

Decision No. C06-0146

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 05R-456E

IN THE MATTER OF THE PROPOSED RULES REGARDING THE ELECTRIC UTILITIES
ENERGY ASSISTANCE PROGRAM.

ORDER ADOPTING RULES

Mailed Date: February 21, 2006

Adopted Date: February 8, 2006

I. BY THE COMMISSION:

A. Statement

1. Senate Bill 05-001, known as the Low-Income Energy Assistance Act (Act), was signed into law on May 5, 2005. The intent of the Act is to aid low-income citizens of Colorado by providing a mechanism in which electric utilities shall collect voluntary contributions from their customers when remitting their monthly utility service payment and, in turn, transmit the payments to Energy Outreach Colorado (EOC).

2. Title 40 Article 8.7, C.R.S., directs the Colorado Public Utilities Commission (Commission) to implement rules to guide utilities in the development and maintenance of a plan that accomplishes the purpose as stated above. Our primary purpose in adopting these rules implementing the low income energy assistance program (EAP) is to reflect the legislature's intent as found in the plain meaning of Title 40 Article 8.7, C.R.S. Where the meaning of a provision appears unclear, we have endeavored to promulgate policy that best comports with the public interest, as well as the intent of the legislature, as the Commission is often called to do.

3. The Act requires all electric utilities doing business in Colorado to participate in the energy assistance program by providing the opportunity for utility customers to make an optional contribution *via* the monthly remittance device on their utility billing statement.

4. The Act also requires EOC to provide energy assistance to individuals and organizations in Colorado with the contributions collected.

B. Procedural History

5. On October 12, 2005, Staff conducted an open informal workshop with interested parties. Several utilities and EOC attended. Commission Staff (Staff) incorporated much of the input received at the workshop into the Notice of Proposed Rulemaking (NOPR), which was issued on October 26, 2005. *See* Commission Decision No. C05-1285.

6. The NOPR provided for comments to be submitted by December 10, 2005. Initial comments were received from: Aquila, Inc., Colorado Rural Electric Association, Energy Outreach Colorado, Kinder Morgan, Inc., Office of Consumer Counsel, and Public Service Company of Colorado.

7. A hearing set for January 5, 2006 was vacated due to the failure of the publisher of the *Colorado Register* to include the NOPR in the December 12, 2005 issue. *See* Decision C05-1285-A. An open informal workshop was held in its place and a new hearing date was scheduled. The workshop allowed several utilities to develop compromise recommendations and to reach a consensus on the rules.

8. On January 25, 2006, Aquila, Inc., Atmos Energy, Colorado Rural Electric Association, Energy Outreach Colorado, Kinder Morgan, Inc., Office of Consumer Counsel, and Public Service Company of Colorado filed consensus comments.

9. On February 2, 2006 we conducted a hearing on this matter. Oral comments were received by several utilities and EOC.

10. We held deliberations on this matter on February 8, 2006.

C. Statement, Findings, and Conclusion

11. In establishing the low-income energy assistance program for the State of Colorado, we considered the comments received as well as the plain language of the statute to assist us in our decision-making process.

12. No oral or written comments were received regarding the following rules and we adopt them accordingly.

- 3411 (a) Basis, Purpose, and Statutory Authority
- 3411 (c) Definitions
- 3411 (f) Prohibition of Disconnection

13. The consensus comments included proposed additional language in 3411(b)(IV). We find that the additional language clarifies that customers of municipally-owned utilities and/or cooperative electric associations in full compliance with § 40-8.7-106(3), C.R.S., which have not exempted themselves from the Act's provision, are entitled to receive benefits under the program. As a result we adopt the consensus language.

14. The consensus comments propose to add language to 3411(d)(I)(A) in order to allow customers who receive and/or remit payment electronically to be informed of the EAP. Additionally, it will allow utilities the option to combine their communication resources. We find that the language is an improvement and will allow for a broader range of notification options by the utilities to the public and adopt the proposed language.

15. The consensus comments also propose to include notification to customers that donor information will be passed on to EOC. We agree that all potential donors should be notified that their personal information will be forwarded to EOC and adopt the proposed language.

16. The consensus comments propose to add language to rule 3411(d)(I)(C), which would allow the utility to identify the EAP on the remittance device using the utility's own program name. We understand that several utilities have already implemented similar programs and to require them to change the name would require additional money, possibly depleting potential donations. While we agree this language is positive, we reserve the right to approve the program identifier used by the utilities.

17. We find that Rule 3411(d)(I)(D) is slightly ambiguous and therefore require the line item to specifically identify the contribution as "voluntary," for clarification purposes.

18. The consensus comments request additional language to be added in Rule 3411(d)(I)(E) to clarify how the utility will manage participation in the EAP when customers miss one or more voluntary payments, or pay less than the pre-selected donation amount. We find that this additional language is an improvement and will afford us the information to regulate utilities non-payment procedures accordingly within the intent of the program.

19. The consensus comments propose to add language to Rule 3411(d)(I)(I) which would allow utilities to recover all start-up costs before the remaining moneys generated by the program are distributed to EOC over a period of time. We agree that there is the possibility that current donations will be usurped by the start-up costs and this language will allow the utility to spread out the start-up costs over a period of time, allowing for some amount of donations to flow to EOC each year.

20. The consensus comments argue that the Act is clear in allowing utilities to recover any reasonable costs incurred in connection with initiating the EAP, and the 3 percent limit is in direct conflict. We agree that Rule 3411(d)(I)(K) sets an arbitrary limitation and eliminates the 3 percent cap. We therefore only require the costs incurred to be “reasonable.”

21. The consensus comments propose to add language to Rule 3411(d)(I)(L) which would allow utilities to recover on-going costs of administration associated with the program through: (1) the utilities’ cost of service; (2) from the funds received by the program; or (3) through a combination of both. However, we find that given the plain language of the Act, it is clear that the Legislature intended only notification costs to be considered in the utility’s cost of service. On-going administrative costs shall not be recovered through the utilities’ cost of service and we decline to adopt the consensus comments additional language.

22. The consensus comments propose to add language to Rule 3411(d)(I)(M) which would set forth how utilities will receive, process and account for dollars received for utility services separately from EAP donations. We agree that it is important that dollars from donations and utility revenues not be commingled and adopt the additional language.

23. The consensus comments request that Rule 3411(e)(I) include the phrase “at a minimum” when referring to when the utility shall transfer the funds collected from its customers to EOC. We agree that many utilities remit customer donations monthly rather than quarterly and this change would give each utility the flexibility to continue this practice yet maintain the minimum quarterly transfer mandated in the Act. We therefore adopt this additional language.

24. The consensus comments also propose to replace Rule 3411(e)(II) with simplified language and add Rule 3411(e)(II)(A). We find that this language is an improvement over the

original language included in the NOPR and does not change the content. As a result we adopt the consensus comments language.

25. The consensus comments propose to add Rule 3411(e)(II)(B) which would require the utility to provide personal donor information to EOC. While we understand EOC's need for the information, we strictly limit its use exclusively for complying with the requirements of the Act, and state and federal laws.

II. ORDER

A. The Commission Orders That:

1. The Commission adopts the rules implementing the Act. These rules are attached to this Order as Attachment A.

2. The rules shall be effective 20 days after publication in the *Colorado Register* by the Office of the Secretary of State.

3. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

4. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or to the committee on legal services, if the General Assembly is not in session, for an opinion as to whether the adopted rules conform with § 40-8.7, C.R.S.

5. The 20-day time-period provided by § 40-6-114(1), C.R.S. to file an application for rehearing, reargument or reconsideration shall begin on the first day after the effective date of this Order.

6. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
February 8, 2006.**

(SEAL)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners

3411 Low-Income Energy Assistance Act

(a) Basis, Purpose, and Statutory Authority

The basis and purpose of these rules is to prescribe the procedures for administering the Low-Income Energy Assistance Act. This program requires electric utilities, combined gas and electric utilities, and cooperative electric associations to provide an opportunity for their customers to contribute an optional amount through the customers' monthly billing statement.

The Commission has the power to issue rules regulating public utilities under § 24-4-101 C.R.S., *et seq.*, § 40-2-108 C.R.S., § 40-3-102 C.R.S., § 40-3-103 C.R.S., and § 40-4-101 C.R.S.

(b) Scope and Applicability.

- (I) Rules 3411(c) through 3411(f) are applicable to electric utilities, combined gas and electric utilities, and cooperative electric association providers except those exempted under (II) or (III).
- (II) Municipally owned electric utilities, combined gas and electric utilities, or cooperative electric associations are exempt if, by September 1, 2006:
 - (A) The utility operates an Alternative Energy Assistance Program to support its low-income customers with their energy needs and self-certifies to the Organization through written statement that its program meets the following criteria:
 - i. The amount and method for funding of the program has been determined by the governing body;
 - ii. The program monies will be collected and distributed in a manner and under eligibility criteria determined by the governing body for the purpose of residential energy assistance to customers who are challenged with paying energy bills for financial reasons, including seniors on fixed incomes, individuals with disabilities, and low-income individuals, or,
 - (B) The governing body of the utility determines its service area has a limited number of people who qualify for energy assistance and self-certifies to the Organization via written statement such determination.
- (III) A municipally owned electric utility, combined gas and electric utility, or cooperative electric association not exempt under (II), is exempt if:
 - (A) The utility designs and implements a procedure to notify all customers at least twice each year of the option to conveniently contribute to the Organization by means of a monthly energy assistance charge. Such procedure shall be approved by the governing utility. The governing body of such utility shall determine the disposition and delivery of the optional energy assistance charge that it collects on the following basis:
 - i. Delivering the collections to the Organization for distribution.
 - ii. Distributing the moneys under criteria developed by the governing body for the purpose set forth in (II)(A)(ii).

- (B) Alternatively, the utility provides funding for energy assistance to the Organization by using a source of funding other than the optional customer contribution on each customer bill that approximates the amount reasonably expected to be collected from an optional charge on customer's bills.
 - (IV) A municipally owned electric utility, combined gas and electric utility, or cooperative electric association that is exempt under (III) shall be entitled to participate in the Organization's low-income assistance program.
 - (V) Electric utilities, combined gas and electric utilities, and cooperative electric associations that desire a change in status must inform the Organization and file a notice to the Commission within 30 days prior to expected changes.
- (c) Definitions.

The following definitions apply only in the context of rule 3411:

- (I) "Alternative Energy Assistance Program" means a program operated by a municipally owned electric and gas utility or rural electric cooperative that is not part of the energy assistance program established pursuant to this statute.
 - (II) "Customer" means the named holder of an individually metered account upon which charges for electricity or gas are paid to a utility. "Customer" shall not include a customer that receives electricity or gas for the sole purpose of reselling the electricity or gas to others.
 - (III) "Energy Assistance Program" or "Program" means the Low Income Energy Assistance Program created by § 40-8.7-104 C.R.S. and designed to provide financial assistance, residential energy efficiency, and energy conservation assistance.
 - (IV) "Organization" means Energy Outreach Colorado, a Colorado nonprofit corporation, formerly known as the Colorado Energy Assistance Foundation.
 - (V) "Remittance Device" means the section of a customer's utility bill statement that is returned to the utility company for payment. This includes but is not limited to paper payment stubs, web page files used to electronically collect payments, and electronic fund transfers.
 - (VI) "Utility" means a corporation, association, partnership, cooperative electric association, or municipally owned entity that provides retail electric service or retail gas service to customers in Colorado. "Utility" does not mean a propane company.
- (d) Plan Implementation and Maintenance.
- (I) Except as provided in 3411(b), no later than June 1, 2006, each utility shall file an application with the Commission detailing its initial plan to implement and maintain a customer opt-in contribution mechanism. The utility shall provide a copy of such application to the Organization. The utility's application shall include, at minimum, the following provisions:
 - (A) A description of the procedures the utility will use to notify its customers, including those customers that make payments electronically, about the opt-in provision prior to September 1, 2006. Utilities may combine their efforts to notify

customers into a single state-wide or region-wide effort consistent with the participating utilities communication programs. Each participating utility shall clearly identify its support of the combined communications program, with its corporate name and/or logo visible to the intended audience.

- (B) A description of the additional efforts the utility will use to inform its customers about the program to ensure that adequate notice of the opt-in provision is given to all customers. Notification shall include communication to all customers that the donation and related information will be passed through to the Organization.
- (C) A description of the check-off mechanism that will be displayed on the monthly remittance device to solicit voluntary donations. The remittance device shall include, at minimum, check-off categories of five dollars, ten dollars, twenty dollars, and "other amount". The remittance device must also note the name of the program as the "voluntary energy assistance program," or if the utility is unable to identify the name of the program individually, the utility shall use a general energy assistance identifier approved by the Commission.
- (D) A description or an example of how the utility will display the voluntary contribution as a separate line item on the customer's monthly billing statement and how the voluntary contribution will be included in the total amount due. The line item must identify the contribution as "voluntary".
- (E) A description of the notification process that the utility will use to ensure that once a utility customer opts into the program, the energy assistance contribution will be assessed on a monthly basis until the customer notifies the utility of the customer's desire to stop contributing. The utility shall describe how it will manage participation in the program when customers miss one or more voluntary payment, or pay less than the pre-selected donation amount.
- (F) Identification of the procedures the utility will use to notify customers of their ability to cancel or discontinue voluntary contributions along with a description of the mechanism the utility will use to allow customers who make electronic payments to discontinue their participation in the opt-in program.
- (G) A description of the procedures the utility will use, where feasible, to notify customers participating in the program about the customer's ability to continue to contribute when the customer changes their address within the utility's service territory.
- (H) A description of the method the utility will use to provide clear, periodic, and cost-effective notice of the opt-in provision to its customers at least twice per year. Acceptable methods include, but are not limited to, bill inserts, statements on the bill or envelope, and other utility communication pieces.
- (I) An estimate of the start-up costs that the utility expects to incur in connection with the program along with supporting detailed justification for such costs. This estimate should include the utility's initial costs of setting up the collection mechanism and reformatting its billing systems to solicit the optional contribution but shall not include the cost of any notification efforts by the utility. Utilities may elect to recover all start-up costs before the remaining moneys generated by the program are distributed to the Organization or over a period of time from the funds generated by the program, subject to Commission review and approval.

- (J) An estimate of the on-going costs that the utility expects to incur in connection with the program along with supporting detailed justification for such costs. This estimate shall not include the cost of any notification efforts by the utility.
 - (K) A detailed justification for the costs identified in (I) and (J). As stated in § 40-8.7-104(3), C.R.S., the costs incurred must be reasonable in connection with the program.
 - (L) Utilities shall recover the start up cost and on-going cost of administration associated with the program from funds generated from the program. Insert and notification costs shall be considered in the utility's cost of service.
 - (M) A description of the procedures the utility will use to account for and process program donations separately from customer payments for utility services.
- (II) Upon application by the utility, the Commission shall expedite its approval or rejection of these initial plans and will render a decision within 60 days after notice has expired.
 - (III) No later than the first billing cycle prior to September 1, 2006, each utility shall notify its customers about the opt-in provision using the method approved by the Commission in its plan.
 - (IV) By no later than September 1, 2006, each utility shall begin participation in the energy assistance program consistent with the plan approved by the Commission and shall provide the opportunity for its customers to make an optional energy assistance contribution on the monthly remittance device on their utility billing statements beginning no later than September 1, 2006.
 - (V) The utility may submit an application to the Commission no later than April 1 of each year for approval of reimbursement costs the utility incurred for the program during the previous calendar year. Such application shall include a proposed schedule for the reimbursement of these costs to the utility. The applications shall include detailed supporting justification for approval of these costs. Such detailed justification includes, but is not limited to, copies of receipts and time sheets. Such applications shall not seek reimbursement of costs related to notification efforts. Participating utilities may include reimbursement costs for such notification efforts in their periodic cost of service rate filings, subject to Commission review and approval.
 - (VI) A utility may seek modification of its initial plan or subsequent plans by filing an application with the Commission. Such application shall meet the requirements of (d)(I).
- (e) Fund Administration.
- (I) At a minimum, each utility shall transfer the funds collected from its customers under the Energy Assistance Program to the Organization under the following schedule:
 - (A) For the funds collected during the period of January 1 to March 31 of each year, the utility shall transfer the collected funds to the Organization before May 1 of such year;
 - (B) For the funds collected during the period of April 1 to June 30 of each year, the utility shall transfer the collected funds to the Organization before August 1 of such year;

- (C) For the funds collected during the period of July 1 to September 30 of each year, the utility shall transfer the collected funds to the Organization before November 1 of such year;
 - (D) For the funds collected during the period of October 1 to December 31 of each year, the utility shall transfer the collected funds to the Organization before February 1 of the next year;
 - (E) Each utility shall maintain a separate accounting for all energy assistance program funds received by customers.
- (II) Each utility shall provide the Organization with the following information:
- (A) How the funds collected for the previous calendar year were generated, including the number of customers participating in the program. Such report shall include a summary of the number of program participants and funds collected by month, and shall be provided by February 1 of each year.
 - (B) At each time funds are remitted, a listing of all program participants including the donor's name, billing address, and monthly donation amount. The participant information provided to the Organization shall be used exclusively for complying with the requirements of § 40-8.7-101, C.R.S., *et seq.* and state and federal laws.
- (III) The Public Utilities Commission shall submit, as necessary, a bill for payment to the Organization for any administrative costs incurred pursuant to the program.
- (IV) The Organization shall provide the Office of Consumer Counsel and the Public Utilities Commission with a copy of the written report that is described in § 40-8.7-110, C.R.S. This report shall not contain individual participant information.
- (f) Prohibition of Disconnection.

Utilities shall not disconnect a customer's electric service for non-payment of optional contribution amounts.