

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13R-0747E

IN THE MATTER OF THE PROPOSED RULES RELATING TO EXEMPTION FROM
ELECTRICITY INVERTED BLOCK RATE SCHEDULE FOR MEDICAL REASONS, 4
CODE OF COLORADO REGULATIONS 723-3, PURSUANT TO SECTION 40-3-103.5,
C.R.S.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
ADOPTING RULES**

Mailed Date: October 23, 2013

I. STATEMENT

1. The above-captioned rulemaking proceeding was commenced on June 28, 2013, when the Colorado Public Utilities Commission (Commission) issued its Notice of Proposed Rulemaking (NOPR) in this matter. *See*, Decision No. C13-0800. A copy of the proposed rules in legislative format (strikeout/underline) was attached to the NOPR.

2. The NOPR was published in the July 10, 2013 edition of *The Colorado Register*, on the website of the Colorado Secretary of State, as well as the Commission's website.

3. The Commission issued the NOPR in response to Senate Bill 13-282 (SB13-282) which directed the Commission to adopt rules creating an exemption from tiered electric rate plans based on a customer's medical condition or use of an essential life support device. SB13-282 amended § 40-3-103.5, C.R.S.

4. The purpose of this proceeding is to implement new Rule 4 *Code of Colorado Regulations* (CCR) 723-3-3413 of the Rules Regulating Electric Utilities which requires

electric utilities to file a tariff with a rate plan for persons who qualify for and request an alternative rate plan based on medical qualifications. More specifically, as indicated previously, the basis and purpose of the proposed rule is to implement SB13-282.

5. By Decision No. C13-0800, the Commission made certain findings and proposed rules related to the exemption from tiered electricity rate plans, also known as inverted block rates for residential customers. The Commission had previously authorized tiered electricity rate plans for residential customers through Decision No. C10-0286 in Docket No. 09AL-299E.

6. The proposed rule presented in the NOPR requires electric utilities to file a tariff with a rate plan for persons who qualify for and request an alternative rate plan based on medical qualifications. As set out in Decision No. C13-0800, the proposed rule requires that in order to qualify for the alternative rate plan, a customer must: 1) provide a certificate from a physician licensed in the State of Colorado verifying a medical condition or use of life support device; and 2) have a household income of less than 250 percent of federal poverty guidelines as published by the U.S. Department of Health and human Services. The proposed rule set forth that should a customer qualify for the medical exemption rate, that customer would not be precluded from participating in any low-income program offered by the utility.

7. The NOPR indicated that interested parties were invited to comment on the proposed rule. The Commission was particularly interested in receiving comments regarding the specific process for verifying household incomes including the types of documents or information necessary for verification, as well as what entity would conduct the verification process.

8. The statutory authority for the proposed rules is found in §§ 29-20-108, 40-2-108, 40-3-102, 40-3-103, 40-3-103.5, 40-3-111, 40-4-101, and 40-4-108, C.R.S.

9. Written comments were filed in this proceeding by or on behalf of Public Service Company of Colorado (Public Service or Company), which filed initial and reply comments, and the National Multiple Sclerosis Society, Colorado-Wyoming Chapter (MS Society) which filed reply comments. Included with Public Service's reply comments was a copy of the Medical Assistance Program application utilized by Fort Collins Utilities for its financial assistance program providing discounted electric rates to residential customers who require the use of medically necessary equipment in their home, and/or have medical conditions requiring air conditioning during the summer billing months.

10. A hearing was conducted in this matter on August 15, 2013. Commission Research and Emerging Issues Staff (Staff) provided an overview of the proposed rule. Representatives of Public Service and the National Multiple Sclerosis Society provided oral comments at the hearing: The written comments, as well as the oral comments received at hearing are discussed in more detail below.

11. At the conclusion of the rulemaking hearing, the matter was taken under advisement. Pursuant to §40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record of this proceeding, as well as a written recommended decision.

II. FINDINGS, DISCUSSION, AND CONCLUSIONS

A. General Provisions

12. Proposed Rule 3413 provides for the medical exemption from tiered electric rate plans as contemplated by § 40-3-103.5, C.R.S. Proposed Rule 3413(a)(I) provides that any electric utility with a Commission approved tiered rate plan (inverted black rates) is to file an Advice Letter and accompanying tariff that includes a rate plan for residential customers who elect an alternate rate plan due to a qualifying medical condition and/or use of an

essential life support device. The Rule further provides that anyone seeking to participate in such a rate plan must have a household income less than 250 percent of federal poverty guidelines, as published annually by the U.S. Department of Health and Human Services, consistent with § 40-3-103.5(3).

13. Section 40-3-103.5(2) states that it is within the Commission's discretion to determine the definition of the term "medical condition." However, any definition by the Commission must include multiple sclerosis, epilepsy, quadriplegia, and paraplegia. Paralleling that statutory language, Rule 3413(b)(V) defines a "qualifying medical condition" as including heat-sensitive medical conditions including, but not limited to, multiple sclerosis, epilepsy, quadriplegia, and paraplegia. In addition, within the definition of qualifying medical condition is the need for the use of an essential life support device as determined by a licensed physician.

14. Rule 3413(c) indicates that medical exemption from tiered rate exemption is to be valid for one year. The Rule also sets out the process for certification.

15. While a medical exemption certificate is incontestable by a utility as to the medical judgment of a licensed Colorado physician's determination that the candidate qualifies for such exemption, Rule 3413(f) provides that the utility may nonetheless use reasonable means to verify the authenticity of such certification.

16. Rule 3413(g) provides that verification of household income is to be conducted by the utility or a Commission-approved third party with which the utility contracts to conduct income verification.

17. Rule 3413(h) states that the Commission may conduct an audit of the income verification process.

18. Rule 3413(i) sets out the method for the utility to obtain cost recovery for lost revenues based on the difference between the expected monthly revenues, and revenues under the alternate rate plan for the months during which a tiered rate plan is in place.

19. Rule 3413(j) requires utilities to file an annual report at the end of each year based on the previous summer cooling period during which tiered rates were in effect that provides information on the number of participating households, electricity usage, the total number of applicants and number of applicants who actually qualified for the alternate rate plan, as well as the total cost of program and the average rate impact to non-participants by rate class.

20. In its initial comments, Public Service contends that when read together, proposed Rule 3413(c)(II) and proposed Rule 3413(g) appear to indicate that the utility may contract with a third party to perform income verification, but the utility will be the only entity that will review the certification of a qualifying medical condition and/or use of essential life support equipment. Public Service takes the position that the utility should be given the discretion to contract with a third party to perform both functions. – that is, collect and review the certificate of a qualifying medical condition and/or use of essential life support equipment, as well as verify income. Public Service points out that this process is permitted under existing customer data and personal information rules (Rules 1105(d) and 3029) which authorize a utility to provide a contracting agent with the customer data and personal information necessary to perform those functions, as long as the contract with the agent meets certain minimum requirements.

21. In order to provide a utility with the ability to contract with a Commission-approved party to collect and review certificates qualifying a medical condition and/or use of essential life support equipment, as well as verify income, Public Service suggests changes to Rule 3413(c) and (g).

22. Regarding Rule 3413(c), Public Service suggests that subsection (II) be amended as follows: (II) be sent from the office of a licensed physician to either the utility or a Commission approved agent with whom the utility contracts pursuant to rule 3209. ~~From the office of a licensed physician.~~ (Proposed changes in underline and strikeout format).

23. Public Service also recommends that Rule 3413(g) be amended as follows: Verification of the authenticity of the certification of a qualifying medical condition; use of essential life support equipment; and, Verification ~~Verification~~ of household income shall be done by the utility or Commission approved third party with which the utility contracts the ~~income~~ verification activities. (Proposed changes in underline and strikeout format).

24. Regarding Rule 3413(j)(I)(A), Public Service recommends that the rule be modified to clarify that in providing monthly information to the Commission, such data should be consistent with the existing electric customer data privacy rules and that any data provided the Commission be in aggregate form so that no individual customer data is revealed. Public Service recommends that Rule 3413(j)(I)(A) be modified as follows:

- (A) Monthly information including number of participants, individual household electric usage, and individual household incomes. The information should be produced consistent with the Commission's electric data privacy rules so that no individual customer data ore reasonable approximation thereof can be determined.

In the alternative, Pubic Service proposes that the Commission state in the rule that to the extent the annual report discloses individual customer data or a reasonable approximation thereof, the utility is authorized to make that portion fo the annual report confidential pursuant to Commission Rule 4 CCR 723-1-1102. (Proposed changes in underline and strikeout format).

25. Written comments were also provided by Ms. Allie Moore on behalf of the MS Society. The MS Society agrees with Public Service that the Company be permitted to contract with a third party to process applications.

26. In addition, the MS Society recommends that while it is appropriate for applicants to attest to their income, they should not be asked to submit verifying documents upon application. The MS Society points to the Fort Collins program for medical exemption from tiered rates as utilizing such an application process successfully. It is the position of the MS Society that because the savings from a tiered rate exemption are relatively modest and only benefit those with high energy use, it does not anticipate incentives for fraudulent applications.

27. In its Reply Comments, Public Service points out that as a condition of participation in the Fort Collins program, the customer must agree to provide, if requested, copies of financial records establishing household income, including copies of IRS tax returns. Public Service attached a copy of the Fort Collins Medical Assistance 2013 Application as Exhibit A to its Reply Comments. Public Service reiterates that what documents may be required of a customer to verify income should be left to the discretion of the utility, and that the Commission's rules should not prohibit the Company from requiring such documentation.

28. The comments received at the August 15, 2013 hearing by Public Service and representative of the MS Society generally reiterated their written comments. Public Service reiterated its position that the ability to verify income was important to it, as well as the ability to utilize a Commission approved third party contractor to verify medical and income eligibility.

29. Representatives of the MS Society reiterated their position that while they agree that a third party contractor is appropriate, the MS Society does not wish to incorporate an income verification process into the proposed rules.

B. Findings and Conclusions

30. The comments of Public Service and the MS Society are greatly appreciated. After review of the comments and the statutory language, it is found to be appropriate to make several modifications to the proposed rules. Therefore, the rules provided pursuant to the Commission issued NOPR will be modified as follows.

31. Rule 3413(c)(II) regarding the certification of a qualifying medical condition and/or use of essential life support equipment will be modified as proposed by Public Service to allow a third party agent to process that certification.

32. Rule 3413(g) regarding verification of household income will be modified as proposed by Public Service to allow a third party agent to verify the authenticity of the certification of a qualifying medical condition and/or use of essential life support equipment.

33. Regarding the requirement to provide verification of household income, the Fort Collins model provides a reasonable template for the Commission to adopt in part. As with the Fort Collins income verification process, while it will not be made mandatory to provide financial records in order to verify household income, it will nonetheless remain an option for the utility or Commission approved third party to request such information if either the utility or Commission approved third party deems it reasonably necessary for the applicant to provide such information.¹ Rule 3413(h) will reflect the change to that requirement and read as follows: If the utility or Commission approved third party deems it reasonably necessary, verification of household income may be done by the utility or a Commission approved third party with which

¹ For example, the utility or Commission approved third party may find it unnecessary for an applicant who has applied for and received a medical exemption pursuant to Rule 3413 in previous consecutive years to continually provide financial records in order to verify household income.

the utility contracts the income verification activities. Current subsections (h), (i) and (j) will be re-designated as subsections (i), (j) and (k) respectively.

34. Regarding the filing of an annual report with the Commission, Rule 3413(j) will be modified as follows: 3413(k)(II) To the extent that the annual report may disclose individual customer information, the utility is authorized to file that portion of the annual report as confidential pursuant to Rule 4 CCR 723-1-1102 Procedures Relating to Confidential Information Submitted to the Commission Outside of a Formal Proceeding.

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

III. ORDER

A. The Commission Orders That:

1. Commission Rules pursuant to 4 *Code of Colorado Regulations* 723-3-3413 contained in Attachment A to this Order are adopted consistent with the discussion above.

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.

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)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAUL C. GOMEZ

Administrative Law Judge