

Decision No. R20-0916-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20M-0267EG

IN THE MATTER OF THE COMMISSION'S IMPLEMENTATION OF SENATE BILL 20-030
RELATING TO INCREASED CONSUMER PROTECTIONS FOR INVESTOR OWNED
UTILITIES.

**INTERIM DECISION OF HEARING COMMISSIONER
JEFFREY P. ACKERMANN MODIFYING REPORTING
REQUIREMENTS AND SETTING FORTH TAKEAWAYS**

Mailed Date: December 28, 2020

I. STATEMENT

1. On June 19, 2020, the Commission opened this Proceeding by Decision No. C20-0452, both to collect information that could inform the issuance of a Notice of Proposed Rulemaking in response to Senate Bill (SB) 20-030, which has since been issued,¹ and to understand regulated utilities' activities related to the coronavirus (COVID-19) pandemic.

2. The following stakeholders submitted comments in response to Decision No. C20-0452, touching both on SB 20-030 and COVID-19: Atmos Energy Corporation (Atmos or Atmos Energy); Black Hills Colorado Electric, LLC / Black Hills Colorado Gas, Inc. (Black Hills Energy); Colorado Natural Gas (CNG); Natural Resources Defense Council (NRDC); Public Service Company of Colorado (Public Service); and Sierra Club.

¹ Decision No. C20-0622, issued August 27, 2020, Proceeding No. 20R-0349EG.

3. On July 29, 2020, the Commission hosted a Commissioners' Information Meeting (CIM) focused on the implementation of SB 20-030. Post-CIM comments were submitted by Atmos Energy, Black Hills Energy, and Public Service.

4. Subsequently, by Decision No. C20-0622, issued August 27, 2020, the Commission separated the implementation of disconnection standards and medical exemptions from tiered electric rates from this Proceeding and issued the Notice of Proposed Rulemaking required by SB 20-030.² COVID-19 issues remained with this Proceeding.

5. On September 1, 2020, the Commission issued Decision No. C20-0636-I, which acknowledged the unusual and concerning circumstances of the COVID-19 pandemic and summarized the responsive actions taken by regulated utilities, the Commission, other branches of government, and other stakeholders related to public safety and energy affordability. Accordingly, the Commission continued this Proceeding, assigned Chairman Jeffrey P. Ackermann as Hearing Commissioner,³ and refined its objectives related to COVID-19 as follows:

- Develop a body of knowledge on how COVID-19 is changing or may change how energy is consumed in Colorado, particularly as it pertains to consumers and their ability to pay, and its implications for utility revenues;
- Explore, using available data regarding ability-to-pay issues, how creativity in bill collection can increase customer retention while minimizing negative impacts and potentially leading to net-beneficial outcomes;
- Provide a forum for collaborative work to identify what actions utilities can take concerning creativity and flexibility in payment assistance options; and

² Proceeding No. 20R-0349EG.

³ Pursuant to § 40-6-101(2), C.R.S.

- Understand whether specific regulatory actions or approvals are required related to the utility's role in economic recovery, with a focus on actions that can be taken quickly, outside existing proceedings.

6. Subsequently, Decision No. R20-0664-I, issued September 16, 2020, established monthly reporting requirements for regulated utilities. To date, Atmos Energy, Black Hills Energy, CNG, and Public Service have provided responsive reports on October 1, 2020, October 15, 2020, November 16, 2020, and December 15, 2020.

7. Decision No. R20-0664-I also solicited further comment from participants on creative approaches to navigate the economic challenges being created by COVID-19. Specifically, it sought comment on how low-income bill assistance is being prioritized, to what extent income eligibility criteria may need to become more flexible, and additional actions that regulated utilities could take to avoid disconnections of residential and small business customers. Furthermore, the Decision raised the question of whether there are options available to customers who do not necessarily fit the statutory definition of low-income created by § 40-3-106(1)(d), C.R.S.

8. On October 1, 2020, initial comments were filed by Atmos Energy, Black Hills Energy, CNG, Energy Outreach Colorado (EOC), Public Service, Pueblo County, and Sierra Club.

9. On October 15, 2020, reply comments were filed by Atmos Energy, Black Hills Energy, CNG, and Public Service.

10. On December 1, 2020, comments were filed by Roger Colton of Fisher, Sheehan, & Colton (FSC), regarding low-income energy assistance and COVID-19.

11. On December 7, 2020, by Decision No. R20-0842-I, the Commission released “Utility Bill Affordability in Colorado: Reforms to Protect Low-Income Consumers from Increasing Rates,” a report produced by the National Consumer Law Center (NCLC) that analyzes low-income energy assistance programs and COVID-19 practices in other states (NCLC Report).

12. By this Decision, we amend reporting requirements for regulated utilities and summarize takeaways so far in this Proceeding.

A. Discussion

1. Reporting Requirements

13. By Decision No. R20-0664-I, issued September 16, 2020, we directed regulated utilities to submit monthly, non-confidential reports related to delinquencies and disconnections. The first report was to be submitted on October 1, 2020, covering data through August 31, 2020. Subsequent reports were to be submitted on the 15th of each month from October 15, 2020, through January 15, 2021. Each report was to include the following information:

- A continuation of the data filed in initial comments in response to paragraph 20 of Decision No. C20-0452, updated to the most recent full month, and including both customer counts and total dollars in arrears by customer class;
- Definitions of key terms, including active vs. inactive arrears, bad debt, etc.;
- A narrative explaining whether customer counts and total dollars in arrears are greater than or less than the prior year, and reasons for the variation where known (*e.g.*, more customers in arrears, customers with larger multi-month arrears);
- How many customers have enrolled in payment plans as compared to the prior year, and any changes to utilities’ practices to notify people of payment plan options as they were described in initial comments;

- Whether the utility has resumed issuing notices of disconnection or plans to as of an anticipated date;
- If the utility has resumed field disconnections or plans to resume disconnections within the next month, how many customers are eligible for disconnection by class, how long they will have to pay arrears, and any changes to internal policies related to which customers will be eligible for disconnection;
- A list of the top five zip codes where residential customers are eligible for disconnection, along with the number of customers who may be eligible for disconnection in each zip code;
- Whether or not the utility is currently reporting customers who are delinquent to credit bureaus; and
- Any additional changes to outreach or protections that the utility is implementing since its initial comments in this Proceeding, if there are any.

14. By their reports filed October 1, 2020, Atmos Energy, Black Hills Energy, and Public Service each raised concerns related to the Commission's requirement that data on delinquencies be submitted non-confidentially on a monthly basis. The regulated utilities requested that they be permitted to submit confidential, granular, monthly data, followed by a public and aggregated version of the data after relevant 10-K or 10-Q reports are filed with the Securities and Exchange Commission (SEC).⁴ They raised concerns that publicly releasing arrearage information could result in the release of material and nonpublic information from which investors could gain an unwarranted advantage. The process proposed by regulated utilities results in public versions of data from the prior quarter being made approximately 30-45 days after the end of each quarter.

15. We approve the process put forth by regulated utilities whereby they file monthly data confidentially and re-file public versions after appropriate quarterly SEC filings. We clarify

⁴ Supplemental Report and Comments of Public Service Company of Colorado at p. 3; Comments in Response to Decision No. R20-0664-I of Black Hills Colorado Electric, LLC, and Black Hills Colorado Gas, Inc., D/B/A Black Hills Energy at pp. 1-2; Atmos Energy Corporation's Non-Confidential First Monthly Report and Initial Comments at pp. 1-2.

that confidential data should be limited to only that which would constitute material and nonpublic information. While this will result in a lag time for public review of data, we believe that these practices will enable sufficient transparency in this Proceeding while preventing the release of material, non-public information. Accordingly, we direct that regulated utilities re-file public versions of all data that is able to be released, if they have not already done so, with the report submitted on January 15, 2021, consistent with the practices recommended.

16. We further amend and extend the reporting requirements initially put forth in Decision No. R20-0664-I in order to build the body of knowledge related to the impacts of COVID-19 on utilities and customers.

17. First, having reviewed regulated utilities' reports covering data through October 31, 2020, we find that the current state of disconnection practices remains somewhat ambiguous. We clarify that going forward, in addition to the reporting requirements set forth in Decision No. R20-0664-I, regulated utilities should also report on:

- The number of notices of discontinuance they have issued;
- The number of customers they have actually disconnected;
- The number of those disconnected for non-payment and the dollars in arrears associated with those disconnections;
- The number of customers reconnected that month; and
- Whether customers were reconnected as a result of receiving bill assistance (where known) or entering a payment plan.

18. This information should continue to be provided by energy type (electric and gas) and by customer class, with comparison to the same month from the prior two years, beginning with the report submitted on January 15, 2021. Explanatory notes are encouraged and appreciated to promote consistency and comparability.

19. Second, it appears unlikely that the economic impacts of COVID-19 will be resolved in the short term. Accordingly, we will proactively extend the reporting timeline. Unless affirmatively rescinded by the Commission by subsequent decision, regulated utilities shall continue to submit reports on the 15th of each month through June 30, 2021, with a final public version filed thereafter consistent with the discussion above.

2. Takeaways and Conclusions

20. Over the course of this Proceeding, participants have raised a variety of concerns about the risks COVID-19 poses to low-income and vulnerable communities. NRDC, for example, raised concerns about high energy burdens disproportionately impacting Latinx and Black households—a situation made worse by COVID-19 also disproportionately impacting those communities from a public health perspective. Pueblo County specifically raised concerns about the ability of its citizens to pay electric bills during and after the COVID-19 pandemic. FSC added that according to the U.S. Census Bureau's Household Pulse Survey, workers with incomes below \$35,000 in Colorado have the highest rates of experienced job loss, over 50 percent.

21. Participants further presented data related to financial need, largely drawn from pre-pandemic American Community Survey results. For example, NRDC identified approximately 232,000 Colorado households with income at 100 percent of the Federal Poverty Level (FPL) or below in 2019; the NCLC Report provided tables identifying over 500,000 households that were at or below 185 percent FPL in 2019; and EOC identified 588,211 households at or below 200 percent FPL in 2018.

22. EOC described the process of allocating bill assistance to income-qualified customers through its programs and through the Colorado Low-Income Energy Assistance Program (LEAP). While LEAP benefits are provided to customers at 60 percent of state median income and

may result in a bill credit, EOC assistance can be provided for customers up to 80 percent area median income. Furthermore, LEAP assistance is provided based on household size and home heating costs, whereas EOC assistance is intended to get a customer's bill current and prevent a disconnection. EOC raised the challenge that customers must not just be LEAP-eligible, but LEAP-approved, to receive assistance, which can lead to lag times. EOC further identified the possibility that categorical eligibility, in which enrollment in the Supplemental Nutrition Assistance Program or the Temporary Assistance for Needy Families program could allow for enrollment in LEAP as well, might increase enrollment in LEAP programs. Finally, EOC added that it or a similar entity could also provide income verification services for utilities in order to expand access to regulated utilities' Percentage of Income Payment Plan (PIPP) programs.

23. Public Service added that it is supportive of further discussion to remove administrative barriers to LEAP participation, but that this forum is not the appropriate one to resolve the issue. Public Service noted that LEAP's new income guidelines were instituted for the 2019-2020 heating season, and should be assessed for an additional season to determine if any changes need to be made in the future.

24. The NCLC Report further described Colorado's PIPP programs, which provide both affordable payment plans and arrearage credits. Participants enrolled in the LEAP program are automatically enrolled in PIPP programs, however, only a small percentage of residential customers are currently enrolled as compared to those who may be income-eligible. The NCLC Report references similar programs in Ohio and Massachusetts that are funded from significantly higher bill surcharges than those currently authorized in Colorado, and proposes that Colorado could raise its current surcharge to expand bill assistance offerings. The NCLC Report also summarized the *Mountain States* case, which set limits on the Commission's ability to establish rates specific to

low-income customers, but stated that it was modified by §40-3-106(1), C.R.S., which allows the Commission to “make[] or grant[] a reasonable preference or advantage to low-income customers.” The NCLC Report suggests that PIPP programs are the best option to mitigate the impact on low-income customers from rate increases, although they are not the only options, and other states have implemented a variety of discount programs based on income. Finally, the NCLC Report summarized efforts being taken by states like Illinois related to COVID-19 economic relief.

25. Participants expressed concerns that customers’ financial need could grow due to COVID-19 beyond the levels of assistance currently available under these programs. Black Hills Energy stated that availability of funds is a core challenge, even during normal economic conditions. CNG noted that increases to LEAP program participation during the COVID-19 pandemic may result in enrollment in PIPP programs beyond the available funding capacity. EOC raised the concern that between its assistance programs and those offered by the LEAP, only about 15 percent of potentially eligible low-income residential customers have been identified and assisted.

26. Given the economic challenges being created by COVID-19, regulated utilities discussed efforts they are taking to reduce the risk that customers who are in arrears will be disconnected. In particular, regulated utilities are prioritizing disconnection notices to customers with higher levels of arrears and longer past-due balances. Regulated utilities that have resumed issuing notices of disconnection report that they are raising the arrears thresholds at which they will issue a notice.

27. Regulated utilities also described the efforts they make to reach out to customers who may be eligible for assistance, including through outbound calls, emails, social media, web, partnerships with nonprofits and local governments, and other efforts. Regulated utilities also

described steps they are taking related to referring customers to bill assistance, enrolling customers in payment plans, educating customers on energy efficiency, and making charitable donations. Public Service has instituted a live employee outbound calling campaign by which it attempts to reach customers that had not been responsive to contacts so far. Black Hills Energy described a tool it is developing that will allow customers to sign up for payment plans online.

28. FCS suggested additional ways that disconnections could be approached thoughtfully, both in general but specifically as a result of the economic impacts of COVID-19. FCS's comments drew on lessons from the mortgage industry which found that adding past-due payments to the mortgage—thus increasing the principal—led to higher levels of defaults than did changes that made mortgages more affordable. FCS analogized this to repayment of arrears: payment plans for past-due bills that increase monthly payments can result in high levels of default, as opposed to programs that reduce bills to affordable levels and offer arrearage credits. FCS recommended considering the cost-effectiveness of a disconnection program and expanding affordability and arrearage management programs.

29. While EOC, NRDC, Pueblo County, and Sierra Club encouraged the Commission to explore all angles of increasing flexibility and bill assistance, regulated utilities urged caution. Public Service, Atmos Energy, and Black Hills Energy opposed concepts like accepting less than full repayment of bills as potentially discriminatory. All regulated utilities expressed concerns about program modifications that may require them to solicit and store sensitive customer income data. CNG further noted the financial impact to utilities of lower usage and increased safety protocols resulting from COVID-19, and Atmos Energy discouraged the Commission from considering activities related to COVID-19 that may be considered single-issue ratemaking.

30. Public data provided by regulated utilities in their reports suggest that arrearages are increasing, and in some cases, so is the number of customers in arrears. Compared to 2019, in recent months, regulated utilities have experienced increases in residential, commercial, and total dollars in arrears. Accordingly, participants' comments and the reports collected in this Proceeding suggest the need to think more creatively about bill payment assistance across customer classes due to the ongoing impacts of the COVID-19 pandemic on Colorado's economy.

31. First, definitions of income eligibility for rates and programs may need to be evaluated for accuracy and effectiveness. Participants raised varying perspectives on this issue, including both concerns that eligibility may be too restrictive either by income or program, and conversely that income criteria may be sufficient but that programs are not reaching enough potentially eligible customers. We also note that SB 20-030 directed the Commission to evaluate raising the income threshold for participation in medical exemption programs for tiered electric rates from 250 percent FPL to 400 percent FPL.

32. Additionally, participants suggest that regulated utilities may have flexibility to design and propose creative low-income rates and programs that goes beyond what Colorado has experienced so far. The NCLC Report suggests that § 40-3-106(1)(d), C.R.S., led to a course change, but even without it, the Commission may take ratemaking actions that are economically justified. This may mean that alternative low-income rates could be designed that are cost-justified and include not only affordability adjustments, but also discounts, or modification of surcharges to exempt low-income customers. FCS's assessment of cost-effectiveness further suggests the possibility that variations on PIPP programs could result in higher overall repayments.

33. Relatedly, regulated utilities and the Commission should take a more informed perspective on what options we have to manage customer arrears across customer classes in order

to prevent disconnections going forward during COVID-19, and even beyond. The data regulated utilities are currently reporting to the Commission on arrearages is not limited to low-income customers, *e.g.*, those to whom the Commission may grant a reasonable preference pursuant to § 40-3-106(1)(d), C.R.S. Rather, the widespread adverse economic implications of COVID-19 are affecting utility customers across rate classifications, and also potentially significantly growing the ranks of those considered “low income” with customers who had not previously met the statutory definition.

34. While the Commission must continue to consider undue discrimination as a factor in ratemaking, there may be non-traditional approaches to addressing arrearages beyond what Colorado is currently implementing that provide creative options for payment leniency regardless of customer class, and therefore income eligibility. FSC recommended that bill assistance programs be designed with several principles in mind, including: using a cost-effectiveness methodology to assess whether the objectives of a collections program are being met; considering the effectiveness of such a program both over a long term and across the utility enterprise (*e.g.*, factoring in its impacts to areas like cash working capital); and considering “hard-to-quantify” benefits as a factor in assessing cost-effectiveness. Better data tracking and presentation of costs and benefits, as suggested by FSC’s comments, could support a more refined perspective on how to balance the Commission’s intertwined public interest concerns related to the opportunity for utilities to earn a fair return and the ability of customers to pay in a challenging economy. It is likely that the creativity suggested above depends on more informed data collection and presentation.

35. Consistent with the discussion above, we continue to encourage regulated utilities to explore new options for promoting affordability in collaboration with low-income experts.

II. ORDER

A. It Is Ordered That:

1. The confidentiality process proposed by regulated utilities is approved, consistent with the discussion above. We direct those utilities who have submitted data confidentially to resubmit non-confidential versions of that data, consistent with the practices they proposed and the discussion above.

2. We order that regulated utilities continue to provide monthly reporting on delinquencies and disconnections through June 30, 2021, as modified consistent with the discussion above.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

Hearing Commissioner

ATTEST: A TRUE COPY

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

Doug Dean,
Director