

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20R-0349EG

IN THE MATTER OF THE PROPOSED RULES REGARDING IMPLEMENTATION OF SENATE BILL 20-030 AND THE REVISION OF DISCONNECTION STANDARDS FOR ELECTRIC AND GAS UTILITIES PURSUANT TO 4 CODE OF COLORADO REGULATIONS 723-3 AND 723-4.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
RESCHEDULING RULEMAKING HEARING, AND
IDENTIFYING ITEMS FOR PUBLIC COMMENT**

Mailed Date: April 2, 2021

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I. STATEMENT AND BACKGROUND

A. Summary.

1. This Decision vacates the public comment rulemaking hearing set for April 12, 2021 and reschedules it for May 10, 2021; and identifies matters for additional comment and dates by which those comments should be filed.

B. Background.

2. This proceeding was initiated in response to Senate Bill 20-030, which requires the Commission to consider modifications to electric and gas utilities' disconnection standards and electric utilities' programs providing medical exemptions from tiered electric rates.¹

3. On August 19, 2020, the Commission adopted a Notice of Proposed Rulemaking (NOPR) to amend its Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules) and Rules Regulating Gas Utilities and Pipeline Operators, 4 CCR 723-4 (Gas Rules).² Decision No. C20-0622, adopted August 19, 2020. The NOPR was accompanied by proposed Electric Rules and Gas Rules in legislative and clean format. *See* Attachments A through D to Decision No. C20-0622. Concurrently, the Commission referred this proceeding to an Administrative Law Judge (ALJ), invited public comments, and scheduled a remote video-conference public comment hearing for October 20, 2020. Decision No. C20-0622. Notice of that public comment hearing was published in *The Colorado Register*.

4. Since this proceeding was initiated, numerous interested persons and entities have submitted public comment. Among the commenters are the following regulated utilities: Atmos

¹ Only the procedural history necessary to understand this Decision is included.

² Unless otherwise specified, the Electric Rules and Gas Rules are treated together in this Decision.

Energy Corporation (Atmos); Black Hills Colorado Electric, LLC and Black Hills Colorado Gas, Inc. (collectively, Black Hills); Colorado Natural Gas, Inc. (CNG); and Public Service Company of Colorado (Public Service or Company).

5. The ALJ held the October 20, 2020 public comment hearing as noticed. *See* Decision No. R20-0801-I issued November 13, 2020. The ALJ also scheduled a second public comment hearing for March 4, 2021; took administrative notice of a filing in another proceeding and invited public comment on that filing; and invited public comment on specific items. *Id.*

6. The ALJ held the March 4, 2021 public comment hearing as noticed. During the hearing, interested persons provided public comment on numerous issues. Several participants offered to submit additional clarifying written comments, as well as a blue-lined version of the rules highlighting proposed changes. At the close of the hearing, the ALJ explained that another public comment hearing would be held, and that the ALJ is considering taking administrative notice of filings in Commission Proceeding No. 20M-0267EG, which a participant raised during the public comment hearing. The ALJ also informed the participants that if she seeks comments on any other specific item, that will be explained in a written decision.

7. On March 16, 2021, the ALJ scheduled another public comment hearing for April 12, 2021; took administrative notice of filings in other Commission proceedings and invited comment on those filings; and identified additional items for public comment. Decision No. R21-0160-I. Comments in response to the issues identified by Decision No. R21-0160-I are due on or by April 6, 2021. *Id.*

II. FINDINGS AND CONCLUSIONS

A. Public Comment Hearing Date

8. Since the hearing was set, scheduling conflicts have arisen making the April 12, 2021 hearing date untenable. In addition, the ALJ has identified several other items for utility public commenters to clarify (as discussed below). Allowing additional time for them to do so is in the public interest and will help the Commission exercise its discretion in this matter.

9. For these reasons, the April 12, 2021 hearing will be vacated and rescheduled for May 10, 2021. Public comments in response to this decision should be filed by April 26, 2021. In addition, because the hearing date is moved, persons wishing to provide public comments in response to Decision No. R21-0160-I may file those by April 26, 2021. Interested persons are encouraged to combine responses to this Decision and Decision No. R21-0160-I into one filing.

B. Additional Items for Public Comment

10. Throughout this proceeding, the ALJ invited public comment on numerous specific items, many directed at gathering data from Colorado regulated utilities. *See* Decision No. R20-0801-I. Utilities have filed public comments in response to the identified items. The ALJ seeks clarity as to several responses to Decision No. R20-0801-I.

1. Deposit Criteria

11. The ALJ invited regulated utilities to provide public comment on “the criteria used to determine whether a customer must pay a deposit. To the extent that credit score or history is a criterion, identify and explain the credit score or history which triggers a deposit requirement.” Decision No. R20-0801-I at 7. The ALJ seeks clarity on responses to this inquiry, as outlined below.

12. In response to the ALJ's inquiry, Public Service states that its deposit criteria are outlined in its tariffs, which were not filed with its response. *See* Public Service Company of Colorado's Initial Comments on Issues Identified by Decision No. R20-0801-I filed January 11, 2021 (Public Service's 1/11/21 Comments) at 9. Public Service states that "factors that might require a customer to provide a deposit on their account include credit, no credit history, a declined credit check, subterfuge, bankruptcy, or poor payment history." *Id.* The ALJ seeks public comment clarifying how Public Service applies these factors.

13. Public Service later says that its deposit criteria are "based on a soft credit check" completed by its vendor and that it "only receives a 'pass/fail' response from the vendor, and a score of 529 or lower would require a residential customer to provide a deposit." *Id.* at 11. Based on this, presumably, a credit score of 529 will result in a fail result, but it is unclear whether that is the only criteria for failing the "soft credit check." As such, the ALJ seeks public comment identifying and explaining the criteria used by Public Service's vendor to determine that a customer's "soft credit check" has passed or failed. In addition, to better understand the Company's overall process, the ALJ seeks public comment explaining how Public Service's soft credit check process fits with its consideration of the factors outlined in ¶ 12 above.

14. In response to the ALJ's inquiry, Black Hills provides language from its tariff outlining its deposit criteria. Comments of Black Hills Colorado Electric, LLC and Black Hills Colorado Gas, Inc., d/b/a Black Hills Energy filed January 11, 2021 (Black Hills's 1/11/21 Comments) at 5. For its electric service, Black Hills states that it requires deposits from current or past customers "whose payment record shows recent or substantial delinquencies" and from new customers who do not provide "documentation of a 12 consecutive month good credit

history from which [the customer] received electric service.” *Id.* at 5. The ALJ seeks clarity on how Black Hills defines “recent or substantial delinquencies” as referenced above.

15. As to Black Hills’s deposit criteria for its gas service, Black Hills refers to this tariff language as its criteria, “[t]he Company may request each new Customer to provide information . . . to determine if the Customer has previously been a Customer of the Company and to determine the Customer’s creditworthiness.” *Id.* Black Hills does not explain how it determines “creditworthiness.” *See id.* But, Black Hills later states that its “residential customers who are required to pay deposits have experienced previous payment and disconnection difficulties.” *Id.* at 7. The ALJ invites public comment explaining how Black Hills determines “creditworthiness,” and what it considers previous payment and disconnection difficulties that trigger a deposit.

16. CNG’s deposit criteria are also laid out in its tariff, which CNG provided with its response. Supplemental Comments of Colorado Natural Gas, Inc. filed January 11, 2021 (CNG’s 1/11/21 Comments) at 3, and Attachment A thereto at 1. CNG requires deposits from past customers applying for residential service who had their service disconnected during the most recent nine consecutive months of previous service, or who paid three or more bills after the due date. Attachment A to CNG’s 1/11/21 Comments at 2. As to applicants for residential service who are not past customers, CNG “will process a credit check” to determine if a deposit is required. Attachment A to CNG’s 1/11/21 Comments, at 2. If the credit check results “are not satisfactory to [CNG], at its discretion, a deposit may be required.” *Id.* Neither the tariff, nor CNG’s comments elucidate the meaning of “not satisfactory.” *Id.* The ALJ invites public comment explaining how CNG determines a “credit check” is “not satisfactory” such that a deposit requirement is triggered. To the extent that a credit score or history triggers a deposit

requirement, the ALJ invites public comment explaining the credit score or history that triggers a deposit requirement for CNG.

17. Atmos uses “RiskView,” a LexisNexis service, to determine whether a customer is required to provide a deposit. Initial Comments of Atmos Energy Corporation filed January 11, 2021 (Atmos’s 1/11/21 Comments) at 3. Customers whose RiskView score is less than 600 must pay a deposit. *Id.* at 3-4. Atmos explains that a RiskView score is different than a traditional credit score, as it considers more factors, while requiring less sensitive information. *Id.* at 4. Atmos relies on RiskView to determine whether a customer’s RiskView score is below 600, and does perform any of that analysis. *Id.* The ALJ seeks public comment explaining the analysis that RiskView performs for Atmos to determine whether a customer’s RiskView score is below 600. The ALJ also invites public comment that could put context to and shed light on the RiskView score or scoring system that Atmos relies upon to make deposit determinations. For example, public comment shedding light on the factors that result in a RiskView score of 600 or less, or how RiskView’s credit score compares to traditional credit scores (*i.e.*, whether a person receiving a RiskView score of 600 or less would have a traditional credit score of 600 or less) would be helpful.

2. Deposit Data

18. Decision No. R20-0801 also invites public comment as follows:

- In calendar years 2018 and 2019, what percentage of customers who were required to pay deposits stayed current on their utility bill?
- In calendar years 2018 and 2019, what percentage of customers who were required to pay deposits had one or more disconnection?
- In calendar years 2018 and 2019, what percentage of customers who were not required to pay deposits stayed current on their utility bill?

- In calendar years 2018 and 2019, what percentage of customers who were not required to pay deposits had one or more disconnection?
- For customers required to pay a deposit who had one or more disconnection in each calendar year 2018 and 2019, provide the percentage of customers whose deposits fully satisfied their arrears. For those whose deposits did not fully satisfy their arrears, identify the percentage of arrears that were satisfied by their deposits, (*e.g.*, deposit satisfied 50 percent of arrears), and the number of months taken to fully satisfy arrears, if any.

Decision No. R20-0801-I at 7-8.

19. Almost all of the utilities except for CNG provided data for all of the above items, broken down by customer class. *See* CNG's 1/11/21 Comments at 3-5; *see e.g.*, Public Service's 1/11/21 Comments at 9-13; Public Service Company of Colorado's Supplemental and Correct Initial Comments filed January 21, 2021 at 2-3; Black Hills's 1/11/21 Comments at 3-5 and 7-11; and Atmos's 1/11/21 Comments at 3 and 5-6. The ALJ finds that breakdown helpful. In addition, CNG's responses to the above items combine data for calendar years 2018 and 2019, rather than breaking the data down by calendar year. CNG's 1/11/21 Comments at 4-5. For the reasons discussed, CNG's data is not as helpful or meaningful as it could be, particularly as to combined two-year data. The ALJ invites public comment from CNG breaking down the data that it provided in response to all of the above items by customer class, by calendar year 2018, and separately by calendar year 2019.

20. As noted above, Decision No. R20-0801-I seeks data from regulated utilities on: (1) the percent of customers who paid deposits that had one or more disconnection in calendar years 2018 and 2019; and (2) the percent of customers disconnected at least once whose deposits fully satisfied their arrears in 2018 and 2019. Decision No. R20-0801-I at 8. In response to the first item, Black Hills provides data broken down by calendar year and service (gas/electric) for

residential customers, but does not provide data for other customer classes. Black Hills's 1/11/21 Comments at 10. The ALJ invites public comment from Black Hills providing this information.

21. As to the second item, Black Hills provides data broken down by calendar year and residential and customer class. Black Hills's 1/11/21 Comments at 11. But, Black Hills does not identify the service – electric or gas – that correlates to the data it provides. *Id.* The ALJ invites public comment clarifying which data set applies to Black Hills's electric service and which applies to its gas service.

III. WRITTEN PUBLIC COMMENTS

22. The Commission prefers written comments over oral comments. As a result, interested persons are encouraged to submit written comments through either: (a) the Commission's Electronic Filing System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> in this proceeding; or (b) the Commission's website at <https://puc.colorado.gov/> by clicking on the "FILE A COMMENT OR COMPLAINT" link. Both oral and written comments will be given the same weight in this proceeding.

23. As noted above, interested persons are urged to submit written comments responding to the items identified in this Decision by April 26, 2021.

24. Individuals who wish to provide oral comments must participate in the remote public rulemaking hearing by telephone or video-conference (as explained below). Anyone wishing to submit documents in addition to their oral comments must submit those in the same manner described above for written comments.

IV. OBSERVING OR PARTICIPATING IN RULEMAKING HEARING**A. Observing Rulemaking Hearing**

25. Consistent with Commission practice, the hearing will be webcast on the Commission's website. Persons wishing to observe, but not participate in the hearing, may do so by observing the webcast of the rulemaking hearing, and need not join the hearing by telephone or video-conference. To observe the rulemaking hearing by webcast, enter this link in the web browser <https://puc.colorado.gov/webcasts> and select the audio or video option for Hearing Room A found on the date and time of the hearing. The ALJ encourages interested persons who do not wish to provide comments during the hearing to observe the hearing through the webcast because this will help minimize background noise during the hearing, and may assist in the orderly progression of the hearing.

B. Video-Conference Rulemaking Hearing

26. The public comment hearing will be held using the web-hosted video-conferencing service, Zoom. Participants in the hearing should prepare in advance to use this platform. Information and requirements to participate in the Zoom hearing by video-conference are included in Attachment A to this Decision.

27. For those who wish to provide oral comments during the hearing, video-conference participation is preferred and encouraged because it allows for the hearing to be held in a manner most similar to in-person hearings. Nevertheless, interested persons have the

option to participate by telephone or by video-conference. The link, access code, and call-in information to participate in the hearing is provided below.

28. Any member of the public who wishes to participate in the public rulemaking hearing by video-conference must use a computer, smart phone, or tablet that is connected to the internet and has an operational microphone, speaker, and camera. Participants are required to input their full name when prompted to do so. This will allow the ALJ to call on participants to provide oral comments in an orderly fashion.

29. During the public comment hearing, the ALJ will take action as necessary to facilitate a clear and understandable record, and to ensure the orderly progress of the hearing. For the same reasons, all participants are required to: (a) mute their microphone during the hearing until called upon by the ALJ; (b) ensure they are participating from a location with minimal or no background noise; and (c) not connect to the hearing using multiple devices located in the same room (which will cause audio feedback). Participants are encouraged to use a headset to listen to the hearing, as this may also help avoid background noise and feedback when they speak.

V. ORDER

A. **It Is Ordered That:**

1. The remote public comment rulemaking hearing scheduled for April 12, 2021 is vacated and rescheduled as set forth below.

2. A remote public comment rulemaking hearing is scheduled for:

DATE: May 10, 2021

TIME: 9:00 a.m., continuing until concluded, not later than 5:00 p.m.

WEBCAST: Hearing Room A

PLACE: Join by video conference using Zoom

PARTICIPATING BY COMPUTER (PREFERRED METHOD):³

<https://zoom.us/j/99678287464?pwd=cFRKK0VOaHIDcnlieFpVcW9tK2Q3QT09>

Meeting ID: 996 7828 7464

Passcode: w7aRe2

3. Members of the public should *not* attend the public rulemaking hearing in-person. Interested persons may participate in the rulemaking hearing by telephone or video-conference using the information provided in this Decision.

4. When joining the rulemaking hearing, participants are required to enter their full name when prompted to do so through Zoom.

5. All participants in the public comment hearing must follow the requirements in Attachment A hereto, which is incorporated as if fully set forth herein.

6. Members of the public who wish to provide written comments may do so by following the instructions in this Decision. Comments in response to the issues identified by this Decision and Decision No. R21-0160-I should be filed on or by April 26, 2021.

7. The Administrative Law Judge may schedule additional hearings if necessary.

³ If a participant is unable to participate by video-conference using a computer or mobile device, participation by telephone only will be accommodated. To do so, dial +1 669-900-6833 US (or find an alternate local number at: <https://zoom.us/j/99678287464?pwd=cFRKK0VOaHIDcnlieFpVcW9tK2Q3QT09>), and enter meeting identification number 996 7828 7464 and passcode 034230 when prompted.

8. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director