

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20R-0537EG

IN THE MATTER OF EMERGENCY RULES MODIFYING COST RECOVERY FOR
LOW-INCOME PROGRAMS OFFERED BY ELECTRIC AND NATURAL GAS UTILITIES
PURSUANT TO 4 CODE OF COLORADO REGULATIONS 723-3-3412 AND 723-4-4412.

**COMMISSION DECISION ADOPTING EMERGENCY
RULES**

Mailed Date: December 16, 2020
Adopted Date: December 16, 2020

I. BY THE COMMISSION

A. Statement

1. By this Decision, we adopt emergency rules 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 emergency rules revise Electric Rule 3412 and Gas Rule 4412 as they relate to cost recovery associated with income-based Percentage of Income Payment Plan (PIPP) Programs offered by regulated utilities, thus allowing for immediate PIPP Program expansion.

2. This rulemaking satisfies the requirements of § 24-4-103(6)(a), C.R.S. Given the ongoing novel coronavirus (COVID-19) pandemic that is driving economic and employment challenges, and the critical nature of energy for health, welfare and safety, we find it imperatively necessary to increase the cap for the allowable surcharge that utilities may assess all customers from \$0.31 to \$1.00 in order to provide targeted low-income residential bill assistance. Increasing the cap for this surcharge through emergency rule allows utilities whose PIPP

Programs are currently budget-constrained to expand their available programs in time to provide relief to income-qualified customers this heating season, when the need is greatest.

3. These emergency rules are effective for the earlier of 210 days from the effective date of this decision, or until the Commission issues permanent rules replacing these emergency rules. *See* § 40-2-108(2), C.R.S.

B. Discussion

4. Electric Rule 3412 and Gas Rule 4412 require regulated utilities to provide energy assistance to low-income customers as defined by § 40-3-106, C.R.S. Per statute, eligible low-income customers are those who have a household income at or below 185 percent of the current federal poverty level (FPL) and who otherwise meet the eligibility criteria set forth in Department of Human Services rules adopted pursuant to § 40-8.5-105, C.R.S. For practical purposes, and based on Electric Rule 3412(c) and Gas Rule 4412(c), customers are automatically enrolled in PIPP Programs after they are enrolled in the Low-Income Energy Assistance Program (LEAP), which is administered by the Colorado Department of Human Services. To enroll in LEAP, customers must demonstrate their prior 30 days' income and information regarding their citizenship or legal residency status.

5. Under Electric Rule 3412(e) and Gas Rule 4412(e), PIPP Programs include two important components: an affordable payment plan and a process for providing arrearage credits. The affordable payment plan applies to forward-looking bills. PIPP Program participants' bills are reduced to an "affordable percentage of income," which varies depending on primary heating fuel, but is generally two to six percent. The arrearage credits apply to backward-looking debts. Utilities must allow PIPP Program participants to reduce their arrearages to \$0.00 over not more than 24 months based on receiving regular bill payments.

6. PIPP Programs are funded by a surcharge on customers' bills that varies by customer class, pursuant to Electric Rule 3412(g) and Gas Rule 4412(g). Residential customers pay a fixed fee that is currently capped at \$0.31 per month. Costs are allocated to other rate classes based on their share of test year revenue requirements established in the utility's last Phase II rate case, or through another reasonable, quantifiable methodology. Revenues collected under these fees may fund program credits for current usage, program credits to reduce pre-existing arrearages, program administrative costs (which are capped), and program evaluation costs.

7. Colorado has been in a state of disaster emergency due to COVID-19 since March 11, 2020. Governor's Executive Orders have directed the Commission to "work with all public utilities to develop and provide payment assistance programs to aid customers, particularly customers qualified for the Low Income Energy Assistance Program, in the payment of their utility bills, related to the impacts of COVID-19."¹ These directives have continued to the present time.²

8. Colorado continues to see an increase in reported COVID-19 cases. According to the Colorado Department of Public Health and the Environment, about 150,000 positive COVID-19 cases were reported to the state in the month of November 2020.³

9. Colorado unemployment levels have increased significantly since the beginning of 2020 and unemployment may continue to increase because personal and commercial bankruptcies may lag in a recession. Furthermore, approximately 60,000 Coloradans are

¹ Governor's Executive Order D 2020 012 dated March 20, 2020.

² Governor's Executive Order D 2020 270 dated December 3, 2020.

³ <https://covid19.colorado.gov/data> (last visited December 10, 2020).

expected to face expiration of unemployment benefits that were extended under the CARES Act at the end of the year.⁴

10. Utilities and the Commission have taken steps to respond to COVID-19, including the suspension of late payment fees and disconnection or reconnection fees⁵ and customer outreach to notify customers of payment plan and bill assistance options to avoid larger arrears or discontinuance of service.⁶ By Decision No. R20-0664-I in Proceeding No. 20M-0267EG, issued September 16, 2020, the Commission required regulated utilities to submit information on arrears and disconnections on a monthly basis. Information submitted demonstrates that most utilities are experiencing significant increases in both the number of residential customers in arrears and the amount of active arrears.

11. At this time, most regulated utilities have resumed issuing notices of disconnections, and are believed to be conducting field disconnections. Regulated utilities have voluntarily adjusted the terms under which they are disconnecting customers to raise the thresholds for past-due bills that are subject to disconnection. However, as of September 30, 2020, per the reports submitted in Proceeding No. 20M-0267EG on October 15, 2020, approximately 15,000 residential customers were eligible for disconnection of electric or gas service, or both, unless they were able to pay past-due bills, receive bill assistance, or enter payment plans.

12. Pursuant to Electric Rule 3412(k) and Gas Rule 4412(k), on October 13, 2020, the Evaluation of the Percentage of Income Payment Plans Final Report, prepared by ADM Energy

⁴ <https://www.cpr.org/2020/11/29/unemployment-and-housing-benefits-are-expiring-colorado-will-try-to-stop-the-bleeding-with-a-modest-stimulus/>

⁵ See, e.g., Proceeding Nos. 20V-0133G; 20V-0150EG; 20V-0152G; 20V-0154E; 20V-0158G.

⁶ See generally Proceeding No. 20M-0267EG.

Research and Evaluation (Triennial Report) was submitted into Proceeding No. 20M-0013EG. On October 28, 2020, the Commission held a Commissioners' Information Meeting (CIM) regarding the Triennial Report. This CIM also included presentations from the Colorado LEAP program and Energy Outreach Colorado (EOC) which were posted on the Commission website.

13. The Triennial Report found that two utilities, Black Hills Colorado Electric (BHCE), and Colorado Natural Gas (CNG), are at the current maximum \$0.31 per month funding fee. BHCE has a wait list for its program, meaning it cannot serve all the customers who would otherwise qualify for low income energy assistance.⁷ The Triennial Report recommended that BHCE increase its monthly residential surcharge by \$0.54, to \$0.85, to fully fund its waitlist, based on the 2018/2019 program year period.⁸ While CNG does not have a wait list, CNG does have a practice of providing a one-time low-income energy assistance payment to each qualified customer rather than monthly payments. If CNG receives an increase in applications, the ability of the program to serve all customers who qualify could be at risk.

14. At the CIM, EOC, which serves people with energy assistance needs through a variety of programs, reported that applications are up 25 percent compared to the same time last year.⁹ EOC reported that 48 of 64 Colorado counties are underfunded for bill assistance and that it anticipates liquidating 25 percent of its reserves to maintain 2018-2019 funding levels in 2020-2021, but is likely to run out of energy assistance funding in Spring 2021.¹⁰ LEAP reported

⁷ Proceeding No. 20M-0013EG, ADM Energy Research and Evaluation, Evaluation of the Percentage of Income Payment Plans Final Report (October 13, 2020), at p. 53.

⁸ *Id.* at line labeled "additional monthly charge per residential customer."

⁹ Energy Outreach Colorado, Triennial Review of Utility IQ Programs, Commissioners' Information Meeting (October 28, 2020), available at <https://drive.google.com/file/d/1e-vee8HLxr5htLJHbyuqKleg7Smj3Z20/view>.

¹⁰ *Id.*

an increase in applications of 15 percent for program year 2019-2020 over program year 2018-2019.¹¹

15. In October 2020, the National Consumer Law Center submitted to the Commission a report titled “Utility Bill Affordability in Colorado: Reforms to Protect Low-Income Consumers from Increasing Rates” (Affordability Report).¹² The Affordability Report explains that the current \$0.31 residential bill impact “is far less than the residential bill impacts in states with large-scale, comprehensive bill affordability programs,” and recommends that regulated utilities implement a fee of \$1.00 per month in order to increase funding for PIPP Programs.¹³

C. Findings and Conclusions

16. The Commission may adopt emergency temporary rules without engaging in the processes required for a permanent rule 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. For the reasons stated below, we find that immediate adoption of these emergency rules is imperatively necessary to provide for the health, safety and welfare of the public.

17. Access to energy is critical in a period in which Coloradans are being encouraged to stay home for health and safety reasons. Residents rely on electricity and natural gas in order to safely and comfortably work from home or educate their children from home.

¹¹ Colorado Department of Human Services, Low-Income Energy Assistance Programs, Commissioners’ Information Meeting (October 28, 2020), *available at* <https://drive.google.com/file/d/1m6CcAA54uhUBHhAUxuSACSAJZOWQtC44/view>.

¹² Proceeding No. 20M-0267EG, Decision No. R20-0842-I, issued December 7, 2020, Attachment A.

¹³ *Id.* at 21-24.

18. Energy assistance allows Coloradans who qualify as low income not to have to choose between basic needs or paying their utility bill. Utility-run PIPP programs are a vital part of energy affordability for many low-income Coloradans. These emergency rules will increase the number of low-income Coloradans who can be assisted by these programs and will help ensure that low-income energy assistance programs continue to provide assistance to those who need it this winter and spring.

19. We find that increasing the maximum allowed impact on residential rates to \$1.00 is consistent with recommendations in the Triennial Report and Affordability Report and should provide sufficient funding to expand PIPP programs to customers on program waitlists and some customers who have recently become eligible for the programs or who will become eligible this heating season.

20. The heating season and LEAP application season began on November 1, 2020. We find that the time necessary to conduct a permanent rulemaking on this issue would result in Coloradans who qualify as low-income pursuant to Commission Rules and § 40-3-106, C.R.S., being denied low-income energy assistance. Therefore, we find that immediate adoption of emergency rules to authorize utilities to increase the cap on the residential surcharge from \$0.31 to \$1.00 per month in order to expand PIPP Programs this heating season 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. We will consider engaging in a permanent rulemaking to address appropriate residential bill impact levels for long-term sustainability and cost recovery for low-income programs, as well as take into account recommendations from the recently completed Triennial Review.

21. We therefore adopt emergency rules modifying cost recovery for low income programs offered by electric and natural gas utilities. These emergency rules modify the maximum residential bill impact allowed in Electric Rule 3412(g)(II)(B) and Gas Rule 4412(g)(II)(B) from \$0.31 to \$1.00 to allow as many Coloradans as possible access to energy assistance during the 2020-2021 program year.

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

23. The emergency rules for electric utilities 4 CCR 723-3 in legislative (strikeout/underline) format and the emergency rules in final version format (Attachments A and B) and the emergency rules for gas utilities 4 CCR 723-4 in legislative (strikeout/underline) format and the emergency rules in final version format (Attachments C and D) are available through the Commission's E-Filings system¹⁴ at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=20R-0537EG

24. Electric or natural gas utilities seeking to file a revised advice letter and tariff in response to these rules shall do so as soon as practicable, on not less than two business days' notice. We expect utilities which are currently unable to serve all low-income customers who have qualified through the LEAP application under their existing fee surcharge will promptly file a revised advice letter and tariff with an increased surcharge up to \$1.00 to serve as many qualified low-income customers as possible. We encourage regulated utilities to consider the likelihood that demand for these PIPP Programs will continue to increase as the COVID-19

¹⁴ 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 (20R-0537EG) in the "Proceeding Number" box and then selecting "Search".

pandemic continues, and to file their advice letter with an appropriate increase. We also encourage utilities to consider additional customer outreach to inform low-income customers who may not be familiar with the utility's PIPP Program of the Program's existence.

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 emergency rules consistent with the discussion above.

2. The emergency rules shall be effective on the mailed date of this Decision.

3. Electric or natural gas utilities seeking to increase their currently assessed residential monthly surcharge for low-income residential bill assistance shall file, in a new proceeding, an advice letter and tariff in response to these rules, shall do so as soon as practicable, and on not less than two business days' notice.

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.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 16, 2020.**

(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

MEGAN M. GILMAN

Commissioners