

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

TABLE OF CONTENTS

I. STATEMENT.....	1
II. DISCUSSION.....	3
A. Rules 3412 and 4412	4
III. ORDER.....	5
A. The Commission Orders That:	5

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 The proposed rules eliminate outdated sections, consolidate and clarify sections, specify data elements to be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

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

Doug Dean,
Director

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.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: August 11, 2016

Adopted Date: August 10, 2016

I. BY THE COMMISSION

A. 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.

B. Background

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, including Energy Outreach Colorado, the Colorado Energy Office, the Colorado Office of Consumer Counsel, the Colorado Department of Human Services, and all regulated gas and electric utilities submitted views and participated informally with Staff of the Public Utilities Commission on the proposals under consideration. Due to the experience gained over these four years, including input from industry and other stakeholders, the Commission proposes modification and improvements to the Low Income Rules through the attached rules.

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).

C. Discussion

5. The primary purpose of this rulemaking is to update the Low Income Rules and make these rules more effective and efficient. Through this NOPR, we propose 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.

6. Several sections of the Low Income Rules are outdated or obsolete. For example, we propose striking current Rule 3412(c)(II)(B), which established phase-in criteria, and current Rule 3412(h), which describes a “safe harbor option” for initial filings, because each of the regulated utilities has a well-established Low Income Program in place. In addition, the proposed rules also eliminate sections that specified the information each utility was to provide in its initial low income filings.⁴ Each utility has an active low income program in place; these sections addressing “initial” filings of the low income rules are no longer needed. We request participant comment on deletion of these sections.

7. We propose reorganization of the rules to make them more effective and efficient. The original rules promulgated in the Low Income Rulemaking Proceeding the Commission adopted a “safe harbor option” for utilities.⁵ In effect, this option identifies the requirements for establishing a phase in of the Low Income Program when it was initially begun. The proposed rules for consideration in this NOPR recognize that most of the utilities have implemented a plan

⁴ Current Rules 3412(d) and 4412(d).

⁵ Current Rule 3412(h).

based on the requirements laid out in existing Rule 3412(h). Therefore, while the proposed rules propose deleting Rule 3412(h), the majority of which is obsolete, we propose incorporating relevant sections of this rule into the revised structure of Rule 3412. The incorporation of relevant sections of this rule into the body of the revised rule is an example of the Commission's interest in this rulemaking to make the proposed rules more effective and efficient.

8. We propose revision in order to provide added transparency of the impact on “non-participants,” in addition to revisions to address processes for excess funding from “non-participants.” As defined in the Low Income Rules, “non-participants” are utility customers who do not receive low-income assistance through a Low Income Program.⁶ Each of the Low Income Programs are primarily funded by charging all Residential class non-participants a low income rate stated in the utility's tariff, which is limited to a maximum monthly impact on non-participants of up to 31.5 cents.⁷ The Commission has reviewed the annual reports filed by the utilities and notes that several utilities report recovery in excess of Low Income Program costs.⁸ Through the proposed rules, the Commission suggests updates to better ensure transparency of the Low Income Program on the charges and impact on non-participants.⁹ In addition, the proposed rules specify a process to resolve current over collection, and potential future over and under collections.¹⁰

⁶ Current Rule 3412(b)(II).

⁷ Public Service of Colorado (Public Service) does not state a specific rate in its tariff for each rate class to fund the low income plan; however a review of Public Service's approved tariff sheets (34D for gas and 99D for electric) state the amount of funding for low income assistance is included in the Service and Facility Charge for each rate schedule. The proposed rules require a stated rate for recovery of program costs for each rate class. *See* Proposed Rules 3412(g)(II)(C) and 4412(g)(II)(C).

⁸ Proceeding No. 16M-0327EG. The Commission notes that many utilities have reduced their rates to zero in recognition of the over funding condition.

⁹ *See, e.g.*, Proposed Rule 3412(f) and 4412(f).

¹⁰ Proposed Rules 3412(g)(II)(D) and 4412(g)(II)(D).

9. In Decision C16-0185, Proceeding No. 15R-0699E, in addition to other revisions to the Commission's rules regulating electric utilities contained in 4 CCR 723-3,¹¹ the Commission made minor revisions to Rule 3412. These revisions included updates for clarity regarding the Low Income Program, in addition to consistency with recent revisions to the Commission's rules of practice and procedure contained in 4 CCR 723-1. Through the proposed rules, we suggest further revision to more fully clarify the Commission's interest in having Low Income Programs effectively provide benefits to low income ratepayers. For example, for these purposes we revise Rule 3412(c), defining participant eligibility, and Rule 3412(d), clarifying the enrollment process.

10. We propose revisions to Rule 4412 for natural gas utilities to parallel the changes adopted to Rule 3412 in Proceeding No. 15R-0699E. Other proposed rule changes for Rule 4412 regulating natural gas utilities' Low Income Programs are intended to mirror applicable, proposed changes for Rule 3412 regulating electric utilities.

D. Conclusion

11. The statutory authority for the rules proposed here is found at §§ 24-4-101, *et seq.*, 40-1-101, *et seq.*, 40-2-108, 40-3-102, 40-3-103, 40-3-106, 40-4-101, and 40-4-108, C.R.S.

12. Prior to our issuance of this NOPR, consistent with § 24-4-103(2), C.R.S., representative groups of participants with an interest in the subject matter of this rulemaking were established, submitted views, and participated informally on the proposals

¹¹ Through Proceeding No. 15R-0699E, the Commission revised its rules regulating electric utilities contained in 4 CCR 723-3, consistent with Senate Bills (SB) 15-046 and 15-254 and House Bills (HB) 15-1284 and 15-1377, which modified the renewable energy statute, § 40-2-124, C.R.S., and the statute authorizing community solar gardens, § 40-2-127, C.R.S. The Commission also updated the low income rules, references to federal rules, and procedures for testing services meters upon a customer's request, in addition to updates consistent with recent changes to the rules of practice and procedure.

under consideration. These participants are included on the list of persons who receive notification of the NOPR.

13. The proposed changes to the Electric Rules are set forth in legislative (i.e., ~~strikeout~~ and underline) format (Attachment A) and final format (Attachment B). Changes to the Gas Rules are also set forth in legislative format (Attachment C) and final format (Attachment D). These attachments are available through the Commission's Electronic Filings (E-Filings) system at:

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

14. This matter is referred to an Administrative Law Judge (ALJ) for the issuance of a recommended decision.

15. The ALJ will conduct a hearing on the proposed rules and related issues on September 19, 2016. Interested persons may submit written comments on the rules and present these orally at hearing, unless the ALJ deems oral presentation unnecessary.

16. We encourage interested persons to recommend rule revisions to the Electric Rules and Gas Rules relevant to Low Income Programs, including, but not limited to, the specific revisions discussed above. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons file comments before the hearing, the Commission requests that initial comments be filed no later than August 29, 2016. The Commission further requests that comments responsive to initial comments be submitted no later than September 12, 2016. The Commission prefers that comments be filed in this Proceeding No. 16R-0607EG using its E-Filing System at:

<http://www.dora.state.co.us/pls/efi/EFI.homepage>.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking, and Attachments A and C shall be filed with the Colorado Secretary of State for publication in the August 25, 2016, edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

3. A hearing on the proposed rules and related matters shall be held as follows:

DATE: September 19, 2016

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

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Commission deems oral comments unnecessary.

4. Interested persons may file written comments in this matter before hearing.

5. The Commission requests that initial pre-filed comments be submitted no later than August 29, 2016, and that any pre-filed comments responsive to the initial comments be submitted no later September 12 2016. The Commission will consider all submissions, whether oral or written. The Commission prefers that comments be filed in this Proceeding No. 16R-0607EG using its E-Filing System at <http://www.dora.state.co.us/pls/efi/EFI.homepage>.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 10, 2016.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

GLENN A. VAAD

FRANCES J. KONCILJA

Commissioners