

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 11R-110EG

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
ADOPTING RULES**

Mailed Date: June 3, 2011

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I. STATEMENT

1. This proceeding concerns low-income assistance programs of electric and gas utilities. In Docket No. 08I-420EG, the Commission conducted an investigation into regulatory and rate incentives for customers of gas and electric utilities. One of the areas of inquiry was

rate design as a method of providing assistance to low-income customers. In Decision No. C09-0172 in that Docket, issued February 27, 2009, the Commission determined that a rulemaking was the appropriate next step in implementing this policy.

2. In Dockets Nos. 10M-473E and 10M-475G, Energy Outreach Colorado (EOC) petitioned the Commission to commence rulemakings for the promulgation of low-income energy assistance rules. The Commission granted EOC's petitions in part; it took comments in those Dockets; and it committed to issuing a Notice of Proposed Rulemaking (NOPR) in the near future that would address the subject. This proceeding resulted. The Commission issued its NOPR in this docket 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 in Decision No. C11-0154 on February 14, 2011. The proposed rules were published in *The Colorado Register* on February 25, 2011, along with notice of a hearing to be held on April 21, 2011 in a Commission hearing room in Denver, Colorado.

3. At the assigned place and time the hearing was held. Several interested entities presented oral comments, and Exhibits 1 through 9 were identified, offered, and admitted into the record. In addition, many written comments had been filed prior to the hearing.¹ At the conclusion of the hearing, the Administrative Law Judge (ALJ) announced that he would extend the comment period through April 28, 2011. Additional comments were received during the extended comment period.² Staff of the Commission's witness in this proceeding had been ordered to file additional comments further explaining his testimony about the development of

¹ Written comments were received in advance of the hearing from EOC; Colorado Office of Consumer Counsel; Public Service Company of Colorado (Public Service); Colorado Natural Gas, Inc.; Atmos Energy Corporation; Black Hills/Colorado Electric Utility Company, L.P. and Black Hills/Colorado Gas Utility Company, L.P. (Black Hills); AARP; Climax Molybdenum Company (Climax); CF&I Steel LP, doing business as Evraz Rocky Mountain Steel (CF&I); and SourceGas Distribution LLC.

² Written comments were received after the hearing from Colorado Division of Low-Income Energy Assistance; Climax; CF&I; Public Service; and EOC.

the maximum impact on non-participants. Due to administrative error at the Commission, the comments were not entered into the e-filing system until April 29, 2011. The ALJ will deem the comments timely filed.

II. AUTHORITY OF THE COMMISSION TO MANDATE LOW-INCOME ASSISTANCE PROGRAMS

4. Black Hills/Colorado Electric Utility Company, L.P. and Black Hills/Colorado Gas Utility Company, L.P. (Black Hills) challenge the authority of the Commission to mandate low-income energy assistance programs, such as those in the proposed rules.³ It notes that a previous effort by the Commission to require gas utilities to implement a discount rate plan for low-income elderly and low-income disabled persons, financed by remaining customers, had been found by the Colorado Supreme Court to have exceeded the Commission's authority.⁴ The Supreme Court there noted that while Article XXV of the Colorado Constitution gave the Commission full legislative authority to regulate public utilities, that authority could be limited by statute.⁵ The Supreme Court held that the then-existing version of § 40-3-106(1), C.R.S. 1973,⁶ as well as § 40-3-102, C.R.S.,⁷ acted as a legislative limitation that would prohibit

³ See, Initial Comments of Black Hills, pp. 7-12.

⁴ *Mountain States Legal Foundation v. Public Utilities Commission*, 197 Colo. 56, 590 P.2d 495 (1979) (hereafter, *Mountain States Legal Foundation*).

⁵ 197 Colo. at 59, citing *Mountain States Telephone and Telegraph Co. v. Public Utilities Commission*, 576 P.2d 544 (Colo. 1978).

⁶ The version then in effect read as follows:

"Advantages prohibited – graduated schedules. (1) No public utility, as to rates, charges, service, or facilities, or in any other respect, shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any respect, either between localities or as between any class of service. The commission has the power to determine any question of fact arising under this section."

⁷ "The power and authority is hereby vested in the Public Utilities Commission of the State of Colorado and it is hereby made its duty to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of every public utility of this state *to correct abuses; to prevent unjust discriminations* and extortions in the rates, charges, and tariffs of such public utilities of this state; to generally supervise and *regulate every public utility in this state*; and to do all things, whether specifically designated in articles 1 through 7 of this title or in addition thereto, which are necessary or convenient in the exercise of such power" (Emphasis added.)

programs such as the Commission had mandated because they were both preferential and unduly discriminatory.

5. Section 40-3-106(1), C.R.S., was subsequently amended and currently reads in pertinent part as follows:

(1)(a) Except when operating under paragraph (c) or (d) of this subsection (1) or pursuant to article 3.4 of this title, no public utility, as to rates, charges, service, or facilities, or in any other respect, shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any respect, either between localities or as between any class of service. The commission has the power to determine any question of fact arising under this section.

(b) Repealed.

(c) ...

(d)(I) Notwithstanding any provision of articles 1 to 7 of this title to the contrary, the commission may approve any rate, charge, service, classification, or facility of a gas or electric utility that makes or grants a reasonable preference or advantage to low-income customers, and the implementation of such commission-approved rate, charge, service, classification, or facility by a public utility shall not be deemed to subject any person or corporation to any prejudice, disadvantage, or undue discrimination.

(II) As used in this paragraph (d), a "low-income utility customer" means a utility customer who:

(A) Has a household income at or below one hundred eighty-five percent of the current federal poverty line; and

(B) Otherwise meets the eligibility criteria set forth in rules of the department of human services adopted pursuant to section 40-8.5-105.

(III) When considering whether to approve a rate that makes or grants a reasonable preference or advantage to low-income utility customers, the commission shall take into account the potential impact on, and cost-shifting to, utility customers other than low-income utility customers.

6. Black Hills interprets the new language of § 40-3-106(1)(d)(I), C.R.S., as only giving the Commission the authority to approve plans that are voluntarily submitted by the utility. Black Hills notes first that nothing in the statute requires the utility to file a plan.

It also notes that nothing in the statute requires the Commission to mandate a plan. It then concludes that the Commission is prohibited from mandating a plan.

7. EOC and OCC take issue with Black Hills' logic. Both point to the broad powers conferred on the Commission by § 40-3-102, C.R.S.⁸ They suggest § 40-3-106(1)(d)(I), C.R.S., has removed the legislative restrictions that the Supreme Court found fatal to adoption of the low income rate structure in *Mountain States Legal Foundation*.

8. The ALJ concludes that the Commission has the power and authority to mandate such programs. This power comes both from § 40-3-102, C.R.S., and Article XXV of the Colorado Constitution. The Supreme Court in *Mountain States Legal Foundation* referred to the Commission's full legislative authority over public utilities granted by Article XXV, subject to legislative limitation. With the adoption of a revised § 40-3-106(1)(d)(I), C.R.S., the legislature has removed the limitation. The full legislative authority of Article XXV, as well as the power and authority to govern and regulate all rates and charges granted by § 40-3-102, C.R.S., fully empower and authorize the Commission to mandate low income energy assistance programs.

III. NEED FOR THE RULES

9. EOC has been dealing with energy affordability in Colorado for many years. It provided this record with substantial data that supports the need for the proposed rules. Among them are the following:⁹

In 2007 the University of Colorado Health Science Center released a report on the causes of homelessness in Colorado.¹⁰ This report concluded that the cost of home energy is the second leading cause of homelessness in the state for families with children, just behind domestic violence.

In 2007 the Children's Sentinel Nutrition Assessment Program published a report concerning the "Impacts of Energy Insecurity on Children's Health,

⁸ See Fn. 6, *infra*.

⁹ The following bullet points are taken verbatim from EOC's Opening Comments.

¹⁰ See p. 9 of Exhibit 4 attached to EOC's Opening Comments.

Nutrition, and Learning.”¹¹ Principal investigators from the University of Maryland School of Medicine, University of Arkansas for Medical Sciences, Drexel University School of Public Health, and the Boston University School of Public Health concluded that “low-income families must struggle constantly to protect their children from multiple threats to their health and growth, of which energy insecurity may be the most immediately life-threatening.” Focused on children under 3 years old, the study concluded that babies and toddlers who live in energy insecure households are more likely to be in poor health, have a history of hospitalizations, be food insecure, and have problems with cognitive development. Further, according to the study, children living in LEAP¹²-eligible homes who do not receive assistance are significantly more likely to be underweight.

The U.S. Department of Labor, Bureau of Labor Statistics published information that, for low-income households, as energy expenditures increase, food expenditures decrease.¹³ This information shows that between 2000 and 2005, for families of four with total annual incomes between \$20,000 and \$29,000, spending for energy rose 22% while at the same time spending for food dropped 10%.

In 2009, the National Energy Assistance Directors Association published the “National Energy Assistance Survey Report.”¹⁴ Based on a survey of households that received LEAP assistance, the report concluded that in order to pay for home energy, 42% of households went without medical or dental care, and 38% went without filling a prescription or taking the full dose of a prescribed medicine. Additionally 32% of households went without food for at least one day, 44% closed off part of their home in order to save energy, and 33% used unsafe methods to heat their homes.

The resource and referral system (211) run by Mile High United Way has consistently listed energy assistance as the second highest request.¹⁵ While many believe that the inability to pay for home energy is a problem in the winter months, it is a year-round issue for low-income households.

10. The above-quoted material gives a fair picture of what effect energy bills and expenditures can have on low-income persons. They are too often faced with a Hobson’s choice when the energy bill comes due; they must pay the energy bill, but forego paying for food,

¹¹ See Exhibit 5 attached to EOC’s Opening Comments.

¹² LEAP stands for Low-income Energy Assistance Program. LEAP is a primarily federally-funded, county-administered program supervised by the Colorado Department of Human Services, Division of Low Income Energy Assistance. It provides cash grants during the heating season to income-qualified households.

¹³ See p. 2 of Exhibit 5 attached to EOC’s Opening Comments.

¹⁴ See Exhibit 6 attached to EOC’s Opening Comments.

¹⁵ See Exhibit 7 attached to EOC’s Opening Comments.

medicine, transportation, or other essentials. The Colorado Legislature recognized this when it amended § 40-3-106(1)(d)(I), C.R.S., as discussed above, to remove the prohibition against the Commission allowing a preference or advantage to low-income customers. No comments were filed opposing the concept in general. The ALJ finds and concludes that rules implementing such a program are in the public interest and should be adopted.

IV. TYPES OF PROGRAMS

11. Having determined above that the Commission has the power and authority to adopt low-income assistance programs, and that there is a need for such programs, the question becomes, what type of program should the rules require? The proposed rules attempted to allow for considerable flexibility by requiring a utility to either craft its own specific program, subject to certain principles, or to adopt a “Safe Harbor” plan that contained the specifics of a program that the Commission deemed sufficient. Not all commenters agreed with this approach. EOC and AARP are firmly convinced that a percentage-of-income program (PIP) is more effective and efficient when compared to a rate discount program. A PIP generally attempts to limit the amount that a ratepayer pays for energy to a certain percentage of the ratepayer’s income. Other types of programs function differently, for example, providing a rate discount to low-income customers, or giving a cash stipend not tied to a percentage of the recipient’s income. There are advantages and disadvantages to each type of program.

12. EOC and AARP argue that a PIP is more efficient at targeting those that need help the most. For example, assume that there are two, four-person households with similar energy usage, whose monthly energy bills are \$200 per month. One household has a monthly income of \$860 per month (about 50 percent of the federal poverty line (FPL)¹⁶) and the second has a

¹⁶ The FPL is an annual calculation that varies by household size. Under § 40-3-106(1)(d)(II)(A), C.R.S., the Commission may grant rate preferences or advantages to utility customers who have a household income at or below 185 percent of the FPL. This example is based on the 2007 FPL guidelines contained in Exhibit 9.

monthly income of \$2150 per month (about 125 percent of the FPL.) Under a rate discount approach that provided a 50 percent rate discount to participants, the second household, with two and one-half times the income as the first household, would receive the same benefits as the first household, namely, \$100 per month. Under a PIP, assume a household pays no more than 6 percent of its income on energy. The first household would pay \$52 per month for energy and receive program benefits of \$148; the second household would pay \$129 per month for energy and receive program benefits of \$71 per month. EOC and AARP would suggest the latter program is more efficient.¹⁷

13. The example above compared only two simple program types. There are variations of these types; for example, the proposed Safe Harbor program had a PIP with a sliding scale. Households at or below 75 percent of the FPL would pay 4 percent of income; those above 75 percent but at or below 125 percent of the FPL would pay 5 percent; and those above 125 percent but at or below 185 percent of the FPL would pay 6 percent. Similar types of features could be put into a rate discount approach as well.

14. Several commenters pointed out that different utilities have different customer demographics. Black Hills notes that the median household incomes in the Black Hills service territory are substantially below the State average and below the averages in the two largest cities served by Public Service. It also notes that in Crowley County, which it serves, approximately 46 percent of customers have income below the poverty line.¹⁸ Public Service has by far the most customers, and hence a greater ability to “spread out” program administrative costs. Several utility commenters are concerned with the administrative aspects of any program,

¹⁷ The reader will note that the total benefits to both households are not the same in both examples. This is part of a larger discussion on budgets and program cost caps. See *infra*.

¹⁸ Initial Comments of Black Hills, p. 11.

particularly the need to deal with confidential customer financial information that would be needed to determine eligibility. The ALJ agrees that the different utility profiles as well as the different customer bases are compelling reasons to allow the utilities the greatest possible flexibility when designing a program. The rules governing the utility-specific programs have been modified to reflect this need for flexibility.

15. The Safe Harbor rules proposed a PIP generally based on proposals made by EOC. The rules are adopted essentially as they were proposed, with some clarifying changes. The significant change from the proposal by EOC, discussed below, is that the adopted Safe Harbor rules limit participation to LEAP participants.

V. EFFECT ON NON-PARTICIPANTS

16. Section 40-3-106(1)(d)(III), C.R.S., mandates that the Commission consider the “...potential impact on, and cost-shifting to, utility customers other than low-income utility customers.” The proposed rules attempted to address this. The proposed electric rules included limits to non-participants of \$0.0008/kWh, \$0.0009/kWh, and \$0.0010/kWh during the phase-in.¹⁹ The proposed gas rules included limits to non-participants of \$0.0074/therm, \$0.0082/therm, and \$0.0093/therm.²⁰

17. Staff explained the origin of these proposed maximum impacts. Staff attempted to develop a cap so that during the initial phase-in, an average electricity user (632 kWh/month) would pay \$0.50 per month. This rises to \$0.56/month in the second phase, and to \$0.63 per month in the final phase. Similarly, an average gas user (68 therms/month) would pay an additional \$0.50, \$0.56, and \$0.63 per month during the phase in. Staff further explained that this was based on the original cost limitations for Amendment 37, which established a

¹⁹ See proposed Rules 3412(c)(III) and 3412(g)(III)(K).

²⁰ See proposed Rules 4412(c)(III) and 4412(g)(III)(K).

Renewable Energy Requirement for certain providers of retail electric service in the State. The ALJ is concerned that these programs are not comparable, and he believes the caps are too high. Therefore he has reduced them by 50 percent. According to EOC's calculations,²¹ these reduced caps would still fund a program participated in by 40 percent of LEAP eligible customers.²²

18. Commenters expressed confusion about the operation of the cap, and how the cap would be coordinated with the phase-in. A budget cap that is based on a rate cap is problematic. First, the budget cap will vary depending on the amount of energy used system-wide, and hence it is not a hard cap. Second, while not dictating a form of cost recovery, it may be difficult to translate to a form of cost recovery that is not volume based.²³

19. Commenters indicated a need for an overall hard budget cap, with program recipients being accepted until the budget cap is met. The ALJ agrees that a hard budget cap is needed to give the utilities certainty, and to give certainty to the effect on non-participants. The rules as adopted require each utility to have a hard dollar cap as part of either an individual utility plan or the Safe Harbor plan.

VI. SAFE HARBOR PLAN

20. The Safe Harbor program described in the proposed rules was designed to offer utilities, in effect, a pre-approved program. It is a PIP that had a sliding scale, as noted above. Almost all of the elements of the Safe Harbor plan drew some comments.

²¹ See Exhibits 6, 7, and 8.

²² Exhibits 6, 7, and 8 state that Public Service experienced a 20 percent participation rate in a pilot Electric Assistance Program. See Fn. 21, *infra*.

²³ For example, Public Service currently is conducting a gas pilot energy assistance program (PEAP) and a pilot Electric Assistance Program (EAP) that provide low-income assistance to residential gas and electric customers. These programs are funded through charges included in its service and facilities charges and are not volume based. It would be difficult develop a meaningful cost of the EAP and PEAP programs on a volume basis.

21. The Safe Harbor program contained a phased-in approach that had three phases. During phase I, the number of participants was limited to 50 percent of the utility's LEAP participants; during phase II, the number of participants was limited to 100 percent of the utility's LEAP participants; and in phase III, was to be "available to all participants within the service territory of a utility."²⁴

22. Commenters differ as to whether LEAP participation should be a condition of participation in either the utility specific plan or the Safe Harbor plan. EOC strongly opposes such a requirement. It states that LEAP funding is frequently limited, enrollment periods are limited to a narrow window of months during winter, and it is targeted to the very young, aged, and disabled. EOC agrees that any utility assistance program should be integrated and coordinated with LEAP. Other commenters believe LEAP participation is a legitimate requirement, and it could greatly simplify the administrative costs of the program, while also keeping the utility from having to obtain the confidential information of its customers. On balance, the ALJ finds that requiring LEAP participation in the Safe Harbor program accomplishes many goals while sacrificing little. In addition, the State Division of Low-Income Energy Assistance clarified at hearing that it would be able to share program qualification information with the utilities. Therefore LEAP participation will be a requirement of participating in the Safe Harbor program.

23. The phase-in periods have been clarified in the rules. Several commenters suggested that the limited dollars should go to the neediest customers first, a sentiment the

²⁴ Proposed Rules 3412(g)(III)(A) and 4412(g)(III)(A). The proposed rules did not state how long each phase was to last. This was different from the phase in proposed for the utility specific program, which was tied to a percentage of the FPL. See Proposed Rules 3412(c)(II)(A) and 4412(c)(II)(A).

ALJ shares. Therefore the phase-in for the Safe Harbor has been changed, and it is based on the customer's household income, with the neediest customers phased in first.²⁵

24. The proposed energy income burdens in the gas and electric Safe Harbor programs did not dovetail. As EOC notes,²⁶ the proposed rules effectively raised the maximum energy burden to 12 percent, and they did not address household use of electricity other than as a primary heating fuel. The adopted rules restore the proposal put forth by EOC in Dockets Nos. 10M-473E and 10M-475G. That is, for low income customers using electricity as their primary heating source, the percent of income burden for electricity is set at 6 percent; for low income customers using gas or other bulk heating fuels as their primary heating source, the maximum percent of income burden is set at 3 percent for electricity. The maximum income burden is set at 3 percent for gas for all circumstances. This will ensure that the maximum percent of income burden is close to 6 percent.

25. Public Service has proposed that arrearage credits should be in an amount, when combined with participant copayments, to reduce the pre-existing arrearage to \$0.00 within 12 months, rather than the 24 months contained in the proposed rules. The ALJ is concerned that recovery over the shorter period may exhaust program dollars to the detriment of potential participants. Therefore the recovery period is left at 24 months.

VII. COST RECOVERY

26. Many comments addressed the issues of cost allocation, cost caps, and rate design. Most emphasized the need for flexibility. Some comments went so far as to suggest that

²⁵ Some commenters suggested that the rules should incorporate the annual Federal Poverty Guidelines as adjusted each year. The Colorado Administrative Procedures Act prohibits this sort of ongoing incorporation by reference in § 24-4-103(12.5)(a)(II), C.R.S. Therefore the ALJ has obtained the latest Federal Poverty Guidelines and inserted them directly into the rules.

²⁶ EOC Initial Comments, p. 14.

such issues should be determined entirely on an individual utility basis and not included in the rules.²⁷ Cost recovery specifics have been removed from the individual utility plan. This is consistent with making those types of plans as flexible as possible. However, in the Safe Harbor plan, program costs are to be allocated to all retail classes based on usage. Cost recovery is also to be based on usage.²⁸

27. Some commenters expressed concern about the effects of these rules on gas transportation customers. As noticed, the low-income rules did not apply to gas transportation customers. The ALJ is concerned that adding them in at this point in the proceeding, when they were not included in the NOPR, is problematic. Therefore they remain excluded by Rule 4400 as contained in the notice of this proceeding.

VIII. EFFECTIVE DATE

28. Public Service is currently conducting pilot programs dealing with low-income energy assistance programs.²⁹ Public Service and others believe that before requiring any additional programs by adopting rules, there should be time to review and learn from Public Service's pilot programs. The ALJ agrees that the results of the pilot programs will be useful. Public Service expects that it will be filing the follow-up report on the pilot programs by January 17, 2012. The rules as adopted to allow a two-month period to analyze the report and to incorporate its teachings into any utility low-income proposal.

²⁷ See, e.g., Supplemental Comments of Climax and CF&I.

²⁸ Of course, a utility could seek approval of an individual utility plan that contained all of the elements of the Safe Harbor Plan except for a different cost recovery provision.

²⁹ See Fn. 22.

29. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.³⁰

IX. ORDER

A. The Commission Orders That:

1. The rules attached to this Order as Attachment A and Attachment B are adopted.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

³⁰ The Electric and Gas rules adopted are included in Attachments A and B to this Order in “clean” format. Copies of the Electric and Gas rules in legislative format, showing changes from the rules as originally proposed in the NOPR, are available in the Commission’s E-Filings system as a miscellaneous document in this docket.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

KEN F. KIRKPATRICK

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

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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.

* * * * *

[indicates omission of unaffected rules]

BILLING AND SERVICE

3400. Applicability.

Rules 3400 through 3412 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.

* * * * *

[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 in the January 20, 2011 Federal Register, Vol. 76, No. 13, pp. 3637-3638, by the U.S. Department of Health and Human Services and set forth in the following table

Persons in Family	Poverty Guideline
1	\$10,890
2	14,710
3	18,530
4	22,350
5	26,170
6	29,990
7	33,810
8	37,630
For families with more than 8 persons, add \$3,820 for each additional person.	

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) “Fixed credit” means an annual bill credit established at the beginning of a participant’s participation in a Program each year delivered as a monthly credit on each participant’s bill. The fixed credit is the participant’s full annual bill minus the participant’s affordable percentage of income payment obligation on the full annual bill.
 - (VII) “Full annual bill” means the current consumption of a participant billed at standard residential rates. The full annual bill of a 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.
 - (VIII) “LEAP” means Low Energy Assistance Program, a county-run, federally-funded, Program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.
- (c) Program requirements.
- (I) Program components. A utility’s proposed Program, required by this rule, shall address the following four aspects of energy assistance.
 - (A) DSM participation. The utility’s Program shall address how it integrates with existing energy efficiency or DSM programs offered by the utility or other entity.
 - (B) Weatherization participation. The utility’s Program shall address how it integrates with existing weatherization programs offered by the state of Colorado or other entities.
 - (C) LEAP Participation. The utility’s Program shall address how it integrates with LEAP or other existing low-income energy assistance programs.
 - (D) Arrearage credit. The utility’s Program shall address consideration of arrearage forgiveness for participants who enter the Program. Arrearage credits shall be sufficient to reduce the pre-existing arrearage to \$0.00 over twenty-four months.

- (II) Participant eligibility phase-in.
 - (A) A utility's plan shall phase in the eligibility requirements over three years 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 year 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 second year 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 third and subsequent years of operation of the Program.
 - (B) Utilities that have implemented a low-income electric service pilot program prior to January 1, 2011 may continue to provide benefits to pilot program participants that are enrolled in the pilot program at the time of filing under rule 3412(d)(I), regardless of the customer's level of poverty, so long as the customer's household income is at or below 185% of Federal Poverty Limits.
- (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) If Program cost recovery is usage-based, then the Program's maximum cost impact on non-participant's volumetric rates are:
 - (i) Phase I: No more than \$0.0004 per kWh;
 - (ii) Phase II: No more than \$0.00045per kWh; and
 - (iii) Phase III: No more than \$0.0005 per kWh.
 - (C) If Program cost recovery is based on something other than usage, the utility shall specify in its filing the maximum cost impact to non-participants.
- (d) Program implementation.
 - (I) Each utility shall file tariffs containing its proposed Program no later than March 19, 2012.
 - (II) At a minimum, the utility's filing shall include the following information:
 - (A) A tariff containing the rules that govern the operation of the Program, including all of the requirements of paragraph 3412(c).

- (B) A narrative description of the proposed Program, including:
 - (i) An explanation of the manner and the extent to which the Program 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 Program enrollment.
 - (C) A hard budget cap for each year the plan is in operation, including Program 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; and the potential impact of energy efficiency/DSM upon average low-income consumption.
 - (E) Other information necessary to adequately support its proposal to the Commission.
- (e) Cost recovery.
- (I) Each utility shall address in its filing how costs of the Program will be recovered.
 - (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) The utility shall apply, as an offset to cost recovery, all Program expense reductions attributable to the Program. Program expense reductions include decreases in utility operating costs; decreases in the return requirement on cash working capital for carrying arrearages; decreases in the cost of credit and collection activities for dealing with low-income participants; and decreases in uncollectable account costs for these participants.
- (f) Energy Assistance Grants
- (I) The utility shall apply energy assistance grants to the dollar value of credits granted to individual Program participants.

- (II) A utility providing 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.
- (g) Annual report.
 - (I) No later than May 31 each year, each utility shall file an annual report, based on the previous 12-month period ending March 31, containing the following information:
 - (A) Monthly information on the Program including number of participants, amount of benefit disbursement, type of benefit disbursement, and revenue collection;
 - (B) The number of applicants for the Program;
 - (C) The number of applicants qualified for the Program;
 - (D) The number of participants;
 - (E) The average assistance provided, both mean and median;
 - (F) The maximum assistance provided to an individual participant;
 - (G) The minimum assistance provided to an individual participant;
 - (H) Total cost of the Program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;
 - (I) The number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;
 - (J) An estimate of utility savings as a result of the implementation of the Program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, , etc.); and
 - (K) Recommended Program modifications based on report findings.

(h) Safe Harbor Program option.

Subparagraph (h) describes an option that each utility may propose as a low-income energy assistance Program. The 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) Customer eligibility for the Safe Harbor Program shall be phased in as provided in subparagraph 3412(c)(II)(A).
- (II) Safe Harbor design requirements. The following design requirements shall be included in the Safe Harbor tariff or filing of a utility.
 - (A) Safe Harbor enrollment shall be limited to the utility’s LEAP participants based on the three-year phase-in schedule contained in 3412 (c)(II)(A).
 - (B) Payment plan proposal. Participant payments for electric bills rendered to Safe Harbor participants shall not exceed a percentage of the Safe Harbor 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 guidelines as set forth in 3412(b)(I)(A).
 - (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.
 - (2) For electric accounts for which electricity is not the primary heating fuel, maximum customer payments shall be set at the following percentage of income burdens:
 - (a) Household income at or below 75 percent of the Federal Poverty Level: two percent of income;
 - (b) Household income exceeding 75 percent but at or below 125 percent of the Federal Poverty Level: two and one-half percent of income; and

- (c) Household income exceeding 125 percent but at or below 185% of the Federal Poverty Level: three percent of income.
- (ii) In the event that a primary heating fuel for any particular Safe Harbor participant has been identified by LEAP, that determination shall be final.
- (C) Full annual bill calculation. The utility shall be responsible for estimating a Safe Harbor participant's full annual bill for the purpose of determining the participant's fixed credit.
- (D) Fixed credit benefit delivery.
 - (i) A utility shall, unless infeasible, deliver Safe Harbor benefits as a percentage of income-based fixed credit on a 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 Safe Harbor benefits as a percentage of income-based fixed credits on a 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 Safe Harbor participants in its levelized budget billing Program as a condition of participation in Safe Harbor. Should a Safe Harbor 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 \$0.00 over twenty-four months.
 - (iii) Application of an arrearage credit to a Safe Harbor account may be conditioned by the utility on one or more of the following:
 - (1) The receipt of regular participant payments toward Safe Harbor 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 while the customer is participating in the Safe Harbor Program.
 - (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 Recovery.
 - (i) Each utility shall include as part of its Safe Harbor the cost recovery requirements listed in rule 3412(e).
 - (ii) Safe Harbor Program costs shall be allocated to all retail rate classes based on usage. Cost recovery shall also be based on usage.
 - (iii) Each utility shall include as part of its Safe Harbor a hard budget cap for each year the Program is in operation, including Program administrative costs, that complies with 3412(c)(III).
- (H) Energy Assistance Grants. The utility shall apply energy assistance grants to the dollar value of credits granted to the individual Program participants as set forth in rule 3412(f).
- (I) Cost control features.
 - (i) A utility shall refer Safe Harbor participants who historically use 150 percent or more of the median use of its 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 a Safe Harbor 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 Safe Harbor benefits for the following year, subject to the following exceptions:
 - (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.

- (3) A household shall not have Safe Harbor benefits denied for failure to provide matching funds for weatherization.
- (J) Targeted outreach. Within its residential customer base, a utility shall make special efforts to target Safe Harbor outreach to payment-troubled customers.
- (K) Portability of benefits. A Safe Harbor participant may continue to participate in Safe Harbor, without reapplication, should the participant change service addresses, but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the levelized budget billing amount to reflect the changed circumstances. A Safe Harbor participant who changes service addresses and does not remain within the service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.
- (L) Maximum cost impact on non-participants. The maximum cost impact to non-participants shall be no more than the limits established in subparagraph 3412(c)(III).
- (M) Program requirements conflict. In the event there is a conflict between participant benefits in subparagraphs 3412(h)(II)(B) and (F) and non-participant impacts in subparagraph 3412(h)(II)(L), the non-participant impact limits shall not be exceeded.
- (N) Administrative Program components. The Safe Harbor Program administration shall include:
 - (i) A written explanation of Safe Harbor, 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 a participant's continuing income eligibility for benefits, provided that:
 - (1) A process through which a participant may reapply 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 a participant must verify income on a more frequent basis may be implemented for participants for whom the calculation of benefits is based on a \$0 income.
 - (3) A utility shall notify the participant for whom the 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 a participant for whom the benefit is based on a \$0 income.

(5) A participant whose benefit is based on a \$0 income who fails to timely verify income shall be removed from Safe Harbor.

(O) Payment default provisions. Failure of a 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 automatic removal of a participant from Safe Harbor.

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

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 4412 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 4412 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 in the January 20, 2011 Federal Register, Vol. 76, No. 13, pp. 3637-3638, by the U.S. Department of Health and Human Services and set forth in the following table:

Persons in Family	Poverty Guideline
1	\$10,890
2	14,710
3	18,530
4	22,350
5	26,170
6	29,990
7	33,810
8	37,630
For families with more than 8 persons, add \$3,820 for each additional person.	

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 4412.
 - (III) "Participant" means an eligible low-income residential utility customer who is granted the reasonable preference or advantage through participation in a 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) "Fixed credit" means an annual bill credit established at the beginning of a participant's participation in a Program each year delivered as a monthly credit on each participant's bill. The fixed credit is the participant's full annual bill minus the participant's affordable percentage of income payment obligation on the full annual bill.
 - (VII) "Full annual bill" means the current consumption of a participant billed at standard residential rates. The full annual bill of a 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.
 - (VIII) "LEAP" means Low Energy Assistance Program, a county-run, federally-funded, Program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.
- (c) Program requirements.
- (I) Program components. A utility's proposed Program, required by this rule, shall address the following four aspects of energy assistance.
 - (A) DSM participation. The utility's Program shall address how it integrates with existing energy efficiency or DSM programs offered by the utility or other entity.
 - (B) Weatherization participation. The utility's Program shall address how it integrates with existing weatherization programs offered by the state of Colorado or other entities.
 - (C) LEAP Participation. The utility's Program shall address how it integrates with LEAP or other existing low-income energy assistance programs.
 - (D) Arrearage credit. The utility's Program shall address consideration of arrearage forgiveness for participants who enter the Program. Arrearage credits shall be sufficient to reduce the pre-existing arrearage to \$0.00 over twenty-four months.

(II) Participant eligibility phase-in.

- (A) A utility's plan shall phase in the eligibility requirements over three years 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 year 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 second year 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 third and subsequent years of operation of the Program.
- (B) Utilities that have implemented a low-income Gas service pilot program prior to January 1, 2011 may continue to provide benefits to pilot program participants that are enrolled in the pilot program at the time of filing under rule 4412(d)(I), regardless of the customer's level of poverty, so long as the customer's household income is at or below 185% of Federal Poverty Limits.

(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) If Program cost recovery is usage-based, then the Program's maximum cost impact on non-participant's volumetric rates are:
 - (i) Phase I: No more than \$0.0037 per therm;
 - (ii) Phase II: No more than \$0.0041 per therm;
 - (iii) Phase III: No more than \$0.00465 per therm.
- (C) If Program cost recovery is based on something other than usage, the utility shall specify in its filing the maximum cost impact to non-participants.

(d) Program implementation.

- (I) Each utility shall file tariffs containing its proposed Program no later than March 19, 2012.
- (II) At a minimum, the utility's filing shall include the following information:
 - (A) A tariff containing the rules that govern the operation of the Program, including all of the requirements of paragraph 4412(c).

- (B) A narrative description of the proposed Program, including:
 - (i) An explanation of the manner and the extent to which the Program 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 Program enrollment.
 - (C) A hard budget cap for each year the plan is in operation, including Program 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.
 - (E) Other information necessary to adequately support its proposal to the Commission.
- (e) Cost recovery.
- (I) Each utility shall address in its filing how costs of the Program will be recovered.
 - (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) The utility shall apply, as an offset to cost recovery, all Program expense reductions attributable to the Program. Program expense offsets include decreases in utility operating costs; decreases in the return requirement on cash working capital for carrying arrearages; decreases in the cost of credit and collection activities for dealing with low-income participants; and decreases in uncollectable account costs for these participants.
- (f) Energy assistance grants.
- (I) The utility shall apply energy assistance grants to the dollar value of credits granted to Program participants.

- (II) A utility providing 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.
- (g) Annual report.
 - (I) No later than May 31 each year, each utility shall file an annual report, based on the previous 12-month period ending March 31, containing the following information:
 - (A) Monthly information on the Program including number of participants, amount of benefit disbursement, type of benefit disbursement, and revenue collection;
 - (B) The number of applicants for the Program;
 - (C) The number of applicants qualified for the Program;
 - (D) The number of participants;
 - (E) The average assistance provided, both mean and median;
 - (F) The maximum individual assistance provided to an individual participant;
 - (G) The minimum assistance provided to an individual participant;
 - (H) Total cost of the Program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;
 - (I) The number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;
 - (J) An estimate of utility savings as a result of the implementation of the Program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, etc.); and
 - (K) Recommended Program modifications based on report findings.

(h) Safe Harbor Program option.

Subparagraph (h) describes an option that each utility may propose as a low-income energy assistance Program. The 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) Customer eligibility for the Safe Harbor Program shall be phased in as provided in subparagraph 4412(c)(II)(A).
- (II) Safe Harbor design requirements. The following design requirements shall be included in the Safe Harbor tariff filing of a utility:
 - (A) Safe Harbor enrollment shall be limited to the utility's LEAP participants based on the three-year phase-in schedule contained in 4412 (c)(II)(A).
 - (B) Payment plan proposal. Participant payments for gas bills rendered to Safe Harbor participants shall not exceed a percentage of the Safe Harbor 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 guidelines set forth in 4412 (b)(I)(A).
 - (1) For gas accounts, 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: two percent of income.
 - (b) Household income exceeding 75 percent but at or below 125 percent of Federal Poverty Level: two and one-half percent of income.
 - (c) Household income exceeding 125 percent but at or below 185 percent of Federal Poverty Level: three percent of income.
 - (ii) In the event that a primary heating fuel for any particular Safe Harbor participant has been identified by LEAP, that determination shall be final.
 - (C) Full annual bill calculation. The utility shall be responsible for estimating a Safe Harbor participant's full annual bill for the purpose of determining the participant's fixed credit.
 - (D) Fixed credit benefit delivery.
 - (i) A utility shall, unless infeasible, deliver Safe Harbor benefits as a percentage of income-based fixed credit on a 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 Safe Harbor benefits as a percentage of income-based fixed credits on a 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 Safe Harbor participants in its levelized budget billing Program as a condition of participation in Safe Harbor. Should a Safe Harbor 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 \$0.00 over twenty-four months.
 - (iii) Application of an arrearage credit to a Safe Harbor account may be conditioned by the utility on one or more of the following:
 - (1) The receipt of regular participant payments toward Safe Harbor 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 while the customer is participating in the Safe Harbor Program.
 - (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 Recovery.
 - (i) Each utility shall include as part of its Safe Harbor the cost recovery requirements listed in rule 4412 (e).

- (ii) Safe Harbor Program costs shall be allocated to all retail rate classes based on usage. Cost recovery shall also be based on usage.
 - (iii) Each utility shall include as part of its Safe Harbor a hard budget cap for each year the Program is in operation, including Program administrative costs, that complies with 4412 (c)(III).
- (H) Energy Assistance Grants. The utility shall apply energy assistance grants to the dollar value of credits granted to the individual Program participants as set forth in rule 4412 (f).
- (I) Cost control features.
 - (i) A utility shall refer Safe Harbor participants who historically use 150 percent or more of the median use of its 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 Safe Harbor 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 Safe Harbor benefits for the following year, subject to the following exceptions:
 - (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.
 - (3) A household shall not have Safe Harbor benefits denied for failure to provide matching funds for weatherization.
- (J) Targeted outreach. Within its residential customer base, a utility shall make special efforts to target Safe Harbor outreach to payment-troubled customers.
- (K) Portability of benefits. A Safe Harbor participant may continue to participate in Safe Harbor, without reapplication, should the participant change service addresses, but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the levelized budget billing amount to reflect the changed circumstances. A Safe Harbor participant who changes service addresses and does not remain within the

service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.

- (L) Maximum cost impact on non-participants. The maximum cost impact to non-participants shall be no more than the limits established in subparagraph 4412(c)(III).
- (M) Program requirements conflict. In the event there is a conflict between participant benefits in subparagraphs 4412(h)(II)(B) and (F) and non-participant impacts in subparagraph 4412(h)(II)(L), the non-participant impact limits shall not be exceeded.
- (N) Administrative Program components. The Safe Harbor Program administration shall include:
 - (i) A written explanation of Safe Harbor 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 a participant's continuing income eligibility for benefits, provided that:
 - (1) A process through which a participant may reapply 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 a participant must verify income on a more frequent basis may be implemented for participants for whom the calculation of benefits is based on a \$0 income.
 - (3) A utility shall notify the participant for whom the 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 a participant for whom the benefit is based on a \$0 income.
 - (5) A participant whose benefit is based on a \$0 income who fails to timely verify income shall be removed from Safe Harbor.
- (O) Payment default provisions. Failure of a 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 automatic removal of a participant from Safe Harbor.

4413. – 4499. [Reserved].

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[indicates omission of unaffected rules]