments, regardless of whether it is for new service or restoration of service.

31. Proposed paragraph (l) clarifies customers' rights related to their deposits. First, we specify that a deposit shall be returned after the customer has made timely payments for 12 months. Currently, the utilities' obligation to return the deposit at a particular time is ambiguous in the rules, although regulated utilities have stated that deposits are returned after 12 months of good payment history. Second, we clarify that a customer who becomes delinquent or is disconnected should not have to pay a full deposit if there is an existing remaining deposit which can be attributed to the arrears. This is designed to prevent multiple deposits from "pancaking" for a customer who is experiencing payment challenges. A clarifying edit was made in proposed paragraph (n) because of this change.

32. We make minor revisions related to proposed subparagraph (p)(V) to parallel the construction of the same rule for gas utilities.

2. Gas Rule 4403. Applications for Service, Customer Deposits, and Third-Party Guarantee Arrangements.

33. Changes to Gas Rule 4403 parallel those made in Electric Rule 3403 except that proposed subparagraph (p)(V) was not changed.

3. Electric Rule 3404. Installment Payments.

34. Current Rule 3404 establishes the Commission's requirements for utilities to provide installment payments and other rate plans designed to reduce arrears, and specifies the kinds of charges or fees that can be included in installment plans. Section 40-3-103.6(1), C.R.S., requires this rulemaking to address the following subjects which are relevant to current Rule 3404:

- (c) prescribed terms and conditions for payment plans to cure delinquency;
- (f) for each utility, standardized methodology to be used in determining reconnection fees and deposit requirements for reconnection.

35. We propose to amend the title of Rule 3404 to be "Charges, Fees, and Payment Plans" in order to better encompass the requirements of the legislation.

36. Proposed paragraph (a) specifically requires utilities to produce a description of all fees associated with past due amounts in their tariffs, and lists what types of fees and charges those are. Utilities may include these charges in tariffs, but they are not required to include them. For example, as is depicted in Table 1 below, currently some regulated utilities charge separate disconnection fees, and others do not. The description of permitted fees is drawn from the current paragraph (c). This proposed paragraph (a) is an attempt to consolidate requirements that are

described elsewhere for simplicity and comparability across utilities, rather than to create new requirements or change what fees and charges can be included in installment plans.

	Atmos	Black Hills Energy	CNG	Public Service
Late Payment Charge	1.5%	Not specified	Not specified	1%
Disconnection Fee	Not specified	Not specified	\$43 (G)	Not assessed
Reconnection Fee	Within work hours: \$45 (G) Outside work hours: \$85 (G)	All hours: \$15 (E) Within work hours: \$55 (G), \$50 (E, large commercial) Outside work hours: \$135 (G), Varies (E, large commercial)	\$43 (G)	Within 24 hours: \$45 (E), \$94 (G), \$107 (E/G) Within 12 hours: \$86 (E), \$126 (G), \$150 (E/G)
Deposit	Not specified	30-day average premise bill or \$100 minimum (E) 90-day average premise bill (G)	Not specified	Not required (residential) Varies (non-residential)
Collection Costs	Not specified	Not specified	Not specified	Not specified
Other Fees or Charges	\$15 final meter read fee for non-AMI customers	Not specified	Not specified	Not specified

Table 1: Current Fees and Charges Related to Delinquency, Disconnection, and Reconnection¹

37. Additionally, proposed paragraph (a) has been amended to specify that utilities must calculate any fees or charges on a cost basis, and that a cost basis should be viewed as an upper limit. This reflects participant comments regarding the current approach for assessing disconnection-related fees and charges, which may be set at or below cost.²

¹ Proceeding No. 20M-0267EG, Atmos Energy Corporation's Comments (Jul. 10, 2020); Atmos Energy Corporation's Supplemental Comments (Aug. 6, 2020); Response Comments of Black Hills Colorado Electric, LLC and Black Hills Colorado Gas, Inc. d/b/a Black Hills Energy (Jul. 10, 2020); Colorado Natural Gas, Inc. Responses to Commission Requests (Jul. 23, 2020); Comments of Public Service Company of Colorado (Jul. 10, 2020); participant comments at Commissioners' Information Meeting (Jul. 29, 2020).

² See, e.g., Colorado Natural Gas, Inc. Responses to Commission Requests (Jul. 23, 2020) (stating that residential customers are billed \$43 for disconnection and \$43 for reconnection, but that costs are \$55 for disconnection and \$85 for reconnection).

38. The Commission further observes that some states have eliminated certain fee requirements as not beneficial.³ Based on a review of quarterly disconnection reports in Proceeding No. 08M-305EG, compared with costs for disconnection and reconnection provided in regulated utilities' initial comments, we are concerned that the average cost of disconnection and reconnection charges may exceed the average customer arrears, making repayment even more difficult. However, in the absence of fuller information on how total costs are measured, how utilities set these fees and charges, and how much they fluctuate year-to-year, we declined at this time to eliminate any fees or charges, or impose a standard fee or alternative standard methodology across all utilities.

39. Proposed paragraph (b) is new, and requires utilities to provide an option to waive certain fees associated with restoration of service where a customer enrolls in a regulated demand-side management program. This proposal is intended to provide customers with an option to reduce the amounts they owe while participating in a program that could provide them with weatherization, upgrades, education, or other actions intended to result in lower long-term costs and greater ability to understand and manage energy use.

40. Proposed paragraph (c) has been revised for clarity, rather than to change the types of payment plans that utilities shall make available to customers.

41. Proposed paragraph (e) has been edited to reflect that examples of fees and charges were moved to proposed paragraph (a).

42. Proposed paragraph (f) allows a customer who enters into a payment arrangement to modify the timing of their billing period. This provision has been added given that at least

³ See, e.g., California Public Utilities Commission, Rulemaking 18-07-005, Decision 20-06-003 (Jun. 11, 2020), available at:

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M340/K648/340648092.PDF>

(eliminating reestablishment deposit and reconnection fees).

some customers entering into payment plan arrangements may need to time their monthly bills based on when they receive state or federal assistance.

43. Proposed paragraph (h) explicitly allows utilities to offer customers longer installment payment plans and variations on installment plans in which less than the full amount is collected in exchange for fewer installments. Due to COVID-19, some utilities stated in their initial comments that they are offering extended payment plans for up to 12 months, which is reflected in this amendment. Furthermore, this proposal attempts to find a balance where customers could reduce their overall arrears, and the risk that their balance may grow to levels that are difficult to repay, while also providing the utility a higher degree of certainty on near-term repayment.

4. Gas Rule 4404. Installment Payments.

44. Changes to Gas Rule 4404 parallel those made in Electric Rule 3404.

5. Electric Rule 3407. Discontinuance of Service.

45. Current Rule 3407 establishes the terms under which utilities can discontinue service to customers, including for nonpayment. Section 40-3-103.6(1), C.R.S., requires this rulemaking to address the following subjects which are relevant to current Rule 3407:

- (b) limiting shut-off times to reasonable hours of the day Monday through Friday, excluding holidays, so that customers can attempt to reconnect on the same day;
- (f) protection policies for customers for whom electricity is medically necessary;
- (g) prohibitions on the disconnection of service during periods of extreme heat or cold, as appropriate to the geographic area served;
- (h) a prohibition on the remote disconnection of service for nonpayment, through advanced metering infrastructure or otherwise, without a reasonable attempt to make contact with the customer of record by telephone or engaging in a personal, physical visit to the premises; and

- (i) reporting requirements, no less frequently than annually, to provide the Commission with standardized information from all utilities about disconnections and delinquencies.

46. Furthermore, § 40-3-103.6(2), C.R.S., requires the Commission to “publish on its website, or require utilities to publish on their websites . . . information regarding the standard practices and fees” adopted in this rulemaking, as is set forth in more detail below.

47. Proposed paragraph (b) prevents a utility from discontinuing service for nonpayment under a list of conditions. We propose to add a requirement that utilities should use nondiscriminatory criteria when determining whether to discontinue service for nonpayment. Regulated utilities participating in the CIM stated that they may initiate disconnection more quickly for customers who have experienced prior disconnections, which we find potentially troubling from a fairness perspective. Proposed subparagraph (b)(II) specifies that utilities shall not discontinue service where the amount past due is less than \$50, which codifies a threshold that many regulated utilities already apply, although at the minimum level (see Table 2 below) in the absence of further information. Proposed subparagraph (b)(IX) would prevent a disconnection where there is an active dispute regarding the past due amounts at issue. This is intended to prevent disconnection or the threat of disconnection when a customer has made an informal complaint that is still being resolved.

48. Proposed subparagraph (e)(III) is intended to limit disconnections to reasonable times of day. The current rules limit shut-offs on weekends and holidays, so this addition would also prevent early morning or nighttime shut-offs.

49. Proposed subparagraphs (e)(IV)(C)-(D) have been modified in minor ways related to exemptions for medical necessity. First, the rule now uses the term “medical certificate” consistently. Second, it allows a utility to accept notification from a physician’s office electronically or by telephone, provided a telephone communication is subsequently

commemorated in writing. This recognizes changes in telemedicine and is designed to allow a medical emergency to be identified and communicated more quickly.

50. Proposed subparagraph (e)(V) prohibits disconnections during periods of extreme heat (greater than 95°F) and cold (less than 32°F). As a starting point, these temperatures were set based on review of typical temperature-based protections.⁴ In Proceeding No. 20M-0267EG, participants at the CIM expressed a concern about delinquencies increasing to unsustainable levels for customers who are subject to full seasonal moratoriums. An alternative approach is to preclude discontinuance of service during periods of significant and sustained weather. Supplemental comments by regulated utilities indicated that these practices were already informally applied, although the temperatures at which disconnections were delayed varied.⁵ In the interests of consistency across utilities and for consumer clarity, we propose weather-based protections related to both hot and cold weather, regardless of utility service area. These protections would apply on the day of the scheduled discontinuance and if the forecast would prevent restoration of power in a timely manner.

51. Proposed subparagraph (e)(VI) is designed to prevent a discontinuance, whether or not for nonpayment, where an occupant of the household can demonstrate that they have received court-ordered protection against a customer of record. This reflects protections in other states and would prevent a spouse or domestic partner from seeking termination of service in a domestic violence situation. Covered court orders include temporary restraining orders, permanent restraining orders, or emergency protection orders.

⁴ LIHEAP Clearinghouse, State Disconnection Policies, <https://liheapch.acf.hhs.gov/disconnect> (last visited Aug. 20, 2020).

⁵ In Proceeding No. 20M-0267EG, *compare* Additional Comments of Public Service, filed Aug. 6, 2020 (per informal practice, does not disconnect customers when temperatures drop below 0°F for 24 hours) *with* Closing Comments of Black Hills Energy, filed Aug. 6, 2020 (per internal policy, does not disconnect customers when temperatures are forecasted to drop below 35°F for 48 hours).

52. Proposed paragraph (f) is designed to address the requirement that the Commission publish, or require utilities to publish, clear information on disconnection standards and fees in a manner that is accessible to customers. The legislative requirement that the information must be provided in “a manner that promotes customer understanding” suggests that utilities should not simply replicate legalistic tariff language, and that customers should be able to find all relevant information (*e.g.*, costs, timelines, contact information) in one place. This proposal also requires utilities to publish information on their websites in languages besides English in accordance with Rule 3408 requirements. Per SB 20-030, the information utilities would be asked to publish reflects the subjects at issue in this NOPR. Requiring utilities to publish standard information would not preclude the Commission from also publishing standard information on its website or proposing a specific format for utilities to use to create consistency.

53. Proposed paragraph (g) establishes quarterly and annual reporting requirements. Proposed subparagraph (g)(I) sets a quarterly reporting requirement for regulated utilities to provide public data on delinquencies and disconnections. The specific metrics are drawn from participants’ comments in Proceeding No. 20M-0267EG,⁶ which themselves reference a standardized reporting framework recommended by the National Consumer Law Center (NCLC).⁷ Using the NCLC framework that is being adopted in other states⁸ creates opportunities for comparison across utilities and states. The requirement that metrics be provided by zip code and customer class attempt to utilize information that utilities are likely to have readily available, as compared to more granular statistical areas, like Census blocks. Participants in the CIM

⁶ Sierra Club’s Initial Comments (Jul. 10, 2020); Initial Comments of NRDC (Jul. 10, 2020).

⁷ National Consumer Law Center, *The Need for Utility Reporting of Key Credit and Collections Data Now and After the COVID-19 Crisis* (Apr. 2020):

https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Data_Reporting.pdf.

⁸ *See, e.g.*, Illinois Commerce Commission, Docket No. 20-0309, Final Order (filed June 18, 2020), available at <https://www.icc.illinois.gov/docket/P2020-0309/documents/300566>.

proposed additional geospatial indicators, but the amendments omit this requirement without more information as to what is useful or necessary, and why. Given the uses for this data that participants have suggested so far—for example, to identify whether delinquencies and disconnections are correlated with particular income or demographic groups—we propose that Rule 3033(b) not apply to these quarterly reports, to enable full and public evaluation of the resulting information.

54. Proposed subparagraph (g)(II) establishes an additional annual reporting requirement in the first quarter of each year. Section 40-3-110(3), C.R.S., requires utilities to produce an annual narrative containing a trends analysis related to delinquencies and disconnections. We propose that this information also be accompanied by information about how the utility is working to reduce delinquencies and disconnections, and an assessment as to whether the efforts the utility is undertaking to collect past due amounts, including the costs of disconnection and reconnection, are cost-effective. This is designed to provide information as to how the costs of seeking repayment compare to the amount actually owed and repaid.

55. Additionally, proposed subparagraph (g)(III) specifically contemplates that the information in these reports may be connected to reporting that is undertaken related to Rule 3412. Rule 3412(k) requires CEO to conduct a triennial program evaluation related to utilities' low-income assistance programs. This new subparagraph allows CEO to request customer-specific data on delinquency and disconnection provided there are protective orders in place to maintain confidentiality. Low-income energy assistance programs make energy more affordable and reduce the possibility that customers become delinquent and disconnected. More

granular information, such as the frequency of disconnections for a single customer, may be necessary to understand whether utilities' programs are overall effective in reducing disconnections through assistance.

6. Gas Rule 4407. Discontinuance of Service.

56. Changes to Gas Rule 4407 parallel those made in Electric Rule 3407, with two significant exceptions.

57. First, current subparagraph (e)(IV)(A) allows a customer to postpone a disconnection due to a medical emergency for 60 days, with an option to extend by 30 days. The comparable Electric Rule provides a single postponement of 90 days. Without a clear rationale for the distinction, and with simplicity for the utilities and customers in mind, we have aligned the Gas Rule with the Electric Rule. Proposed subparagraph (e)(IV)(A) now allows for a single postponement of 90 days.

58. Second, discontinuance related to weather, in subparagraph (e)(V), is limited to cold temperatures for gas utilities.

7. Electric Rule 3408. Notice of Discontinuance of Service.

59. Current Rule 3408 specifies what information must appear in a notice of disconnection and what kind of outreach a utility must perform prior to disconnecting a customer. Section 40-3-103.6(1), C.R.S., requires this rulemaking to address the following subjects which are relevant to current Rule 3408:

- (a) resources to support customers in multiple languages, as appropriate to the geographic areas served;

- (b) limiting shut-off times to reasonable hours of the day Monday through Friday, excluding holidays, so that customers can attempt to reconnect on the same day;
- (d) referral of delinquent customers to energy payment assistance resources such as Energy Outreach Colorado, charities, nonprofits, and state agencies that provide, or that administer federal funds for, low-income energy assistance;
- (h) a prohibition on the remote disconnection of service for nonpayment, through advanced metering infrastructure or otherwise, without a reasonable attempt to make contact with the customer of record by telephone or engaging in a personal, physical visit to the premises.

60. Current Rule 3408 refers variously to a notice, a written notice, a discontinuance notice, and a notice of discontinuance. For clarity, a standard term, “notice of discontinuance,” is proposed throughout.

61. Proposed paragraph (a) is designed to clearly state the utility’s obligations with regard to contacting a customer, and is drawn from current paragraphs (a), (c), and (f). It does not change core obligations to provide at least 15 days’ and 24 hours’ advance notice prior to a disconnection being undertaken. However, it does add two further requirements.

62. First, proposed subparagraph (a)(I) requires that customers receive a notice of late payment prior to a notice of discontinuance being issued. Currently, utilities vary in how quickly they issue a notice of discontinuance upon a bill becoming past due (see Table 2 below), meaning disconnections could occur anywhere from 45 to 75 days after a bill is issued. To create greater equity for customers served by different utilities, the proposed notice of late payment would be provided upon a bill becoming past due and at least 15 days in advance of issuing a notice of discontinuance, using the customer’s preferred method of contact (phone, email, mail, etc.). This requirement adds at least 15 days to the disconnection process and is designed to prevent

disconnections occurring more quickly than 60 days after the due date of the unpaid bill, to promote consistency across utilities.

	Atmos	Black Hills Energy	CNG	Public Service
Due Date	Unspecified	Bill issuance + 15 days (E) + 20 days (G)	Bill issuance + 15 days	Bill issuance + 14 business days
Delinquency	Balance >\$95 unpaid after due date	Balance >\$50 unpaid after due date	Balance unpaid after due date	Balance > \$180 unpaid after due date
Late Payment Notice	Unspecified	Unspecified	Automated message 28 days after due date	Notice provided 30 days after due date
Disconnection Notice (Initiates 15-Day Timeline)	Written notice: Due date + 23 business days (31 calendar days)	Written notice: Bill issuance + 30 days Telephone notice 8 days after written notice In-person or telephone notice 24 hours prior	Written notice: Due date + 31 days Automated message 38 days after due date Automated message and call 42 days after due date	Written notice: Due date + 60 days Telephone notice attempted after due date

Table 2: Current Practices for Noticing Disconnection⁹

63. Second, proposed subparagraph (a)(IV) relates to situations where disconnections will be conducted remotely, if the utility has advanced metering capabilities or similar. The current proposal does not require a “last knock” in-person contact, but it does require contact by telephone at least 72 hours in advance of disconnection; this is additive to the other requirements in subparagraph (a). Additionally, proposed paragraph (a) requires notice to a third party identified by the customer at the same time as the customer. This change results in the deletion of current paragraph (c), and corresponding renumbering, for clarity.

64. Proposed paragraph (b) contains edits for clarity given some content was moved into proposed paragraph (a).

⁹ Proceeding No. 20M-0267EG, Atmos Energy Corporation’s Comments (Jul. 10, 2020); Atmos Energy Corporation’s Supplemental Comments (Aug. 6, 2020); Response Comments of Black Hills Colorado Electric, LLC and Black Hills Colorado Gas, Inc. d/b/a Black Hills Energy (Jul. 10, 2020); Colorado Natural Gas, Inc. Responses to Commission Requests (Jul. 23, 2020); Comments of Public Service Company of Colorado (Jul. 10, 2020); participants’ comments at Commissioners’ Information Meeting (Jul. 29, 2020).

65. Proposed subparagraph (c)(XII) states that the notice of discontinuance should inform low-income customers that they may be able to obtain financial assistance by contacting the utility. We retain this provision but include a question in Section E of this Decision regarding whether additional language is necessary to meet SB 20-030's requirement that delinquent customers be referred to energy assistance organizations.

66. We also retain paragraph (d), which includes a requirement that the notice of discontinuance is printed in English and other languages appropriate to the utility's service territory as determined by U.S. Census data. As noted above, we similarly applied this language to the requirement to produce disconnection standards on the utility's website, in proposed Rule 3407(f). These provisions correspond to SB 20-030's requirement to provide resources in multiple languages appropriate to the utility's geographic service area.

67. Proposed paragraph (f) clarifies that if a utility attempts to contact a customer, they should leave written notice or recorded notice depending on the means used.

8. Gas Rule 4408. Notice of Discontinuance of Service.

68. Changes to Gas Rule 4408 parallel those made in Electric Rule 3408.

9. Electric Rule 3409. Restoration of Service.

69. Current Rule 3409 provides the conditions under which a utility shall restore service to a customer who has been disconnected. Section 40-3-103.6(1), C.R.S., requires this rulemaking to address the following subjects which are relevant to current Rule 3409:

- (b) limiting shut-off times to reasonable hours of the day Monday through Friday, excluding holidays, so that customers can attempt to reconnect on the same day.

70. Proposed paragraph (b) has been edited to clarify the situations in which a utility is required to restore service.

71. Proposed paragraph (c) addresses the timelines under which service must be restored, drawing from the requirements in current paragraph (b). Given that disconnections can lead to spoiled food and medicine, and unsafe indoor air quality, our edits reflect a preference toward ensuring that customers who complete required actions are reconnected quickly.¹⁰ This proposal attempts to meet the requirements of SB 20-030 by providing that same-day reconnection is required where customers complete the request before 10:00 a.m. on a weekday. The revision further specifies that reconnection must occur no later than 24 hours after the customer has taken a step in proposed paragraph (b). However, in the absence of further information about utilities' capabilities to restore service quickly, evenings and weekends continue to be excluded from the timeline requirement.

72. Proposed paragraph (d) provides that where doubt exists as to whether service should be restored—for example, if there are questions on the sufficiency of a medical certificate—the default action shall be to restore service.

73. Proposed paragraph (e) similarly recognizes that where customers are not quickly reconnected, it can have impacts to their personal and professional lives. Regardless of intent, a utility that fails to reconnect service on the regulated timeline will be required to credit the customer's account \$50 per day, or a portion thereof, for each day that service is not restored.

10. Gas Rule 4409. Restoration of Service.

74. Changes to Gas Rule 4409 parallel those made in Electric Rule 3409.

11. Electric Rule 3413. Medical Exemption from Tiered Rate Plans.

75. Current Rule 3413 includes criteria under which electric utilities shall offer medical exemptions from tiered rate plans. Section 40-3-103.5, C.R.S., requires this rulemaking

¹⁰ The Utility Reform Network, Living Without Power: Health Impacts of Utility Shutoffs in California (May 2018), http://www.turn.org/wp-content/uploads/2018/05/2018_TURN_Shut-Off-Report_FINAL.pdf.

to address whether the Commission shall apply a means test of 400 percent of federal poverty guidelines, and to require additions to utilities' currently effective reporting requirements.

76. According to initial comments filed in Proceeding No. 20M-0267EG, Public Service and Black Hills Energy both manage eligibility through a third party entity, Chronic Care Collaborative (CCC). CCC collects customers' self-certified income information. As discussed at the CIM, electric utilities have not rejected applicants for a medical exemption rate program due to income levels that are above the current statutory threshold. Initial comments of Public Service suggest that a family of four at 400 percent of the federal poverty limit would have a household income of approximately \$104,800, compared to \$65,500 at 250 percent of the federal poverty limit. Participants raised questions as to, given the increase in income levels, a means test continues to be a meaningful tool to determine participant eligibility. However, OCC, Public Service, and Black Hills suggested that a means test remains useful even at the higher income threshold. Without additional information on the extent to which this changes overall eligibility for the program, we decline to select a single option for this NOPR.

77. We propose two options to amend current paragraph (a)(I). Option 1 increases the means test from 250 percent to 400 percent, as is required by the legislation. However, the Commission must find that a means test is necessary in order to apply it, so Option 2 deletes the means test.

78. Proposed subparagraph (c)(I) specifies that medical certification can be provided electronically. This is designed to accommodate changing trends in telemedicine and electronic recordkeeping.

79. Proposed subparagraph (i)(I) adds a further component to utilities' annual program reports by directing transferring the language from SB 20-030 that requires a description of how they facilitate enrollment.

12. Electric Rule 3976. Regulated Electric Utility Rule Violations, Civil Enforcement, and Civil Penalties.

80. Proposed Rule 3976 updates the table of civil penalties related to intentional violations of the Electric Rules. The table has been updated to correct rule references and to adjust the maximum penalties associated with rule violations. The civil penalty for violations of rules related to discontinuance and restoration of service have been adjusted to the statutory maximum of \$2,000 under § 40-7-113.5, C.R.S. This recognizes that interruptions in electric service can have significant impacts on customers' daily lives, including safety, health, and comfort. The civil penalty associated with Rule 3404 has also been increased from \$100 to \$1,000, consistent with penalty levels set by more recent rulemakings.

13. Gas Rule 4976. Regulated Gas Utility Rule Violations, Civil Enforcement, and Civil Penalties.

81. Changes to Gas Rule 4976 parallel those made in Electric Rule 3976.

E. Supplemental Questions

82. In addition to comments on the proposed rules as described in Section D, the Commission also desires comments on a series of questions that are laid out by topic below. Participants may respond to these questions specifically or in the course of responding to the proposed rules in Section D. When responding, participants are encouraged to propose specific rule language, if applicable.

1. Requested Information from Regulated Utilities

- Please provide corrections or clarifications to Tables 1 and 2, if desired.
- What proportion of residential customers experience multiple delinquencies per year? If this data is not available, why or why not?
- What proportion of residential customers experience multiple disconnections per year? If this data is not available, why or why not?
- What proportion of residential customers is disconnected and then never reconnected?

- Where a customer has a past-due balance on a bill for a joint electric and gas utility, is a notice of discontinuance issued for either service, or for both?
- Do utilities report past-due bills and/or disconnections to credit reporting bureaus?
- What is the typical cost for a residential customer to restore power once that person is disconnected, including any late payment charges, disconnection fees, reconnection fees, deposits, collection fees, etc.? Please list all charges and fees individually and in total, in the format used in Table 1.
- What is the typical cost for a small business customer to restore power once that entity is disconnected, including any late payment charges, disconnection fees, reconnection fees, deposits, collection fees, etc.? Please list all charges and fees individually and in total, in the format used in Table 1.
- How do utilities currently calculate fees or charges associated with disconnection and reconnection of power, and how frequently are these calculations updated?
- What are utilities' collection practices? What costs are included in collections fees that may be passed on to customers?

2. Understanding Delinquency and Disconnection

- What policy objectives are rules around disconnection intended to address, if any?
- What is the relationship between delinquencies or disconnections and housing security?
- How should customers receive information about disconnection standards at regulated utilities? Are there relevant examples in other jurisdictions (*e.g.*, a "customer bill of rights")?

3. Reducing Delinquency and Disconnection

- At what stages should referrals to organizations that provide energy assistance happen? Should that list of organizations be prescribed or be flexible?
- To what extent can other tools, such as service limiters or prepay programs, reduce disconnections?
- Should the Commission set quantitative or qualitative goals related to reducing disconnections?
- What action(s) should the Commission take if reporting contemplated by this legislation indicates that a utility is experiencing a significant increase in delinquencies and/or disconnections, or that certain zip codes are disproportionately impacted?

4. Navigating Disconnection and Reconnection

- Should there be additional or different protections related to non-residential customers?
- The Commission recognizes that, in many states, there are specific disconnection protections associated with age (elder, newborn) or disability. Should Colorado consider additional disconnection protections, including delays or moratoriums, for these or similar populations?

F. Conclusion

83. The statutory authorities for these proposed rules are §§ 40-4-101(3), 40-3-103.5, 40-3-103.6, 40-3-106, and 40-3-110, C.R.S.

84. Interested persons may comment on these proposed amendments and associated questions. The Commission prefers comments in this Proceeding No. 20R-0349EG to be filed through the Commission's E-Filings System available at:

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

85. 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=20R-0349EG

86. 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 September 10, 2020, 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, whether oral or written.

3. Regulated utilities are asked to submit responses to the Commission's questions in Section E of this Decision on or before September 22, 2020.

4. Comments from interested persons on the proposed amendments to the Electric Rules and Gas Rules, and the questions in Section E of this Decision, shall be due on or before September 22, 2020, and reply comments are due no later than October 8, 2020.

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

DATE: Tuesday, October 20, 2020

TIME: 9:00 a.m.

PLACE: Online, using GoToMeeting's platform for video conferencing
(instructions to be sent in a separate decision).

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

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

8. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 19, 2020.**

(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

JOHN GAVAN

MEGAN M. GILMAN

Commissioners