

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 11R-110EG

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IN THE MATTER OF THE PROPOSED RULES REGULATING LOW INCOME ASSISTANCE PROGRAMS OF ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, AND GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4.

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**NOTICE OF PROPOSED RULEMAKING**

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Mailed Date: February 14, 2011

Adopted Date: January 5, 2011

**I. BY THE COMMISSION**

**A. Statement**

1. The Colorado Public Utilities Commission (Commission) hereby issues this Notice of Proposed Rulemaking (NOPR) regarding its Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR), 723-3 and its Rules Regulating Gas Utilities and Pipeline Operators, 4 CCR 723-4.

2. This NOPR proposes changes to the Commission's rules, precipitated by a Petition for Issuance by the Commission of Notice of Proposed Electric Utility Rulemaking, filed by Energy Outreach Colorado (EOC) on July 2, 2010. EOC requested that the Commission issue a formal Notice of Proposed Rulemaking (NOPR) for the promulgation of low-income rate assistance rules. To assist the Commission, EOC included EOC prototype rules as the basis for comment and discussion. We received comments from interested parties as part of Docket No. 08I-420EG and, in accordance with Decision No. C09-0172, undertake this proposed rulemaking.

3. The basis and purpose of the proposed amendments is to revise the current electric and gas rules to add rules addressing low income energy assistance programs. The Commissioners directed Staff to develop a set of low-income rules that include a percent of income type benefit, arrearage forgiveness, and weatherization/DSM type requirement program, while being mindful of the impact to non-participants and to accomplish this using a phased-in implementation approach.

4. The statutory authority for the proposed rules is found in § 40-6-3-106(d), C.R.S.

5. Rule 3412 is added to establish the requirements of low income programs for regulated electric utilities. Rule 3412 is structured into six sections including (a) scope and applicability, (b) definitions, (c) program requirements, (d) program implementation, (e) cost recovery, (f) annual report requirements, and (g) energy service affordability program (ESAP). Rule 3412 (f) ESAP is a detailed program that may be adopted by a utility in satisfaction of the requirements of this rule 3412 and, as such, constitutes a “safe harbor” for compliance.

6. Rule 4412 is added to establish the requirements of low income programs for regulated gas utilities. Rule 4412 is structured into six sections including (a) scope and applicability, (b) definitions, (c) program requirements, (d) program implementation, (e) cost recovery, (f) annual report requirements, and (g) energy service affordability program (ESAP). Rule 4412 (f) ESAP is a detailed program that may be adopted by a utility in satisfaction of the requirements of this rule 4412 and, as such, constitutes a “safe harbor” for compliance.

7. Rules not specifically discussed in this NOPR do not constitute a portion of this NOPR. The Commission is not proposing any changes to the rules not specifically discussed in this NOPR.

8. The proposed amendments will be published in the February 25, 2011 edition of *The Colorado Register*. Additionally, interested persons may acquire a copy of the proposed amendments through the Commission's Electronic filing system or by contacting the Administrative Support Section through Elizabeth Hayes at 303.894.2884 or [Elizabeth.hayes@dora.state.co.us](mailto:Elizabeth.hayes@dora.state.co.us).

9. An Administrative Law Judge (ALJ) will conduct a hearing on the proposed amendments and related issues at the below-stated time and place. Interested persons may submit written comments on the amendments, including data, views, or arguments, and present these orally at hearing unless the ALJ deems oral presentations unnecessary. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that such comments be filed no later than March 17, 2011. Reply comments should be submitted by April 6, 2011. The Commission prefers that interested persons submitting comments do so through the Commission's Electronic filing system. The Commission will consider all submissions, whether oral or written.

10. The Commission directs each regulated electric and gas utility to provide relevant data and statistics regarding the program benefits to participants including, but not limited to, the number of participants currently receiving low-income energy assistance from the utility or other agency (excluding arrearage forgiveness); the number of participants at or below 125 percent of the federal poverty level, at or below 150 percent of the federal poverty level, and the number of participants at or below 185 percent of the federal poverty level; the average amount of base consumption that occurs in low-income homes; and the number of participants currently eligible

for low-income assistance that require arrearage benefits and the amount of arrearage benefits required.

11. In addition, the Commission directs each regulated electric and gas utility to address the costs associated with a proposed program, including costs at each phase of implementation, as well as costs currently incurred by utilities and savings that will occur as a result of the proposed program; and the rate impact from the above upon all utility non-participants.

12. The Commission is mindful of the concerns that a percent of income type program may create for the privacy of consumer data and invites the State of Colorado Department of Human Services to provide its views on any legal issues that may arise because of the data being requested through this proposed rule.

## **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 February 25, 2011, edition of *The Colorado Register*.

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

DATE: April 21 , 2011  
TIME: 9:00 a.m.  
PLACE: Commission Hearing Room  
Suite 250  
1560 Broadway  
Denver, Colorado

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

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary. Interested persons may file written comments in this matter before hearing. The Commission prefers that such pre-filed comments be submitted through the Commission's Electronic Filing System no later than March 17, 2011. Reply comments should be submitted by April 6, 2011.

5. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
January 5, 2011.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

RONALD J. BINZ

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JAMES K. TARPEY

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MATT BAKER

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Commissioners

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## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-3

#### PART 3

#### RULES REGULATING ELECTRIC UTILITIES

#### BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to describe the electric service to be provided by jurisdictional utilities and master meter operators to their customers; to designate the manner of regulation over such utilities and master meter operators; and to describe the services these utilities and master meter operators shall provide. In addition, these rules identify the specific provisions applicable to public utilities or other persons over which the Commission has limited jurisdiction. These rules address a wide variety of subject areas including, but not limited to, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, master meter operations, flexible regulation, procedures for administering the Low-Income Energy Assistance Act, electric service low-income program, cost allocation between regulated and unregulated operations, recovery of costs, the acquisition of renewable energy, small power producers and cogeneration facilities, and appeals regarding local government land use decisions. The statutory authority for these rules can be found at §§ 29-20-108, 40-1-103.5, 40-2-108, 40-2-124(2), 40-3-102, 40-3-103, 40-3-104.3, 40-3-106, 40-3-111, 40-3-114, 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, 40-7-113.5, 40-7-116.5, 40-8.7-105(5), and 40-9.5-107(5), C.R.S.

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[indicates omission of unaffected rules]

#### BILLING AND SERVICE

##### 3400. Applicability.

Rules 3400 through 341~~12~~ apply to residential customers, small commercial customers and agricultural customers served pursuant to a utility's rates or tariffs. In its tariffs, a utility shall define "residential," "small commercial" and "agricultural" customers to which these rules apply. The utility may elect to apply the same or different terms and conditions of service to other customers.

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[indicates omission of unaffected rules]

[new rules]

##### 3412. Electric Service Low-Income Program.

##### (a) Scope and Applicability.

- (I) Electric utilities with Colorado retail customers shall file with the Commission a proposal to provide low-income energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential low-income customers, as permitted by § 40-3-106, C.R.S.
- (II) Rule 3412 is applicable to investor-owned electric utilities subject to rate regulation by the Public Utilities Commission of Colorado.
- (b) Definitions. The following definitions apply only in the context of rule 3412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply:

  - (I) “Eligible low-income customer” means a residential utility customer who:

    - (A) Has a household income at or below one hundred eighty-five percent of the current federal poverty level, as published each year in the federal register by the U.S. Department of Health and Human Services; and
    - (B) Otherwise meets the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.
  - (II) “Non-participant” means a utility customer who is not receiving low-income assistance under rule 3412.
  - (III) “Participant” means an eligible low-income residential utility customer who is granted the reasonable preference or advantage through participation in an electric service low-income program.
  - (IV) “Program” means an electric service low-income program approved under rule 3412.
  - (V) “Arrearage” means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.
  - (VI) “Energy Outreach Colorado” means the organization defined in § 40-8.7-103, C.R.S.
  - (VII) “ESAP” means energy service affordability program, an income-based utility program through which participants make regular monthly payments for energy service, which may be for an amount that is less than the current bill for that energy service at standard residential rates, in exchange for continued access to the energy service.
  - (VIII) “Fixed credit” means an annual bill credit established at the beginning of a participant’s participation in ESAP each year delivered as a monthly credit on each participant’s bill. The fixed credit is the ESAP participant’s full annual bill minus the participant’s affordable percentage of income payment obligation on the full annual bill. A fixed credit allows the ESAP participant’s payment to vary given changes in usage or price, with the monthly credit remaining constant.
  - (IX) “Full annual bill” means the current consumption of an ESAP participant billed at standard residential rates. The full annual bill of an ESAP participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and (2) that portion of the bill that exceeds the affordable percentage of income payment.

(c) Program requirements.

(I) Program components. A utility's proposed program, required by this rule, shall address the following five aspects of energy assistance.

- (A) Reasonable preference. The utility's application shall address in detail how eligible participants will benefit from a reasonable preference or advantage in rates, charges, and services.
- (B) DSM participation. The utility's application shall address how the program integrates with existing energy efficiency or DSM programs offered by the utility or other entity. The proposed program may require that the participants participate in no-cost or low-cost energy efficiency programs, if applicable, as a condition for receiving utility-based energy assistance.
- (C) Weatherization participation. The utility's application shall address how the program integrates with existing weatherization programs offered by the state of Colorado or other entities. The program may require that the utility program participant also participate in such weatherization programs, if applicable, as a condition for receiving utility-based energy assistance.
- (D) Low-Income Energy Assistance Program (LEAP) Participation. The utility's application shall address how the program integrates with LEAP or other existing low-income energy assistance programs. The program may require that the utility program participant also participate in LEAP, if applicable, as a condition for receiving utility-based energy assistance.
- (E) Arrearage credit. The utility's application shall address consideration of arrearage forgiveness for participants who enter the program.

(II) Participant eligibility phase-in.

- (A) A utility's plan shall phase in the eligibility requirements in accordance with the following schedule:
  - (i) Phase I: Eligible participants are limited to those with a household income at or below one hundred twenty-five percent of the current federal poverty level during the first and second years of operation of the program.
  - (ii) Phase II: Eligible participants are limited to those with a household income at or below one hundred fifty percent of the current federal poverty level during the third and fourth years of operation of the program.
  - (iii) Phase III: Eligible participants are limited to those with a household income at or below one hundred eighty five percent of the current federal poverty level during the fifth and subsequent years of operation of the program.

(B) In making eligibility determinations, the utility shall identify participants utilizing a credible third-party's determination (e.g., Colorado Department of Human Services, Low-Income Energy Assistance Program office) while complying with § 26-1-114, C.R.S., on the confidentiality of public assistance data.

(III) Maximum impact on non-participant.

(A) The utility shall quantify the anticipated impact of its program on non-participants, for each phase identified in subparagraph 3412(c)(II)(A), as required by § 40-3-106(d)(III), C.R.S.

(B) The program shall include maximum impact ceiling goals on non-participant rates at the following level:

(i) Phase I: No more than \$0.0008 per kWh on the utilities volumetric charge per non-participant account.

(ii) Phase II: No more than \$0.0009 per kWh on the utilities volumetric charge per non-participant.

(iii) Phase III: No more than \$0.0010 per kWh on the utilities volumetric charge per non-participant.

(d) Program implementation.

(I) Each utility shall file its proposed program as part of its next general rate case or by January 1, 2012, whichever comes first.

(II) At a minimum, the utility's tariff filing shall include the following information:

(A) A tariff containing the rules that govern the operation of ESAP, including all of the requirements of paragraph 3412(c).

(B) A narrative description of the proposed ESAP, including:

(i) An explanation of the manner and the extent to which the ESAP operates in an integrated manner with other components of utility billing, credit and collection policies and programs, and usage reduction processes of the utility to accomplish the program goals.

(ii) A needs assessment identifying an estimate of the total number of low-income participants; the number of identified low-income participant accounts; and the projected ESAP enrollment.

(C) A projected budget for each year the plan is in operation, including ESAP administrative costs.

(D) The number of participants currently receiving low-income energy assistance from the utility; the average amount of base consumption that occurs in low-income homes; the potential impact of energy efficiency/DSM upon average low-income consumption; and the average reduction in consumption that would be anticipated as a result of usage/behavioral changes.

(E) Other information necessary to adequately support its proposal to the Commission.

(e) Cost recovery.

(I) Each utility shall address in its filing whether the recovery of costs should be made through a base rate adjustment, a separate cost adjustment rider, or by the creation of a separate rate class (i.e., lifeline rate).

(II) Each utility shall provide information regarding impacts on the various participant classes and on participants within a class.

(III) The following costs are eligible for recovery by a utility as program costs:

(A) Program credits or discounts applied against bills for current usage.

(B) Program credits applied against pre-existing arrearages.

(C) Program administrative costs.

(D) Other reasonable costs that the utility is able to demonstrate are attributable to its program.

(IV) In evaluating program cost-recovery, the Commission will consider both revenue and expense impacts.

(A) The utility shall apply energy assistance grants to the dollar value of credits granted to program participants.

(B) The utility shall apply, as an offset to cost recovery, all program expense offsets attributable to the program.

(i) Program expense offsets include decreases in utility operating costs:

(ii) Utility operating costs include, but are not limited to, the return requirement on cash working capital for carrying arrearages; the cost of credit and collection activities for dealing with low-income participants; and uncollectable account costs for these participants.

(V) A utility delivering a program as a percentage of income plan shall apply any energy assistance grant to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.

(A) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:

(i) First, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding.

(ii) Second, to the account of the program participant as a benefit to the participant.

(B) No portion of an energy assistance grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.

(VI) Program costs shall be allocated to all retail rate classes based on usage.

(f) Annual report.

(I) No later than May 31 each year, each utility shall file an annual report containing the following information:

(A) Monthly information on the program for the prior calendar year including number of participants, amount of benefit disbursement, type of benefit disbursement, and revenue collection;

(B) The number of participants applying for the program;

(C) The number of participants qualified and participating;

(D) The average assistance provided, the median assistance provided;

(E) The maximum individual assistance provided;

(F) The minimum assistance provided;

(G) Total cost of the program and the average rate impact on non-participants by rate class;

(H) The number of participants in the reporting period that had service discontinued as a result of late payment or non-payment, amount of uncollectable revenue from residential participants and average number of days sales outstanding for the residential participant class;

(I) An estimate of utility savings as a result of the implementation of the program (i.e., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, reduction in number of days sales outstanding, etc.);

(J) A quantitative assessment the impact of the program has on participants and non-participants (i.e., number of participants; average level of assistance; overlap with other services such as LEAP, DSM and weatherization, etc.); and

(K) Recommended program modifications based on report findings.

(g) Energy service affordability program option.

Subparagraph (g) describes an example of the general requirement of this rule 3412 that each utility propose a low-income energy assistance program. The ESAP program detailed in this section may be adopted by a utility in satisfaction of the requirements of this rule 3412 and, as such, constitutes a “safe harbor” for compliance.

(I) The Energy Service Affordability Program (ESAP) is an alternative program that the that a utility may propose in its application.

- (II) Eligibility for the ESAP program shall be phased in as provided in subparagraph 3412(c)(II)(A).
- (III) ESAP design requirements. The following design requirements shall be included in the ESAP tariff or application of a utility or as determined by the Commission:
  - (A) ESAP enrollment shall be limited to participants within the service territory of a utility based on the following schedule:
    - (i) During phase I, the number of participants enrolled in ESAP shall be no more than 50 percent of the utility's LEAP participants from the prior LEAP program year as certified by the Colorado LEAP program administrator.
    - (ii) During phase II, the number of participants enrolled in ESAP shall be no more than 100 percent of the utility's LEAP participants from the prior LEAP program year as certified by the Colorado LEAP program administrator.
    - (iii) During phase III, and thereafter, ESAP shall be available to all participants within the service territory of a utility.
  - (B) Payment plan proposal. Participant payments for electric bills rendered to ESAP participants shall not exceed a percentage of the ESAP participant's annual income.
    - (i) Percentage of income plan. The total payment for all electric home energy under a percentage of income plan is determined based upon a percentage of the participant's annual gross household income. The participant's annual gross household income and household size place the participant at a particular poverty level based on federal poverty income guidelines as published annually by the U.S. Department of Health and Human Services:
      - (1) For electric accounts for which electricity is the primary heating fuel, maximum participant payments shall be set at the following percentage of income burdens:
        - (a) Household income at or below 75 percent of Federal Poverty Level: four percent of income.
        - (b) Household income exceeding 75 percent but at or below 125 percent of Federal Poverty Level: five percent of income.
        - (c) Household income exceeding 125 percent but at or below 185 percent of Federal Poverty Level: six percent of income.
    - (ii) In the event that a primary heating fuel for any particular ESAP participant has been identified by LEAP, that determination shall be final.

(C) Full annual bill calculation. The utility shall be responsible for estimating an ESAP participant's full annual bill for the purpose of determining the ESAP participant's fixed credit.

(D) Fixed credit benefit delivery.

(i) A utility shall, unless infeasible, deliver ESAP benefits as a percentage of income-based fixed credit on an ESAP participant's bill.

(ii) Fixed credits shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges, change to the extent that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.

(iii) If a utility demonstrates that it is infeasible to deliver ESAP benefits as a percentage of income-based fixed credits on an ESAP participant's bill, a participant's annual payment each year shall be calculated as a percentage of household income and converted to a percentage of the participant's full annual bill. A participant will pay that percentage of the total bill irrespective of the level of the full annual bill.

(E) Levelized budget billing participation. A utility shall, unless infeasible, enroll ESAP participants in its levelized budget billing program as a condition of participation in ESAP. Should an ESAP participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.

(F) Arrearage credits.

(i) Arrearage credits shall be applied to pre-existing arrearages.

(ii) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to \$0 over no more than a two year period.

(iii) With the approval of the Commission, application of an arrearage credit to an ESAP account may be conditioned by the utility on one or more of the following:

(1) The receipt of regular participant payments toward ESAP bills for current usage; or

(2) The payment of a participant copayment toward the arrearages so long as the participant copayment does not exceed one percent of gross household income.

(iv) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity.

(v) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills, if the participant enters into and maintains a levelized budget billing plan.

(G) Cost control features.

(i) A utility shall refer ESAP participants who historically use 150 percent or more of the median use of residential class participants to public or private usage reduction programs, including the utility's own demand side management programs and the usage reduction programs of local weatherization agencies that provide free energy efficiency upgrades to income-qualified consumers based on availability of funding.

(ii) Households approved to receive an ESAP benefit must agree to have their dwelling weatherized if contacted by a state-authorized weatherization agency. Failure to permit or complete weatherization may result in the denial of ESAP benefits for the following year.

(1) Households containing a member(s) whose mental or physical health could be jeopardized because of weatherization shall be exempt from this requirement. Such participants must provide a certificate of medical hardship which shall be in writing sent to the utility from the office of a licensed physician, and show clearly the name of the participant or individual whose health is at issue; the Colorado medical identification number, phone number, name, and signature of the physician or health care practitioner acting under a physician's authority certifying the medical hardship.

(2) A household whose landlord refuses to allow weatherization shall not have benefits denied.

(H) Targeted outreach. Within its residential participant base, a utility shall make special efforts to target ESAP outreach to payment-troubled participants.

(I) Portability of benefits. An ESAP participant may continue to participate in ESAP, without reapplication, should the participant change service addresses, but remain within the service territory of the utility providing the ESAP benefit, provided that the utility may make necessary adjustments in the levelized budget billing amount to reflect the changed circumstances. An ESAP participant who changes service addresses and does not remain within the service territory of the utility providing the ESAP benefit must reapply for ESAP at the participant's new service address.

(J) Appeals process. Existing utility and Commission dispute and appeals procedures shall be available to resolve any dispute regarding ESAP participation.

(K) Maximum impact on non-participants. The utility shall implement a maximum impact to non-participants according to subparagraph 3412(c)(III)(B).

- (L) Program requirements conflict. In the event there is a conflict between participant benefits in subparagraphs 3412(g)(III)(B) and (F) and non-participant impacts in subparagraph 3412(g)(III)(K), the Commission authorized budget cap shall supersede the conflict.
- (M) Administrative program components. The ESAP program administration shall include:
- (i) A written explanation of ESAP provided to participants.
  - (ii) Consumer education programs that shall include information on the benefits of energy conservation, and that may include referrals to other appropriate weatherization and income supplement programs.
  - (iii) An annual process that verifies an ESAP participant's continuing income eligibility for ESAP benefits, provided that:
    - (1) A process through which an ESAP participant may reapply for ESAP on a less frequent basis may be implemented for categories of participants that are not likely to experience annual fluctuations in income; and
    - (2) A process through which an ESAP participant must verify income on a more frequent basis may be implemented for participants for whom the calculation of ESAP benefits is based on a \$0 income.
    - (3) A utility shall notify the ESAP participant for which the ESAP benefit is based on a \$0 income of the frequency with which income must be verified.
    - (4) A utility must provide an income verification process for an ESAP participant for which the ESAP benefit is based on a \$0 income.
    - (5) An ESAP participant whose benefit is based on a \$0 income who fails to timely verify income shall be removed from ESAP.
- (N) Payment default provisions. Failure of an ESAP participant to make his or her monthly bill payments will result in a utility placing the participant in its regular collection cycle. Nonpayment shall not result in the removal of a participant from ESAP.

~~3412~~3413. – 3499.

[Reserved].

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[indicates omission of unaffected rules]

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-4

#### PART 4

#### RULES REGULATING GAS UTILITIES AND PIPELINE OPERATORS

#### BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to set forth rules describing the service to be provided by jurisdictional gas utilities and master meter operators to their customers and describing the manner of regulation over jurisdictional gas utilities, master meter operators, and the services they provide. These rules address a wide variety of subject areas including, but not limited to, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, master meter operations, transportation service, flexible regulation, procedures for administering the Low-Income Energy Assistance Act, gas service low-income program, cost allocation between regulated and unregulated operations, recovery of gas costs, appeals regarding local government land use decisions, and authority of the Commission to impose civil penalties on public utilities. The statutory authority for these rules can be found at §§ 29-20-108, 40-1-103.5, 40-2-108, 40-2-115, 40-3-102, 40-3-103, 40-3-104.3, 40-3-106, 40-3-111, 40-3-114, 40-3-101, 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, 40-7-117, 40-7-113.5, 40-7-116.5; and 40-8.7-105(5), C.R.S.

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[indicates omission of unaffected rules]

#### BILLING AND SERVICE

##### 4400. Applicability.

Rules 4400 through 441~~12~~ apply to residential customers, small commercial customers and agricultural customers served pursuant to a utility's rates or tariffs. Rules 4400 through 4405 and rules 4407 through 441~~12~~ shall not apply to customers served under a utility's transportation rates or tariffs. In its tariffs, a utility shall define "residential," "small commercial" and "agricultural" customers to which these rules apply. The utility may elect to apply the same or different terms and conditions of service to other customers.

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[indicates omission of unaffected rules]

[new rules]

**4412. Gas Service Low-Income Program.**

**(a) Scope and Applicability.**

(I) Gas utilities with Colorado retail customers shall file with the Commission a proposal to provide low-income energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential low-income customers, as permitted by § 40-3-106, C.R.S.

(II) Rule 4412 is applicable to investor-owned gas utilities subject to rate regulation by the Public Utilities Commission of Colorado.

**(b) Definitions. The following definitions apply only in the context of rule 4412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply:**

(I) “Eligible low-income customer” means a residential utility customer who:

(A) Has a household income at or below one hundred eighty-five percent of the current federal poverty level, as published each year in the federal register by the U.S. Department of Health and Human Services; and

(B) Otherwise meets the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to section § 40-8.5-105, C.R.S.

(II) “Non-participant” means a utility customer who is not receiving low-income assistance under rule 4412.

(III) “Participant” means an eligible low-income residential utility customer who is granted the reasonable preference or advantage through participation in an gas service low-income program.

(IV) “Program” means a gas service low-income program approved under rule 4412.

(V) “Arrearage” means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.

(VI) “Energy Outreach Colorado” means the organization defined in § 40-8.7-103, C.R.S.

(VII) “ESAP” means energy service affordability program, an income-based utility program through which participants make regular monthly payments for energy service, which may be for an amount that is less than the current bill for that energy service at standard residential rates, in exchange for continued access to the energy service.

(VIII) “Fixed credit” means an annual bill credit established at the beginning of a participant’s participation in ESAP each year delivered as a monthly credit on each participant’s bill. The fixed credit is the ESAP participant’s full annual bill minus the participant’s affordable percentage of income payment obligation on the full annual bill. A fixed credit allows the ESAP participant’s payment to vary given changes in usage or price, with the monthly credit remaining constant.

(IX) “Full annual bill” means the current consumption of an ESAP participant billed at standard residential rates. The full annual bill of an ESAP participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and (2) that portion of the bill that exceeds the affordable percentage of income payment.

(c) Program requirements.

(I) Program components. A utility’s proposed program, required by this rule, shall address the following five aspects of energy assistance.

(A) Reasonable preference. The utility’s application shall address in detail how eligible participants will benefit from a reasonable preference or advantage in rates, charges, and services.

(B) DSM participation. The utility’s application shall address how the program integrates with existing energy efficiency or DSM programs offered by the utility or other entity. The proposed program may require that the participants participate in no-cost or low-cost energy efficiency programs, if applicable, as a condition for receiving utility-based energy assistance.

(C) Weatherization participation. The utility’s application shall address how the program integrates with existing weatherization programs offered by the state of Colorado or other entities. The program may require that the utility program participant also participate in such weatherization programs, if applicable, as a condition for receiving utility-based energy assistance.

(D) Low-Income Energy Assistance Program (LEAP) Participation. The utility’s application shall address how the program integrates with LEAP or other existing low-income energy assistance programs. The program may require that the utility program participant also participate in LEAP, if applicable, as a condition for receiving utility-based energy assistance.

(E) Arrearage credit. The utility’s application shall address consideration of arrearage forgiveness for participants who enter the program.

(II) Participant eligibility phase-in.

(A) A utility’s plan shall phase in the eligibility requirements in accordance with the following schedule:

(i) Phase I: Eligible participants are limited to those with a household income at or below one hundred twenty-five percent of the current federal poverty level during the first and second years of operation of the program.

(ii) Phase II: Eligible participants are limited to those with a household income at or below one hundred fifty percent of the current federal poverty level during the third and fourth years of operation of the program.

(iii) Phase III: Eligible participants are limited to those with a household income at or below one hundred eighty five percent of the current federal poverty level during the fifth and subsequent years of operation of the program.

(B) In making eligibility determinations, the utility shall identify participants utilizing a credible third-party's determination (e.g. Colorado Department of Human Services, Low-Income Energy Assistance Program office) while complying with § 26-1-114, C.R.S., on the confidentiality of public assistance data.

(III) Maximum impact on non-participant.

(A) The utility shall quantify the anticipated impact of its program on non-participants, for each phase identified in subparagraph 4412(c)(II)(A), as required by § 40-3-106(d)(III), C.R.S.

(B) The program shall include maximum impact ceiling goals on non-participant rates at the following level:

(i) Phase I: No more than \$0.0074 per therm on the utilities volumetric charge per non-participant account.

(ii) Phase II: No more than \$0.0082 per therm on the utilities volumetric charge per non-participant.

(iii) Phase III: No more than \$0.0093 per therm on the utilities volumetric charge per non-participant.

(d) Program implementation.

(I) Each utility shall file its proposed program as part of its next general rate case or by January 1, 2012, whichever comes first.

(II) At a minimum, the utility's tariff filing shall include the following information:

(A) A tariff containing the rules that govern the operation of ESAP, including all of the requirements of paragraph 4412(c).

(B) A narrative description of the proposed ESAP, including:

(i) An explanation of the manner and the extent to which the ESAP operates in an integrated manner with other components of utility billing, credit and collection policies and programs, and usage reduction processes of the utility to accomplish the program goals.

(ii) A needs assessment identifying an estimate of the total number of low-income participants; the number of identified low-income participant accounts; and the projected ESAP enrollment.

(C) A projected budget for each year the plan is in operation, including ESAP administrative costs.

(D) The number of participants currently receiving low-income energy assistance from the utility; the average amount of base consumption that occurs in low-income homes; the potential impact of energy efficiency/DSM upon average low-income consumption; and the average reduction in consumption that would be anticipated as a result of usage/behavioral changes.

(E) Other information necessary to adequately support its proposal to the Commission.

(e) Cost recovery.

(I) Each utility shall address in its filing whether the recovery of costs should be made through a base rate adjustment, a separate cost adjustment rider, or by the creation of a separate rate class (i.e., lifeline rate).

(II) Each utility shall provide information regarding impacts on the various participant classes and on participants within a class.

(III) The following costs are eligible for recovery by a utility as program costs:

(A) Program credits or discounts applied against bills for current usage.

(B) Program credits applied against pre-existing arrearages.

(C) Program administrative costs.

(D) Other reasonable costs that the utility is able to demonstrate are attributable to its program.

(IV) In evaluating program cost-recovery, the Commission will consider both revenue and expense impacts.

(A) The utility shall apply energy assistance grants to the dollar value of credits granted to program participants.

(B) The utility shall apply, as an offset to cost recovery, all program expense offsets attributable to the program.

(i) Program expense offsets include decreases in utility operating costs;

(ii) Utility operating costs include, but are not limited to, the return requirement on cash working capital for carrying arrearages; the cost of credit and collection activities for dealing with low-income participants; and uncollectable account costs for these participants.

(V) A utility delivering a program as a percentage of income plan shall apply any energy assistance grant to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.

(A) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:

- (i) First, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding.
    - (ii) Second, to the account of the program participant as a benefit to the participant.
  - (B) No portion of an energy assistance grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.
- (VI) Program costs shall be allocated to all retail rate classes based on usage.
- (f) Annual report.
  - (I) No later than May 31 of each year, each utility shall file an annual report containing the following information:
    - (A) Monthly information on the program for the prior calendar year including number of participants, amount of benefit disbursement, type of benefit disbursement, and revenue collection;
    - (B) The number of participants applying for the program;
    - (C) The number of participants qualified and participating;
    - (D) The average assistance provided, the median assistance provided;
    - (E) The maximum individual assistance provided;
    - (F) The minimum assistance provided;
    - (G) Total cost of the program and the average rate impact on non-participants by rate class;
    - (H) The number of participants in the reporting period that had service discontinued as a result of late payment or non-payment, amount of uncollectable revenue from residential participants, and average number of days sales outstanding for the residential participant class;
    - (I) An estimate of utility savings as a result of the implementation of the program (i.e., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, reduction in number of days sales outstanding, etc.);
    - (J) A quantitative assessment the impact of the program has on participants and non-participants (i.e., number of participants; average level of assistance; overlap with other services such as LEAP, DSM and weatherization, etc.); and
    - (K) Recommended program modifications based on report findings.

(g) Energy service affordability program option.

Subparagraph (g) describes an example of the general requirement of this rule 4412 that each utility propose a low-income energy assistance program. The ESAP program detailed in this section may be adopted by a utility in satisfaction of the requirements of this rule 4412 and, as such, constitutes a “safe harbor” for compliance.

(I) The Energy Service Affordability Program (ESAP) is an alternative program that the that a utility may propose in its application.

(II) Eligibility for the ESAP program shall be phased in as provided in subparagraph 4412(c)(II)(A).

(III) ESAP design requirements. The following design requirements shall be included in the ESAP tariff or application of a utility or as determined by the Commission:

(A) ESAP enrollment shall be limited to participants within the service territory of a utility based on the following schedule:

(i) During phase I, the number of participants enrolled in ESAP shall be no more than 50 percent of the utility's LEAP participants from the prior LEAP program year as certified by the Colorado LEAP program administrator.

(ii) During phase II, the number of participants enrolled in ESAP shall be no more than 100 percent of the utility's LEAP participants from the prior LEAP program year as certified by the Colorado LEAP program administrator.

(iii) During phase III, and thereafter, ESAP shall be available to all participants within the service territory of a utility.

(B) Payment plan proposal. Participant payments for gas bills rendered to ESAP participants shall not exceed a percentage of the ESAP participant's annual income.

(i) Percentage of income plan. The total payment for all gas home energy under a percentage of income plan is determined based upon a percentage of the participant's annual gross household income. The participant's annual gross household income and household size place the participant at a particular poverty level based on federal poverty income guidelines as published annually by the U.S. Department of Health and Human Services:

(1) For gas accounts for which gas is the primary heating fuel, maximum participant payments shall be set at the following percentage of income burdens:

(a) Household income at or below 75 percent of Federal Poverty Level: four percent of income.

- (b) Household income exceeding 75 percent but at or below 125 percent of Federal Poverty Level: five percent of income.
    - (c) Household income exceeding 125 percent but at or below 185 percent of Federal Poverty Level: six percent of income.
  - (ii) In the event that a primary heating fuel for any particular ESAP participant has been identified by LEAP, that determination shall be final.
- (C) Full annual bill calculation. The utility shall be responsible for estimating an ESAP participant's full annual bill for the purpose of determining the ESAP participant's fixed credit.
- (D) Fixed credit benefit delivery.
  - (i) A utility shall, unless infeasible, deliver ESAP benefits as a percentage of income-based fixed credit on an ESAP participant's bill.
  - (ii) Fixed credits shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges, change to the extent that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.
  - (iii) If a utility demonstrates that it is infeasible to deliver ESAP benefits as a percentage of income-based fixed credits on an ESAP participant's bill, a participant's annual payment each year shall be calculated as a percentage of household income and converted to a percentage of the participant's full annual bill. A participant will pay that percentage of the total bill irrespective of the level of the full annual bill.
- (E) Levelized budget billing participation. A utility shall, unless infeasible, enroll ESAP participants in its levelized budget billing program as a condition of participation in ESAP. Should an ESAP participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.
- (F) Arrearage credits.
  - (i) Arrearage credits shall be applied to pre-existing arrearages.
  - (ii) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to \$0 over no more than a two (2) year period.

(iii) With the approval of the Commission, application of an arrearage credit to an ESAP account may be conditioned by the utility on one or more of the following:

(1) The receipt of regular participant payments toward ESAP bills for current usage; or

(2) The payment of a participant copayment toward the arrearages so long as the participant copayment does not exceed one percent of gross household income.

(iv) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity.

(v) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills, if the participant enters into and maintains a levelized budget billing plan.

(G) Cost control features.

(i) A utility shall refer ESAP participants who historically use 150% or more of the median use of residential class participants to public or private usage reduction programs, including the utility's own demand side management programs and the usage reduction programs of local weatherization agencies that provide free energy efficiency upgrades to income-qualified consumers based on availability of funding.

(ii) Households approved to receive an ESAP benefit must agree to have their dwelling weatherized if contacted by a state-authorized weatherization agency. Failure to permit or complete weatherization may result in the denial of ESAP benefits for the following year.

(1) Households containing a member(s) whose mental or physical health could be jeopardized because of weatherization shall be exempt from this requirement. Such participants must provide a certificate of medical hardship which shall be in writing sent to the utility from the office of a licensed physician, and show clearly the name of the participant or individual whose health is at issue; the Colorado medical identification number, phone number, name, and signature of the physician or health care practitioner acting under a physician's authority certifying the medical hardship.

(2) A household whose landlord refuses to allow weatherization shall not have benefits denied.

(H) Targeted outreach. Within its residential participant base, a utility shall make special efforts to target ESAP outreach to payment-troubled participants.

- (I) Portability of benefits. An ESAP participant may continue to participate in ESAP, without reapplication, should the participant change service addresses, but remain within the service territory of the utility providing the ESAP benefit, provided that the utility may make necessary adjustments in the levelized budget billing amount to reflect the changed circumstances. An ESAP participant who changes service addresses and does not remain within the service territory of the utility providing the ESAP benefit must reapply for ESAP at the participant's new service address.
- (J) Appeals process. Existing utility and Commission dispute and appeals procedures shall be available to resolve any dispute regarding ESAP participation.
- (K) Maximum impact on non-participants. The utility shall implement a maximum impact to non-participants according to subparagraph 4412(c)(III)(B).
- (L) Program requirements conflict. In the event there is a conflict between participant benefits in subparagraphs 4412(g)(III)(B) and (F) and non-participant impacts in subparagraph 4412(g)(III)(K), the Commission authorized budget cap shall supersede the conflict.
- (M) Administrative program components. The ESAP program administration shall include:

  - (i) A written explanation of ESAP provided to participants.
  - (ii) Consumer education programs that shall include information on the benefits of energy conservation, and that may include referrals to other appropriate weatherization and income supplement programs.
  - (iii) An annual process that verifies an ESAP participant's continuing income eligibility for ESAP benefits, provided that:

    - (1) A process through which an ESAP participant may reapply for ESAP on a less frequent basis may be implemented for categories of participants that are not likely to experience annual fluctuations in income; and
    - (2) A process through which an ESAP participant must verify income on a more frequent basis may be implemented for participants for whom the calculation of ESAP benefits is based on a \$0 income.
    - (3) A utility shall notify the ESAP participant for which the ESAP benefit is based on a \$0 income of the frequency with which income must be verified.
    - (4) A utility must provide an income verification process for an ESAP participant for which the ESAP benefit is based on a \$0 income.
    - (5) An ESAP participant whose benefit is based on a \$0 income who fails to timely verify income shall be removed from ESAP.

(N) Payment default provisions. Failure of an ESAP participant to make his or her monthly bill payments will result in a utility placing the participant in its regular collection cycle. Nonpayment shall not result in the removal of a participant from ESAP.

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[indicates omission of unaffected rules]