BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF COLORADO
DOCKET NO. 11R-110EG

IN THE MATTER OF THE PROPOSED RULES REGULATING LOW INCOME ASSISTANCE PROGRAMS OF ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, AND GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4.

OPENING COMMENTS OF ENERGY OUTREACH COLORADO

By its undersigned attorney, Energy Outreach Colorado ("Energy Outreach" or "EOC") respectfully supplies the following comments as requested by the Commission in Decision No. C11-0154 (mailed February 14, 2011).

Introduction

EOC appreciates the opportunity to make comments regarding the Commission's draft rules in this docket. In addition to our comments, we have provided redline versions of the Commission's draft rules in order to illustrate the effect of our suggestions and proposed changes.[1]

The issue of energy affordability is vital to hundreds of thousands of Colorado households. Compared to other necessary household expenses, home energy bills are at the "top of the stack." This is because the potential consequence of not paying for household energy bills is the risk of losing service for heating, cooking, lighting and related essential needs. With this loss of service, there comes a real possibility of loss of affordable shelter.[2] The only expense more critical to household survival than energy costs is the cost of rent or mortgage payments.

Given the high priority they are thus forced to give to paying utility bills, low-income families face sacrificing other absolute necessities in order to pay for home energy. Household members skip meals or buy lower quality food; they don't take necessary medications or take a dose lower than prescribed, and don't see the doctor when they need to. Other needs such as transportation to and from work, clothing, and school supplies become a luxury.

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[1] Our redline versions of the proposed rules for electric and natural gas utilities are attached as Exhibits 1 and 2, respectively. At the end of these comments is an index of all of the exhibits we have attached.
[2] Answer Testimony and Exhibits of Roger D. Colton (for Energy Outreach Colorado), Docket No. 08S-146G (July 30, 2008), pages 8-10. A copy of this testimony (hereafter, "2008 Colton 146G Testimony") is attached as Exhibit 3 to these comments.

Several recent studies address the impact of home energy costs on low-income households.

- In 2007 the University of Colorado Health Science Center released a report on the causes of homelessness in Colorado.[3] This report concluded that the cost of home energy is the second leading cause of homelessness in the state for families with children, just behind domestic violence.

- In 2007 the Children's Sentinel Nutrition Assessment Program published a report concerning the "Impacts of Energy Insecurity on Children's Health, Nutrition, and Learning."[4] Principal investigators from the University of Maryland School of Medicine, University of Arkansas for Medical Sciences, Drexel University School of Public Health, and the Boston University School of Public Health concluded that "low-income families must struggle constantly to protect their children from multiple threats to their health and growth, of which energy insecurity may be the most immediately life-threatening." Focused on children under 3 years old, the study concluded that babies and toddlers who live in energy insecure households are more likely to be in poor health, have a history of hospitalizations, be food insecure, and have problems with cognitive development. Further, according to the study, children living in LEAP-eligible homes who do not receive assistance are significantly more likely to be underweight.

- The U.S. Department of Labor, Bureau of Labor Statistics published information that, for low-income households, as energy expenditures increase, food expenditures decrease.[5] This information shows that between 2000 and 2005, for families of four with total annual incomes between $20,000 and $29,000, spending for energy rose 22% while at the same time spending for food dropped 10%.

- In 2009, the National Energy Assistance Directors Association published the "National Energy Assistance Survey Report."[6] Based on a survey of households that received LEAP assistance, the report concluded that in order to pay for home energy, 42% of households went without medical or dental care, and 38% went without filling a prescription or taking the full dose of a prescribed medicine. Additionally 32% of households went without food for at least one day, 44% closed off part of their home in order to save energy, and 33% used unsafe methods to heat their homes.

[3] A copy of the report is attached as Exhibit 4. *See* Figure H, page 9. The report was accessed March 16, 2011, at: http://dola.colorado.gov/cdh/publications/Winter_2007_Statewide_PIT.pdf.
[4] A copy of the report is attached as Exhibit 5. The report was accessed March 14, 2011, at http://www.nationalfuelfunds.org/nffnpressroom/Fuel%20for%20Our%20Future%209-18-07.pdf
[5] See bar graph at page 2 of Exhibit 5.
[6] A copy of the report is attached as Exhibit 6. The report was accessed March 14, 2011, at: http://www.neada.org/communications/surveys/2010-04-19NEADA_2009_Survey_Report.pdf.

- The resource and referral system (211) run by Mile High United Way has consistently listed energy assistance as the second highest request.[7] While many believe that the inability to pay for home energy is a problem in the winter months, it is a year-round issue for low-income households.

In recognition of the disproportionate home energy burden borne by low-income households, the Colorado legislature in 2007 enacted Senate Bill 07-022, now codified as Colo. Rev. Stat., § 40-3-106(3)(d).[8] The statute authorizes this Commission to implement rates granting reasonable preferences or advantages to qualified low-income utility customers, while taking into account the potential impact on, and cost-shifting to, utility customers other than low-income utility customers. The statute provides the basis for the adoption of rules such as have been proposed in this docket.

EOC Comments

General: Percentage-of-Income Approach vs. Rate Discount Approach

Energy Outreach strongly believes that a percentage-of income approach is not only more *effective* than the alternative of delivering a rate discount, but is more *efficient* as well.[9]

The purpose of a low-income rate should be not simply to provide some degree of rate relief to all low-income customers. The purpose should be to maximize the utility's receipt of revenue from low-income customers who cannot afford to pay their bills while at the same time minimizing total expenses associated with collection and nonpayment. If low-income rates are viewed in this light, it can be seen that an across-the-board discount has less direct connection to collection savings than does a percentage-of-income approach.

To illustrate: Providing a 30 percent discount to a low-income household with a monthly bill of $50 is probably unnecessary to obtain this household's payment of its full bill—simply because the bill is relatively small. By contrast, providing a 30 percent discount to a low-income household with a $250 bill is probably insufficient to obtain payment in full—because the bill is relatively large. In both of these cases, a standard low-income discount, if one is given, carries no reasonable expectation that there will be offsetting impacts on bill payment outcomes by the customer. From this perspective, the standard discount is ineffective.

[7] See for example the 2009 United Way summary referral statistics, attached as Exhibit 7. These statistics were accessed March 14, 2011, at: http://www.unitedwaydenver.org/atf/cf/%7BB8560A52-5C7A-44E7-BDC9-78F8AE692FE2%7D/09_Annual_Referral_&_%20demographics_%20report.pdf.
[8] The full text of Colo. Rev. Stat., § 40-3-106 is set forth in Exhibit 8 hereto.
[9] Accordingly, EOC advocated such an approach in the rules it proposed for adoption by the Commission in July, 2010, in what became Dockets Nos. 10M-473E and 10M-475G. For the record, copies of the percentage-of-income-based rules that EOC proposed in those dockets are attached as Exhibits 9 and 10, respectively.

Moreover, an across-the-board discount provides poorly targeted assistance. Providing a 30 percent discount to a customer with a monthly bill of $50 will likely provide too much assistance; providing a 30 percent discount to a customer with a monthly bill of $250 will likely provide too little assistance. An across-the-board discount, in other words, systematically makes over-payments and under-payments relative to affordability. It is inefficient.

A fixed credit under a percentage-of-income approach, on the other hand, precisely targets benefits. The issue of whether some customers receive “too much” and others receive “too little” does not arise.

It of course is possible that the cost of setting-up and administering a percentage-of-income fixed credit program will be higher than the cost of setting up and administering a tiered discount program. The issue of administrative costs is not trivial, since every dollar that goes for set-up and administration is a dollar that is not going to pay energy assistance benefits. However, the experience of Xcel Energy in establishing its natural gas and electric low-income pilot programs, PEAP and EAP, as well as the experience of utilities in other states offering percentage of income based programs, indicates that such programs can be established and operated with reasonable limits on administrative expenditures.

A percentage-of-income program with an annual fixed credit, rather than a standard rate “discount,” may also give benefited customers an incentive to conserve. An annual fixed credit is just that—“fixed.” Once the credit is determined at the beginning of the program year, the risk that bills will change (as a result of either weather or price) lies with the customer. If the customer manages usage so as to achieve a lower bill, the customer pockets the difference. If the customer has a higher bill, the customer bears the burden (the excess of the bill over the credit) of the increase.

The corollary of the fixed credit’s customer conservation incentive is the operational benefit the fixed credit approach affords the utility. In a fixed credit (percentage of income) approach, the maximum program expenditure is established at the time a customer enters the program. Changes in weather or price will not drive program costs up for the utility. In contrast, with a tiered discount, program costs for the utility will fluctuate based on both weather and price. If there is a very cold winter (or a very hot summer), with correspondingly higher bills, the program must bear the cost of the higher discounts that will be provided.

For these reasons EOC believes that rules implementing low-income customer utility rates should take a percentage-of-income approach. We therefore recommend that the Commission in this docket adopt rules based on those proposed by EOC in Dockets Nos. 10M-473E and Docket No. 10M-475G (Exhibits 9 and 10, hereto). The Commission can modify the EOC rules to incorporate the Commission’s preferences with respect to phased implementation, cost recovery, limits on non-participant impact, and other issues.

EOC notes that the draft rules it submitted in Dockets Nos. 10M-473E and Docket No. 10M-475G were pre-vetted with, and incorporated many of the ideas and suggestions of, Public Service Company of Colorado, Atmos Energy, the Office of Consumer Counsel (OCC), the Commission staff, LEAP, AARP, the Governor's Energy Office and national experts. All regulated utilities in Colorado had the opportunity to review and recommend changes to EOC's proposed rules prior to the filing of EOC's petition for rulemaking. In comments or letters filed in Dockets Nos. 10M-473E and Docket No. 10M-475G, Public Service, Atmos, the OCC, AARP, Environment Colorado, the Colorado Center on Law and Policy, Western Resource Advocates, and the Colorado Cross Disabilities Association recommended using EOC's draft rules as the basis from which to craft final rules. EOC respectfully requests that the Commission for purposes of this rulemaking take administrative notice of, and incorporate as part of the record, all filings, letters and comments in those dockets.

Notwithstanding its preference for the percentage-of-income approach set forth in its originally proposed rules, EOC submits the following comments and recommended changes with respect to draft rules issued with the NOPR in this docket.

Comments on Rules Issued with Decision No. C11-0154 in This Docket

Definitions – Energy Outreach Colorado

Attachment A – Electric: 3412(b)(VI) - Delete
Attachment B – Gas: 4412(b)(VI) - Delete

The definition for "Energy Outreach Colorado" should be removed in that there is no reference to the organization in the draft rules.

Definitions – Retail Customer – New

Attachment A – Electric: 3412(b)(IX) - New
Attachment B – Gas: 4412(b)(IX) - New

We propose that the regulations include a definition of "retail customer." We recommend that the Colorado rules in this respect follow the Nevada low-income program. The Nevada low-income energy assistance programs are funded through a legislatively-imposed "universal energy charge."[10] The universal energy charge is imposed on "each retail customer,"[11] which is explicitly defined to include "without limitation, a residential, commercial or industrial end-use customer that purchases natural gas or electricity for consumption" in the state.[12] This kind of language in Colorado will assure that the costs of an energy service affordability program are shared by and

[10] N.R.S., §§ 702.100 (2007) and 702.160 (2007).
[11] N.R.S. §702.160(1) (2007).
[12] N.R.S., §702.090(2) (2007).

collected from all retail end-use customers, including those purchasing only natural gas transportation service.[13]

Definitions – Household Income

Attachment A – Electric: 3412(b)(X) - New
Attachment B – Gas: 4412(b)(X) – New

We propose that utilities determine "household income" for purposes of eligibility for low-income rate affordability assistance under the proposed rules in the same manner employed by LEAP. LEAP, for example, appears to allow gross annual income to be determined based on less than a full year's income records.[14] We propose that utilities adopt the same income determination methods used by LEAP. Thus if LEAP allows a 30-day income amount to be annualized for purposes of determining LEAP eligibility, utilities offering a rate affordability program should do so as well. Annualizing household income in this fashion is reasonable since households seeking energy assistance often have income over a full twelve-month period that is higher than their income at the time they apply for assistance. What drives them to seek assistance is a current loss of employment, a disability or illness, or a change in marital status. The impact of these exigencies may not reflected in their income over the previous 12-month period. The process of determining "annual income" used by LEAP should be accepted as the process of determining annual income used for purposes of a rate affordability program.

Reasonable Preference

Attachment A – Electric: 3412(c)(I)(A) - Revise
Attachment B – Gas: 4412(c)(I)(A) - Revise

In our redline comments, we clarify that a utility should address the specific benefits of the specific program that the utility is proposing.

[13] EOC is aware that under current decisional law in Colorado, a downstream natural gas LDC utility not currently having its own low-income rate preference program that transports natural gas on the distribution system of Public Service Company of Colorado is assessed to pay for Public Services' low-income natural gas PEAP pilot program. *See* Decision No. C08-1311 (December 23, 2008) in Docket No. 08S-146G, pages 16-18. Such a utility is not an end-use customer within the terms of the definition EOC is here proposing. EOC's assumption going into this rulemaking is that all natural gas and electric utilities in the state will be required to develop and put in place low-income rate preference programs for their retail end-use customers that are generally consistent with the rules proposed in NOPR Decision C11-0154 in this docket. If that is the case, then EOC believes it would be inappropriate to require a natural gas LDC with its own low-income preference plan to be required to pay, in addition to the costs of its own program, a contribution to the costs of the low-income preference program of another LDC on which it obtains transport service.

[14] For example, 9 *Colorado Code of Regulations* 2503-1, Rule 3.752-22 currently provides as follows with respect to LEAP income eligibility: "For purposes of determining a household's eligibility, income shall be the countable gross income in any four (4) weeks of the eight (8) weeks prior to application, which best represents the applicant's current income situation." Accessed March 16, 2011, at: http://www.cdhs.state.co.us/leap/PDFs/LEAP%20Rules%20for%20Season%202010.2011.pdf.

DSM and Weatherization Participation

Attachment A – Electric: 3412(c)(I)(B&C) – New Rule
Attachment B – Gas: 4412(c)(I)(B&C) – New Rule

The draft rules contemplate that a utility may require all participants in an energy affordability program to participate in DSM and Weatherization programs. In reality, however, these programs are not always available to low-income households.

First, the availability of free or low-cost programs is tied directly to the amount of federal funding and utility funding available. Second, there are severe resource limitations on the number of service providers available to reach individual homes. Third, for participants who rent their homes, the landlord must consent to these services, and many don't for a variety of reasons. Fourth, there are situations where it is not possible to perform some work or even to enter into a participant's home due to medical conditions suffered by members of the household. Last, if a DSM or weatherization program requires a participant to fund a portion of the cost of services, and a direct low-income subsidy is not available, the low-income household will simply not have the financial resource to participate.

We have added language to the draft rules to address circumstances such as these.

LEAP Participation

Attachment A – Electric: 3412(c)(I)(D)
Attachment B – Gas: 4412(c)(I)(D)

We have removed the sentence that provides that a utility may require participation in LEAP as a condition to participation by a low-income utility customer in a rate affordability program. Many legitimate reasons exist why a household may not participate in LEAP. LEAP funding is frequently limited, with enrollment periods substantially constrained to a narrow window during the winter months. Numerous studies have found that there are information barriers to applying for LEAP. Even when low-income households know about the program, they may not know how to access the program. Knowledge barriers are often driven by age, disability status, and English as a second language. Finally, LEAP has statutory targeting objectives that would not necessarily be shared by a utility program. By law, LEAP is to target the very young, the aged and the disabled. Utilities would be interested in targeting payment-troubled customers, whether or not they meet these LEAP targeting criteria.

Thus, while we agree that a utility should articulate how it intends to integrate its affordability program with LEAP (or other fuel assistance programs), we believe it would be inappropriate to *require* LEAP participation as a condition to participation in the energy affordability program.

Arrearage Credit

Attachment A – Electric: 3412(c)(I)(E) – New Rule
Attachment B – Gas: 4412(c)(I)(E) – New Rule

The draft rules appear to leave open the possibility that arrearage forgiveness need not be a mandatory element in a utility's program. Energy Outreach believes strongly that arrearage forgiveness is critical to a program participant's long-term success in paying for utility service. We have relocated and changed language from draft rules 3412(e)(V) and 4412(e)(V) to make clear that arrearage forgiveness must be a part of all utility programs, not just those programs that take a "percentage of income plan" approach.

Arrearage management is necessary to help low-income customers get "even" so they have a chance at future success in making payments. It is counter-productive to make current bills affordable while leaving the total bill unaffordable due to payment obligations required to retire bills incurred before the program began (pre-program arrears).

If pre-program arrearages are not treated, they increase a participant's total bill. A 2006 evaluation of the New Jersey Universal Service Fund (USF) found that increasing the percentage of income burden to participants in an affordability program in this manner adversely impacted the ability of participants to maintain payment compliance under the program.[15]

Inclusion of Existing Public Service Company Pilot Program Customers

Attachment A – Electric: 3412(c)(II)(B) – New Rule
Attachment B – Gas: 4412(c)(II)(B) – New Rule

Public Service Company's existing low-income EAP and PEAP pilot programs currently have enrolled customers with incomes at or below 185% of the Federal Poverty Level. Some of these participants' incomes therefore exceed the proposed income thresholds in the poverty-level based phase-in approach of the proposed rules. As Public Service transitions from these pilot programs to a new low-income program under the proposed rules, these current participants should not be removed from any program adopted by Public Service because their incomes exceed the poverty levels in the proposed phase-in process outlined in the draft rules. Rather, these participating Public Service customers should be grandfathered. We have drafted a provision that allows for this.

[15] Apprise, Inc., Impact Evaluation and Concurrent Process Evaluation of New Jersey Universal Service Fund, Final Report (2006), pages 79-82. Accessed March 16, 2011, at: http://www.appriseinc.org/reports/NJ%20USF%202006.pdf.

Program Access

Attachment A – Electric: 3412(c)(II)(D) – New Rule
Attachment B – Gas: 4412(c)(II)(D) – New Rule

Energy Outreach believes it is important to ensure that no eligible participant is denied access to a utility's program so long as funding under the maximum impact ceiling goals has not been reached. We have added language to make this clear.

Portability of Benefits

Attachment A – Electric: 3412(c)(II)(E) – New Rule
Attachment B – Gas: 4412(c)(II)(E) – New Rule

Language regarding portability of benefits is included in the "safe harbor" rules in the current draft. However, portability of benefits should be allowed in whatever program a utility adopts to comply with the rules. We have modified the current draft rule language and relocated the concept to provide for this.

Maximum Impact on Non-Participants

Attachment A – Electric: 3412(c)(III)
Attachment B – Gas: 4412(c)(III)

We have added the word "net" to modify "maximum impact" for purposes of determining the "maximum impact ceiling goals" for ratepayers. As the rules acknowledge, the gross cost of any low-income program will not be identical to the economic "impact" of the program on non-participating customers. A low-income program will generate not only costs, but benefits as well. For example, in a series of Pennsylvania Public Utility Commission cases regarding natural gas and electric "universal service programs," the utilities offering the programs have agreed that bad debt offsets alone—not taking into account working capital, credit and collection savings, or other positive impacts—will reduce the cost of the programs by roughly 10% to 20%.[16]

For purposes of the proposed rules here, it is not necessary to identify the precise offset, merely to make clear that the "maximum impact ceiling goals" are to be calculated taking the offsets into account.

Utility Program Filing Date

Attachment A – Electric: 3412(d)(I)(A) – New Rule
Attachment B – Gas: 4412(d)(I)(A) – New Rule

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[16] *See*, Testimony of Lauren B. Feldhake, Director of Customer Financial Operations, PECO Energy—Gas Division, Docket No. R-2010-2161592, Pennsylvania Public Utilities Commission (March 31, 2010), at page 7. A copy is attached as Exhibit 11.

The draft rules require utilities to file their proposed program by January 1, 2012. As noted above, however, Public Service Company currently is operating gas and electric pilot programs (PEAP & EAP) that are similar to the ESAP rules proposed by Energy Outreach in Dockets Nos. 10M-473E and 10M-475G. Both pilot programs are scheduled to end in September 2011, after which an in-depth analysis will be completed by an independent party. The company has agreed to continue delivering the program to participants until such time as the analysis can be completed and recommendations regarding modifications to the programs can be developed, probably in January of 2011.

The draft rules as written would preclude Public Service Company from implementing the lessons learned from the pilot programs. Energy Outreach has added language in our redline document in order to accommodate this situation.

Utility Tariff filing - ESAP Reference

Attachment A – Electric: 3412(d)(II)(A,B&C)
Attachment B – Gas: 4412(d)(II)(A,B&C)

In the above-referenced rules, the Commission draft included reference to ESAP, we believe erroneously. This section of the rules is not applicable to the ESAP safe harbor section alone. The defined term "ESAP" should be replaced with the defined term "Program."

Utility Tariff filing

Attachment A – Electric: 3412(d)(II)(D)
Attachment B – Gas: 4412(d)(II)(D)

The Commission's draft rules require that a utility's tariff filing include "The number of participants currently receiving low-income energy assistance from the *utility*." We believe that the intent of this language is to determine the number of participants that receive energy assistance from LEAP, EOC, or other entities. Because the customers do not receive energy assistance from the utility, we have included redline language that would reflect what we believe is intended in this rule.

Cost Recovery – Separate Rate Class/Lifeline Rate

Attachment A – Electric: 3412(e)(I)
Attachment B – Gas: 4412(e)(I)

We have removed the reference to the "creation of a separate rate class" from the proposed "cost recovery" rule. Creating a separate rate class is not a rate recovery mechanism. Creating a separate rate class may well be a step in the delivery of low-income rate affordability assistance. For example, National Grid in New Hampshire offers its "R-4" natural gas rate, incorporating a low-income discount. The Pennsylvania utilities all have specific tariffs specifying the availability and operation of their "CAP" (Customer Assistance Program) rates. These separate tariffed rates, however, do not relate to program cost recovery. The basic program cost recovery mechanisms involve either the recovery of costs through base rates or the recovery of costs through a reconcilable rate rider. Reference to the creation of a separate rate class, and the coincident reference to a "lifeline rate," in the "cost recovery" rule, however, should be removed.

Cost Recovery – Program Administrative Cost

Attachment A – Electric: 3412(e)(III)(C)
Attachment B – Gas: 4412(e)(III)(C)

We have added the word "incremental" before the words "program administrative costs." Utilities should not be allowed to recategorize existing costs as a cost of the low-income program for purposes of cost recovery. For example, existing call center costs associated with addressing payment troubles, even if those payment troubles are experienced by "low-income" customers, are built into a utility's current cost structure. The only "program administrative costs" that should be included as part of the cost recovery for a low-income program under these rules are costs over and beyond existing costs that, when measured by a "but for" test, are directly caused by the implementation and delivery of a low-income rate affordability program. The test should be: but for the implementation and delivery of the low-income program, the costs would not have been incurred.

Cost Recovery – Other Reasonable Costs

Attachment A – Electric: 3412(e)(III)(D)
Attachment B – Gas: 4412(e)(III)(D)

We have substituted the words "directly caused by" for the words "attributable to" in this regulation. Low-income cost recovery should not be allowed to be used as a mechanism for recovering costs that the Company would have incurred even in the absence of a low-income program. The words "attributable to" could, for example, be used to support an *allocation* of common costs (e.g., Company management, headquarters building, administrative and general expenses) to the low-income program. There may well be costs that are directly caused by a low-income program. Delivering energy education, for example, is a program cost that does not "fit" into credits toward current usage [(III)(C)], credits toward preprogram arrears [(III)(D)], or administrative costs [(III)(E)]. Certain program start-up costs may not exactly fit into the costs enumerated in sub-sections (III)(C) through (III)(E). The language we propose, however, requires there to be a direct causal link between the delivery of the low-income program and the costs to be recovered. It is not a mere "attribution" of costs.

Cost Recovery – Assistance Grant Disposition

Attachment A – Electric: 3412(e)(IV)(A)
Attachment B – Gas: 4412(e)(IV)(A)

In the Commission's draft rules 3412(e)(V)(A&B) and 4412(e)(V)(A&B), language was included outlining the disposition of third-party energy assistance grants in cases where such grant(s) exceed the amount of percentage of income plan benefits. This notion is important to the rules, but cannot be limited to just percentage of income plans. We have taken pertinent language in the Commission's draft and inserted it in the above-referenced rules so that the disposition of third-party energy assistance grants is treated appropriately in all utility programs.

For the most part, energy assistance grants are provided by the Colorado Department of Human Services LEAP program. This federally funded program requires that all benefits delivered to clients go to the benefit of the clients themselves. No portion of the grant can be used to benefit other parties.

The language in this section allows the utility to apply LEAP payments to offset the cost of the amount granted under a utility's program up to the amount of the program benefits. The utility may apply any excess in LEAP benefits to offset pre-existing arrearage amounts. For any portion of the customer's LEAP grant outstanding, the balance must be delivered to the customer either through a credit to their gas and/or electric bill or through a direct cash refund.

Cost Recovery – Class Allocation

Attachment A – Electric: 3412(e)(V)
Attachment B – Gas: 4412(e)(V)

The Commission's draft rules require that program costs be allocated to "retail" rate classes. It is our assumption that this will include transportation customers, consistent with the definition of "retail customer" that we proposed above.

ESAP Phase-In Language

Attachment A – Electric: 3412(g)(III)(A)(i-iii)
Attachment B – Gas: 4412(g)(III)(A)(i-iii)

In Dockets Nos. 10M-473E and 10M-475G EOC proposed a six-year phase-in of energy affordability rules. In Phase I, the EOC proposed rules would have limited total enrollment in a utility program to 50% of the utility customers receiving LEAP assistance in the previous LEAP program year. In Phase II, allowed enrollment would have increased to 100% of such customers. In Phase III, prior receipt of LEAP assistance would have been eliminated as a criterion for enrollment altogether.

EOC now proposes redline amendments to eliminate the prior-receipt-of-LEAP-benefits criterion for phasing in program participation that EOC proposed in Dockets Nos. 10M-473E and 10M-475G. This is because the Commission, in the proposed rules in this docket, has offered a completely different approach to phasing in customer participation. The Commission proposes a four-year phase-in approach that offers initial eligibility to the poorest of the poor, based on poverty level, then gradually increases the threshold poverty level that qualifies a customer for participation.

Two separate phase-in approaches (the one proposed by EOC in Dockets Nos. 10M-473E and 10M-475G coupled with the one proposed here by the Commission) would severely limit the number of vulnerable households that could take advantage of the program.[17] Reference to the originally proposed EOC phase-in criteria should therefore be eliminated.[18]

For informational purposes EOC presents the table below. Based on 2000 census data (the most recent official data available) the table shows a distribution of Colorado households in which total income is at or below 185% of federal poverty limits (FPL).

Poverty Level	**Number of Households[19]**	**Percent of Total Eligible**
Below 50% of FPL	68,878	18.8%
50% - 74% of FPL	39,900	10.9%
75% - 99% of FPL	46,610	12.7%
100% - 124% of FPL	55,403	15.1%
125% - 149% of FPL	64,867	17.6%
150% - 185% of FPL	91,227	24.9%
Total Below 185% of FPL	**366,885**	**100%**

The table indicates that some 58% of total households would meet the Phase 1 eligibility criterion in the Commission's proposed rules—125% or less of the FPL. The table indicates that 75% of the total households would meet the Commission's Phase 2 eligibility criterion—150% of the FPL. EOC submits that no additional eligibility screens are necessary.

[17] We note that under the proposed rules here, the possibility of two separate phase-in systems simultaneously operating would apply only in the context of the ESAP "safe harbor" rule, Rule 3412(g) and 4412(g)—not to other rule implementation approaches that may be proposed by utilities.
[18] Another reason the dual phase-in requirements should be eliminated is that the proposed rules here effectively impose a third limitation on customer participation through a cost (rules 3412(c)(III)(B) and 4412(c)(III)(B)).
[19] *See* Schedule RDC-2 to 2008 Colton 146G Testimony (Exhibit 3).

<u>Safe Harbor Energy Burden</u>

Attachment A – Electric: 3412(g)(III)(B)
Attachment B – Gas: 4412(g)(III)(B)(1)

The proposed rules submitted by EOC in its petition for rule-making in Dockets Nos. 10M-473E and 10M-475G contemplated a maximum total home energy burden of up to 6% of income for eligible low-income households based on their level of poverty. The proposed rules in this docket increase this maximum energy burden to 12%. The proposed rules also effectively preclude program participation by households that use electricity as a non-heating fuel. EOC has modified this in its proposed rule revisions.

The draft rule by EOC in Dockets Nos. 10M-473E and 10M-475G also contemplated two home energy use scenarios. First, for low-income customers using electricity as their primary heating source, the percent of income burden is set at 6% of income. Second, for customers that use natural gas or other bulk heating fuels as their primary heating source (and electricity for refrigeration, lighting and other power needs), the maximum percent of income burden is set at 3% for natural gas and 3% for electricity based on the customer's level of poverty for a total combined home energy burden of up to 6% of household income.

EOC's redline amendments to the proposed rules here restore the energy burden levels to those set forth in EOC's originally submitted draft rules. These happen as well to be the maximum levels currently in place in Public Service Company's PEAP and EAP low-income pilot programs.

Households with low incomes by and large cannot afford the cost of home energy. For these customers, the cost of home energy presents a crippling and disproportionate financial burden. As household incomes decrease, the percent of the home energy bill obligation to total income increases as demonstrated below.

Household Poverty Level	Energy Burden[20]
Below 50%	38.2%
50% - 74%	15.4%
75% - 99%	11.0%
100% - 124%	8.6%
125% - 149%	7.0%
150% - 185%	5.8%

By contrast, the average Colorado household pays around 4% of their household income for home energy. The revisions proposed by EOC will set the home energy burden for vulnerable households at a level around the level experienced by non-low-income households.

[20] *See* Schedule RDC-1 to 2008 Colton 146G Testimony (Exhibit 3).

Safe Harbor Cost Control Features

Attachment A – Electric: 3412(g)(III)(G) – Delete and Relocate
Attachment B – Gas: 4412(g)(III)(G) – Delete and Relocate

We propose relocating language in the Commission's draft rules regarding exceptions to weatherization requirements to rules 3412(c)(I)(B&C) and 4412(c)(I)(B&C). Regardless of the particular program a utility adopts to comply with the rules, requirements for customers to implement weatherization or DSM measures should be the same. This is not exclusive to the ESAP safe harbor program.

Safe Harbor Portability of Benefits

Attachment A – Electric: 3412(g)(III)(I) – Delete and Relocate
Attachment B – Gas: 4412(g)(III)(I) – Delete and Relocate

Language regarding portability of benefits should a program participant relocate within the utility's service territory should not apply only to the ESAP safe harbor program. Appropriate language was placed in rules 3412(c)(II)(E) and 4412(c)(II)(E) to reflect that for any utility program, participants may relocate and remain in the program without reapplication.

Safe Harbor Appeals Process

Attachment A – Electric: 3412(g)(III)(J) – Delete
Attachment B – Gas: 4412(g)(III)(J) – Delete

Language in the Commission's draft rules indicates that, for ESAP safe harbor participants, current dispute and appeals process are available. Regardless of the utility's program, these processes are available to participants with or without this language. EOC has deleted this language from the rules.

Conclusion

EOC looks forward to continuing to participate in this rulemaking process and thanks the Commission and its staff for their work and support in drafting the baseline rules that accompanied the NOPR. EOC hopes that its foregoing comments and proposed changes will facilitate the process of adopting and putting into effect rules that meet the needs both of utilities and participating low-income customers.

Dated this 17th day of March, 2011.

Respectfully submitted,

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ATTORNEY FOR ENERGY OUTREACH COLORADO

EXHIBITS THAT ACCOMPANY EOC OPENING COMMENTS

Exhibit	Description
1	EOC Redline of Proposed Electric Rule
2	EOC Redline of Proposed Natural Gas Rule
3	Answer Testimony of Roger D. Colton for EOC in Dkt. No. 08S-146G
4	UCHSC, Colorado Statewide Homeless Count (2006)
5	Children's Sentinel Nutrition Assessment, Impacts of Energy Insecurity on Children's Health, Nutrition, and Learning
6	National Energy Assistance Directors Association, 2009 National Energy Assistance Survey
7	Mile High United Way 2-1-1, 2009 Annual Report
8	Text of Colo. Rev. Stat., § 40-6-103 as amended by Senate Bill 07-022.
9	EOC proposed percentage-of-income rules in Docket No. 10M-473E
10	EOC proposed percentage-of-income rules in Docket No. 10M-475G
11	Testimony of Lauren B. Feldhake, Director of Customer Financial Operations, PECO Energy—Gas Division, Docket No. R-2010-2161592, Pennsylvania Public Utilities Commission (March 31, 2010).

Certificate of Filing and Service

I hereby certify that on March 17, 2011, I caused the foregoing **OPENING COMMENTS OF ENERGY OUTREACH COLORADO AND EXHIBITS 1-11** to be filed electronically at the Colorado Public Utilities Commission, 1560 Broadway, Suite 250, Denver, CO 80202; and to be served electronically through the Commission's E-filing system on those persons and parties shown in the E-filing registry for this docket.

/s/ Jeffrey G. Pearson