

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 16R-0607EG

IN THE MATTER OF THE PROPOSED RULES RELATING TO LOW INCOME PROGRAMS FOR 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
ROBERT I. GARVEY
AMENDING RULES**

Mailed Date: November 10, 2016

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I. STATEMENT

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to amend its rules governing low income assistance programs (Low Income Programs), Rule 3412 of the Commission’s Rules Regulating Electric Utilities, 4 Code of Colorado Regulations (CCR) 723-3 (Electric Rules), and Rule 4412 of the Commission’s Rules Regulating Gas Utilities and Pipeline Operators, 4 CCR 723-4 (Gas Rules). The proposed rules eliminate outdated sections, consolidate and clarify sections, specify data elements to be

provided the Commission in future annual reports, and provide clarification for the operation of the low income programs.

2. In Decision R11-0606, Proceeding No. 11R-110EG (Low Income Rulemaking Proceeding), the assigned Administrative Law Judge found that the Commission had authority to mandate Low Income Programs, and proposed the Commission adopt Rules 3412 for regulated electric utilities and 4412 for regulated gas utilities.¹ Consistent with this recommendation, the Commission ultimately adopted rules requiring low-income assistance programs for regulated electric utilities and regulated natural gas utilities.² Both Rule 3412 and Rule 4412 went into effect on December 15, 2011. Together, Rule 3412 and Rule 4412 are referred to as the “Low Income Rules.”

3. As a result of the Low Income Rulemaking Proceeding and subsequent filings by regulated utilities, each regulated electric and gas utility in Colorado now offers a Low Income Program in its tariff, providing quantifiable benefits to low income customers under individualized tariff terms and conditions governed by Commission Rules.³ All regulated electric and gas utilities have had a low income program in effect for more than four years.

4. Representative participants with an interest in the subject matter of this rulemaking submitted views and participated informally with Staff of the Public Utilities Commission on the proposals under consideration. Due to the experience gained over these

¹ See Paragraph 8, Decision No. R11-0606.

² Decision No. C11-1217, issued November 10, 2011 (addressing requests for rehearing, reargument, or reconsideration). Non-substantive corrections were made in Decision C11-1217 to the Low Income Rules adopted in Decision R11-0606, issued June 3, 2011.

³ Atmos Energy (13A-0868G), Public Service Company of Colorado (electric and gas) (12A-428EG), Black Hills Energy Colorado (electric and gas) (12AL-438E and 12AL-439G), Colorado Natural Gas Company (12A-430G), and SourceGas Distribution (now Black Hills Gas Distribution) (12A-427G).

four years, including input from industry and other stakeholders, the Commission proposed modifications and improvements to the Low Income Rules.

5. Written comment was filed with the Commission by Energy Outreach Colorado (EOC), Office of Consumer Counsel (OCC), Public Service Company of Colorado (Public Service), Black Hills/Colorado Electric Utility Company, LP, Black Hills/Colorado Gas Utility Company, LP, and Black Hills Gas Distribution, LLC, all d/b/a Black Hills Energy (collectively, Black Hills), Atmos Energy Corporation (Atmos), the Colorado Energy Office (CEO), and Colorado Natural Gas, Inc. (CNG).

6. The written comments of EOC, CEO, Atmos, and OCC were in favor of the proposed changes with no suggested additions or changes.

7. EOC and CNG filed a response to the initial comments.

8. A hearing was held on September 19, 2016. At the hearing comment was provided by Black Hills.

9. The ALJ did not believe further hearings were necessary after October 22, 2013.

10. Being fully advised in this matter and consistent with the discussion below, in accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. DISCUSSION

11. The primary purpose of this rulemaking was to update the Low Income Rules and make these rules more effective and efficient. This NOPR was called to eliminate outdated sections, consolidate and clarify certain other sections, specify data elements to be provided the Commission in future annual reports, and specifically provide clarification for the operation of the low income programs. Updated rules are revised to provide added transparency and

processes for Low Income Programs, in addition to proposing changes to the Low Income Rules consistent with recent updates in the Commissions electric rules, and rules of practice and procedure

12. It was proposed that the reorganization of the rules make them more effective and efficient.

13. Not all modifications to the proposed rules are specifically addressed herein. Any changes incorporated into the redline version of the rules appended hereto are recommended for adoption.

14. The undersigned ALJ has reviewed the record in this proceeding to date, including written and oral comments.

15. The proposed rules attached to Decision No. C16-0744 in legislative (i.e., strikeout/underline) format and in final format, were made available through the Commission's Electronic Filings (E-Filings) system.

A. Rules 3412 and 4412

16. Black Hills proposes changes to many of the subsections of this rule, although the vast majority concern grammatical issues.

17. The main issue of concern for Black Hills was Rule 4412(g)(II)(D)(i) and (ii), as it concerned customer refunds.⁴ No other party suggested any additional substantive change to this subsection.

18. CNG supports the position of Black Hills due to its small size.⁵ During the hearing CNG admitted that its concerns could be met by the granting of a waiver of this rule.

⁴ Initial Comments of Black Hills/Colorado Electric Utility Company, LP, Black Hills/Colorado Gas Utility Company, LP, Black Hills Gas Distribution Company, LLC, p. 3-4.

⁵ Colorado Natural Gas, Inc.'s . Response to initial comments.

19. The undersigned ALJ does not find the arguments of Black Hills presented in both written comment and during the hearing to be compelling. The rule shall not be revised as suggested by Black Hills.

20. Public Service suggests an additional definition be added for Percentage of Income Payment Plan.⁶

21. The undersigned finds that this additional definition would be a useful addition and therefore it shall be added.

22. Additional grammatical changes have been adopted that were suggested by various parties.

III. ORDER

A. The Commission Orders That:

1. The Rules Regulating Electric Utilities, 4 Code of Colorado Regulations 723-3, and Rules Regulating Gas Utilities and Pipeline Operators Utilities, 4 Code of Colorado Regulations 723-4, contained in redline and strikeout format attached to this Recommended Decision as Attachment A and C are adopted and are available in the PUC E-Filings System at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=16R-0607EG.

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.

⁶ Public Service Company of Colorado's Initial Comments on Proposed Low Income Program Rule Revisions, p. 2.

4. 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.

5. 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.

6. 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director