

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 21R-0326EG

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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.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
CONOR F. FARLEY  
ADOPTING RULES**

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Mailed Date: June 1, 2022

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**I. STATEMENT**

**A. Background**

1. On July 15, 2021, the Commission issued Decision No. C21-0408, which was the Notice of Proposed Rulemaking (NOPR) that initiated this proceeding. Decision

No. C21-0408 proposed updates to the rules governing low-income programs offered by electric and natural gas utilities.<sup>1</sup> Decision No. C21-0408 established deadlines for comments and response comments of August 6 and 13, 2021, respectively, and scheduled a public comment hearing to be held on August 23, 2021. This proceeding has been referred to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

2. On August 6, 2021, the Colorado Energy Office (CEO), Energy Outreach Colorado (EOC), Black Hills Energy (Black Hills), and Atmos Energy Corporation (Atmos) filed comments. On August 13, 2021, Black Hills, Public Service Company of Colorado (Public Service), and Colorado Natural Gas, Inc. (CNG) filed responsive comments. In their comments, CEO and EOC addressed, among other things, compliance with Senate Bill (SB) 21-272, now codified at § 40-2-108(3)(c)(II), C.R.S., which requires the Commission to identify “disproportionately impacted communities” and host “informational meetings workshops, and hearings that invite input from” those communities “[w]hen making decisions relating to retail customer programs.”

3. On August 11, 2021, a cost-benefit analysis issued in response to the request for such an analysis submitted by State Senator Rankin was filed by Staff of the Colorado Public Utilities Commission (Staff).

4. On August 23, 2021, the remote public comment hearing took place. The ALJ and the participants discussed § 40-2-108(3)(c)(II), C.R.S., related statutory provisions, whether they applied to this proceeding, and, if so, how to comply with their requirements. At the end of

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<sup>1</sup> 4 *Code of Colorado Regulations* (CCR) 723-3-3412 (Rules Regulating Electric Utilities) and 723-4-4412 (Rules Regulating Gas Utilities).

the discussion, the ALJ posed several questions for the participants to answer in written comments, and continued the remote public comment hearing to September 27, 2021 at 9:00 a.m.

5. On September 7, 2021, the ALJ issued Decision No. R21-0550-I that memorialized the date and time of the continued remote public comment hearing and the questions addressing § 40-2-108(3)(c)(II), C.R.S., and related statutory provisions regarding which participants in the proceeding were requested to provide written comments, and established deadlines of September 13 and 20, 2021 for further written comments and response comments addressing the questions posed in the decision.

6. The Colorado Department of Public Health and Environment, CEO, CNG, EOC, Public Service, GRID Alternatives and Vote Solar, and the Office of the Utility Consumer Advocate (UCA) filed comments addressing the questions posed in Decision No. R21-0550-I.

7. The first continued remote public comment hearing took place on September 27, 2021. The ALJ and participants discussed a proposal for complying with § 40-2-108(3)(c)(II), C.R.S., and a schedule for doing so, and a stakeholder process involving the participants in this proceeding, including the regulated utilities, EOC, CEO, Staff, and UCA, that would create the forms of notice that comply with § 40-2-108(3)(c)(II), C.R.S., to be used in this proceeding. The ALJ established October 15, 2021 as the deadline for a status report from the stakeholder group and continued the remote public comment hearing until October 19, 2021 at 9:00 a.m.

8. Decision No. R21-0619-I, which issued on October 5, 2021, memorialized the foregoing decisions from the September 27, 2021 continued public comment hearing. The ALJ also concluded that the proposal discussed at the September 27, 2021 first continued remote public comment hearing complied with § 40-2-108(3)(c)(II), C.R.S., “to the extent reasonably possible” under the current circumstances.

9. On October 15, 2021, the Status Report from the stakeholder group was filed together with samples of on-bill messages concerning this rulemaking that the utilities proposed to include with the bills provided to their customers.

10. At the second continued remote public comment hearing that took place on October 19, 2021, the participants discussed four primary topics. First, the ALJ and the participants discussed how the message proposed by the stakeholders would be included with the utilities' bills and the utilities agreed that an on-bill message is the least expensive way of including the message with their bills. Second, the ALJ asked the utilities other than Public Service, whether they could include additional language proposed by Public Service, which is underlined in the following: "Colorado's rules on payment help for low-income customers are changing. You can help regulators shape them—get involved, share your comments and learn about energy payment assistance programs at [puc.colorado.gov/LIprograms](http://puc.colorado.gov/LIprograms). We are also here to help if you need assistance paying your bill. Find more resources at [xcelenergy.com/energyassistance](http://xcelenergy.com/energyassistance)."<sup>2</sup> Because representatives of the other utilities did not have certain knowledge of their on-bill messaging space limitations, the ALJ requested the utilities to provide additional comments by October 25, 2021 clarifying whether they could add the underlined language to their messages. Third, UCA and CEO repeated their request for the utilities to send the message discussed above by email to their customers (in addition to including the message on their bills). To aid the Commission in deciding whether to request the utilities to do so, UCA further requested that the utilities identify the total number of emails sent

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<sup>2</sup> Public Service's Mock Bill submitted with Status Update of Stakeholder Process filed on October 15, 2021 at 1 (emphasis added).

to customers so far in 2021 and the percentage of those emails that serve regulatory versus marketing purposes. The ALJ requested that the utilities provide the requested information by October 25, 2021. Finally, EOC stated that it would provide “information to its agency partners with the intent of spreading the word to energy assistance participants” of this proceeding and the need for participation therein by members of disproportionately impacted communities.

11. On October 22, 2021, the ALJ issued Decision No. R21-0659-I that memorialized the requests for information made at the second continued hearing and further continued the remote public comment hearing to December 21, 2021.

12. On October 25, 2021, the utilities filed their comments providing answers to the questions posed, and the information requested, at the October 19, 2021 second continued remote public comment hearing.

13. On November 1, 2021, the ALJ issued Decision No. R21-0683-I that requested the participating utilities to provide the notice developed by the stakeholder group (including the clause developed by Public Service) by on-bill message sent to each of their customers to be received sufficiently in advance of the third continued remote public comment hearing on December 21, 2021 to provide the opportunity for the recipients to participate in the third continued remote public comment hearing. The Decision also denied a request by UCA to require the utilities to email to their customers, the notice developed by the stakeholders group, and concluded again that the plan outlined in Decision No. R21-0619-I (which did not include email notification) complied with § 40-2-108(3)(c)(II), C.R.S., “to the extent reasonably possible” under the current circumstances.

14. On December 28, 2021, the ALJ issued Decision No. R21-0828-I that scheduled the fourth continued remote public comment hearing for February 4, 2022 from 4:00 to 7:00 p.m. Decision No. R21-0828-I also requested written comment on five issues that arose during the November 1, 2021 third continued remote public comment hearing: (a) whether a definition of levelized budget billing should be incorporated into Rules 3412(b)/4412(b) and, if so, what the definition should be; (b) whether language should be incorporated into Rules 3412(c)/4412(c) specifying that the utilities can/will rely on third-parties (such as CEO and EOC) to determine ratepayer eligibility for utilities' energy assistance programs; (c) whether language should be added to Rules 3412(e)(VI)/4412(e)(VI) to specify the conditions in which a regulated utility would be permitted not to allow ratepayers to opt out of the levelized budget billing program as a condition of participating in that utility's "affordable percentage of income payment plan;" (d) whether language should be added to Rules 3412(j)/4412(j) to specify that, in addition to "low-income stakeholders," regulated utilities will also conduct annual meetings with participants "for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders"; and (e) whether Rules 3412(l)/4412(l) should require the utilities to file "one report for participant accounts that use electricity as the primary heating fuel and a separate report for participant accounts that use a different primary heating fuel."<sup>3</sup> Decision No. R22-0828-I established deadlines of January 14, 2022 and January 21, 2022 as the deadline for initial and response comments on those issues.

15. The fourth continued remote public comment hearing took place on February 4, 2022 as noticed. Participants provided additional comment regarding the issues described in Decision No. R22-0828-I and other issues relevant to the rulemaking. At the conclusion, the ALJ

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<sup>3</sup> Decision No. R21-0828-I at 2-3 (¶ 5).

adjourned the hearing and instructed the participants that a Recommended Decision would be forthcoming.

16. On March 1, 2022, CEO filed a Notice of Informational Filing that attached a report released by CEO in February 2022 entitled “Pathways to Energy Affordability in Colorado.”

## **II. DISCUSSION**

### **A. Introduction**

17. In rendering this Decision, the ALJ has carefully reviewed and considered all the comments filed in this Proceeding and provided at the public comment hearing, even if this Decision does not specifically address every comment made, or every nuance of each comment.

### **B. Analysis**

#### **1. Rules 3412/4412 and 3412(a)/4412(a) – Title and Naming Convention**

18. Rules 3412(a)/4412(a) address the scope and applicability of Rules 3412/4412.

##### **a. Comments**

19. CEO recommends changing the title of Rules 3412/4412 from “Service Low-Income Program” to “Service Affordability Program” and that all regulated utilities use the same name convention for assistance programs, namely “[Utility name] Affordability Program.” CEO states that this recommendation was included in the report of the triennial evaluation of utility affordability programs conducted pursuant to Rules 3412(k) and 4412(k). According to

CEO, these changes would “[help] promote recognition and would facilitate state-wide awareness efforts of the benefit.”<sup>4</sup> The changes proposed by CEO are as follows:<sup>5</sup>

3412. Electric Service ~~Low Income~~Affordability Program.

(a) Scope and applicability.

- (I) Electric utilities with Colorado retail customers shall provide low-income energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential low-income customers, as permitted by § 40-3-106, C.R.S. Electric utilities shall use consistent naming for assistance programs: [Utility name] Affordability Program.<sup>6</sup>

20. Black Hills was concerned that the naming convention proposed by CEO in Rule 3412(a)(I) would require Black Hills to rebrand its low-income program, which “has been marketed successfully as the Black Hills Energy Assistance Program (“BHEAP”).”<sup>7</sup> At the December 21, 2021 continued remote hearing, Black Hills clarified that it was willing to change “Assistance” to “Affordability” in the name of its BHEAP program, but that it wanted to ensure that it could continue to use “Black Hills Energy” rather than its full legal name in the name of the program. CEO agreed that some level of flexibility in naming these programs is appropriate, but that consistency as to inclusion of “Affordability Programs” in the naming of these programs is the goal of this proposed rule change.

**b. Analysis**

21. The ALJ will recommend adoption of the changes proposed by CEO with the understanding that there is some flexibility in the use of the utility name in the naming

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<sup>4</sup> CEO 8/6/2021 Comments at 9 (quoting from Triennial Evaluation Report attached as CEO-4).

<sup>5</sup> Additions are shown with underlining and deletions are shown in strikethrough. Changes proposed by participants are shown in blue and changes proposed by the Commission are shown in red.

<sup>6</sup> CEO’s 8/6/2021 Comments, Attach. CEO-2 at 1.

<sup>7</sup> Black Hills’ 8/13/2021 Comments at 1-2.

convention included in Rules 3412(a)(I) and 4412(a)(I). The programs covered by these rules should be referred to as “Affordability Programs.”

## 2. Rules 3412(b)/4412(b) – Definition of “Levelized Budget Billing”

22. The current rules do not contain a definition of “levelized budget billing,” which is a “payment plan that provides customers with an average, consistent monthly utility bill that avoids seasonal fluctuations or sharp variations in utility bills.”<sup>8</sup>

### a. Comments

23. CEO recommends that a definition of “levelized budget billing” be adopted to ensure that all utilities employ the same approach to that assistance program. According to CEO, the triennial evaluation: (a) noted that levelized budget billing has been “calculated differently across utilities, using either a rolling 11-month calculation to level monthly bill amounts, a 12-month estimate of the average bill with adjustments, or a 12-month average to fix the billing amount”;<sup>9</sup> and (b) recommended “the development of a consistent means of amortizing differences between amounts paid through levelized budget billing and total energy costs.”<sup>10</sup> As to the latter, the triennial evaluation recommended “either using a rolling calculation to smooth out monthly costs or amortizing the difference between fixed paid amounts and owed costs to prevent customers receiving a potentially large additional charge to reconcile payments and costs.”<sup>11</sup> CEO did not propose a definition for levelized budget billing that solves the issues noted in the triennial evaluation.

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<sup>8</sup> CEO’s 8/6/2021 Comments at 12.

<sup>9</sup> *Id.* (quoting from *id.*, Attach. CEO-4 at 12).

<sup>10</sup> *Id.* (quoting from *id.*, Attach. CEO-4 at 12).

<sup>11</sup> *Id.*

24. Black Hills proposes the following definition for levelized budget billing:

“Levelized budget billing” means a billing amount that is fixed or averaged, each month, which amount is subject to the terms and conditions in each utility’s approved tariff pursuant to Rule 3404(a)/4404(a).<sup>12</sup>

Black Hills notes that the utilities are required to include their levelized budget billing plans in tariffs filed with, and approved by, the Commission. According to Black Hills, this process has resulted in differences between the utilities’: (a) “calculation method for the levelized budget billing amount;” and (b) “true-up method for actual balances.”<sup>13</sup> Black Hills’ proposed definition does not seek to make consistent, the calculation or true-up methods between utilities, but merely to make clear that the utilities must follow the methods stated in their tariffs.

25. Public Service proposes the following definition:

Averaged Monthly Payment Plan is a plan in which customers pay an agreed upon fixed amount each month, which helps them average their energy costs over a 12-month period.<sup>14</sup>

Public Service provides a definition for “Averaged Monthly Payment Plan,” rather than “Levelized Budget Billing,” because the former is the name of its plan. Public Service “has no position on whether a definition of levelized budget billing should be included in Rules 3412/4412,” but if one is, it proposes that its language be used.<sup>15</sup>

26. CNG states that it is “is not aware of issues caused by a lack of a common definition impacting its customers.”<sup>16</sup> CNG does not, however, generally oppose a definition of

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<sup>12</sup> Black Hills’ 1/14/2022 Comments at 1-2.

<sup>13</sup> *Id.*

<sup>14</sup> Public Service’s 1/14/2022 Comments at 3.

<sup>15</sup> *Id.*

<sup>16</sup> CNG’s 1/14/2022 Comments at 2.

levelized budget billing.<sup>17</sup> CNG did not express any support or opposition to the definitions proposed by Black Hills and Public Service.

**b. Analysis**

27. The ALJ will not recommend adoption of a definition for “levelized budget billing” in the rules. As Black Hills notes, Rules 3404(b)/4404(b) state that “[i]n its tariffs, a utility shall have . . . a budget or level- payment plan” “available for its customers.”<sup>18</sup> As a result, any differences between the levelized budget billing plans of the utilities should be contained in their tariffs, which were reviewed and approved by the Commission. In addition, as CNG notes, no problem resulting from the differences in the utilities’ levelized budget billing plans have been identified that would be solved by a definition incorporated into the rules effectively requiring the utilities to make changes to their plans to make them more consistent. Under these circumstances, the ALJ will not recommend that the Commission adopt a definition for “levelized budget billing.”

**3. Rules 3412(b)/4412(b) – Definition of “EOC” and “EOC Participant”**

**a. Comments**

28. The existing rules do not contain a definition of “EOC” or “EOC Participant.” Public Service recommends adding such definitions as follows:

“EOC” means Energy Outreach Colorado, a non-for profit that leads a network of industry, state and local partners to support, stabilize and sustain Coloradans to afford their energy needs.

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<sup>17</sup> *Id.*

<sup>18</sup> 4 CCR 723-3, 723-4.

“EOC Participant” means a utility customer who at the time of applying to participate in the program has been determined to be eligible for EOC’s utility bill payment assistance benefits by EOC.<sup>19</sup>

Public Service asserts that the addition of these definitions will clarify the rules.

29. EOC does not contest the definition of “EOC” proposed by Public Service. However, EOC recommends making the following changes to the definition of “EOC Participant”:

“EOC Participant” means a utility customer who at the time of applying to participate in the program has been determined to be income-eligible ~~for EOC’s utility bill payment assistance benefits~~ by EOC.

As support, EOC states: “Under EOC’s proposal, an EOC participant could come in from other types of programs such as Community Solar Gardens or Transportation Electrification. This proposed modification would comport with the demonstrable intention to expand PIPP program eligibility and not provide additional unneeded barriers to entry.”<sup>20</sup>

#### **b. Analysis**

30. The ALJ will not recommend adoption of a definition of either “EOC” or “EOC Participant.” EOC appears once in the revised rules (Rules 3412(k)(I)/4412(k)(I)) and EOC Participant does not appear. The ALJ finds and concludes that there is no ambiguity resulting from the inclusion of EOC’s name in the rules and thus a definition of that organization is not required.

#### **4. Rules 3412(b)(IX)/4412(b)(IX)**

31. The Commission proposed to eliminate in Rules 3412(b)(IX)/4412(b)(IX), the dates of the application period for the Low-Income Energy Assistance Program (LEAP), which is

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<sup>19</sup> Public Service’s 1/14/2022 Comments at 6.

<sup>20</sup> EOC’s 1/21/2022 Comments at 4.

a county-run, federally-funded program supervised by the Colorado Department of Human Services (DHS), as follows:

“LEAP participant” means a utility customer who at the time of applying to participate in a program has been determined to be eligible for LEAP benefits by the Department during either: (1) the Department’s current ~~six-month (November 1—April 30)~~ LEAP application period, if that period is open at the time the customer applies for program participation; or, (2) the Department’s most recently closed ~~six-month (November 1—April 30)~~ LEAP application period, if that period is closed at the time the customer applies to participate in the program and the Department’s next ~~six-month (November 1—April 30)~~ LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under part (2) of this definition, the utility customer must apply to the Department during the Department’s next ~~six-month (November 1—April 30)~~ LEAP benefit application period and be determined eligible for such benefits.

The basis for the proposed changes is that, while the LEAP application period typically runs from November 1 to April 30 of each year, the period has been extended in the past. Moreover, while the DHS has chosen to provide LEAP benefits during the heating season, which is typically from November 1 to April 30 of each year, there is nothing preventing LEAP benefits to be provided year-round (*i.e.*, for both the heating and cooling seasons).

**a. Comments**

32. Public Service stated that “eliminating the timeframe of the LEAP application period from the definition of the LEAP participant in the rules could be confusing to customers. In addition, the Company believes the LEAP enrollment timeframe remains November 1 through April 30 as stated on LEAP’s website.”<sup>21</sup> However, both Public Service and EOC stated at the Third Continued Public Comment Hearing on December 21, 2021, that the LEAP season, and

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<sup>21</sup> Public Service’s 12/16/2021 Comments at 2.

thus the period during which LEAP processes applications, has been extended beyond April 30 on at least one occasion in the last few years. In addition, EOC and CEO both raised the possibility that their offices would perform income-qualification for the LEAP program at least during the May 1 to October 31 period when the LEAP office is typically not processing applications, in conjunction with income qualification processes performed by EOC and CEO for other utility programs. Both EOC and CEO thus support the changes to Rules 3412(b)(IX)/4412(b)(IX) proposed in the NOPR.

**b. Analysis**

33. The ALJ will recommend adoption of the changes to Rules 3412(b)(IX)/4412(b)(IX) proposed in the NOPR. The ALJ concludes that the risk of confusion identified by Public Service is low. In fact, there is a more substantial risk of confusion resulting from including a specified application period (November 1 to April 30) when income qualification for LEAP purposes could extend, and in fact has extended in the past, outside of that period. Accordingly, the changes proposed to Rules 3412(b)(IX)/4412(b)(IX) in the NOPR will be maintained.

**5. Rules 3412(c)/4412(c)**

34. In the NOPR, the Commission proposed to make the following changes to Rules 3412(c)/4412(c):

- (c) Participant eligibility. Eligible participants are limited to those with a household income at or below 185 percent of the current federal poverty level ~~and~~ or who otherwise meet the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.
  - (I) The utility ~~shall~~ may obtain household income information from LEAP.

- (II) If a participant's household income is \$0, the utility may establish a process that verifies income on a more frequent basis.
- (III) Program participants shall not be required to make payment on their utility account as a condition of entering into the program.

35. The eligibility criteria in Rules 3412(c)/4412(c) are taken from the definition of "low-income utility customers" in § 40-3-106(1)(d)(I), C.R.S., which applies to any "rate, charge, service, classification, or facility of a gas or electric utility that makes or grants a reasonable preference or advantage to low-income customers." House Bill (HB) 21-1105, which was signed into law by Governor Polis on July 7, 2021, made modifications to the eligibility criteria for low-income programs under § 40-3-106(1)(d), C.R.S. Specifically, HB 1105 made the following changes to § 40-3-106(1)(d)(II), C.R.S., as follows:

- (II) As used in this subsection (1)(d), a "low-income utility customer" means a utility customer who:
  - (A) Has a household income at or below one hundred eighty-five percent of the current federal poverty line; ~~and~~  
or
  - (B) Otherwise meets the income eligibility criteria set forth in rules of the department of human services adopted pursuant to section 40-8.5-105.

The changes to Rules 3412(c)/4412(c) thus were designed to incorporate the changes made to § 40-3-106(1)(d)(II)(A), C.R.S., by HB 1105.

**a. Comments**

36. CEO and EOC propose to incorporate into Rules 3412(c)/4412(c) the definition of "low income" from § 40-2-108(3)(d)(III), C.R.S., which states:

- (III) "Low income" means meeting one or more of the following criteria:
  - (A) Median household income less than or equal to two hundred percent of the federal poverty guideline;

- (B) Median household income less than or equal to eighty percent of the area median income; or
- (C) Qualification under income guidelines adopted by the department of human services pursuant to section 40-8.5-105.

CEO and EOC thus propose to make the following changes to Rules 3412(c)/4412(c) (with the Commission's proposed changes shown in redline and the changes proposed by CEO and EOC shown in blue line):

- (I) Participant eligibility. Eligible participants are limited to those with a household income at or below 185 percent of the current federal poverty level or who otherwise meet the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S. who meet one or more of the following criteria:
  - (A) Median household income less than or equal to two hundred percent of the federal poverty guideline;
  - (B) Median household income less than or equal to eighty percent of the area median income; or
  - (C) Qualification under income guidelines adopted by the department of human services pursuant to section 40-8.5-105.
- (II) The utility ~~shall~~ may obtain household income information from LEAP.
- (III) If a participant's household income is \$0, the utility may establish a process that verifies income on a more frequent basis.
- (IV) Program participants shall not be required to make payment on their utility account as a condition of entering into the program.<sup>22</sup>

CEO requested that the Commission make the foregoing changes in an emergency rulemaking and then open “a subsequent rulemaking on Rules 3412 and 4412 and a rulemaking to comply with SB 21-272 can revisit affordability program eligibility criteria under Rules 3412(c) and 4412(c).”<sup>23</sup>

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<sup>22</sup> CEO's 8/6/2021 Comments, Attach. CEO-2 at 2-3. See also EOC's 8/6/2021 Comments at 5.

<sup>23</sup> CEO's 8/6/2021 Comments at 11.

37. EOC also proposes to add to the introductory paragraph of Rules 3412(c)/4412(c) the qualification that the eligibility criteria are **income** eligibility criteria specified in HB 1105 as follows (with the Commission's proposed changes shown in redline and the EOC's proposed change shown in blue line):

Participant eligibility. Eligible participants are limited to those with a household income at or below 185 percent of the current federal poverty level ~~and or~~ who otherwise meet the income eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.<sup>24</sup>

38. CNG supports the proposal of CEO and EOC to incorporate into Rules 3412(c)/4412(c) the definition of "low income" from § 40-2-108(3)(d)(III), C.R.S.<sup>25</sup> Black Hills "does not oppose" the proposal.<sup>26</sup> Public Service states that it "prefers the language proposed by the Commission."<sup>27</sup>

39. All three utilities expressed concern about who would conduct the verification of ratepayer eligibility if the broader definition of "low-income" from § 40-2-108(3)(d)(III), C.R.S., is incorporated into Rules 3412(c)/4412(c). Currently, the LEAP office in the DHS determines participant eligibility and then informs the utilities of its determination. All three utilities stated that they do not currently have the resources or expertise to either collect the information necessary to conduct the participant eligibility analysis or to conduct the analysis if the information was provided to them. As a result, the utilities would be required to invest in the

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<sup>24</sup> EOC's 8/6/2021 Comments at 4.

<sup>25</sup> CNG 8/13/21 Comments at 3.

<sup>26</sup> Black Hills' 8/13/21 Comments at 2.

<sup>27</sup> Public Service's 8/13/21 Reply Comments at 4-5.

resources necessary to collect the information necessary to conduct the participant eligibility analysis and to conduct the analysis, which costs would likely be passed on to ratepayers.

40. All three utilities and EOC agree that the regulated utilities should not either collect the information necessary to conduct the participant eligibility analysis or conduct the analysis. As CNG stated,

[i]f the utility were to be responsible for determining whether ratepayers qualify [for low-income programs] it would necessitate, at a minimum, solicitation of financial information from all customers, and it is likely that this would need to be done on a non-discriminatory basis. Many customers may reasonably consider such information as privileged and confidential and be reluctant to provide the necessary information. It is important that the utility maintain trusting relationships with its customers and not be perceived as intruding.<sup>28</sup>

CNG thus “supports language that would specify the entities that utilities should rely on to determine whether ratepayers qualify for low-income programs.”<sup>29</sup> CNG does not, however, support requiring the utilities to make the eligibility determination.

41. Similarly, Black Hills stated that requiring a utility to make the eligibility determination and then either offer one or more recommendations for assistance programs to a ratepayer, or inform the ratepayer that he/she does not qualify for assistance “may give rise to unnecessary and potentially difficult controversies and arguments with customers.”<sup>30</sup> Black Hills proposes that Rules 3412(c)/4412(c) be amended as follows:

The utility shall obtain household income information from LEAP, [Energy Outreach Colorado](#), [the Colorado Energy Office](#), or [other qualified providers](#).

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<sup>28</sup> CNG’s 1/14/2022 Comments at 3.

<sup>29</sup> *Id.* at 2.

<sup>30</sup> Black Hills’ 1/14/2022 Comments at 2.

Public Service recommended similar language that leaves out CEO:

The utility may obtain household income from LEAP, [EOC or other third-party that may do verification in the future.](#)

42. CEO recommends adopting language that permits utilities either to determine eligibility themselves, or to rely on third parties to make that determination.<sup>31</sup> CEO stated that specific organizations should not be identified in the rules as conducting eligibility determinations. CEO believes that refraining from doing so will provide utilities with maximum flexibility.<sup>32</sup>

43. Finally, Public Service argues that ratepayers “referred to the utility energy assistance programs by EOC should have a guarantee of funding from EOC that covers the same portion that LEAP covers.”<sup>33</sup> Public Service thus recommends a new subparagraph as follows:

[\(c\)\(I\)\(A\) LEAP and EOC will include a guarantee of funding as a condition of enrollment and verification of participation in the utility’s energy assistance program.](#)

Public Service states that it needs this funding from EOC to replace the funding that would be provided if the LEAP office makes the eligibility determination.

44. Black Hills supports Public Service’s proposal because it “is necessary to operate PIPP in a manner consistent with its historical practice and to mitigate cost shifts to Non-Participants to fund newly-eligible Participants.”<sup>34</sup> EOC does not support Public Service’s proposal, arguing that the Commission does not have jurisdiction over EOC and thus cannot require EOC to provide funding for a ratepayer that EOC determines is eligible for a utility’s

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<sup>31</sup> CEO’s 1/14/2022 Comments at 2.

<sup>32</sup> *Id.*

<sup>33</sup> Public Service’s 1/14/2022 Comments at 4.

<sup>34</sup> Black Hills’ 1/21/2022 Comments at 2.

energy assistance program.<sup>35</sup> EOC also states that requiring EOC to provide funding for any ratepayer who it determines is eligible for utility assistance would require EOC to change its rules, because EOC only provides funding to eliminate arrearages on a ratepayer's utility bill. Public Service's proposal would require EOC to provide such funding for an eligible ratepayer regardless of whether the ratepayer has an arrearage on its utility bill.

**b. HB 1018**

45. On April 21, 2022, HB 1018 went into effect. HB 1018 changed the definition of "low-income utility customer" (now referred to as "income qualified utility customer") in § 40-3-106(1)(d), C.R.S., to be consistent with the definition of "low income" in § 40-2-108(3)(d)(III), C.R.S. Section 40-3-106(1)(d)(II), C.R.S., now reads:

As used in this subsection (1)(d), an "income-qualified utility customer" means a utility customer who the department of human services, created in section 26-1-105; the organization defined in section 40-8.7-103 (4); or the Colorado energy office, created in section 24-38.5-101, has determined:

- (A) Has a household income at or below two hundred percent of the current federal poverty line;
- (B) Has a household income at or below eighty percent of the area median income, as published annually by the United States department of housing and urban development; or
- (C) Otherwise meets the income eligibility criteria set forth in rules of the department of human services adopted pursuant to section 40-8.5-105.

HB 1018 thus made the changes to § 40-3-106(1)(d), C.R.S. that CEO and EOC requested to be made to Rules 3412(c)/4412(c).

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<sup>35</sup> EOC's 1/21/2022 Comments at

**c. Analysis**

46. At the outset of this proceeding, the ALJ declined to incorporate the definition of “low income” from § 40-2-108(3)(d)(III), C.R.S., into Rules 3412(c)/4412(c), by emergency rulemaking or otherwise, as proposed by CEO and EOC. As explained at the September 27, 2021 first continued remote public comment hearing, the ALJ does not have the authority to issue emergency or temporary rules in a proceeding in which the initiating NOPR did not even reference them. The ALJ also concluded that it would not be efficient for the ALJ to issue an interim decision addressing whether the Commission should issue temporary rules to incorporate the definition of “low income” from § 40-2-108(3)(d)(III), C.R.S., into Rules 3412(c)/4412(c) and then certifying the decision to the Commission pursuant to Rule 1502(d) of the Commission’s Rules of Practice and Procedure, as requested by CEO.<sup>36</sup> Instead, the ALJ stated that it would be up to the participants to file a petition requesting the Commission to initiate a temporary or emergency rulemaking addressing this issue.

47. In addition, the ALJ did not agree that it would be appropriate to incorporate the definition of “low income” from § 40-2-108(3)(d)(III), C.R.S., into Rules 3412(c)/4412(c). Rules 3412(c)/4412(c) have used the definition of “low-income utility customer” from § 40-3-106(1)(d), C.R.S., which applies to any “rate, charge, service, classification, or facility of a gas or electric utility that makes or grants a reasonable preference or advantage to low-income customers.” Rules 3412 and 4412 are each entitled, in part, “Low-Income Program” and grant a “reasonable preference or advantage to low-income customers.”

48. In contrast, § 40-2-108(3)(b), C.R.S., directs the Commission to “promulgate rules requiring that the commission, in all of its work including its review of all filings and

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<sup>36</sup> 4 CCR 723-1.

its determination of all adjudications, consider how best to provide equity, minimize impacts, and prioritize benefits to disproportionately impacted communities and address historical inequalities.”<sup>37</sup> A “disproportionately impacted community” is then defined, in part, as “a census block group, as determined in accordance with the most recent United States census, where the proportion of households that are low income is greater than forty percent.”<sup>38</sup> And, “low income” is defined, “[a]s used in [] subsection (3)” of § 40-2-108, C.R.S., as a household that “meet[s] one or more of the following criteria:”

- (A) Median household income less than or equal to two hundred percent of the federal poverty guideline;
- (B) Median household income less than or equal to eighty percent of the area median income; or
- (C) Qualification under income guidelines adopted by the department of human services pursuant to section 40-8.5-105.<sup>39</sup>

49. Under these circumstances, it made sense to employ in Rules 3412(c)/4412(c) the definition of “low-income utility customers” from § 40-3-106(1)(d), C.R.S., rather than the definition of “low-income” from § 40-2-108(3)(d)(III), C.R.S. While § 40-2-108(3), C.R.S., addressed the considerations regarding disproportionately impacted communities the Commission must take into account in its rulemaking processes, § 40-3-106(1)(d), C.R.S., specifically addressed the types of low-income programs upon which Rules 3412(c)/4412(c) focus. In fact, employing the “low income” definition from § 40-2-108(3)(d)(III), C.R.S., in Rules 3412(c)/4412(c) would have rendered superfluous the definition in § 40-3-106(1)(d), C.R.S.

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<sup>37</sup> § 40-2-108(3)(b), C.R.S.

<sup>38</sup> § 40-2-108(3)(d)(II), C.R.S.

<sup>39</sup> § 40-2-108(3)(d)(III), C.R.S.

50. However, on April 21, 2022, HB 1018 went into effect. As explained above, HB 1018 changed the definition of “low-income utility customer” (now referred to as “income qualified utility customer”) in § 40-3-106(1)(d), C.R.S., to be consistent with the definition of “low income” in § 40-2-108(3)(d)(III), C.R.S.

51. Under these new circumstances, the ALJ finds and concludes that it is appropriate to incorporate into Rules 3412(c)/4412(c) the new definition of low-income adopted in § 40-3-106(1)(d)(II), C.R.S. In addition, Rules 3412(c)(II)/4412(c)(II) shall be revised to reflect that the DHS, CEO, and EOC will perform the income qualification for purposes of determining participant eligibility in the utilities’ low-income programs. The new Rules 3412(c)/4412(c) will read as follows:

- (I) Participant eligibility. Eligible participants are limited to those ~~with a household income at or below 185 percent of the current federal poverty level or who otherwise meet the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.~~ who meet one or more of the following criteria:
  - (A) Median household income less than or equal to two hundred percent of the federal poverty guideline;
  - (B) Median household income less than or equal to eighty percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or
  - (C) Qualification under income guidelines adopted by the Department of Human Services pursuant to section § 40-8.5-105, C.R.S.
- (II) The utility shall obtain ~~household income information~~ the determination of a participant’s eligibility from ~~LEAP~~ the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office.
- (III) If a participant's household income is \$0, the utility may establish a process that verifies income on a more frequent basis.

- (IV) Program participants shall not be required to make payment on their utility account as a condition of entering into the program.<sup>40</sup>

These changes are consistent with the current versions of §§ 40-2-108(3)(d)(III) and 40-3-106(1)(d), C.R.S., and the changes proposed by EOC, CEO, and Black Hills during this rulemaking.

52. The ALJ declines to adopt the request by Public Service to specify that any eligibility determination made by DHS, EOC, or CEO and provided to a utility will be accompanied by “a guarantee of funding.” The LEAP office within DHS has provided funding to a ratepayer’s utility when the LEAP office has determined that the ratepayer is eligible for LEAP assistance. The LEAP office’s funding is designed to cover the “unaffordable portion” of a ratepayer’s heating costs, as determined by the LEAP office. The utility’s energy assistance program has been used to provide financial support in addition to the support provided by LEAP.

53. As a result, if EOC and CEO do not provide the funding for the “unaffordable portion” of the utility bills of ratepayers they determine meet the eligibility requirements, the utilities’ funding for their LEAP programs will be impacted. While the ALJ understands and appreciates the concern of Public Service and Black Hills regarding this impact, the Commission does not have jurisdiction over EOC or CEO and thus cannot impose a funding requirement on those entities. Accordingly, the ALJ will not recommend adoption of Public Service’s request, which was supported by Black Hills, to require funding by the entity that determines a ratepayer’s eligibility for a utility’s assistance programs.

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<sup>40</sup> CEO’s 8/6/2021 Comments, Attach. CEO-2 at 2-3. *See also* EOC’s 8/6/2021 Comments at 5.

## 6. Rules 3412(e)(VI)/4412(e)(VI) – Levelized Billing Opt-Out

54. In the rules attached to the NOPR, the Commission proposed the following changes to Rules 3412(e)(VI)/4412(e)(VI):

Levelized budget billing participation. A utility ~~shall~~may enroll participants in its levelized budget billing program as a condition of participation in the program, though the utility shall also allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits. Should a participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility’s levelized budget billing tariff.

### a. Comments

55. Black Hills states that it does not currently have the capability in its automated billing system to accommodate a request from a ratepayer enrolled in Black Hills’ Percentage of Income Payment Plan (PIPP) to opt-out of levelized billing. Black Hills estimates that “[s]ignificant internal time, and perhaps third-party expense, would be incurred for both programming and testing” of its automated billing system to provide the levelized billing opt-out option.<sup>41</sup> Black Hills expressed concern that “cost recovery for [the programming and testing] could exceed the 10% cap on administrative costs allowed in the PIPP rules.”<sup>42</sup> Based on the foregoing, Black Hills proposes the following changes (with the Commission’s proposed changes shown in redline and Black Hills’ proposed changes shown in blue line).

Rule 3412(e)(VI) Levelized budget billing participation. A utility ~~shall~~may enroll participants in its levelized budget billing program as a condition of participation in the program, though the utility shall also allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits, which option shall be available to the participants where the utility’s automated billing system is capable. Utilities without automated billing systems capable of permitting opt out of levelized budget billing shall reasonably and prudently modify their

<sup>41</sup> Black Hills’ 8/6/2021 Comments at 2

<sup>42</sup> *Id.* at 2-3.

[systems to facilitate opt out of levelized budget billing](#). Should a participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.

56. CEO supports the changes proposed by the Commission, but also understands that programming the opt-out process into computerized billing systems “may be a complex process or require substantial changes.”<sup>43</sup> For this reason, “CEO recommends that the Commission could permit utilities up to one year to accommodate such changes if a utility expresses this need.”<sup>44</sup>

57. EOC “does not oppose” CEO’s proposal to give the utilities one year to make the changes necessary to accommodate a levelized billing opt-out request by ratepayers enrolled in the utilities’ PIPP program.<sup>45</sup> CNG does not oppose Black Hills’ language creating an exception for utilities who cannot accommodate opt-out requests due to their automated billing systems.<sup>46</sup>

#### **b. Analysis**

58. The ALJ finds that it is in the public interest to adopt the changes proposed by the Commission in the NOPR and the additional changes proposed by Black Hills. The ALJ understands that modification of Black Hills’ automated billing system to accommodate a PIPP participant’s request to opt-out of levelized budget billing could take time and financial resources. However, such an opt-out option is important and Black Hills thus should work towards including such functionality in its automated billing system. For this reason, the ALJ will add the following provision to Rules 3412(l)/4412(l):

(XVIV) a statement regarding whether the utility is accommodating PIPP participants’ requests to opt-out of levelized budget billing pursuant to Rule 3412(e)(VI)/4412(e)(VI) and, if not, an explanation of why the

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<sup>43</sup> CEO’s 1/14/2022 Comments at 3.

<sup>44</sup> *Id.*

<sup>45</sup> EOC’s 1/21/2022 Comments at 4.

<sup>46</sup> CNG’s 1/14/2022 Comments at 3-4.

utility believes it is not reasonable and prudent to modify its automated billing system to accommodate such requests. If the utility plans to accommodate such requests at any point in the upcoming year, a description of the plan, including the anticipated cost of the plan and the date that the functionality in its automated billing system will go online, must be included.

**7. Rules 3412(e)(IX)/4412(e)(IX) – Payment Default Provisions**

59. The Commission proposed the following changes to Rules 3412(e)(IX)/4412(e)(IX):

- (IX) Payment default provisions. Failure of a participant to make his or her monthly bill payments ~~will~~ may result in a utility placing the participant in its regular collection cycle. ~~Missed, partial~~ Partial or late payments shall not result in the removal of a participant from the program.

**a. Comments**

60. Atmos states that the deletion of “Missed” could lead to “confusion.” As support, Atmos states that

[f]unctionally, there is little difference between a “missed” payment of \$0.00 and a “partial” payment of \$0.01. However, the “partial” payment would prevent a customer from being removed from the program and the “missed” payment would not. Atmos Energy believes it would be better to continue to make it clear that “missed” payments do not result in the removal of a participant from the program.<sup>47</sup>

**b. Analysis**

61. The ALJ will not recommend adoption of Atmos’ suggestion and maintain the change proposed by the Commission in the NOPR.

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<sup>47</sup> Atmos’ 8/6/2021 Comments at 1.

**8. Rules 3412(j)/4412(j), 3412(l)/4412(l) – Annual Meetings with Participants/Stakeholders**

**a. Comments**

62. CEO proposes to add language to Rules 3412(j)/4412(j) as follows:

Stakeholder engagement. A utility shall conduct annual meetings with participants and low-income stakeholders for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders.<sup>48</sup>

Similarly, CEO proposes the following changes to Rules 3412(l)/4412(l):

Annual report. ~~No later than December 31, 2016, No later than December 31 of each year,~~ each utility shall file a report in the most recent miscellaneous proceeding for annual low income filings using the form available on the Commission’s website, ~~based on the seven month period April 1, 2016 through October 31, 2016, and then on November 30 each of the following years,~~ based on each 12-month period ending October 31, and containing the following information below.

....

(XIX) a description of participant and low-income stakeholder outreach efforts and key findings;<sup>49</sup>

CEO states that these changes are consistent with the “spirit of the requirements” in SB 21-272 (among others) for the Commission to promulgate rules that “consider how best to provide equity, minimize impacts, and prioritize benefits to disproportionately impacted communities.”<sup>50</sup> In later comments, CEO clarified that

it did not intend to recommend that utilities conduct joint stakeholder processes with affordability program participants and other low income stakeholder groups. In fact, CEO believes that outreach to these two groups require different communications, marketing collateral, and strategies. Knowing that utilities already engage with various low-income stakeholders, such as the informal Low-Income Rate Assistance Coalition, CEO’s recommendation is that utilities should also conduct routine engagement with affordability program participants, if they do not do so

<sup>48</sup> CEO’s 8/6/2021 Comments, Attach CEO-2 at 7.

<sup>49</sup> CEO’s 8/6/2021 Comments, Attach CEO-2 at 8,9.

<sup>50</sup> CEO’s 8/6/2021 Comments at 13 (citing § 40-2-108(3)(b), C.R.S., as amended by SB 21-272).

already. For example, routine engagement can include participant webinars, focus groups, or surveys. CEO also recommended that an overview of engagement with affordability program participants (conducted independent of other low-income stakeholder engagement) should be briefly summarized in annual reports pursuant to Rules 3412(l) and 4412(l).<sup>51</sup>

CEO also stated at the February 4, 2022 fifth continued public comment hearing that some utilities have been conducting webinars for participants and/or potential participants in affordability programs to explain the programs and what they provide to participants.

63. Black Hills takes no position with respect to CEO's proposed changes.<sup>52</sup> While Public Service agrees that "inviting participants to these stakeholder meetings is appropriate," it believes that specifying "participants" in the rule is unnecessary "as participants are also 'stakeholders.'"<sup>53</sup> Public Service also expresses concern regarding the logistics of holding such meetings given that Public Service "has over 30,000 customers enrolled in our energy assistance programs for the Company's Electric and Gas Affordability Programs."<sup>54</sup> Public Service thus suggests that, if the rule changes are adopted, it be permitted to place reasonable limitations on the number of participants/stakeholders who can participate in any meeting and record and then post the meetings on Public Service's website.<sup>55</sup>

64. CNG states that it has complied with the current rule by holding meetings with "low-income stakeholders."<sup>56</sup> However, CNG states that "[t]hese meetings have resulted in little to no attendance by stakeholders on multiple occasions."<sup>57</sup> CNG concludes that it "is not

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<sup>51</sup> CEO's 11/05/2021 Comments at 4 (footnotes omitted).

<sup>52</sup> Black Hills' 1/14/2022 Comments at 4.

<sup>53</sup> Public Service's 1/14/2022 Comments at 4.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 5.

<sup>56</sup> CNG's 1/14/2022 Comments at 4.

<sup>57</sup> *Id.*

opposed to continuing the annual meeting in the rule as written, inviting the participation of stakeholders at their option, but without expansion of the language or additional requirements.<sup>58</sup>

**b. Analysis**

65. The ALJ will not recommend adoption of the changes proposed by CEO to Rules 3412(j)/4412(j). The ALJ agrees with Public Service that “participants” fall reasonably within the broader category of “low-income stakeholders.” Thus, it is unnecessary to add “participants” to Rules 3412(j)/4412(j), particularly given the ambiguity of the proposed changes that required CEO’s clarification of its intent.

66. However, the ALJ will adopt a change to Rules 3412(l)/4412(l) based on the change proposed by CEO as follows:

Annual report. ~~No later than December 31, 2016, No later than December 31 of each year,~~ each utility shall file a report in the most recent miscellaneous proceeding for annual low income filings using the form available on the Commission’s website, ~~based on the seven-month period April 1, 2016 through October 31, 2016, and then on November 30 each of the following years,~~ based on each 12-month period ending October 31, and containing the following information below.

....

(XVIII) a description of participant outreach, education, and engagement efforts, including descriptions of communications and materials, and key findings from those efforts;

The ALJ finds and concludes that requiring such a description is worthwhile because it could inform any necessary improvements to such outreach efforts in the future.

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<sup>58</sup> *Id.*

## 9. Rules 3412(k)/4412(k) – Customer Needs Assessment

### a. Comments

67. CEO proposes to add to the triennial evaluation a customer needs assessment that would be based on a survey aimed at the general population of low-income ratepayers that would seek information concerning barriers to participation in LEAP and PIPP. The assessment would only be included if the then current funding from the \$0.0013 utility charge per customer for the triennial evaluation is sufficient to pay for such an analysis.<sup>59</sup> CEO thus proposes to add the following language to Rules 3412(k)(4412(k):

- (k) Program evaluation. A triennial evaluation of the program provisions under rule 3412 beginning in 2019 shall be undertaken in order to review best practices in similar low-income assistance programs in existence in other regulatory jurisdictions, as well as evaluate operation of each utility’s program for effectiveness in achieving optimum support being provided to low income participants. The evaluation shall also recommend modifications if available that improve the delivery of benefits to participants and increase the efficiency and effectiveness of each program as they exist at the point of evaluation. [The program evaluation shall include a customer needs assessment provided that adequate funds are available.](#)<sup>60</sup>

### b. Analysis

68. The ALJ finds and concludes that the addition by CEO is in the public interest. Accordingly, the customer needs assessment will be added to Rule 3412(k)/4412(k).

## 10. Rules 3412(l)/4412(l) – Dual PIPP Reporting by Heating Fuel Type

### a. Comments

69. CEO proposes to add to the reporting requirement in Rules 3412(l)/4412(l) for utilities to “file one report for participant accounts that use electricity as the primary heating fuel

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<sup>59</sup> CEO’s 11/5/2021 Comments at 5.

<sup>60</sup> CEO’s 8/6/2021 Comments, Attach CEO-2 at 7.

and a separate report for participant accounts that use a different primary heating fuel.”<sup>61</sup> As justification, CEO states:

For the electric program participants specifically, the Commission cannot currently distinguish how many participants have electric heat, as compared to customers with electric service and another heating fuel. Given that the Commission determines an affordable bill for these customers differently under Rule 3412(e)(I), CEO recommends that utilities should report this information separately. CEO believes that electric utilities have the ability to execute this separate reporting, either based on their internal data or LEAP data. Additionally, CEO recommends the Commission consider extending this requirement to gas utilities.<sup>62</sup>

70. In response, Black Hills, Public Service, and CNG state that they do not collect and/or track heating fuel type by customer.<sup>63</sup> Public Service agrees that this information is included in the reports provided to it by the LEAP office. Public Service “suggests that CEO request and receive this data directly from LEAP.”<sup>64</sup>

### **b. Analysis**

71. The ALJ will not recommend CEO’s change to Rules 3412(l)/4412(l) noted above. As none of the utilities that participated in this rulemaking collect information for heating fuel type by customer, there is no point in requiring them to report this information.

## **11. Rules 3412(l)/4412(l) – CEO’s Other Proposed Changes**

### **a. Comments**

72. CEO proposes the following changes to Rules 3412(l)/4412(l):

- (l) Annual report. ~~No later than December 31, 2016, No later than December 31 of each year~~, each utility shall file a report in the most recent miscellaneous proceeding for annual low income

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<sup>61</sup> *Id.* at 8.

<sup>62</sup> CEO’s 8/6/21 Comments at 16.

<sup>63</sup> Black Hills’ 1/14/2022 Comments at 4; Public Service’s 1/14/2022 Comments at 5; CNG’s 1/14/2022 Comments at 5.

<sup>64</sup> Public Service’s 1/14/2022 Comments at 5.

filings using the form available on the Commission’s website, ~~based on the seven-month period April 1, 2016 through October 31, 2016, and then on November 30 each of the following years,~~ based on each 12-month period ending October 31, and containing the following information [below](#).

(I) monthly information on the program including [total](#) number of participants, amount of benefit disbursement, type of benefit disbursement, LEAP benefits applied to the unaffordable portion of participant’s bills, administrative costs, and revenue collection;

....

(XIV) [the total dollar value of participant arrearages forgiven, the number of customers who had arrearage balances forgiven, and the maximum and minimum dollar value of arrears forgiven;](#)

(XV) a description of the ways in which the program is being integrated with existing energy efficiency, ~~of DSM,~~ [or behavioral](#) programs offered by the utility;

....

(XVIII) [a description of participant outreach, education, and engagement efforts, including descriptions of communications and materials;](#)

....

(XX) the number of participants at the start of the program year that the utility removed for any reason, [the number of participants who opted out of the program after enrollment,](#) the number of potential participants rejected because of the existence of a cap on the program, the period of arrearage time from date participants became eligible and were granted arrearage forgiveness, and the number of participants who came back as eligible participants in the program year after being eligible in a prior program year and were provided arrearage credits in the program year; and<sup>65</sup>

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<sup>65</sup> CEO’s 8/6/2021 Comments, Attach CEO-2 at 9.

**b. Analysis**

73. The ALJ finds and concludes that the additions by CEO are in the public interest and thus will recommend they be adopted. As noted above, the ALJ has recommended an addition to the language proposed by CEO at Rules 3412(1)(XVIII)/4412(1)(XVIII).

**12. Remaining Commission-Proposed Changes**

74. The ALJ finds and concludes that the remaining changes proposed by the Commission are in the public interest and thus will be adopted. The ALJ has extended the dates proposed by the Commission in Rules 3412(m)/4412(m) by one year in light of the effective dates of these rules.

75. Pursuant to the provisions of § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

**III. ORDER****A. The Commission Orders That:**

1. The Rules Regulating Electric Utilities attached to this Recommended Decision are adopted.

2. The rules in redline legislative format (showing changes to current rules) are attached to this Recommended Decision as Attachments A (electric) and C (gas). The rules in final format are attached to this Recommended Decision as Attachments B (electric) and D (gas). They are also available in the Commission's E-Filings system at:

[https://www.dora.state.co.us/pls/efi/EFI.Show\\_Docket?p\\_session\\_id=&p\\_docket\\_id=21R-0326EG](https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0326EG)

3. 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.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be made available to all parties in the proceeding, who may file exceptions to it.

a) 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.

b) 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.

5. 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

CONOR F. FARLEY

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-3

#### PART 3 RULES REGULATING ELECTRIC UTILITIES

\* \* \* \*

[indicates omission of unaffected rules]

**3412. Electric Service ~~Affordability~~Low-Income Program.**

(a) Scope and applicability.

- (I) Electric utilities with Colorado retail customers shall provide low-income energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential low-income customers, as permitted by § 40-3-106, C.R.S. Electric utilities shall use consistent naming for assistance programs: [Utility name] Affordability Program.
- (II) Rule 3412 is applicable to investor-owned electric utilities subject to rate regulation by the Commission.

(b) Definitions. The following definitions apply only in the context of rule 3412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (I) “Administrative cost” means the utility’s direct cost for labor (to include the cost of benefit loadings), materials, and other verifiable expenditures directly related to the administration and operation of the program not to exceed ten percent of the total cost of program credits applied against bills for current usage and pre-existing arrearages or \$10,000, whichever amount is greater.
- (II) “Affordable percentage of income payment” means the amount of the participant’s annual bill deemed affordable under subparagraph 3412(e)(I).
- (III) “Arrearage” means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.
- (IV) “Colorado Energy Office” means the Colorado Energy Office created in § 24-38.5-101, C.R.S.
- (V) “Eligible low-income customer” means a residential utility customer who meets the household income thresholds pursuant to paragraph 3412(c).

- (VI) “Fixed credit” means an annual bill credit established at the beginning of a participant’s participation in a program each year delivered as a monthly credit on each participant’s bill. The fixed credit is the participant’s full annual bill minus the participant’s affordable percentage of income payment obligation on the full annual bill.
- (VII) “Full annual bill” means the current consumption of a participant billed at standard residential rates. The full annual bill of a participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and, (2) that portion of the bill that exceeds the affordable percentage of income payment.
- (VIII) “LEAP” means Low-Income Energy Assistance Program, a county-run, federally-funded, program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.
- (IX) “LEAP participant” means a utility customer who at the time of applying to participate in a program has been determined to be eligible for LEAP benefits by the Department during either: (1) the Department’s current ~~six-month (November 1—April 30)~~ LEAP application period, if that period is open at the time the customer applies for program participation; or, (2) the Department’s most recently closed ~~six-month (November 1—April 30)~~ LEAP application period, if that period is closed at the time the customer applies to participate in the program and the Department’s next ~~six-month (November 1—April 30)~~ LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under part (2) of this definition, the utility customer must apply to the Department during the Department’s next ~~six-month (November 1—April 30)~~ LEAP benefit application period and be determined eligible for such benefits.
- (X) “Non-participant” means a utility customer who is not receiving low-income assistance under rule 3412.
- (XI) “Participant” means an eligible low-income residential utility customer who is granted the reasonable preference or advantage through participation in an electric service low-income program.
- (XII) “Percentage of Income Payment Plan” (or “PIPP”) means a payment plan for participants that does not exceed an affordable percentage of their household income as set forth in subparagraph 3412(e)(I).
- (XIII) “Program” means an electric service low-income program approved under rule 3412.
- (XIV) “Program credits” means the amount of benefits provided to participants to offset the unaffordable portion of a participant’s utility bill and /or dollar amounts credited to participants for arrearage forgiveness.
- (XV) “Unaffordable portion” means the amount of the estimated full annual bill that exceeds the affordable percentage of income payment.

- (c) Participant eligibility. ~~Eligible participants are limited to those with a household income at or below 185 percent of the current federal poverty level and who otherwise meet the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.~~
- (I) Eligible participants are limited to those who meet one or more of the following criteria:
- (A) median household income less than or equal to 200 percent of the federal poverty guideline;
- (B) median household income less than or equal to 80 percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or
- (C) qualification under income guidelines adopted by the Department of Human Services pursuant to section § 40-8.5-105, C.R.S.
- ~~(II) The utility shall may obtain the determination of a participant's eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office.household income information from LEAP.~~
- ~~(III) If a participant's household income is \$0, the utility may establish a process that verifies income on a more frequent basis.~~
- ~~(IV#) Program participants shall not be required to make payment on their utility account as a condition of entering into the program.~~
- (d) Enrollment. Utilities shall be responsible for the methods by which participant enrollment in their approved low income program is obtained and sustained, however the utility should engage in enrollment processes that are efficient and attempt to maximize the potential benefits of participation in the low income program by low income customers.
- (e) Payment plan.
- (I) Participant payments for electric bills rendered to participants shall not exceed an affordable percentage of income payment. The percentage of a participant's household income for which the participant is responsible shall be determined as follows:
- (A) for electric accounts for which electricity is the primary heating fuel, participant payments shall be no lower than three percent and not greater than six percent of the participant's household income; however, if the participant also has natural gas service from a regulated utility, participant payments shall not be greater than five percent of the participant's household income; and
- (B) for electric accounts for which electricity is not the primary heating fuel, participant payments shall be no lower than two percent and not greater than three percent of the participant's household income.

- (II) In the event that a primary heating fuel for any particular participant has been identified by LEAP, that determination shall be final.
- (III) Notwithstanding the percentage of income limits established in subparagraph 3412(e)(I), a utility may establish minimum monthly payment amounts for participants with household income of \$0, provided that:
  - (A) the participant's minimum payment for an electric heating account shall be no more than \$20.00 a month; and
  - (B) the participant's minimum payment for an electric non-heating account shall be no more than \$10.00 a month.
- (IV) Full annual bill calculation. The utility shall be responsible for estimating a participant's full annual bill for the purpose of determining the unaffordable portion of the participant's full annual bill delivered as a fixed credit on the participant's monthly billing statement.
- (V) Fixed credit benefit. The fixed credit shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges change to the extent that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.
- (VI) Levelized budget billing participation. A utility ~~shall~~ may enroll participants in its levelized budget billing program as a condition of participation in the program, though the utility shall also allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits, which option shall be available to the participants where the utility's automated billing system is capable. Utilities without automated billing systems capable of permitting opt out of levelized budget billing shall reasonably and prudently modify their systems to facilitate opt out of levelized budget billing. Should a participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.
- (VII) Arrearage credits.
  - (A) Arrearage credits shall be applied to pre-existing arrearages.
  - (B) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to \$0.00 over a period not less than one month and not more than twenty-four months.
  - (C) Application of an arrearage credit to a participant account may be conditioned by the utility on one or more of the following:
    - (i) the receipt of regular participant payments toward bills for current usage;  
or

- (ii) the payment of a participant copayment toward the arrearages so long as the participant's copayment total dollar amount does not exceed one percent of gross household income.
  - (D) Should the participant exit the program prior to the full forgiveness of all pre-existing arrearages, the amount of remaining pre-existing arrearages shall become due in accordance with the ~~utilities-utility's~~ tariff filed under rules 3401, 3407, and 3408.
  - (E) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity while the customer is participating in the program.
  - (F) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills, ~~if the participant enters into and maintains a levelized budget billing plan.~~
  - (VIII) Portability of benefits. A participant may continue to participate without reapplication should the participant change service addresses, but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the ~~levelized budget~~ billing amount to reflect the changed circumstances. A participant who changes service addresses and does not remain within the service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.
  - (IX) Payment default provisions. Failure of a participant to make his or her monthly bill payments ~~will~~ may result in a utility placing the participant in its regular collection cycle. ~~Missed, partial~~ Partial or late payments shall not result in the removal of a participant from the program.
- (f) Program implementation.
- Each utility shall maintain effective terms and conditions in its tariffs on file with the Commission containing its low-income program.
- (g) Cost recovery.
- (I) Each utility shall include in its low income tariff terms and conditions how costs of the program will be recovered.
  - (II) Program cost recovery.
    - (A) Program cost recovery shall be based on a fixed monthly fee.
    - (B) ~~[Emergency rule expired on 07/14/2021]~~ The maximum impact on residential rates shall be no more than \$1.00 per month.

- (C) In order to determine monthly rates applicable to rate classes other than residential, program costs shall be allocated to each retail rate based on each rate class's share of the test year revenue requirement established in the utility's last Phase II rate case, or under another reasonable methodology supported by quantifiable information. The monthly rate per this subparagraph to be charged each rate schedule customer shall be clearly stated on a tariff sheet.
- (D) Utilities shall separately account for the ~~cumulative program year's~~ program cost recovery and ~~cumulative~~ program and administrative costs to determine if the net of program cost recovery and program and administrative cost are in balance during the program year.
- ~~(i) By December 31, 2016, utilities shall determine if the total cumulative cost recovery amount exceeds total cumulative program and administrative costs through September 30, 2016. If at that time total cumulative cost recovery exceeds total cumulative program and administrative costs by 50 percent or more, the over collected amount shall be refunded to all customers in accordance with rule 3410.~~
- ~~(ii) Beginning December 31, 2017 and in each year thereafter, By December 15 of each year,~~ the utility shall file a report with the Commission in the most recent miscellaneous proceeding for annual low-income filings detailing the net difference between program cost recovery and program costs as of ~~September 30~~ October 31 of each year.
- (1) Should the net difference of program cost recovery over program and administrative costs be greater than 50 percent derived in ~~(#D)~~ above, either positive or negative, and the utility is not currently at the maximum impact for non-participants, the utility shall file with the Commission an advice letter and tariff pages seeking approval for the rates determined in subparagraph 3412(g)(II)(D) in order to bring the projected recovery in balance for the ensuing 12 month period. The revised charge shall not exceed the maximum impact for non-participants in subparagraph 3412(g)(II)(C).
- (III) The following costs are eligible for recovery by a utility as program costs:
- (A) program credits or discounts applied against bills for current usage.
- (B) program credits applied against pre-existing arrearages.
- (C) program administrative costs; and
- (D) Commission-sponsored program evaluation costs required under paragraph 3412(k).

- (IV) The utility shall apply, as an offset to cost recovery, all program expenses attributable to the program. Program expenses include utility operating costs; changes in the return requirement on cash working capital for carrying arrearages; changes in the cost of credit and collection activities directly related to low-income participants; and changes in uncollectable account costs for these participants.
- (V) LEAP grants. The utility ~~shall~~ may apply energy assistance grants provided to the participant by the LEAP program to the dollar value of credits granted to individual program participants.
  - (A) A-If applying LEAP grants first, a utility shall apply any energy assistance benefit granted to the participant by LEAP to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.
  - (B) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:
    - (i) first, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding; and
    - (ii) second, to the account of the program participant as a benefit to the participant.
  - (C) No portion of an energy assistance or LEAP grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.
  - (D) If an all-electric utility's low-income customers do not benefit widely from LEAP grants, the utility shall not apply the dollar value of credits granted to individual LEAP grantees to the dollar value of credits granted to individual program participants.
- (h) Other programs. In addition to the utility's low-income program, with Commission approval, a utility may offer other rate relief options to eligible households.
  - (I) Other programs offered by the utility under rule 3412 must be intended to reach low-income households that do not substantially benefit from the provisions of the low-income program. Such programs may take the form of discount rates, tiered discount rates or other direct bill relief methods where the low-income household benefitting from the program is granted a reasonable preference in tariffed rates assessed to all residential utility customers.
  - (II) Cost recovery for other programs combined with the Percentage of Income Payment Plan shall not exceed the maximum impact on residential rates described in subparagraph 3412(g)(II)(C).

- (i) Energy efficiency and weatherization.
  - (I) The utility shall provide all program participants with information on energy efficiency programs offered by the utility or other entities and existing weatherization programs offered by the state of Colorado or other entities.
  - (II) The utility shall provide the Colorado Energy Office with the name and service address of participant households for which annual electricity usage exceeds 10,000 kWh annually.
- (j) Stakeholder engagement. A utility shall conduct annual meetings with low-income stakeholders for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders.
- (k) Program evaluation. A triennial evaluation of the program provisions under rule 3412 beginning in 2019 shall be undertaken in order to review best practices in similar low-income assistance programs in existence in other regulatory jurisdictions, as well as evaluate operation of each utility's program for effectiveness in achieving optimum support being provided to low income participants. The evaluation shall also recommend modifications if available that improve the delivery of benefits to participants and increase the efficiency and effectiveness of each program as they exist at the point of evaluation. The program evaluation shall include a customer needs assessment provided that adequate funds are available.
  - (I) Procurement of the third-party vendor that will perform the evaluation will be undertaken by the Colorado Energy Office. The CEO shall seek the involvement of interested stakeholders including, but not limited to, Commission staff, all Commission regulated electric and gas utilities, LEAP, the Office of Consumer Counsel, and Energy Outreach Colorado in the design of the requirements regarding study focus and final reporting.
  - (II) Approval of the third-party vendor shall be the responsibility of the Commission. The CEO shall file with the Commission in the most recent annual report proceeding, a request for approval of the contract of the vendor selected. The Commission shall review and act on the request within 30 days.
  - (III) \$00.0013 per customer per month shall be set aside by the utility ~~starting in the 2016-2017 program year~~ in order to fund the triennial evaluation of the program evaluation described in paragraph 3412(k).
  - (IV) The dollars resulting from the \$00.0013 charge shall be recovered as a program cost under subparagraph 3412(f)(IV).
  - (V) The evaluation will be filed by Commission staff in the most recent miscellaneous proceeding for annual low income filings.
  - (VI) Staff and the CEO will assess the individual utilities' deferred balances set aside for the program evaluation starting in 2019 at the conclusion of the third program year and each three years thereafter and will determine the amounts each utility is to remit to the third party evaluator based on the contractual terms approved by the Commission for the evaluation.

- (I) Annual report. ~~No later than December 31, 2016, No later than December 31 of each year,~~ each utility shall file a report in the most recent miscellaneous proceeding for annual low-income filings using the form available on the Commission's website, ~~based on the seven-month period April 1, 2016 through October 31, 2016, and then on November 30 each of the following years,~~ based on each 12-month period ending October 31, and containing the following information:
- (I) monthly information on the program including total number of participants, amount of benefit disbursement, type of benefit disbursement, LEAP benefits applied to the unaffordable portion of participant's bills, administrative costs, and revenue collection;
  - (II) the number of applicants for the program;
  - (III) the number of applicants qualified for the program;
  - (IV) the number of participants;
  - (V) the average assistance provided, both mean and median;
  - (VI) the maximum assistance provided to an individual participant;
  - (VII) the minimum assistance provided to an individual participant;
  - (VIII) total cost of the program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;
  - (IX) the number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;
  - (X) an estimate of utility savings as a result of the implementation of the program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, etc.);
  - (XI) the average monthly and annual total electric consumption in PIPP participants' homes;
  - (XII) the average monthly and annual total electric consumption in the utility's residential customer's homes;
  - (XIII) the number of program participants referred to the weatherization program;
  - (XIV) the total dollar value of participant arrearages forgiven, the number of customers who had arrearage balances forgiven, and the maximum and minimum dollar value of arrears forgiven;
  - ~~(XV)~~ a description of the ways in which the program is being integrated with existing energy efficiency, ~~of DSM,~~ or behavioral programs offered by the utility;
  - (XVI) a description of the ways in which the program is being integrated with existing weatherization programs offered by the state of Colorado;

(XVII) a description of program outreach strategies and metrics that illustrate the effectiveness of each outreach strategy;

(XVIII) a description of participant outreach, education, and engagement efforts, including descriptions of communications and materials, and key findings from those efforts;

(X~~XIV~~) the number of participants at the start of the program year that the utility removed for any reason, the number of participants who opted out of the program after enrollment, the number of potential participants rejected because of the existence of a cap on the program, the period of arrearage time from date participants became eligible and were granted arrearage forgiveness, and the number of participants who came back as eligible participants in the program year after being eligible in a prior program year and were provided arrearage credits in the program year; ~~and~~

(X~~XVIII~~) a narrative summary of the utility's recommended program modifications based on report findings; and

(XXI) a statement regarding whether the utility is accommodating PIPP participants' requests to opt-out of levelized budget billing pursuant to subparagraph 3412(e)(VI) and, if not, an explanation of why the utility believes it is not reasonable and prudent to modify its automated billing system to accommodate such requests. If the utility plans to accommodate such requests at any point in the upcoming year, a description of the plan, including the anticipated cost of the plan and the date that the functionality in its automated billing system will go online, must be included.

(m) Energy Assistance System Benefit Charge. Beginning October 1, 2022, each utility shall include on its monthly bills a flat energy assistance system benefit charge of 50 cents, with this amount rising to 75 cents on October 1, 2023, and being adjusted for inflation in accordance with changes in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood beginning on October 1, 2024. The disposition of money collected by the Energy Assistance System Benefit Charge is determined by § 40-8.7-108, C.R.S.

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-3

#### PART 3 RULES REGULATING ELECTRIC UTILITIES

\* \* \* \*

[indicates omission of unaffected rules]

#### **3412. Electric Service Affordability Program.**

(a) Scope and applicability.

- (I) Electric utilities with Colorado retail customers shall provide low-income energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential low-income customers, as permitted by § 40-3-106, C.R.S. Electric utilities shall use consistent naming for assistance programs: [Utility name] Affordability Program.
- (II) Rule 3412 is applicable to investor-owned electric utilities subject to rate regulation by the Commission.

(b) Definitions. The following definitions apply only in the context of rule 3412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (I) “Administrative cost” means the utility’s direct cost for labor (to include the cost of benefit loadings), materials, and other verifiable expenditures directly related to the administration and operation of the program not to exceed ten percent of the total cost of program credits applied against bills for current usage and pre-existing arrearages or \$10,000, whichever amount is greater.
- (II) “Affordable percentage of income payment” means the amount of the participant’s annual bill deemed affordable under subparagraph 3412(e)(I).
- (III) “Arrearage” means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.
- (IV) “Colorado Energy Office” means the Colorado Energy Office created in § 24-38.5-101, C.R.S.
- (V) “Eligible low-income customer” means a residential utility customer who meets the household income thresholds pursuant to paragraph 3412(c).

- (VI) “Fixed credit” means an annual bill credit established at the beginning of a participant’s participation in a program each year delivered as a monthly credit on each participant’s bill. The fixed credit is the participant’s full annual bill minus the participant’s affordable percentage of income payment obligation on the full annual bill.
  - (VII) “Full annual bill” means the current consumption of a participant billed at standard residential rates. The full annual bill of a participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and, (2) that portion of the bill that exceeds the affordable percentage of income payment.
  - (VIII) “LEAP” means Low-Income Energy Assistance Program, a county-run, federally-funded, program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.
  - (IX) “LEAP participant” means a utility customer who at the time of applying to participate in a program has been determined to be eligible for LEAP benefits by the Department during either: (1) the Department’s current LEAP application period, if that period is open at the time the customer applies for program participation; or, (2) the Department’s most recently closed LEAP application period, if that period is closed at the time the customer applies to participate in the program and the Department’s next LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under part (2) of this definition, the utility customer must apply to the Department during the Department’s next LEAP benefit application period and be determined eligible for such benefits.
  - (X) “Non-participant” means a utility customer who is not receiving low-income assistance under rule 3412.
  - (XI) “Participant” means an eligible low-income residential utility customer who is granted the reasonable preference or advantage through participation in an electric service low-income program.
  - (XII) “Percentage of Income Payment Plan” (or “PIPP”) means a payment plan for participants that does not exceed an affordable percentage of their household income as set forth in subparagraph 3412(e)(l).
  - (XIII) “Program” means an electric service low-income program approved under rule 3412.
  - (XIV) “Program credits” means the amount of benefits provided to participants to offset the unaffordable portion of a participant’s utility bill and /or dollar amounts credited to participants for arrearage forgiveness.
  - (XV) “Unaffordable portion” means the amount of the estimated full annual bill that exceeds the affordable percentage of income payment.
- (c) Participant eligibility.
- (l) Eligible participants are limited to those who meet one or more of the following criteria:

- (A) median household income less than or equal to 200 percent of the federal poverty guideline;
  - (B) median household income less than or equal to 80 percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or
  - (C) qualification under income guidelines adopted by the Department of Human Services pursuant to section § 40-8.5-105, C.R.S.
- (II) The utility may obtain the determination of a participant's eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office.
- (III) If a participant's household income is \$0, the utility may establish a process that verifies income on a more frequent basis.
- (IV) Program participants shall not be required to make payment on their utility account as a condition of entering into the program.
- (d) Enrollment. Utilities shall be responsible for the methods by which participant enrollment in their approved low income program is obtained and sustained, however the utility should engage in enrollment processes that are efficient and attempt to maximize the potential benefits of participation in the low income program by low income customers.
- (e) Payment plan.
- (I) Participant payments for electric bills rendered to participants shall not exceed an affordable percentage of income payment. The percentage of a participant's household income for which the participant is responsible shall be determined as follows:
    - (A) for electric accounts for which electricity is the primary heating fuel, participant payments shall be no lower than three percent and not greater than six percent of the participant's household income; however, if the participant also has natural gas service from a regulated utility, participant payments shall not be greater than five percent of the participant's household income; and
    - (B) for electric accounts for which electricity is not the primary heating fuel, participant payments shall be no lower than two percent and not greater than three percent of the participant's household income.
  - (II) In the event that a primary heating fuel for any particular participant has been identified by LEAP, that determination shall be final.
  - (III) Notwithstanding the percentage of income limits established in subparagraph 3412(e)(I), a utility may establish minimum monthly payment amounts for participants with household income of \$0, provided that:
    - (A) the participant's minimum payment for an electric heating account shall be no more than \$20.00 a month; and

- (B) the participant's minimum payment for an electric non-heating account shall be no more than \$10.00 a month.
- (IV) Full annual bill calculation. The utility shall be responsible for estimating a participant's full annual bill for the purpose of determining the unaffordable portion of the participant's full annual bill delivered as a fixed credit on the participant's monthly billing statement.
- (V) Fixed credit benefit. The fixed credit shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges change to the extent that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.
- (VI) Levelized budget billing participation. A utility may enroll participants in its levelized budget billing program as a condition of participation in the program, though the utility shall also allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits, which option shall be available to the participants where the utility's automated billing system is capable. Utilities without automated billing systems capable of permitting opt out of levelized budget billing shall reasonably and prudently modify their systems to facilitate opt out of levelized budget billing. Should a participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.
- (VII) Arrearage credits.
  - (A) Arrearage credits shall be applied to pre-existing arrearages.
  - (B) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to \$0.00 over a period not less than one month and not more than twenty-four months.
  - (C) Application of an arrearage credit to a participant account may be conditioned by the utility on one or more of the following:
    - (i) the receipt of regular participant payments toward bills for current usage;  
or
    - (ii) the payment of a participant copayment toward the arrearages so long as the participant's copayment total dollar amount does not exceed one percent of gross household income.
  - (D) Should the participant exit the program prior to the full forgiveness of all pre-existing arrearages, the amount of remaining pre-existing arrearages shall become due in accordance with the utility's tariff filed under rules 3401, 3407, and 3408.
  - (E) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity while the customer is participating in the program.

- (F) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills.
  - (VIII) Portability of benefits. A participant may continue to participate without reapplication should the participant change service addresses but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the billing amount to reflect the changed circumstances. A participant who changes service addresses and does not remain within the service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.
  - (IX) Payment default provisions. Failure of a participant to make his or her monthly bill payments may result in a utility placing the participant in its regular collection cycle. Partial or late payments shall not result in the removal of a participant from the program.
- (f) Program implementation.

Each utility shall maintain effective terms and conditions in its tariffs on file with the Commission containing its low-income program.

- (g) Cost recovery.
- (I) Each utility shall include in its low income tariff terms and conditions how costs of the program will be recovered.
  - (II) Program cost recovery.
    - (A) Program cost recovery shall be based on a fixed monthly fee.
    - (B) The maximum impact on residential rates shall be no more than \$1.00 per month.
    - (C) In order to determine monthly rates applicable to rate classes other than residential, program costs shall be allocated to each retail rate based on each rate class's share of the test year revenue requirement established in the utility's last Phase II rate case, or under another reasonable methodology supported by quantifiable information. The monthly rate per this subparagraph to be charged each rate schedule customer shall be clearly stated on a tariff sheet.
    - (D) Utilities shall separately account for the program year's program cost recovery and program and administrative costs to determine if the net of program cost recovery and program and administrative cost are in balance during the program year.
      - (i) By December 15 of each year, the utility shall file a report with the Commission in the most recent miscellaneous proceeding for annual low-income filings detailing the net difference between program cost recovery and program costs as of October 31 of each year.

- (1) Should the net difference of program cost recovery over program and administrative costs be greater than 50 percent derived in (D) above, either positive or negative, and the utility is not currently at the maximum impact for non-participants, the utility shall file with the Commission an advice letter and tariff pages seeking approval for the rates determined in subparagraph 3412(g)(II)(D) in order to bring the projected recovery in balance for the ensuing 12 month period. The revised charge shall not exceed the maximum impact for non-participants in subparagraph 3412(g)(II)(C).
- (III) The following costs are eligible for recovery by a utility as program costs:
    - (A) program credits or discounts applied against bills for current usage.
    - (B) program credits applied against pre-existing arrearages.
    - (C) program administrative costs; and
    - (D) Commission-sponsored program evaluation costs required under paragraph 3412(k).
  - (IV) The utility shall apply, as an offset to cost recovery, all program expenses attributable to the program. Program expenses include utility operating costs; changes in the return requirement on cash working capital for carrying arrearages; changes in the cost of credit and collection activities directly related to low-income participants; and changes in uncollectable account costs for these participants.
  - (V) LEAP grants. The utility may apply energy assistance grants provided to the participant by the LEAP program to the dollar value of credits granted to individual program participants.
    - (A) If applying LEAP grants first, a utility shall apply any energy assistance benefit granted to the participant by LEAP to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.
    - (B) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:
      - (i) first, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding; and
      - (ii) second, to the account of the program participant as a benefit to the participant.

- (C) No portion of an energy assistance or LEAP grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.
  - (D) If an all-electric utility's low-income customers do not benefit widely from LEAP grants, the utility shall not apply the dollar value of credits granted to individual LEAP grantees to the dollar value of credits granted to individual program participants.
- (h) Other programs. In addition to the utility's low-income program, with Commission approval, a utility may offer other rate relief options to eligible households.
  - (I) Other programs offered by the utility under rule 3412 must be intended to reach low-income households that do not substantially benefit from the provisions of the low-income program. Such programs may take the form of discount rates, tiered discount rates or other direct bill relief methods where the low-income household benefitting from the program is granted a reasonable preference in tariffed rates assessed to all residential utility customers.
  - (II) Cost recovery for other programs combined with the Percentage of Income Payment Plan shall not exceed the maximum impact on residential rates described in subparagraph 3412(g)(II)(C).
- (i) Energy efficiency and weatherization.
  - (I) The utility shall provide all program participants with information on energy efficiency programs offered by the utility or other entities and existing weatherization programs offered by the state of Colorado or other entities.
  - (II) The utility shall provide the Colorado Energy Office with the name and service address of participant households for which annual electricity usage exceeds 10,000 kWh annually.
- (j) Stakeholder engagement. A utility shall conduct annual meetings with low-income stakeholders for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders.
- (k) Program evaluation. A triennial evaluation of the program provisions under rule 3412 beginning in 2019 shall be undertaken in order to review best practices in similar low-income assistance programs in existence in other regulatory jurisdictions, as well as evaluate operation of each utility's program for effectiveness in achieving optimum support being provided to low income participants. The evaluation shall also recommend modifications if available that improve the delivery of benefits to participants and increase the efficiency and effectiveness of each program as they exist at the point of evaluation. The program evaluation shall include a customer needs assessment provided that adequate funds are available.

- (I) Procurement of the third-party vendor that will perform the evaluation will be undertaken by the Colorado Energy Office. The CEO shall seek the involvement of interested stakeholders including, but not limited to, Commission staff, all Commission regulated electric and gas utilities, LEAP, the Office of Consumer Counsel, and Energy Outreach Colorado in the design of the requirements regarding study focus and final reporting.
  - (II) Approval of the third-party vendor shall be the responsibility of the Commission. The CEO shall file with the Commission in the most recent annual report proceeding, a request for approval of the contract of the vendor selected. The Commission shall review and act on the request within 30 days.
  - (III) \$00.0013 per customer per month shall be set aside by the utility in order to fund the triennial evaluation of the program evaluation described in paragraph 3412(k).
  - (IV) The dollars resulting from the \$00.0013 charge shall be recovered as a program cost under subparagraph 3412(f)(IV).
  - (V) The evaluation will be filed by Commission staff in the most recent miscellaneous proceeding for annual low income filings.
  - (VI) Staff and the CEO will assess the individual utilities' deferred balances set aside for the program evaluation starting in 2019 at the conclusion of the third program year and each three years thereafter and will determine the amounts each utility is to remit to the third party evaluator based on the contractual terms approved by the Commission for the evaluation.
- (I) Annual report. No later than December 31 of each year, each utility shall file a report in the most recent miscellaneous proceeding for annual low-income filings using the form available on the Commission's website based on each 12-month period ending October 31, and containing the following information:
- (I) monthly information on the program including total number of participants, amount of benefit disbursement, type of benefit disbursement, LEAP benefits applied to the unaffordable portion of participant's bills, administrative costs, and revenue collection;
  - (II) the number of applicants for the program;
  - (III) the number of applicants qualified for the program;
  - (IV) the number of participants;
  - (V) the average assistance provided, both mean and median;
  - (VI) the maximum assistance provided to an individual participant;
  - (VII) the minimum assistance provided to an individual participant;

- (VIII) total cost of the program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;
- (IX) the number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;
- (X) an estimate of utility savings as a result of the implementation of the program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, etc.);
- (XI) the average monthly and annual total electric consumption in PIPP participants' homes;
- (XII) the average monthly and annual total electric consumption in the utility's residential customer's homes;
- (XIII) the number of program participants referred to the weatherization program;
- (XIV) the total dollar value of participant arrearages forgiven, the number of customers who had arrearage balances forgiven, and the maximum and minimum dollar value of arrears forgiven;
- (XV) a description of the ways in which the program is being integrated with existing energy efficiency, DSM, or behavioral programs offered by the utility;
- (XVI) a description of the ways in which the program is being integrated with existing weatherization programs offered by the state of Colorado;
- (XVII) a description of program outreach strategies and metrics that illustrate the effectiveness of each outreach strategy;
- (XVIII) a description of participant outreach, education, and engagement efforts, including descriptions of communications and materials, and key findings from those efforts;
- (XIX) the number of participants at the start of the program year that the utility removed for any reason, the number of participants who opted out of the program after enrollment, the number of potential participants rejected because of the existence of a cap on the program, the period of arrearage time from date participants became eligible and were granted arrearage forgiveness, and the number of participants who came back as eligible participants in the program year after being eligible in a prior program year and were provided arrearage credits in the program year;
- (XX) a narrative summary of the utility's recommended program modifications based on report findings; and
- (XXI) a statement regarding whether the utility is accommodating PIPP participants' requests to opt-out of levelized budget billing pursuant to subparagraph 3412(e)(VI) and, if not, an explanation of why the utility believes it is not reasonable and prudent to modify its automated billing system to accommodate such requests. If the utility plans to

accommodate such requests at any point in the upcoming year, a description of the plan, including the anticipated cost of the plan and the date that the functionality in its automated billing system will go online, must be included.

- (m) Energy Assistance System Benefit Charge. Beginning October 1, 2022, each utility shall include on its monthly bills a flat energy assistance system benefit charge of 50 cents, with this amount rising to 75 cents on October 1, 2023, and being adjusted for inflation in accordance with changes in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood beginning on October 1, 2024. The disposition of money collected by the Energy Assistance System Benefit Charge is determined by § 40-8.7-108, C.R.S.

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-4

#### PART 4

#### RULES REGULATING GAS UTILITIES AND PIPELINE OPERATORS

\* \* \* \*

[indicates omission of unaffected rules]

**4412. Gas Service ~~Affordability~~Affordability~~Low-Income~~ Program.**

(a) Scope and applicability.

- (I) Gas utilities with Colorado retail customers shall provide low-income energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential low-income customers, as permitted by § 40-3-106, C.R.S.
- (II) Rule 4412 is applicable to investor-owned gas utilities subject to rate regulation by the Commission.

(b) Definitions. The following definitions apply only in the context of rule 4412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (I) “Administrative cost” means the utility’s direct cost for labor (to include the cost of benefit loadings), materials, and other verifiable expenditures directly related to the administration and operation of the program not to exceed ten percent of the total cost of program credits applied against bills for current usage and pre-existing arrearages or \$10,000, whichever amount is greater.
- (II) “Affordable percentage of income payment” means the amount of the participant’s annual bill deemed affordable under subparagraph 4412(e)(I).
- (III) “Arrearage” means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.
- (IV) “Colorado Energy Office” (CEO) means the Colorado Energy Office created in § 24-38.5-101, C.R.S.
- (V) “Eligible low-income customer” means a residential utility customer who meets the household income thresholds pursuant to paragraph 4412(c).

- (VI) “Fixed credit” means an annual bill credit established at the beginning of a participant’s participation in a program each year delivered as a monthly credit on each participant’s bill. The fixed credit is the participant’s full annual bill minus the participant’s affordable percentage of income payment obligation on the full annual bill.
- (VII) “Full annual bill” means the current consumption of a participant billed at standard residential rates. The full annual bill of a participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and (2) that portion of the bill that exceeds the affordable percentage of income payment.
- (VIII) “LEAP” means Low-Income Energy Assistance Program, a county-run, federally-funded, program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.
- (IX) “LEAP participant” means a utility customer who at the time of applying to participate in a program has been determined to be eligible for LEAP benefits by the Department during either the Department’s current ~~six-month (November 1 — April 30)~~ LEAP application period, if that period is open at the time the customer applies for program participation; or (the Department’s most recently closed ~~six-month (November 1 — April 30)~~-LEAP application period, if that period is closed at the time the customer applies to participate in the program and the Department’s next ~~six-month (November 1 — April 30)~~-LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under this definition, the utility customer must apply to the Department during the Department’s next ~~six-month (November 1 — April 30)~~-LEAP benefit application period and be determined eligible for such benefits.
- (X) “Non-participant” means a utility customer who is not receiving low-income assistance under rule 4412.
- (XI) “Participant” means an eligible low-income residential utility customer who is granted the reasonable preference or advantage through participation in a gas service low-income program.
- (XII) “Percentage of Income Payment Plan” (PIPP) means a payment plan for participants that does not exceed an affordable percentage of their household income as set forth in subparagraph 4412(e)(I).
- (XIII) “Program” means a gas service low-income program approved under rule 4412.
- (XIV) “Program credits” means the amount of benefits provided to participants to offset the unaffordable portion of a participant’s utility bill and /or dollar amounts credited to participants for arrearage forgiveness.
- (XV) “Unaffordable portion” means the amount of the estimated full annual bill that exceeds the affordable percentage of income payment.

- (c) Participant eligibility. ~~Eligible participants are limited to those with a household income at or below 185 percent of the current federal poverty level and or who otherwise meet the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.~~
- (I) Eligible participants are limited to those who meet one or more of the following criteria:
- (A) median household income less than or equal to 200 percent of the federal poverty guideline;
- (B) median household income less than or equal to 80 percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or
- (C) qualification under income guidelines adopted by the Department of Human Services pursuant to section § 40-8.5-105, C.R.S.
- (II) The utility shall obtain the determination of a participant's eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office. ~~household income information from LEAP.~~
- (III) If a participant's household income is \$0, the utility may establish a process that verifies income on a more frequent basis.
- (IV#) Program participants shall not be required to make payment on their utility account as a condition of entering into the program.
- (d) Enrollment. Utilities shall be responsible for the methods by which participant enrollment in their approved low income program is obtained and sustained, however the utility should engage in enrollment processes that are efficient and attempt to maximize the potential benefits of participation in the low income program by low income customers.
- (e) Payment plan.
- (I) Participant payments for natural gas bills rendered to participants shall not exceed an affordable percentage of income payment. For accounts for which natural gas is the primary heating fuel, participant payments shall be no lower than two percent and not greater than three percent of the participant's household income. For accounts for which electricity is the primary heating fuel but the participant also has natural gas service, utility participant payments for gas service shall not be greater than one percent of the participant's household income.
- (II) In the event that a primary heating fuel for any particular participant has been identified by LEAP, that determination shall be final.
- (III) Notwithstanding the percentage of income limits established in subparagraph 4412(e)(I), a utility may establish minimum monthly payment amounts for participants with household income of \$0, provided that the participant's minimum payment for a natural gas account shall be no more than \$10.00 a month.

- (IV) Full annual bill calculation. The utility shall be responsible for estimating a participant's full annual bill for the purpose of determining the unaffordable portion of the participant's full annual bill delivered as a fixed credit on the participant's monthly billing statement.
- (V) Fixed credit benefit. The fixed credit shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges change to the extent that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.
- (VI) Levelized budget billing participation. A utility ~~shall~~may enroll participants in its levelized budget billing program as a condition of participation in the program, though the utility shall also allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits, which option shall be available to the participants where the utility's automated billing system is capable. Utilities without automated billing systems capable of permitting opt out of levelized budget billing shall reasonably and prudently modify their systems to facilitate opt out of levelized budget billing. Should a participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.
- (VII) Arrearage credits.
- (A) Arrearage credits shall be applied to pre-existing arrearages.
- (B) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to \$0.00 over a period not less than one month and not more than twenty-four months.
- (C) Application of an arrearage credit to a participant account may be conditioned by the utility on one or more of the following:
- (i) the receipt of regular participant payments toward bills for current usage;  
or
- (ii) the payment of a participant copayment toward the arrearages so long as the participant's copayment total dollar amount does not exceed one percent of gross household income.
- (D) Should the participant exit the program prior to the full forgiveness of all pre-existing arrearages, the amount of remaining pre-existing arrearages shall become due in accordance with the ~~utilities-~~utility's tariff filed under rules 4401, 4407, and 4408.
- (E) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity while the customer is participating in the program.

- (F) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills, ~~if the participant enters into and maintains a levelized budget billing plan.~~
- (VIII) Portability of benefits. A participant may continue to participate without reapplication should the participant change service addresses but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the ~~levelized budget~~ billing amount to reflect the changed circumstances. A participant who changes service addresses and does not remain within the service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.
- (IX) Payment default provisions. Failure of a participant to make his or her monthly bill payments ~~will may~~ result in a utility placing the participant in its regular collection cycle. ~~Missed, partial~~Partial or late payments shall not result in the removal of a participant from the program.
- (f) Program implementation.
- Each utility shall maintain effective terms and conditions in its tariffs on file with the Commission describing its low-income program.
- (g) Cost recovery.
- (I) Each utility shall include in its low income tariff terms and conditions how costs of the program will be recovered.
- (II) Program cost recovery.
- (A) Program cost recovery shall be based on a fixed monthly fee.
- (B) ~~[Emergency rule expired 07/14/2021]~~The maximum impact on residential rates shall be no more than \$1.00 per month.
- (C) In order to determine monthly rates applicable to rate classes other than residential, program costs shall be allocated to each retail rate based on each rate class's share of the test year revenue requirement established in the utility's last Phase II rate case, or under another reasonable methodology supported by quantifiable information. The monthly rate per this subparagraph to be charged each rate schedule customer shall be clearly stated on a tariff sheet.
- (D) Utilities shall separately account for the ~~cumulative program year's~~ program cost recovery and ~~cumulative~~ program and administrative costs to determine if the net of program cost recovery and program and administrative cost are in balance during the program year.
- (i) ~~Beginning October 31, 2018 and in each year thereafter, By December 15 of each year,~~ the utility shall file a report with the Commission in the most recent miscellaneous proceeding for annual low-income filings

detailing the net difference between program cost recovery and program costs as of ~~September 30~~October 31 of each year.

- (1) Should the net difference of program cost recovery over program and administrative costs be greater than 50 percent derived in ~~(#D)~~ above, either positive or negative, and the utility is not currently at the maximum impact for non-participants, the utility shall file with the Commission an advice letter and tariff pages seeking approval for the rates determined in subparagraph 4412(g)(II)(D) in order to bring the projected recovery in balance for the ensuing 12 month period. The revised Residential charge shall not exceed the maximum impact for non-participants in subparagraph 4412(g)(II)(C).
- (III) The following costs are eligible for recovery by a utility as program costs:
- (A) program credits or discounts applied against bills for current usage;
  - (B) program credits applied against pre-existing arrearages;
  - (C) program administrative costs; and
  - (D) Commission-sponsored program evaluation costs required under paragraph 4412(k).
- (IV) The utility shall apply, as an offset to cost recovery, all program expenses attributable to the program. Program expenses include utility operating costs; changes in the return requirement on cash working capital for carrying arrearages; changes in the cost of credit and collection activities directly related to low-income participants; and changes in uncollectable account costs for these participants.
- (V) LEAP grants.
- (A) The utility ~~shall~~may apply energy assistance grants provided to the participant by the LEAP program to the dollar value of credits granted to individual program participants.
  - (B) ~~A utility shall~~If applying LEAP grants first, a utility shall apply any energy assistance benefit granted to the participant by LEAP to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.
  - (C) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:
    - (i) first, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding; and

- (ii) second, to the account of the program participant as a benefit to the participant.
  - (D) No portion of an energy assistance or LEAP grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.
- (h) Other programs. In addition to the utility's low-income program, with Commission approval, a utility may offer other rate relief options to eligible households.
  - (I) Other programs offered by the utility under rule 4412 must be intended to reach low-income households that do not substantially benefit from the provisions of the low-income program. Such programs may take the form of discount rates, tiered discount rates or other direct bill relief methods where the low-income household benefitting from the program is granted a reasonable preference in tariffed rates assessed to all residential utility customers.
  - (II) Cost recovery for other programs combined with the Percentage of Income Payment Plan shall not exceed the maximum impact on residential rates described in subparagraph 4412(g)(II)(C).
- (i) Energy efficiency and weatherization.
  - (I) The utility shall provide all program participants with information on energy efficiency programs offered by the utility or other entities and existing weatherization programs offered by the state of Colorado or other entities.
  - (II) The utility shall provide the Colorado Energy Office with the name and service address of participant households for which annual natural gas usage exceeds 600 therms annually.
- (j) Stakeholder engagement. A utility shall conduct annual meetings with low-income stakeholders for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders.
- (k) Program evaluation. A triennial evaluation of the program provisions under rule 4412 beginning in 2019 shall be undertaken in order to review best practices in similar low income assistance programs in existence in other regulatory jurisdictions, as well as evaluate operation of each utility's program for effectiveness in achieving optimum support being provided to low income participants. The evaluation shall also recommend modifications if available that improve the delivery of benefits to participants and increase the efficiency and effectiveness of each program as they exist at the point of evaluation. The program evaluation shall include a customer needs assessment provided that adequate funds are available.
  - (I) Procurement of the third-party vendor that will perform the evaluation will be undertaken by the Colorado Energy Office. The CEO shall seek the involvement of interested stakeholders including, but not limited to, Commission staff, all Commission regulated electric and gas utilities, LEAP, the Office of Consumer Counsel, and Energy Outreach Colorado in the design of the requirements regarding study focus and final reporting.

- (II) Approval of the third-party vendor shall be the responsibility of the Commission. The CEO shall file with the Commission in the most recent annual report proceeding, a request for approval of the contract of the vendor selected. The Commission shall review and act on the request within 30 days.
  - (III) \$00.0013 per customer per month shall be set aside by the utility ~~starting in the 2016-2017 program year~~ in order to cover the cost of the program evaluation described in paragraph 4412(k).
  - (IV) The dollars resulting from the \$00.0013 charge shall be recovered as a program cost under subparagraph 4412(g)(III).
  - (V) The evaluation will be filed by Commission staff in the most recent miscellaneous proceeding for annual low income filings.
  - (VI) Staff and the CEO will assess the individual utilities' deferred balances set aside for the program evaluation starting in 2019 at the conclusion of the third program year and each three years thereafter and will determine the amounts each utility is to remit to the third party evaluator based on the contractual terms approved by the Commission for the evaluation.
- (I) Annual report. No later than December 31, of each year, ~~the~~each utility shall file a report in the most recent miscellaneous proceeding established by the Commission to receive annual low income filings using the form available on the Commission's website, based on the 12-month period ending October 31 and containing the following information below:
- (I) monthly information on the program including number of participants, amount of benefit disbursement, type of benefit disbursement, LEAP benefits applied to the unaffordable portion of participant's bills, administrative costs, and revenue collection;
  - (II) the number of applicants for the program;
  - (III) the number of applicants qualified for the program;
  - (IV) the number of participants;
  - (V) the average assistance provided, both mean and median;
  - (VI) the maximum assistance provided to an individual participant;
  - (VII) the minimum assistance provided to an individual participant;
  - (VIII) total cost of the program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;
  - (IX) the number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;

- (X) an estimate of utility savings as a result of the implementation of the program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, etc.);
  - (XI) the average monthly and annual total natural gas consumption in PIPP participants' homes;
  - (XII) the average monthly and annual total natural gas consumption in the utility's residential customer's homes;
  - (XIII) the number of program participants referred to the weatherization program;
  - (XIV) the total dollar value of participant arrearages forgiven, the number of customers who had arrearage balances forgiven, and the maximum and minimum dollar value of arrears forgiven;
  - ~~(XV)~~ a description of the ways in which the program is being integrated with existing energy efficiency, ~~of DSM, or behavioral~~ programs offered by the utility;
  - ~~(XVI)~~ a description of the ways in which the program is being integrated with existing weatherization programs offered by the state of Colorado;
  - ~~(XVII)~~ a description of program outreach strategies and metrics that illustrate the effectiveness of each outreach strategy;
  - ~~(XVIII)~~ a description of participant outreach, education, and engagement efforts, including descriptions of communications and materials, and key findings from those efforts;
  - ~~(XIX)~~ the number of participants at the start of the program year that the utility removed for any reason, the number of participants who opted out of the program after enrollment, the number of potential participants rejected because of the existence of a cap on the program, the period of arrearage time from date participants became eligible and were granted arrearage forgiveness, and the number of participants who came back as eligible participants in the program year after being eligible in a prior program year and were provided arrearage credits in the program year; ~~and~~
  - ~~(XX)~~ a narrative summary of the utility's recommended program modifications based on report findings; ~~and~~.
  - ~~(XXI)~~ a statement regarding whether the utility is accommodating PIPP participants' requests to opt-out of levelized budget billing pursuant to subparagraph 4412(e)(VI) and, if not, an explanation of why the utility believes it is not reasonable and prudent to modify its automated billing system to accommodate such requests. If the utility plans to accommodate such requests at any point in the upcoming year, a description of the plan, including the anticipated cost of the plan and the date that the functionality in its automated billing system will go online, must be included.
- (m) Energy Assistance System Benefit Charge. Beginning October 1, 2022, each utility shall include on its monthly bills a flat energy assistance system benefit charge of 50 cents, with this amount

rising to 75 cents on October 1, 2023, and being adjusted for inflation in accordance with changes in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood beginning on October 1, 2024. The disposition of money collected by the Energy Assistance System Benefit Charge is determined by § 40-8.7-108, C.R.S.

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-4

#### PART 4

#### RULES REGULATING GAS UTILITIES AND PIPELINE OPERATORS

\* \* \* \*

[indicates omission of unaffected rules]

#### **4412. Gas Service Affordability Program.**

- (a) Scope and applicability.
- (I) Gas utilities with Colorado retail customers shall provide low-income energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential low-income customers, as permitted by § 40-3-106, C.R.S.
  - (II) Rule 4412 is applicable to investor-owned gas utilities subject to rate regulation by the Commission.
- (b) Definitions. The following definitions apply only in the context of rule 4412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.
- (I) “Administrative cost” means the utility’s direct cost for labor (to include the cost of benefit loadings), materials, and other verifiable expenditures directly related to the administration and operation of the program not to exceed ten percent of the total cost of program credits applied against bills for current usage and pre-existing arrearages or \$10,000, whichever amount is greater.
  - (II) “Affordable percentage of income payment” means the amount of the participant’s annual bill deemed affordable under subparagraph 4412(e)(I).
  - (III) “Arrearage” means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.
  - (IV) “Colorado Energy Office” (CEO) means the Colorado Energy Office created in § 24-38.5-101, C.R.S.
  - (V) “Eligible low-income customer” means a residential utility customer who meets the household income thresholds pursuant to paragraph 4412(c).

- (VI) “Fixed credit” means an annual bill credit established at the beginning of a participant’s participation in a program each year delivered as a monthly credit on each participant’s bill. The fixed credit is the participant’s full annual bill minus the participant’s affordable percentage of income payment obligation on the full annual bill.
  - (VII) “Full annual bill” means the current consumption of a participant billed at standard residential rates. The full annual bill of a participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and (2) that portion of the bill that exceeds the affordable percentage of income payment.
  - (VIII) “LEAP” means Low-Income Energy Assistance Program, a county-run, federally-funded, program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.
  - (IX) “LEAP participant” means a utility customer who at the time of applying to participate in a program has been determined to be eligible for LEAP benefits by the Department during either the Department’s current LEAP application period, if that period is open at the time the customer applies for program participation; or (the Department’s most recently closed LEAP application period, if that period is closed at the time the customer applies to participate in the program and the Department’s next LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under this definition, the utility customer must apply to the Department during the Department’s next LEAP benefit application period and be determined eligible for such benefits.
  - (X) “Non-participant” means a utility customer who is not receiving low-income assistance under rule 4412.
  - (XI) “Participant” means an eligible low-income residential utility customer who is granted the reasonable preference or advantage through participation in a gas service low-income program.
  - (XII) “Percentage of Income Payment Plan” (PIPP) means a payment plan for participants that does not exceed an affordable percentage of their household income as set forth in subparagraph 4412(e)(l).
  - (XIII) “Program” means a gas service low-income program approved under rule 4412.
  - (XIV) “Program credits” means the amount of benefits provided to participants to offset the unaffordable portion of a participant’s utility bill and /or dollar amounts credited to participants for arrearage forgiveness.
  - (XV) “Unaffordable portion” means the amount of the estimated full annual bill that exceeds the affordable percentage of income payment.
- (c) Participant eligibility.
- (l) Eligible participants are limited to those who meet one or more of the following criteria:

- (A) median household income less than or equal to 200 percent of the federal poverty guideline;
  - (B) median household income less than or equal to 80 percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or
  - (C) qualification under income guidelines adopted by the Department of Human Services pursuant to section § 40-8.5-105, C.R.S.
- (II) The utility shall obtain the determination of a participant's eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office..
- (III) If a participant's household income is \$0, the utility may establish a process that verifies income on a more frequent basis.
- (IV) Program participants shall not be required to make payment on their utility account as a condition of entering into the program.
- (d) Enrollment. Utilities shall be responsible for the methods by which participant enrollment in their approved low income program is obtained and sustained, however the utility should engage in enrollment processes that are efficient and attempt to maximize the potential benefits of participation in the low income program by low income customers.
- (e) Payment plan.
- (I) Participant payments for natural gas bills rendered to participants shall not exceed an affordable percentage of income payment. For accounts for which natural gas is the primary heating fuel, participant payments shall be no lower than two percent and not greater than three percent of the participant's household income. For accounts for which electricity is the primary heating fuel but the participant also has natural gas service, utility participant payments for gas service shall not be greater than one percent of the participant's household income.
  - (II) In the event that a primary heating fuel for any particular participant has been identified by LEAP, that determination shall be final.
  - (III) Notwithstanding the percentage of income limits established in subparagraph 4412(e)(I), a utility may establish minimum monthly payment amounts for participants with household income of \$0, provided that the participant's minimum payment for a natural gas account shall be no more than \$10.00 a month.
  - (IV) Full annual bill calculation. The utility shall be responsible for estimating a participant's full annual bill for the purpose of determining the unaffordable portion of the participant's full annual bill delivered as a fixed credit on the participant's monthly billing statement.
  - (V) Fixed credit benefit. The fixed credit shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges change to the extent

that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.

- (VI) Levelized budget billing participation. A utility may enroll participants in its levelized budget billing program as a condition of participation in the program, though the utility shall also allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits, which option shall be available to the participants where the utility's automated billing system is capable. Utilities without automated billing systems capable of permitting opt out of levelized budget billing shall reasonably and prudently modify their systems to facilitate opt out of levelized budget billing. Should a participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.
- (VII) Arrearage credits.
- (A) Arrearage credits shall be applied to pre-existing arrearages.
- (B) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to \$0.00 over a period not less than one month and not more than twenty-four months.
- (C) Application of an arrearage credit to a participant account may be conditioned by the utility on one or more of the following:
- (i) the receipt of regular participant payments toward bills for current usage; or
- (ii) the payment of a participant copayment toward the arrearages so long as the participant's copayment total dollar amount does not exceed one percent of gross household income.
- (D) Should the participant exit the program prior to the full forgiveness of all pre-existing arrearages, the amount of remaining pre-existing arrearages shall become due in accordance with the utility's tariff filed under rules 4401, 4407, and 4408.
- (E) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity while the customer is participating in the program.
- (F) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills.
- (VIII) Portability of benefits. A participant may continue to participate without reapplication should the participant change service addresses, but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the billing amount to reflect the changed circumstances. A participant who changes

service addresses and does not remain within the service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.

- (IX) Payment default provisions. Failure of a participant to make his or her monthly bill payments may result in a utility placing the participant in its regular collection cycle. Partial or late payments shall not result in the removal of a participant from the program.

- (f) Program implementation.

Each utility shall maintain effective terms and conditions in its tariffs on file with the Commission describing its low-income program.

- (g) Cost recovery.

- (I) Each utility shall include in its low income tariff terms and conditions how costs of the program will be recovered.

- (II) Program cost recovery.

- (A) Program cost recovery shall be based on a fixed monthly fee.

- (B) The maximum impact on residential rates shall be no more than \$1.00 per month.

- (C) In order to determine monthly rates applicable to rate classes other than residential, program costs shall be allocated to each retail rate based on each rate class's share of the test year revenue requirement established in the utility's last Phase II rate case, or under another reasonable methodology supported by quantifiable information. The monthly rate per this subparagraph to be charged each rate schedule customer shall be clearly stated on a tariff sheet.

- (D) Utilities shall separately account for the program year's program cost recovery and program and administrative costs to determine if the net of program cost recovery and program and administrative cost are in balance during the program year.

- (i) By December 15 of each year, the utility shall file a report with the Commission in the most recent miscellaneous proceeding for annual low-income filings detailing the net difference between program cost recovery and program costs as of October 31 of each year.

- (1) Should the net difference of program cost recovery over program and administrative costs be greater than 50 percent derived in D) above, either positive or negative, and the utility is not currently at the maximum impact for non-participants, the utility shall file with the Commission an advice letter and tariff pages seeking approval for the rates determined in subparagraph 4412(g)(II)(D) in order to bring the projected recovery in balance for the ensuing 12 month period. The revised Residential charge shall not exceed the maximum impact for non-participants in subparagraph 4412(g)(II)(C).
- (III) The following costs are eligible for recovery by a utility as program costs:
- (A) program credits or discounts applied against bills for current usage;
  - (B) program credits applied against pre-existing arrearages;
  - (C) program administrative costs; and
  - (D) Commission-sponsored program evaluation costs required under paragraph 4412(k).
- (IV) The utility shall apply, as an offset to cost recovery, all program expenses attributable to the program. Program expenses include utility operating costs; changes in the return requirement on cash working capital for carrying arrearages; changes in the cost of credit and collection activities directly related to low-income participants; and changes in uncollectable account costs for these participants.
- (V) LEAP grants.
- (A) The utility may apply energy assistance grants provided to the participant by the LEAP program to the dollar value of credits granted to individual program participants.
  - (B) If applying LEAP grants first, a utility shall apply any energy assistance benefit granted to the participant by LEAP to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.
  - (C) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:
    - (i) first, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding; and
    - (ii) second, to the account of the program participant as a benefit to the participant.

- (D) No portion of an energy assistance or LEAP grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.
- (h) Other programs. In addition to the utility's low-income program, with Commission approval, a utility may offer other rate relief options to eligible households.
  - (I) Other programs offered by the utility under rule 4412 must be intended to reach low-income households that do not substantially benefit from the provisions of the low-income program. Such programs may take the form of discount rates, tiered discount rates or other direct bill relief methods where the low-income household benefitting from the program is granted a reasonable preference in tariffed rates assessed to all residential utility customers.
  - (II) Cost recovery for other programs combined with the Percentage of Income Payment Plan shall not exceed the maximum impact on residential rates described in subparagraph 4412(g)(II)(C).
- (i) Energy efficiency and weatherization.
  - (I) The utility shall provide all program participants with information on energy efficiency programs offered by the utility or other entities and existing weatherization programs offered by the state of Colorado or other entities.
  - (II) The utility shall provide the Colorado Energy Office with the name and service address of participant households for which annual natural gas usage exceeds 600 therms annually.
- (j) Stakeholder engagement. A utility shall conduct annual meetings with low-income stakeholders for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders.
- (k) Program evaluation. A triennial evaluation of the program provisions under rule 4412 beginning in 2019 shall be undertaken in order to review best practices in similar low income assistance programs in existence in other regulatory jurisdictions, as well as evaluate operation of each utility's program for effectiveness in achieving optimum support being provided to low income participants. The evaluation shall also recommend modifications if available that improve the delivery of benefits to participants and increase the efficiency and effectiveness of each program as they exist at the point of evaluation. The program evaluation shall include a customer needs assessment provided that adequate funds are available.
  - (I) Procurement of the third-party vendor that will perform the evaluation will be undertaken by the Colorado Energy Office. The CEO shall seek the involvement of interested stakeholders including, but not limited to, Commission staff, all Commission regulated electric and gas utilities, LEAP, the Office of Consumer Counsel, and Energy Outreach Colorado in the design of the requirements regarding study focus and final reporting.

- (II) Approval of the third-party vendor shall be the responsibility of the Commission. The CEO shall file with the Commission in the most recent annual report proceeding, a request for approval of the contract of the vendor selected. The Commission shall review and act on the request within 30 days.
  - (III) \$00.0013 per customer per month shall be set aside by the utility in order to cover the cost of the program evaluation described in paragraph 4412(k).
  - (IV) The dollars resulting from the \$00.0013 charge shall be recovered as a program cost under subparagraph 4412(g)(III).
  - (V) The evaluation will be filed by Commission staff in the most recent miscellaneous proceeding for annual low income filings.
  - (VI) Staff and the CEO will assess the individual utilities' deferred balances set aside for the program evaluation starting in 2019 at the conclusion of the third program year and each three years thereafter and will determine the amounts each utility is to remit to the third party evaluator based on the contractual terms approved by the Commission for the evaluation.
- (I) Annual report. No later than December 31 of each year, each utility shall file a report in the most recent miscellaneous proceeding established by the Commission to receive annual low income filings using the form available on the Commission's website, based on the 12-month period ending October 31 and containing the following information below:
- (I) monthly information on the program including number of participants, amount of benefit disbursement, type of benefit disbursement, LEAP benefits applied to the unaffordable portion of participant's bills, administrative costs, and revenue collection;
  - (II) the number of applicants for the program;
  - (III) the number of applicants qualified for the program;
  - (IV) the number of participants;
  - (V) the average assistance provided, both mean and median;
  - (VI) the maximum assistance provided to an individual participant;
  - (VII) the minimum assistance provided to an individual participant;
  - (VIII) total cost of the program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;
  - (IX) the number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;

- (X) an estimate of utility savings as a result of the implementation of the program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, etc.);
  - (XI) the average monthly and annual total natural gas consumption in PIPP participants' homes;
  - (XII) the average monthly and annual total natural gas consumption in the utility's residential customer's homes;
  - (XIII) the number of program participants referred to the weatherization program;
  - (XIV) the total dollar value of participant arrearages forgiven, the number of customers who had arrearage balances forgiven, and the maximum and minimum dollar value of arrears forgiven;
  - (XV) a description of the ways in which the program is being integrated with existing energy efficiency, DSM, or behavioral programs offered by the utility;
  - (XVI) a description of the ways in which the program is being integrated with existing weatherization programs offered by the state of Colorado;
  - (XVII) a description of program outreach strategies and metrics that illustrate the effectiveness of each outreach strategy;
  - (XVIII) a description of participant outreach, education, and engagement efforts, including descriptions of communications and materials, and key findings from those efforts;
  - (XIX) the number of participants at the start of the program year that the utility removed for any reason, the number of participants who opted out of the program after enrollment, the number of potential participants rejected because of the existence of a cap on the program, the period of arrearage time from date participants became eligible and were granted arrearage forgiveness, and the number of participants who came back as eligible participants in the program year after being eligible in a prior program year and were provided arrearage credits in the program year;
  - (XX) a narrative summary of the utility's recommended program modifications based on report findings; and
  - (XXI) a statement regarding whether the utility is accommodating PIPP participants' requests to opt-out of levelized budget billing pursuant to subparagraph 4412(e)(VI) and, if not, an explanation of why the utility believes it is not reasonable and prudent to modify its automated billing system to accommodate such requests. If the utility plans to accommodate such requests at any point in the upcoming year, a description of the plan, including the anticipated cost of the plan and the date that the functionality in its automated billing system will go online, must be included.
- (m) Energy Assistance System Benefit Charge. Beginning October 1, 2022, each utility shall include on its monthly bills a flat energy assistance system benefit charge of 50 cents, with this amount

rising to 75 cents on October 1, 2023, and being adjusted for inflation in accordance with changes in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood beginning on October 1, 2024. The disposition of money collected by the Energy Assistance System Benefit Charge is determined by § 40-8.7-108, C.R.S.

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 21R-0326EG

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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.

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**COMMISSION DECISION ADDRESSING EXCEPTIONS  
TO DECISION NO. R22-0330 AND ADOPTING RULES**

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Mailed Date: August 2, 2022  
Adopted Date: July 27, 2022

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**I. BY THE COMMISSION****A. Statement**

1. Through this Decision, the Commission addresses the exceptions filed to Decision No. R22-0330, issued June 1, 2022, by Administrative Law Judge (ALJ) Conor F. Farley (Recommended Decision). The Commission adopts revised rules governing low-income programs offered by electric and natural gas utilities, located within the Commission's Rules Regulating Electric Utilities at 4 *Code of Colorado Regulations* (CCR) 723-3-3412, and the Commission's Rules Regulating Gas Utilities at 4 CCR 723-4-4412. The adopted rules are attached to this Decision in legislative format (i.e., strikeout/underline) as Attachments A (electric) and C (gas), and in final format as Attachments B (electric) and D (gas).

**B. Background**

2. On July 15, 2021, the Commission commenced this rulemaking by a Notice of Proposed Rulemaking (NOPR) issued as Decision No. C21-0408. Decision No. C21-0408 established deadlines for comments and response comments, scheduled a public comment hearing to be held on August 23, 2021, and referred this proceeding to an ALJ.

3. After receiving initial and responsive comments from rulemaking participants, the ALJ held the scheduled remote public comment hearing on August 23, 2021. At the end of the discussion, the ALJ posed several questions for the participants to answer in written comments and continued the remote public comment hearing to September 27, 2021. The ALJ continued the remote public comment hearing three additional times until October 19, 2021, then to December 21, 2021, and then to February 4, 2022. Rulemaking participants filed multiple rounds of comments during the proceeding. On June 1, 2022, the ALJ issued the Recommended Decision.

4. On June 21, 2022, Public Service Company of Colorado (Public Service), the Colorado Energy Office (CEO), and Black Hills Colorado Electric, LLC and Black Hills Colorado Gas, Inc., d/b/a Black Hills Energy (collectively Black Hills) filed exceptions to the Recommended Decision. On July 1, 2022, Colorado Natural Gas, Inc. (CNG) filed responses to CEO's exceptions, and on July 5, 2022, Black Hills filed responses to CEO's exceptions.

### **C. Exceptions**

5. Below, we address relevant portions of the Recommended Decision, exceptions, any responses, and the Commission's findings and conclusions regarding the ALJ's adopted rules and the exceptions.

#### **1. Rules 3412(b)/4412(b) – Levelized Budget Billing Definition**

6. The current rules do not contain a definition of "levelized budget billing." Throughout the proceeding, CEO recommended that a definition be adopted to ensure that all utilities employ the same approach to that assistance program and to solve certain issues set forth in the triennial evaluation of utility affordability programs conducted pursuant to Rules 3412(k) and 4412(k). However, it did not propose a specific definition. Black Hills and Public Service proposed definitions, and Black Hills noted that utilities are required to include their levelized budget billing plans in tariffs approved by the Commission. CNG stated that it was not aware of any issues caused by the lack of a common definition across the utilities.

7. The ALJ was persuaded by the fact that utilities are required by Rules 3404(b)/4404(b) to have a budget or level-payment plan available for customers, that any differences between the utilities' levelized budget plans are contained in Commission-approved tariffs, and that no issues have been identified that would be solved by including a definition in the

rules. Therefore, the Recommended Decision did not adopt a definition for “levelized budget billing.”

8. In its exceptions, CEO states it continues to believe that a definition of the term is provided to provide clarity in the rules. CEO recommends that the Commission choose either of the definitions proposed by Black Hills or Public Service.

9. We agree with the ALJ’s reasoning and determination that including a definition of “levelized budget billing” is unnecessary. Therefore, we deny CEO’s exception on this point.

## **2. Rules 3412(c)/4412(c) – Specific Language Proposals**

10. The Recommended Decision incorporated into Rules 3412(c)/4412(c) the new definition of low-income changed by House Bill (HB) 22-1018 and adopted in § 40-3-106(1)(d)(II), C.R.S. Therefore, in accordance with this new definition, the ALJ adopted rules to reflect that the Department of Human Services (DHS), Energy Outreach Colorado (EOC), and CEO will perform the income qualification for purposes of determining participant eligibility in the utilities’ low-income programs.

### **a. Exceptions and Responses**

11. In their exceptions, Public Service and CEO highlight an inconsistency in the adopted rules. Electric Rule 3412(c)(II) reads: “the utility may obtain the determination of a participant’s eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office,” while Gas Rule 4412(c)(II) states that “the utility shall obtain the determination” from the three entities. Public Service recommends that both rules use “shall,” consistent with the ALJ’s intent, and CEO agrees. In its response, CNG recommends that the rules use “may.” CNG argues that the verification process is managed by the utilities and because CNG is concerned that the reference to only the Department of Humans Services (DHS), CEO, or Energy

Outreach Colorado (EOC) will conflict with its current practice of working with the Colorado Department of Human Services' Low Income Energy Assistance Program (LEAP) for income determination, and will limit utilities' ability to determine customer eligibility from another third party.

12. Additionally, CEO argues that the adopted rules' requirement that utilities "obtain" the determinations from DHS, EOC, or CEO imposes Commission requirements on entities that are not subject to the Commission's jurisdiction. CEO is concerned that it would be required to provide such determinations when asked. CEO therefore proposes the rules state "the utility shall accept the determination" regarding participant eligibility. CNG opposes this proposal, arguing that utilities shouldn't be required to accept, without question, determinations done by entities outside of the Commission's authority.

**b. Findings and Conclusions**

13. For Electric Rule 3412(c)(II), we will adopt the following: "the utility shall obtain the determination of a participant's eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office." Gas Rule 4412(c)(II) contains this language and will remain unchanged from the version adopted by the Recommended Decision. Statute now specifies that to be eligible for utility low-income programs, the customer must meet specified criteria as determined by DHS, CEO, or EOC. Therefore, it is logical that utilities be required to work with these three entities. Additionally, we are not persuaded by CNG's concern that it will not be able to continue working with LEAP, because LEAP is housed within DHS.

14. We reject CEO's proposal that utilities be required to "accept" eligibility determinations rather than to "obtain" eligibility determinations. The adopted rules require utilities

to obtain the eligibility determinations, and do not directly place any associated requirements on DHS, CEO, or EOC.

### **3. Rules 3412(c)/4412(c) – Funding Guarantee**

15. Over the course of the rulemaking, utilities expressed concern that CEO and EOC could provide eligibility determinations without the guarantee of additional funding assistance. EOC argued that the Commission does not have jurisdiction over EOC and thus cannot require EOC to provide funding for a ratepayer that EOC determines is eligible for an energy assistance program.

16. The Recommend Decision recognizes that currently, the LEAP office provides funding to a ratepayer's utility when it determines the ratepayer is eligible for LEAP assistance, and that the LEAP office's funding is designed to cover the "unaffordable portion" of a ratepayer's heating costs as determined by the LEAP office. The ALJ also recognizes that the utilities' energy assistance programs have been used to provide financial support in addition to the support provided by LEAP, so that if EOC and CEO do not provide similar funding assistance, the utilities' funding for their energy assistance programs will be impacted. Despite these issues, the ALJ determined that because the Commission does not have jurisdiction over EOC or CEO, the Commission's rules cannot impose a requirement on EOC or CEO to guarantee funding for ratepayers those entities identify as eligible.

#### **a. Exceptions**

17. Black Hills filed an exception on this point, repeating the arguments made by utilities prior to the Recommended Decision. Black Hills states that the modifications in the adopted rules result in higher income levels for eligibility and additional entities verifying eligibility, but without the funding guarantee that is currently available. Black Hills states that

expanded participant eligibility, without guaranteed funding, will likely result in no support for some eligible participants.

18. Black Hills points to the new Energy Assistance System Benefit Charge (EASBC), which was established by HB 21-1105. The EASBC is to be included on each customer's monthly bill as a flat charge to "help finance the low-income energy assistance program."<sup>1</sup> Black Hills states that EOC, as a recipient of those funds, is required to utilize those funds to provide low-income energy assistance and help finance direct utility bill payment assistance. Black Hills argues that therefore, the EASBC should be used to help finance low-income energy assistance programs.

**b. Findings and Conclusions**

19. Despite the potential funding issues identified by the utilities, the Commission agrees with the ALJ's determination that a funding guarantee should not be included because we are not persuaded that our authority extends to the EOC's or the CEO's use of funds. We are also not persuaded that EOC's use of the EASBC created by HB 21-1105, which Black Hills points to, is subject to our oversight.<sup>2</sup> Therefore, we deny Black Hills' exception requesting the inclusion of a funding guarantee.

**4. Rules 3412(e)(VI)/4412(e)(VI) – Levelized Budget Billing Opt-Out**

20. Through the NOPR, we proposed that Rules 3412(e)(VI)/4412(e)(VI) allowing utilities to enroll participants in its levelized budget billing program as a condition of participation also require utilities to "allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits." During the proceeding, Black Hills stated that its automated billing system is not capable of accommodating an opt-out request, and it proposed that

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<sup>1</sup> § 40-8.7-105.5(1)(a), C.R.S.

<sup>2</sup> See, e.g., § 40-8.5-103.5, C.R.S.

the opt-out requirement be applicable only to utilities with capable automated billing systems. Additionally, it proposed including in the rules that utilities “shall reasonable and prudently modify their systems to facilitate opt out of levelized budget billing.” CEO recommended that the Commission permit utilities up to one year to implement any billing system changes necessary to implement the opt-out requirement proposed by the NOPR.

21. The ALJ was persuaded by Black Hills’ concern that modification of its system could take time and financial resources, but he also recognized that an opt-out option is important. Therefore, the Recommended Decision adopted the language proposed in the NOPR, the language proposed by Black Hills, and additional language requiring utilities not accommodating participants’ opt-out requests to explain why such an accommodation is not reasonable and prudent.

**a. Exceptions and Responses**

22. CEO argues that the adopted rules do not go far enough to ensure that participants can opt out of a levelized budget billing plan. It proposes that utilities be required to modify their systems within one year of a request to opt out unless the Commission determines that such modification is not technically feasible. In its response to exceptions, CNG states it is not opposed to CEO’s proposed rule modification, but it suggests that the rule include a less uncertain timetable for such requests, for example within one year of the rule’s effective date.

**b. Findings and Conclusions**

23. We find that the ALJ appropriately addressed the balance of customers’ interests in the availability of different billing options and the concern regarding time and expense to implement such options. Therefore, we reject CEO’s exception on this point and uphold the determinations in the Recommended Decision.

**5. Rules 3412(g)/4412(g) and Rules 3412(l)/4412(l) – Report Filing Dates**

24. Adopted Rules 3412(g)(II)(D)(i)/4412(g)(II)(D)(i) require utilities, by December 15 of each year, to submit a report for annual low-income filings detailing the net difference between program cost recovery and program costs as of October 31 of each year. Adopted Rules 3412(l)/4412(l) require utilities, no later than December 31 of each year, to submit a report for annual low-income filings using the form available on the Commission’s website based on each 12-month period ending October 31.

25. In its exceptions, Public Service requests that the filing deadline for the two reports referenced above be consistent, stating that it would be more efficient to have the same filing deadline for both reports. It recommends that the Commission revise the annual report deadline in Rules 3412(l) and 4412(l) from December 31 to December 15.

26. We grant Public Service’s request in part and revise Rules 3412(g)(II)(D)(i)/4412(g)(II)(D)(i) so that the referenced reports must be filed no later than December 31 of each year.

**6. Rules 3412(j)/4412(j) – Annual Meetings with Participants/Stakeholders**

27. Rules 3412(j)/4412(j) require utilities to conduct annual meetings with “low-income stakeholders for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders.” Over the course of the rulemaking, CEO proposed adding language so that utilities would be required to conduct annual meetings “with participants and low-income stakeholders,” and that utilities be required to annually report on participant and low-income stakeholder outreach efforts. CEO argued that participants and low-income stakeholders should be considered two separate groups, implying that

utilities engage with certain organizations focused on low-income customers but not with actual participants in low-income programs.

28. The Recommended Decision rejected CEO's proposal that would explicitly require an annual participant meeting, reasoning that "participants" fall reasonably within the broader category of "low-income stakeholders," and noting that CEO's proposed changes were ambiguous. However, the ALJ did adopt CEO's recommendation that utilities be required to report on "participant outreach, education, and engagement efforts...."

**a. Exceptions and Responses**

29. In its exceptions, CEO argues that the addition of the word "participant" is necessary because utilities have seldom engaged participants in the past. CEO provides additional clarification regarding its proposal, recommending a separate and distinct process where utilities would engage with their customers regarding these programs. It states that its proposal is intended to increase participant awareness.

30. Black Hills and CNG responded in opposition to CEO's proposal. Black Hills states that the proposal is vague, not practicable, and would unnecessarily increase administrative costs that would be deducted from its program funding. CNG states it never contemplated that a participant would be excluded from its annual meetings with low-income stakeholders. It opposes a rigid separate process focused on participants that would potentially increase the utilities' administrative costs to comply with the rules.

**b. Findings and Conclusions**

31. We agree with the determination in the Recommended Decision that the term "low-income" is sufficiently broad to encompass participants, and we find it unnecessary to explicitly require annual meetings with participants. Therefore, we deny CEO's exception on this

point. We note that the ALJ did adopt CEO's proposal regarding annual reporting of participant engagement, and we will review such engagement efforts closely.

**7. Rules 3412(I)/4412(I) – Dual Reporting by Heating Type**

32. Rules 3412(I)/4412(I) require utilities to file annual reports for participant accounts and allow utilities to combine in one report accounts that use gas as the primary heating fuel and accounts that use a different type of heating fuel.

33. During the proceeding, CEO proposed that utilities be required to file separate reports for the two types of accounts. CEO maintained that separate reporting is appropriate because currently, the Commission cannot distinguish how many participants have electric heat, as compared to customers with electric service and another heating fuel. CEO argued that the utilities should report this information separately since the Commission determines an affordable bill for these customers differently under Rule 3412(e). Public Service, Black Hills, and CNG stated that they do not collect and/or track heating fuel type by customer. The ALJ was persuaded by the utilities' statements and declined to adopt CEO's proposed change in the Recommended Decision.

**a. Exceptions and Responses**

34. In its exceptions, CEO repeats its argument that the rules should require separate annual reports for participants based on their primary heating fuel type. CEO also states that this is necessary for the Commission to ensure that participants are paying an affordable bill for their heating and other fuel usage under Rules 3412(e)(I)/4412(e)(I), and that this issue will become increasingly important as customers transition from gas or propane heating to electric heating. CEO argues the Commission should require utilities to collect this data from their customers or to obtain it from LEAP or another third party that verifies participant eligibility.

35. Black Hills and CNG responded in opposition to CEO's request for separate annual reporting by heating fuel type. CNG is concerned that as a pure-play gas utility, it is unclear how a requirement for separate reporting would apply to its operations, and it states that there is nothing in the record confirming that LEAP or another third party actually has this information. Black Hills states that separate reporting would be burdensome and would reduce funding available for participant benefits.

**b. Findings and Conclusions**

36. We find that separate reporting is unwarranted at this time, particularly given that it appears the utilities do not collect and/or track heating fuel type by customer. We agree with the reasoning and determination in the Recommended Decision and reject CEO's exception on this point.

**8. Rules 3412(m)/4412(m) - Dates**

37. By statute, the EASBC is set at \$0.50 for electric service and \$0.50 for gas service between October 2021 through September 2022. For October 2022 through September 2023, the charges are set at \$0.75 for electric and gas services. Then, beginning October 1, 2023, the \$0.75 charge shall be adjusted in accordance with a specified consumer price index.<sup>3</sup> Adopted Rules 3412(m)/4412(m) generally adopt this framework. However, the ALJ pushed back the dates by one year due to the expected effective date of the rules.

38. Black Hills filed an exception, stating that the dates in the adopted rules conflict with the dates set forth in statute. We grant Black Hills' exception on this point and modify the adopted rules so that the relevant dates conform with statute.

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<sup>3</sup> § 40-8.7-105.5, C.R.S.

**9. Rules 3412(m)/4412(m) – Calculation of the EASBC**

39. As set forth in § 40-8.7-105.5(1)(b)(III), C.R.S., the EASBC will be adjusted for inflation in accordance with changes in the United States Department of Labor’s, Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood beginning on October 1, 2023. Adopted Rules 3412(m)/4412(m), as modified by this Decision, reflect this statutory requirement.

40. In their exceptions, Black Hills and Public Service express concern that the calculation for the index adjustment could be practiced differently by different utilities. For example, performing the calculation on different dates may result in different results. Both utilities request the Commission’s rules include a process for adjusting the EASBC for inflation and suggest that Staff provide the calculated amount using a process similar the process set forth in Rules 3403(o)(II)/4403(o)(II).

41. We grant the exceptions of Black Hills and Public Service on this issue. Thus, Rules 3412(m)/4412(m) shall include the following language: “Prior to October 1, 2023, and each year following, Commission staff shall compute the charge adjusted by the index and shall send a letter to each utility stating the charge to be paid by customers during the next calendar year.”

**II. ORDER****A. The Commission Orders That:**

1. The exceptions to Recommended Decision No. R22-0330 filed by Public Service Company of Colorado on July 21, 2022, are granted, in part, consistent with the discussion above.

2. The exceptions to Recommended Decision No. R22-0330 filed by Black Hills Colorado Electric, LLC and Black Hills Colorado Gas, Inc., d/b/a Black Hills Energy, on July 21, 2022 are granted, in part, and denied, in part, consistent with the discussion above.

3. The exceptions to Recommended Decision No. R22-0330 filed by the Colorado Energy Office on July 21, 2022, are denied, consistent with the discussion above.

4. Amendments to Rule 3412 within the Commission's Rules Regulating Electric Utilities, 4 Code of Colorado Regulations (CCR) 723-3, and amendments to Rule 4412 within the Commission Rules Regulating Gas Utilities, 4 CCR 723-4, contained in legislative (i.e., strikeout/underline) format as Attachments A (electric) and C (gas) and final format as Attachments B (electric) and D (gas) are adopted, and are available through the Commission's Electronic Filings system at:

[https://www.dora.state.co.us/pls/efi/EFI.Show\\_Docket?p\\_session\\_id=&p\\_docket\\_id=21R-0326EG](https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0326EG)

5. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

6. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

7. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
July 27, 2022.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ERIC BLANK

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JOHN GAVAN

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MEGAN M. GILMAN

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Commissioners

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-3

#### PART 3 RULES REGULATING ELECTRIC UTILITIES

\* \* \* \*

[indicates omission of unaffected rules]

#### 3412. Electric Service ~~Affordability~~**Low-Income** Program.

(a) Scope and applicability.

- (I) Electric utilities with Colorado retail customers shall provide low-income energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential low-income customers, as permitted by § 40-3-106, C.R.S. Electric utilities shall use consistent naming for assistance programs: [Utility name] Affordability Program.
- (II) Rule 3412 is applicable to investor-owned electric utilities subject to rate regulation by the Commission.

(b) Definitions. The following definitions apply only in the context of rule 3412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (I) “Administrative cost” means the utility’s direct cost for labor (to include the cost of benefit loadings), materials, and other verifiable expenditures directly related to the administration and operation of the program not to exceed ten percent of the total cost of program credits applied against bills for current usage and pre-existing arrearages or \$10,000, whichever amount is greater.
- (II) “Affordable percentage of income payment” means the amount of the participant’s annual bill deemed affordable under subparagraph 3412(e)(I).
- (III) “Arrearage” means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.
- (IV) “Colorado Energy Office” means the Colorado Energy Office created in § 24-38.5-101, C.R.S.
- (V) “Eligible low-income customer” means a residential utility customer who meets the household income thresholds pursuant to paragraph 3412(c).

- (VI) “Fixed credit” means an annual bill credit established at the beginning of a participant’s participation in a program each year delivered as a monthly credit on each participant’s bill. The fixed credit is the participant’s full annual bill minus the participant’s affordable percentage of income payment obligation on the full annual bill.
- (VII) “Full annual bill” means the current consumption of a participant billed at standard residential rates. The full annual bill of a participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and, (2) that portion of the bill that exceeds the affordable percentage of income payment.
- (VIII) “LEAP” means Low-Income Energy Assistance Program, a county-run, federally-funded, program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.
- (IX) “LEAP participant” means a utility customer who at the time of applying to participate in a program has been determined to be eligible for LEAP benefits by the Department during either: (1) the Department’s current ~~six-month (November 1—April 30)~~ LEAP application period, if that period is open at the time the customer applies for program participation; or, (2) the Department’s most recently closed ~~six-month (November 1—April 30)~~ LEAP application period, if that period is closed at the time the customer applies to participate in the program and the Department’s next ~~six-month (November 1—April 30)~~ LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under part (2) of this definition, the utility customer must apply to the Department during the Department’s next ~~six-month (November 1—April 30)~~ LEAP benefit application period and be determined eligible for such benefits.
- (X) “Non-participant” means a utility customer who is not receiving low-income assistance under rule 3412.
- (XI) “Participant” means an eligible low-income residential utility customer who is granted the reasonable preference or advantage through participation in an electric service low-income program.
- (XII) “Percentage of Income Payment Plan” (or “PIPP”) means a payment plan for participants that does not exceed an affordable percentage of their household income as set forth in subparagraph 3412(e)(I).
- (XIII) “Program” means an electric service low-income program approved under rule 3412.
- (XIV) “Program credits” means the amount of benefits provided to participants to offset the unaffordable portion of a participant’s utility bill and /or dollar amounts credited to participants for arrearage forgiveness.
- (XV) “Unaffordable portion” means the amount of the estimated full annual bill that exceeds the affordable percentage of income payment.

- (c) Participant eligibility. ~~Eligible participants are limited to those with a household income at or below 185 percent of the current federal poverty level and who otherwise meet the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.~~
- (I) Eligible participants are limited to those who meet one or more of the following criteria:
- (A) median household income less than or equal to 200 percent of the federal poverty guideline;
- (B) median household income less than or equal to 80 percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or
- (C) qualification under income guidelines adopted by the Department of Human Services pursuant to § 40-8.5-105, C.R.S.
- (II) The utility shall obtain the determination of a participant's eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office. ~~household income information from LEAP.~~
- (III) If a participant's household income is \$0, the utility may establish a process that verifies income on a more frequent basis.
- (IV#) Program participants shall not be required to make payment on their utility account as a condition of entering into the program.
- (d) Enrollment. Utilities shall be responsible for the methods by which participant enrollment in their approved low-income program is obtained and sustained, however the utility should engage in enrollment processes that are efficient and attempt to maximize the potential benefits of participation in the low-income program by low-income customers.
- (e) Payment plan.
- (I) Participant payments for electric bills rendered to participants shall not exceed an affordable percentage of income payment. The percentage of a participant's household income for which the participant is responsible shall be determined as follows:
- (A) for electric accounts for which electricity is the primary heating fuel, participant payments shall be no lower than three percent and not greater than six percent of the participant's household income; however, if the participant also has natural gas service from a regulated utility, participant payments shall not be greater than five percent of the participant's household income; and
- (B) for electric accounts for which electricity is not the primary heating fuel, participant payments shall be no lower than two percent and not greater than three percent of the participant's household income.

- (II) In the event that a primary heating fuel for any particular participant has been identified by LEAP, that determination shall be final.
- (III) Notwithstanding the percentage of income limits established in subparagraph 3412(e)(I), a utility may establish minimum monthly payment amounts for participants with household income of \$0, provided that:
  - (A) the participant's minimum payment for an electric heating account shall be no more than \$20.00 a month; and
  - (B) the participant's minimum payment for an electric non-heating account shall be no more than \$10.00 a month.
- (IV) Full annual bill calculation. The utility shall be responsible for estimating a participant's full annual bill for the purpose of determining the unaffordable portion of the participant's full annual bill delivered as a fixed credit on the participant's monthly billing statement.
- (V) Fixed credit benefit. The fixed credit shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges change to the extent that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.
- (VI) Levelized budget billing participation. A utility ~~shall~~ may enroll participants in its levelized budget billing program as a condition of participation in the program, though the utility shall also allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits, which option shall be available to the participants where the utility's automated billing system is capable. Utilities without automated billing systems capable of permitting opt out of levelized budget billing shall reasonably and prudently modify their systems to facilitate opt out of levelized budget billing. Should a participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.
- (VII) Arrearage credits.
  - (A) Arrearage credits shall be applied to pre-existing arrearages.
  - (B) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to \$0.00 over a period not less than one month and not more than twenty-four months.
  - (C) Application of an arrearage credit to a participant account may be conditioned by the utility on one or more of the following:
    - (i) the receipt of regular participant payments toward bills for current usage;  
or

- (ii) the payment of a participant copayment toward the arrearages so long as the participant's copayment total dollar amount does not exceed one percent of gross household income.
  - (D) Should the participant exit the program prior to the full forgiveness of all pre-existing arrearages, the amount of remaining pre-existing arrearages shall become due in accordance with the ~~utilities-~~utility's tariff filed under rules 3401, 3407, and 3408.
  - (E) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity while the customer is participating in the program.
  - (F) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills, ~~if the participant enters into and maintains a levelized budget billing plan.~~
  - (VIII) Portability of benefits. A participant may continue to participate without reapplication should the participant change service addresses, but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the ~~levelized budget~~ billing amount to reflect the changed circumstances. A participant who changes service addresses and does not remain within the service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.
  - (IX) Payment default provisions. Failure of a participant to make his or her monthly bill payments ~~will~~ may result in a utility placing the participant in its regular collection cycle. ~~Missed, partial~~Partial or late payments shall not result in the removal of a participant from the program.
- (f) Program implementation.
- Each utility shall maintain effective terms and conditions in its tariffs on file with the Commission containing its low-income program.
- (g) Cost recovery.
- (I) Each utility shall include in its low-income tariff terms and conditions how costs of the program will be recovered.
  - (II) Program cost recovery.
    - (A) Program cost recovery shall be based on a fixed monthly fee.
    - (B) ~~[Emergency rule expired on 07/14/2021]~~The maximum impact on residential rates shall be no more than \$1.00 per month.

- (C) In order to determine monthly rates applicable to rate classes other than residential, program costs shall be allocated to each retail rate based on each rate class's share of the test year revenue requirement established in the utility's last Phase II rate case, or under another reasonable methodology supported by quantifiable information. The monthly rate per this subparagraph to be charged each rate schedule customer shall be clearly stated on a tariff sheet.
- (D) Utilities shall separately account for the ~~cumulative program year's~~ program cost recovery and ~~cumulative~~ program and administrative costs to determine if the net of program cost recovery and program and administrative cost are in balance during the program year.
- ~~(i) By December 31, 2016, utilities shall determine if the total cumulative cost recovery amount exceeds total cumulative program and administrative costs through September 30, 2016. If at that time total cumulative cost recovery exceeds total cumulative program and administrative costs by 50 percent or more, the over collected amount shall be refunded to all customers in accordance with rule 3410.~~
- ~~(ii) Beginning December 31, 2017 and in each year thereafter, No later than December 31 of each year,~~ the utility shall file a report with the Commission in the most recent miscellaneous proceeding for annual low-income filings detailing the net difference between program cost recovery and program costs as of ~~September 30~~ October 31 of each year.
- (1) Should the net difference of program cost recovery over program ~~and administrative~~ costs be greater than 50 percent derived in ~~(#D)~~ above, either positive or negative, and the utility is not currently at the maximum impact for non-participants, the utility shall file with the Commission an advice letter and tariff pages seeking approval for the rates determined in subparagraph 3412(g)(II)(D) in order to bring the projected recovery in balance for the ensuing 12 month period. The revised charge shall not exceed the maximum impact for non-participants in subparagraph 3412(g)(II)(C).
- (III) The following costs are eligible for recovery by a utility as program costs:
- (A) program credits or discounts applied against bills for current usage.
- (B) program credits applied against pre-existing arrearages.
- (C) program administrative costs; and
- (D) Commission-sponsored program evaluation costs required under paragraph 3412(k).

- (IV) The utility shall apply, as an offset to cost recovery, all program expenses attributable to the program. Program expenses include utility operating costs; changes in the return requirement on cash working capital for carrying arrearages; changes in the cost of credit and collection activities directly related to low-income participants; and changes in uncollectable account costs for these participants.
- (V) LEAP grants. The utility ~~shall~~ may apply energy assistance grants provided to the participant by the LEAP program to the dollar value of credits granted to individual program participants.
  - (A) A-If applying LEAP grants first, a utility shall apply any energy assistance benefit granted to the participant by LEAP to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.
  - (B) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:
    - (i) first, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding; and
    - (ii) second, to the account of the program participant as a benefit to the participant.
  - (C) No portion of an energy assistance or LEAP grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.
  - (D) If an all-electric utility's low-income customers do not benefit widely from LEAP grants, the utility shall not apply the dollar value of credits granted to individual LEAP grantees to the dollar value of credits granted to individual program participants.
- (h) Other programs. In addition to the utility's low-income program, with Commission approval, a utility may offer other rate relief options to eligible households.
  - (I) Other programs offered by the utility under rule 3412 must be intended to reach low-income households that do not substantially benefit from the provisions of the low-income program. Such programs may take the form of discount rates, tiered discount rates or other direct bill relief methods where the low-income household benefitting from the program is granted a reasonable preference in tariffed rates assessed to all residential utility customers.
  - (II) Cost recovery for other programs combined with the Percentage of Income Payment Plan shall not exceed the maximum impact on residential rates described in subparagraph 3412(g)(II)(C).

- (i) Energy efficiency and weatherization.
  - (I) The utility shall provide all program participants with information on energy efficiency programs offered by the utility or other entities and existing weatherization programs offered by the state of Colorado or other entities.
  - (II) The utility shall provide the Colorado Energy Office with the name and service address of participant households for which annual electricity usage exceeds 10,000 kWh annually.
- (j) Stakeholder engagement. A utility shall conduct annual meetings with low-income stakeholders for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders.
- (k) Program evaluation. A triennial evaluation of the program provisions under rule 3412 beginning in 2019 shall be undertaken in order to review best practices in similar low-income assistance programs in existence in other regulatory jurisdictions, as well as evaluate operation of each utility's program for effectiveness in achieving optimum support being provided to low-income participants. The evaluation shall also recommend modifications if available that improve the delivery of benefits to participants and increase the efficiency and effectiveness of each program as they exist at the point of evaluation. The program evaluation shall include a customer needs assessment provided that adequate funds are available.
  - (I) Procurement of the third-party vendor that will perform the evaluation will be undertaken by the Colorado Energy Office. The CEO shall seek the involvement of interested stakeholders including, but not limited to, Commission staff, all Commission regulated electric and gas utilities, LEAP, the Office of Consumer Counsel, and Energy Outreach Colorado in the design of the requirements regarding study focus and final reporting.
  - (II) Approval of the third-party vendor shall be the responsibility of the Commission. The CEO shall file with the Commission in the most recent annual report proceeding, a request for approval of the contract of the vendor selected. The Commission shall review and act on the request within 30 days.
  - (III) \$00.0013 per customer per month shall be set aside by the utility ~~starting in the 2016-2017 program year~~ in order to fund the triennial evaluation of the program evaluation described in paragraph 3412(k).
  - (IV) The dollars resulting from the \$00.0013 charge shall be recovered as a program cost under subparagraph 3412(f)(IV).
  - (V) The evaluation will be filed by Commission staff in the most recent miscellaneous proceeding for annual low-income filings.
  - (VI) Staff and the CEO will assess the individual utilities' deferred balances set aside for the program evaluation starting in 2019 at the conclusion of the third program year and each three years thereafter and will determine the amounts each utility is to remit to the third party evaluator based on the contractual terms approved by the Commission for the evaluation.

- (I) Annual report. ~~No later than December 31, 2016, No later than December 31 of each year,~~ each utility shall file a report in the most recent miscellaneous proceeding for annual low-income filings using the form available on the Commission's website, ~~based on the seven-month period April 1, 2016 through October 31, 2016, and then on November 30 each of the following years,~~ based on each 12-month period ending October 31, and containing the following information:
- (I) monthly information on the program including total number of participants, amount of benefit disbursement, type of benefit disbursement, LEAP benefits applied to the unaffordable portion of participant's bills, administrative costs, and revenue collection;
  - (II) the number of applicants for the program;
  - (III) the number of applicants qualified for the program;
  - (IV) the number of participants;
  - (V) the average assistance provided, both mean and median;
  - (VI) the maximum assistance provided to an individual participant;
  - (VII) the minimum assistance provided to an individual participant;
  - (VIII) total cost of the program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;
  - (IX) the number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;
  - (X) an estimate of utility savings as a result of the implementation of the program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, etc.);
  - (XI) the average monthly and annual total electric consumption in PIPP participants' homes;
  - (XII) the average monthly and annual total electric consumption in the utility's residential customer's homes;
  - (XIII) the number of program participants referred to the weatherization program;
  - (XIV) the total dollar value of participant arrearages forgiven, the number of customers who had arrearage balances forgiven, and the maximum and minimum dollar value of arrears forgiven;
  - ~~(XV)~~ a description of the ways in which the program is being integrated with existing energy efficiency, ~~of DSM,~~ or behavioral programs offered by the utility;
  - (XVI) a description of the ways in which the program is being integrated with existing weatherization programs offered by the state of Colorado;

(XVII) a description of program outreach strategies and metrics that illustrate the effectiveness of each outreach strategy;

(XVIII) a description of participant outreach, education, and engagement efforts, including descriptions of communications and materials, and key findings from those efforts;

(X~~XV~~~~II~~) the number of participants at the start of the program year that the utility removed for any reason, the number of participants who opted out of the program after enrollment, the number of potential participants rejected because of the existence of a cap on the program, the period of arrearage time from date participants became eligible and were granted arrearage forgiveness, and the number of participants who came back as eligible participants in the program year after being eligible in a prior program year and were provided arrearage credits in the program year; ~~and~~

(X~~XV~~~~III~~) a narrative summary of the utility's recommended program modifications based on report findings; and

(XXI) a statement regarding whether the utility is accommodating PIPP participants' requests to opt out of levelized budget billing pursuant to subparagraph 3412(e)(VI) and, if not, an explanation of why the utility believes it is not reasonable and prudent to modify its automated billing system to accommodate such requests. If the utility plans to accommodate such requests at any point in the upcoming year, a description of the plan, including the anticipated cost of the plan and the date that the functionality in its automated billing system will go online, must be included.

(m) Energy Assistance System Benefit Charge. Beginning October 1, 2021, each utility shall include on its monthly bills a flat energy assistance system benefit charge of 50 cents, with this amount rising to 75 cents on October 1, 2022, and being adjusted for inflation in accordance with changes in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood beginning on October 1, 2023. The disposition of money collected by the Energy Assistance System Benefit Charge is determined by § 40-8.7-108, C.R.S.

(l) Prior to October 1, 2023, and each year following, Commission staff shall compute the charge adjusted by the index and shall send a letter to each utility stating the charge to be paid by customers during the next calendar year.

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-3

#### PART 3 RULES REGULATING ELECTRIC UTILITIES

\* \* \* \*

[indicates omission of unaffected rules]

#### **3412. Electric Service Affordability Program.**

- (a) Scope and applicability.
- (I) Electric utilities with Colorado retail customers shall provide low-income energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential low-income customers, as permitted by § 40-3-106, C.R.S. Electric utilities shall use consistent naming for assistance programs: [Utility name] Affordability Program.
  - (II) Rule 3412 is applicable to investor-owned electric utilities subject to rate regulation by the Commission.
- (b) Definitions. The following definitions apply only in the context of rule 3412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.
- (I) “Administrative cost” means the utility’s direct cost for labor (to include the cost of benefit loadings), materials, and other verifiable expenditures directly related to the administration and operation of the program not to exceed ten percent of the total cost of program credits applied against bills for current usage and pre-existing arrearages or \$10,000, whichever amount is greater.
  - (II) “Affordable percentage of income payment” means the amount of the participant’s annual bill deemed affordable under subparagraph 3412(e)(I).
  - (III) “Arrearage” means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.
  - (IV) “Colorado Energy Office” means the Colorado Energy Office created in § 24-38.5-101, C.R.S.
  - (V) “Eligible low-income customer” means a residential utility customer who meets the household income thresholds pursuant to paragraph 3412(c).

- (VI) “Fixed credit” means an annual bill credit established at the beginning of a participant’s participation in a program each year delivered as a monthly credit on each participant’s bill. The fixed credit is the participant’s full annual bill minus the participant’s affordable percentage of income payment obligation on the full annual bill.
  - (VII) “Full annual bill” means the current consumption of a participant billed at standard residential rates. The full annual bill of a participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and, (2) that portion of the bill that exceeds the affordable percentage of income payment.
  - (VIII) “LEAP” means Low-Income Energy Assistance Program, a county-run, federally-funded, program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.
  - (IX) “LEAP participant” means a utility customer who at the time of applying to participate in a program has been determined to be eligible for LEAP benefits by the Department during either: (1) the Department’s current LEAP application period, if that period is open at the time the customer applies for program participation; or, (2) the Department’s most recently closed LEAP application period, if that period is closed at the time the customer applies to participate in the program and the Department’s next LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under part (2) of this definition, the utility customer must apply to the Department during the Department’s next LEAP benefit application period and be determined eligible for such benefits.
  - (X) “Non-participant” means a utility customer who is not receiving low-income assistance under rule 3412.
  - (XI) “Participant” means an eligible low-income residential utility customer who is granted the reasonable preference or advantage through participation in an electric service low-income program.
  - (XII) “Percentage of Income Payment Plan” (or “PIPP”) means a payment plan for participants that does not exceed an affordable percentage of their household income as set forth in subparagraph 3412(e)(l).
  - (XIII) “Program” means an electric service low-income program approved under rule 3412.
  - (XIV) “Program credits” means the amount of benefits provided to participants to offset the unaffordable portion of a participant’s utility bill and /or dollar amounts credited to participants for arrearage forgiveness.
  - (XV) “Unaffordable portion” means the amount of the estimated full annual bill that exceeds the affordable percentage of income payment.
- (c) Participant eligibility.
- (l) Eligible participants are limited to those who meet one or more of the following criteria:

- (A) median household income less than or equal to 200 percent of the federal poverty guideline;
  - (B) median household income less than or equal to 80 percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or
  - (C) qualification under income guidelines adopted by the Department of Human Services pursuant to § 40-8.5-105, C.R.S.
- (II) The utility shall obtain the determination of a participant's eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office.
- (III) If a participant's household income is \$0, the utility may establish a process that verifies income on a more frequent basis.
- (IV) Program participants shall not be required to make payment on their utility account as a condition of entering into the program.
- (d) Enrollment. Utilities shall be responsible for the methods by which participant enrollment in their approved low-income program is obtained and sustained, however the utility should engage in enrollment processes that are efficient and attempt to maximize the potential benefits of participation in the low-income program by low-income customers.
- (e) Payment plan.
- (I) Participant payments for electric bills rendered to participants shall not exceed an affordable percentage of income payment. The percentage of a participant's household income for which the participant is responsible shall be determined as follows:
    - (A) for electric accounts for which electricity is the primary heating fuel, participant payments shall be no lower than three percent and not greater than six percent of the participant's household income; however, if the participant also has natural gas service from a regulated utility, participant payments shall not be greater than five percent of the participant's household income; and
    - (B) for electric accounts for which electricity is not the primary heating fuel, participant payments shall be no lower than two percent and not greater than three percent of the participant's household income.
  - (II) In the event that a primary heating fuel for any particular participant has been identified by LEAP, that determination shall be final.
  - (III) Notwithstanding the percentage of income limits established in subparagraph 3412(e)(I), a utility may establish minimum monthly payment amounts for participants with household income of \$0, provided that:
    - (A) the participant's minimum payment for an electric heating account shall be no more than \$20.00 a month; and

- (B) the participant's minimum payment for an electric non-heating account shall be no more than \$10.00 a month.
- (IV) Full annual bill calculation. The utility shall be responsible for estimating a participant's full annual bill for the purpose of determining the unaffordable portion of the participant's full annual bill delivered as a fixed credit on the participant's monthly billing statement.
- (V) Fixed credit benefit. The fixed credit shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges change to the extent that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.
- (VI) Levelized budget billing participation. A utility may enroll participants in its levelized budget billing program as a condition of participation in the program, though the utility shall also allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits, which option shall be available to the participants where the utility's automated billing system is capable. Utilities without automated billing systems capable of permitting opt out of levelized budget billing shall reasonably and prudently modify their systems to facilitate opt out of levelized budget billing. Should a participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.
- (VII) Arrearage credits.
  - (A) Arrearage credits shall be applied to pre-existing arrearages.
  - (B) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to \$0.00 over a period not less than one month and not more than twenty-four months.
  - (C) Application of an arrearage credit to a participant account may be conditioned by the utility on one or more of the following:
    - (i) the receipt of regular participant payments toward bills for current usage;  
or
    - (ii) the payment of a participant copayment toward the arrearages so long as the participant's copayment total dollar amount does not exceed one percent of gross household income.
  - (D) Should the participant exit the program prior to the full forgiveness of all pre-existing arrearages, the amount of remaining pre-existing arrearages shall become due in accordance with the utility's tariff filed under rules 3401, 3407, and 3408.
  - (E) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity while the customer is participating in the program.

- (F) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills.
  - (VIII) Portability of benefits. A participant may continue to participate without reapplication should the participant change service addresses but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the billing amount to reflect the changed circumstances. A participant who changes service addresses and does not remain within the service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.
  - (IX) Payment default provisions. Failure of a participant to make his or her monthly bill payments may result in a utility placing the participant in its regular collection cycle. Partial or late payments shall not result in the removal of a participant from the program.
- (f) Program implementation.

Each utility shall maintain effective terms and conditions in its tariffs on file with the Commission containing its low-income program.

- (g) Cost recovery.
- (I) Each utility shall include in its low-income tariff terms and conditions how costs of the program will be recovered.
  - (II) Program cost recovery.
    - (A) Program cost recovery shall be based on a fixed monthly fee.
    - (B) The maximum impact on residential rates shall be no more than \$1.00 per month.
    - (C) In order to determine monthly rates applicable to rate classes other than residential, program costs shall be allocated to each retail rate based on each rate class's share of the test year revenue requirement established in the utility's last Phase II rate case, or under another reasonable methodology supported by quantifiable information. The monthly rate per this subparagraph to be charged each rate schedule customer shall be clearly stated on a tariff sheet.
    - (D) Utilities shall separately account for the program year's program cost recovery and program and administrative costs to determine if the net of program cost recovery and program and administrative cost are in balance during the program year.
      - (i) No later than December 31 of each year, the utility shall file a report with the Commission in the most recent miscellaneous proceeding for annual low-income filings detailing the net difference between program cost recovery and program costs as of October 31 of each year.

- (1) Should the net difference of program cost recovery over program and administrative costs be greater than 50 percent derived in (D) above, either positive or negative, and the utility is not currently at the maximum impact for non-participants, the utility shall file with the Commission an advice letter and tariff pages seeking approval for the rates determined in subparagraph 3412(g)(II)(D) in order to bring the projected recovery in balance for the ensuing 12 month period. The revised charge shall not exceed the maximum impact for non-participants in subparagraph 3412(g)(II)(C).
- (III) The following costs are eligible for recovery by a utility as program costs:
    - (A) program credits or discounts applied against bills for current usage.
    - (B) program credits applied against pre-existing arrearages.
    - (C) program administrative costs; and
    - (D) Commission-sponsored program evaluation costs required under paragraph 3412(k).
  - (IV) The utility shall apply, as an offset to cost recovery, all program expenses attributable to the program. Program expenses include utility operating costs; changes in the return requirement on cash working capital for carrying arrearages; changes in the cost of credit and collection activities directly related to low-income participants; and changes in uncollectable account costs for these participants.
  - (V) LEAP grants. The utility may apply energy assistance grants provided to the participant by the LEAP program to the dollar value of credits granted to individual program participants.
    - (A) If applying LEAP grants first, a utility shall apply any energy assistance benefit granted to the participant by LEAP to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.
    - (B) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:
      - (i) first, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding; and
      - (ii) second, to the account of the program participant as a benefit to the participant.

- (C) No portion of an energy assistance or LEAP grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.
  - (D) If an all-electric utility's low-income customers do not benefit widely from LEAP grants, the utility shall not apply the dollar value of credits granted to individual LEAP grantees to the dollar value of credits granted to individual program participants.
- (h) Other programs. In addition to the utility's low-income program, with Commission approval, a utility may offer other rate relief options to eligible households.
- (I) Other programs offered by the utility under rule 3412 must be intended to reach low-income households that do not substantially benefit from the provisions of the low-income program. Such programs may take the form of discount rates, tiered discount rates or other direct bill relief methods where the low-income household benefitting from the program is granted a reasonable preference in tariffed rates assessed to all residential utility customers.
  - (II) Cost recovery for other programs combined with the Percentage of Income Payment Plan shall not exceed the maximum impact on residential rates described in subparagraph 3412(g)(II)(C).
- (i) Energy efficiency and weatherization.
- (I) The utility shall provide all program participants with information on energy efficiency programs offered by the utility or other entities and existing weatherization programs offered by the state of Colorado or other entities.
  - (II) The utility shall provide the Colorado Energy Office with the name and service address of participant households for which annual electricity usage exceeds 10,000 kWh annually.
- (j) Stakeholder engagement. A utility shall conduct annual meetings with low-income stakeholders for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders.
- (k) Program evaluation. A triennial evaluation of the program provisions under rule 3412 beginning in 2019 shall be undertaken in order to review best practices in similar low-income assistance programs in existence in other regulatory jurisdictions, as well as evaluate operation of each utility's program for effectiveness in achieving optimum support being provided to low-income participants. The evaluation shall also recommend modifications if available that improve the delivery of benefits to participants and increase the efficiency and effectiveness of each program as they exist at the point of evaluation. The program evaluation shall include a customer needs assessment provided that adequate funds are available.

- (I) Procurement of the third-party vendor that will perform the evaluation will be undertaken by the Colorado Energy Office. The CEO shall seek the involvement of interested stakeholders including, but not limited to, Commission staff, all Commission regulated electric and gas utilities, LEAP, the Office of Consumer Counsel, and Energy Outreach Colorado in the design of the requirements regarding study focus and final reporting.
  - (II) Approval of the third-party vendor shall be the responsibility of the Commission. The CEO shall file with the Commission in the most recent annual report proceeding, a request for approval of the contract of the vendor selected. The Commission shall review and act on the request within 30 days.
  - (III) \$00.0013 per customer per month shall be set aside by the utility in order to fund the triennial evaluation of the program evaluation described in paragraph 3412(k).
  - (IV) The dollars resulting from the \$00.0013 charge shall be recovered as a program cost under subparagraph 3412(f)(IV).
  - (V) The evaluation will be filed by Commission staff in the most recent miscellaneous proceeding for annual low-income filings.
  - (VI) Staff and the CEO will assess the individual utilities' deferred balances set aside for the program evaluation starting in 2019 at the conclusion of the third program year and each three years thereafter and will determine the amounts each utility is to remit to the third party evaluator based on the contractual terms approved by the Commission for the evaluation.
- (I) Annual report. No later than December 31 of each year, each utility shall file a report in the most recent miscellaneous proceeding for annual low-income filings using the form available on the Commission's website based on each 12-month period ending October 31, and containing the following information:
- (I) monthly information on the program including total number of participants, amount of benefit disbursement, type of benefit disbursement, LEAP benefits applied to the unaffordable portion of participant's bills, administrative costs, and revenue collection;
  - (II) the number of applicants for the program;
  - (III) the number of applicants qualified for the program;
  - (IV) the number of participants;
  - (V) the average assistance provided, both mean and median;
  - (VI) the maximum assistance provided to an individual participant;
  - (VII) the minimum assistance provided to an individual participant;

- (VIII) total cost of the program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;
- (IX) the number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;
- (X) an estimate of utility savings as a result of the implementation of the program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, etc.);
- (XI) the average monthly and annual total electric consumption in PIPP participants' homes;
- (XII) the average monthly and annual total electric consumption in the utility's residential customer's homes;
- (XIII) the number of program participants referred to the weatherization program;
- (XIV) the total dollar value of participant arrearages forgiven, the number of customers who had arrearage balances forgiven, and the maximum and minimum dollar value of arrears forgiven;
- (XV) a description of the ways in which the program is being integrated with existing energy efficiency, DSM, or behavioral programs offered by the utility;
- (XVI) a description of the ways in which the program is being integrated with existing weatherization programs offered by the state of Colorado;
- (XVII) a description of program outreach strategies and metrics that illustrate the effectiveness of each outreach strategy;
- (XVIII) a description of participant outreach, education, and engagement efforts, including descriptions of communications and materials, and key findings from those efforts;
- (XIX) the number of participants at the start of the program year that the utility removed for any reason, the number of participants who opted out of the program after enrollment, the number of potential participants rejected because of the existence of a cap on the program, the period of arrearage time from date participants became eligible and were granted arrearage forgiveness, and the number of participants who came back as eligible participants in the program year after being eligible in a prior program year and were provided arrearage credits in the program year;
- (XX) a narrative summary of the utility's recommended program modifications based on report findings; and
- (XXI) a statement regarding whether the utility is accommodating PIPP participants' requests to opt out of levelized budget billing pursuant to subparagraph 3412(e)(VI) and, if not, an explanation of why the utility believes it is not reasonable and prudent to modify its automated billing system to accommodate such requests. If the utility plans to

accommodate such requests at any point in the upcoming year, a description of the plan, including the anticipated cost of the plan and the date that the functionality in its automated billing system will go online, must be included.

- (m) Energy Assistance System Benefit Charge. Beginning October 1, 2021, each utility shall include on its monthly bills a flat energy assistance system benefit charge of 50 cents, with this amount rising to 75 cents on October 1, 2022, and being adjusted for inflation in accordance with changes in the United States Department of Labor’s Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood beginning on October 1, 2023. The disposition of money collected by the Energy Assistance System Benefit Charge is determined by § 40-8.7-108, C.R.S.
- (l) Prior to October 1, 2023, and each year following, Commission staff shall compute the charge adjusted by the index and shall send a letter to each utility stating the charge to be paid by customers during the next calendar year.

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-4

#### PART 4

#### RULES REGULATING GAS UTILITIES AND PIPELINE OPERATORS

\* \* \* \*

[indicates omission of unaffected rules]

**4412. Gas Service ~~Affordability~~Affordability~~Low-Income~~ Program.**

(a) Scope and applicability.

- (I) Gas utilities with Colorado retail customers shall provide low-income energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential low-income customers, as permitted by § 40-3-106, C.R.S.
- (II) Rule 4412 is applicable to investor-owned gas utilities subject to rate regulation by the Commission.

(b) Definitions. The following definitions apply only in the context of rule 4412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (I) “Administrative cost” means the utility’s direct cost for labor (to include the cost of benefit loadings), materials, and other verifiable expenditures directly related to the administration and operation of the program not to exceed ten percent of the total cost of program credits applied against bills for current usage and pre-existing arrearages or \$10,000, whichever amount is greater.
- (II) “Affordable percentage of income payment” means the amount of the participant’s annual bill deemed affordable under subparagraph 4412(e)(I).
- (III) “Arrearage” means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.
- (IV) “Colorado Energy Office” (CEO) means the Colorado Energy Office created in § 24-38.5-101, C.R.S.
- (V) “Eligible low-income customer” means a residential utility customer who meets the household income thresholds pursuant to paragraph 4412(c).

- (VI) “Fixed credit” means an annual bill credit established at the beginning of a participant’s participation in a program each year delivered as a monthly credit on each participant’s bill. The fixed credit is the participant’s full annual bill minus the participant’s affordable percentage of income payment obligation on the full annual bill.
- (VII) “Full annual bill” means the current consumption of a participant billed at standard residential rates. The full annual bill of a participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and (2) that portion of the bill that exceeds the affordable percentage of income payment.
- (VIII) “LEAP” means Low-Income Energy Assistance Program, a county-run, federally-funded, program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.
- (IX) “LEAP participant” means a utility customer who at the time of applying to participate in a program has been determined to be eligible for LEAP benefits by the Department during either the Department’s current ~~six-month (November 1 — April 30)~~ LEAP application period, if that period is open at the time the customer applies for program participation; or (the Department’s most recently closed ~~six-month (November 1 — April 30)~~-LEAP application period, if that period is closed at the time the customer applies to participate in the program and the Department’s next ~~six-month (November 1 — April 30)~~-LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under this definition, the utility customer must apply to the Department during the Department’s next ~~six-month (November 1 — April 30)~~-LEAP benefit application period and be determined eligible for such benefits.
- (X) “Non-participant” means a utility customer who is not receiving low-income assistance under rule 4412.
- (XI) “Participant” means an eligible low-income residential utility customer who is granted the reasonable preference or advantage through participation in a gas service low-income program.
- (XII) “Percentage of Income Payment Plan” (PIPP) means a payment plan for participants that does not exceed an affordable percentage of their household income as set forth in subparagraph 4412(e)(I).
- (XIII) “Program” means a gas service low-income program approved under rule 4412.
- (XIV) “Program credits” means the amount of benefits provided to participants to offset the unaffordable portion of a participant’s utility bill and /or dollar amounts credited to participants for arrearage forgiveness.
- (XV) “Unaffordable portion” means the amount of the estimated full annual bill that exceeds the affordable percentage of income payment.

- (c) Participant eligibility. ~~Eligible participants are limited to those with a household income at or below 185 percent of the current federal poverty level and or who otherwise meet the eligibility criteria set forth in rules of the Colorado Department of Human Services adopted pursuant to § 40-8.5-105, C.R.S.~~
- (I) Eligible participants are limited to those who meet one or more of the following criteria:
- (A) median household income less than or equal to 200 percent of the federal poverty guideline;
- (B) median household income less than or equal to 80 percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or
- (C) qualification under income guidelines adopted by the Department of Human Services pursuant to § 40-8.5-105, C.R.S.
- (II) The utility shall obtain the determination of a participant's eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office. ~~household income information from LEAP.~~
- (III) If a participant's household income is \$0, the utility may establish a process that verifies income on a more frequent basis.
- (IV#) Program participants shall not be required to make payment on their utility account as a condition of entering into the program.
- (d) Enrollment. Utilities shall be responsible for the methods by which participant enrollment in their approved low-income program is obtained and sustained, however the utility should engage in enrollment processes that are efficient and attempt to maximize the potential benefits of participation in the low-income program by low-income customers.
- (e) Payment plan.
- (I) Participant payments for natural gas bills rendered to participants shall not exceed an affordable percentage of income payment. For accounts for which natural gas is the primary heating fuel, participant payments shall be no lower than two percent and not greater than three percent of the participant's household income. For accounts for which electricity is the primary heating fuel but the participant also has natural gas service, utility participant payments for gas service shall not be greater than one percent of the participant's household income.
- (II) In the event that a primary heating fuel for any particular participant has been identified by LEAP, that determination shall be final.
- (III) Notwithstanding the percentage of income limits established in subparagraph 4412(e)(I), a utility may establish minimum monthly payment amounts for participants with household income of \$0, provided that the participant's minimum payment for a natural gas account shall be no more than \$10.00 a month.

- (IV) Full annual bill calculation. The utility shall be responsible for estimating a participant's full annual bill for the purpose of determining the unaffordable portion of the participant's full annual bill delivered as a fixed credit on the participant's monthly billing statement.
- (V) Fixed credit benefit. The fixed credit shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges change to the extent that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.
- (VI) Levelized budget billing participation. A utility ~~shall~~ may enroll participants in its levelized budget billing program as a condition of participation in the program, though the utility shall also allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits, which option shall be available to the participants where the utility's automated billing system is capable. Utilities without automated billing systems capable of permitting opt out of levelized budget billing shall reasonably and prudently modify their systems to facilitate opt out of levelized budget billing. Should a participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.
- (VII) Arrearage credits.
- (A) Arrearage credits shall be applied to pre-existing arrearages.
- (B) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to \$0.00 over a period not less than one month and not more than twenty-four months.
- (C) Application of an arrearage credit to a participant account may be conditioned by the utility on one or more of the following:
- (i) the receipt of regular participant payments toward bills for current usage;  
or
- (ii) the payment of a participant copayment toward the arrearages so long as the participant's copayment total dollar amount does not exceed one percent of gross household income.
- (D) Should the participant exit the program prior to the full forgiveness of all pre-existing arrearages, the amount of remaining pre-existing arrearages shall become due in accordance with the ~~utilities-~~ utility's tariff filed under rules 4401, 4407, and 4408.
- (E) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity while the customer is participating in the program.

- (F) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills, ~~if the participant enters into and maintains a levelized budget billing plan.~~
- (VIII) Portability of benefits. A participant may continue to participate without reapplication should the participant change service addresses but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the ~~levelized budget~~ billing amount to reflect the changed circumstances. A participant who changes service addresses and does not remain within the service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.
- (IX) Payment default provisions. Failure of a participant to make his or her monthly bill payments ~~will may~~ result in a utility placing the participant in its regular collection cycle. ~~Missed, partial~~Partial or late payments shall not result in the removal of a participant from the program.
- (f) Program implementation.
- Each utility shall maintain effective terms and conditions in its tariffs on file with the Commission describing its low-income program.
- (g) Cost recovery.
- (I) Each utility shall include in its low-~~income~~ income tariff terms and conditions how costs of the program will be recovered.
- (II) Program cost recovery.
- (A) Program cost recovery shall be based on a fixed monthly fee.
- (B) ~~[Emergency rule expired 07/14/2021]~~The maximum impact on residential rates shall be no more than \$1.00 per month.
- (C) In order to determine monthly rates applicable to rate classes other than residential, program costs shall be allocated to each retail rate based on each rate class's share of the test year revenue requirement established in the utility's last Phase II rate case, or under another reasonable methodology supported by quantifiable information. The monthly rate per this subparagraph to be charged each rate schedule customer shall be clearly stated on a tariff sheet.
- (D) Utilities shall separately account for the ~~cumulative program year's~~ program cost recovery and ~~cumulative~~ program and administrative costs to determine if the net of program cost recovery and program and administrative cost are in balance during the program year.
- (i) ~~Beginning October 31, 2018 and in each year thereafter, No later than December 31 of each year,~~ the utility shall file a report with the Commission in the most recent miscellaneous proceeding for annual

low-income filings detailing the net difference between program cost recovery and program costs as of ~~September 30~~October 31 of each year.

- (1) Should the net difference of program cost recovery over program and administrative costs be greater than 50 percent derived in ~~(#D)~~ above, either positive or negative, and the utility is not currently at the maximum impact for non-participants, the utility shall file with the Commission an advice letter and tariff pages seeking approval for the rates determined in subparagraph 4412(g)(II)(D) in order to bring the projected recovery in balance for the ensuing 12 month period. The revised Residential charge shall not exceed the maximum impact for non-participants in subparagraph 4412(g)(II)(C).
- (III) The following costs are eligible for recovery by a utility as program costs:
- (A) program credits or discounts applied against bills for current usage;
  - (B) program credits applied against pre-existing arrearages;
  - (C) program administrative costs; and
  - (D) Commission-sponsored program evaluation costs required under paragraph 4412(k).
- (IV) The utility shall apply, as an offset to cost recovery, all program expenses attributable to the program. Program expenses include utility operating costs; changes in the return requirement on cash working capital for carrying arrearages; changes in the cost of credit and collection activities directly related to low-income participants; and changes in uncollectable account costs for these participants.
- (V) LEAP grants.
- (A) The utility ~~shall~~may apply energy assistance grants provided to the participant by the LEAP program to the dollar value of credits granted to individual program participants.
  - (B) ~~A utility shall~~If applying LEAP grants first, a utility shall apply any energy assistance benefit granted to the participant by LEAP to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.
  - (C) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:

- (i) first, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding; and
    - (ii) second, to the account of the program participant as a benefit to the participant.
  - (D) No portion of an energy assistance or LEAP grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.
- (h) Other programs. In addition to the utility's low-income program, with Commission approval, a utility may offer other rate relief options to eligible households.
  - (I) Other programs offered by the utility under rule 4412 must be intended to reach low-income households that do not substantially benefit from the provisions of the low-income program. Such programs may take the form of discount rates, tiered discount rates or other direct bill relief methods where the low-income household benefitting from the program is granted a reasonable preference in tariffed rates assessed to all residential utility customers.
  - (II) Cost recovery for other programs combined with the Percentage of Income Payment Plan shall not exceed the maximum impact on residential rates described in subparagraph 4412(g)(II)(C).
- (i) Energy efficiency and weatherization.
  - (I) The utility shall provide all program participants with information on energy efficiency programs offered by the utility or other entities and existing weatherization programs offered by the state of Colorado or other entities.
  - (II) The utility shall provide the Colorado Energy Office with the name and service address of participant households for which annual natural gas usage exceeds 600 therms annually.
- (j) Stakeholder engagement. A utility shall conduct annual meetings with low-income stakeholders for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders.
- (k) Program evaluation. A triennial evaluation of the program provisions under rule 4412 beginning in 2019 shall be undertaken in order to review best practices in similar low-income assistance programs in existence in other regulatory jurisdictions, as well as evaluate operation of each utility's program for effectiveness in achieving optimum support being provided to low-income participants. The evaluation shall also recommend modifications if available that improve the delivery of benefits to participants and increase the efficiency and effectiveness of each program as they exist at the point of evaluation. The program evaluation shall include a customer needs assessment provided that adequate funds are available.
  - (I) Procurement of the third-party vendor that will perform the evaluation will be undertaken by the Colorado Energy Office. The CEO shall seek the involvement of interested stakeholders including, but not limited to, Commission staff, all Commission regulated

electric and gas utilities, LEAP, the Office of Consumer Counsel, and Energy Outreach Colorado in the design of the requirements regarding study focus and final reporting.

- (II) Approval of the third-party vendor shall be the responsibility of the Commission. The CEO shall file with the Commission in the most recent annual report proceeding, a request for approval of the contract of the vendor selected. The Commission shall review and act on the request within 30 days.
  - (III) \$00.0013 per customer per month shall be set aside by the utility ~~starting in the 2016-2017 program year~~ in order to cover the cost of the program evaluation described in paragraph 4412(k).
  - (IV) The dollars resulting from the \$00.0013 charge shall be recovered as a program cost under subparagraph 4412(g)(III).
  - (V) The evaluation will be filed by Commission staff in the most recent miscellaneous proceeding for annual low-~~income~~ filings.
  - (VI) Staff and the CEO will assess the individual utilities' deferred balances set aside for the program evaluation starting in 2019 at the conclusion of the third program year and each three years thereafter and will determine the amounts each utility is to remit to the third party evaluator based on the contractual terms approved by the Commission for the evaluation.
- (I) Annual report. No later than December 31~~7~~, of each year, ~~the~~each utility shall file a report in the most recent miscellaneous proceeding established by the Commission to receive annual low-~~income~~ filings using the form available on the Commission's website, based on the 12-month period ending October 31 and containing the following information below:
- (I) monthly information on the program including number of participants, amount of benefit disbursement, type of benefit disbursement, LEAP benefits applied to the unaffordable portion of participant's bills, administrative costs, and revenue collection;
  - (II) the number of applicants for the program;
  - (III) the number of applicants qualified for the program;
  - (IV) the number of participants;
  - (V) the average assistance provided, both mean and median;
  - (VI) the maximum assistance provided to an individual participant;
  - (VII) the minimum assistance provided to an individual participant;
  - (VIII) total cost of the program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;

- (IX) the number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;
- (X) an estimate of utility savings as a result of the implementation of the program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, etc.);
- (XI) the average monthly and annual total natural gas consumption in PIPP participants' homes;
- (XII) the average monthly and annual total natural gas consumption in the utility's residential customer's homes;
- (XIII) the number of program participants referred to the weatherization program;
- (XIV) the total dollar value of participant arrearages forgiven, the number of customers who had arrearage balances forgiven, and the maximum and minimum dollar value of arrears forgiven;
- ~~(XV)~~ a description of the ways in which the program is being integrated with existing energy efficiency, ~~of DSM, or behavioral~~ programs offered by the utility;
- ~~(XVI)~~ a description of the ways in which the program is being integrated with existing weatherization programs offered by the state of Colorado;
- ~~(XVII)~~ a description of program outreach strategies and metrics that illustrate the effectiveness of each outreach strategy;
- ~~(XVIII)~~ a description of participant outreach, education, and engagement efforts, including descriptions of communications and materials, and key findings from those efforts;
- ~~(XIX)~~ the number of participants at the start of the program year that the utility removed for any reason, the number of participants who opted out of the program after enrollment, the number of potential participants rejected because of the existence of a cap on the program, the period of arrearage time from date participants became eligible and were granted arrearage forgiveness, and the number of participants who came back as eligible participants in the program year after being eligible in a prior program year and were provided arrearage credits in the program year; ~~and~~
- ~~(XX)~~ a narrative summary of the utility's recommended program modifications based on report findings; ~~and-~~
- ~~(XXI)~~ a statement regarding whether the utility is accommodating PIPP participants' requests to opt out of levelized budget billing pursuant to subparagraph 4412(e)(VI) and, if not, an explanation of why the utility believes it is not reasonable and prudent to modify its automated billing system to accommodate such requests. If the utility plans to accommodate such requests at any point in the upcoming year, a description of the plan, including the anticipated cost of the plan and the date that the functionality in its automated billing system will go online, must be included.

- (m) Energy Assistance System Benefit Charge. Beginning October 1, 2021, each utility shall include on its monthly bills a flat energy assistance system benefit charge of 50 cents, with this amount rising to 75 cents on October 1, 2022, and being adjusted for inflation in accordance with changes in the United States Department of Labor’s Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood beginning on October 1, 2023. The disposition of money collected by the Energy Assistance System Benefit Charge is determined by § 40-8.7-108, C.R.S.
- (l) Prior to October 1, 2023, and each year following, Commission staff shall compute the charge adjusted by the index and shall send a letter to each utility stating the charge to be paid by customers during the next calendar year.

## COLORADO DEPARTMENT OF REGULATORY AGENCIES

### Public Utilities Commission

#### 4 CODE OF COLORADO REGULATIONS (CCR) 723-4

#### PART 4

#### RULES REGULATING GAS UTILITIES AND PIPELINE OPERATORS

\* \* \* \*

[indicates omission of unaffected rules]

#### **4412. Gas Service Affordability Program.**

- (a) Scope and applicability.
- (I) Gas utilities with Colorado retail customers shall provide low-income energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential low-income customers, as permitted by § 40-3-106, C.R.S.
  - (II) Rule 4412 is applicable to investor-owned gas utilities subject to rate regulation by the Commission.
- (b) Definitions. The following definitions apply only in the context of rule 4412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.
- (I) “Administrative cost” means the utility’s direct cost for labor (to include the cost of benefit loadings), materials, and other verifiable expenditures directly related to the administration and operation of the program not to exceed ten percent of the total cost of program credits applied against bills for current usage and pre-existing arrearages or \$10,000, whichever amount is greater.
  - (II) “Affordable percentage of income payment” means the amount of the participant’s annual bill deemed affordable under subparagraph 4412(e)(I).
  - (III) “Arrearage” means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.
  - (IV) “Colorado Energy Office” (CEO) means the Colorado Energy Office created in § 24-38.5-101, C.R.S.
  - (V) “Eligible low-income customer” means a residential utility customer who meets the household income thresholds pursuant to paragraph 4412(c).

- (VI) “Fixed credit” means an annual bill credit established at the beginning of a participant’s participation in a program each year delivered as a monthly credit on each participant’s bill. The fixed credit is the participant’s full annual bill minus the participant’s affordable percentage of income payment obligation on the full annual bill.
  - (VII) “Full annual bill” means the current consumption of a participant billed at standard residential rates. The full annual bill of a participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and (2) that portion of the bill that exceeds the affordable percentage of income payment.
  - (VIII) “LEAP” means Low-Income Energy Assistance Program, a county-run, federally-funded, program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.
  - (IX) “LEAP participant” means a utility customer who at the time of applying to participate in a program has been determined to be eligible for LEAP benefits by the Department during either the Department’s current LEAP application period, if that period is open at the time the customer applies for program participation; or (the Department’s most recently closed LEAP application period, if that period is closed at the time the customer applies to participate in the program and the Department’s next LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under this definition, the utility customer must apply to the Department during the Department’s next LEAP benefit application period and be determined eligible for such benefits.
  - (X) “Non-participant” means a utility customer who is not receiving low-income assistance under rule 4412.
  - (XI) “Participant” means an eligible low-income residential utility customer who is granted the reasonable preference or advantage through participation in a gas service low-income program.
  - (XII) “Percentage of Income Payment Plan” (PIPP) means a payment plan for participants that does not exceed an affordable percentage of their household income as set forth in subparagraph 4412(e)(l).
  - (XIII) “Program” means a gas service low-income program approved under rule 4412.
  - (XIV) “Program credits” means the amount of benefits provided to participants to offset the unaffordable portion of a participant’s utility bill and /or dollar amounts credited to participants for arrearage forgiveness.
  - (XV) “Unaffordable portion” means the amount of the estimated full annual bill that exceeds the affordable percentage of income payment.
- (c) Participant eligibility.
- (l) Eligible participants are limited to those who meet one or more of the following criteria:

- (A) median household income less than or equal to 200 percent of the federal poverty guideline;
  - (B) median household income less than or equal to 80 percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or
  - (C) qualification under income guidelines adopted by the Department of Human Services pursuant to § 40-8.5-105, C.R.S.
- (II) The utility shall obtain the determination of a participant's eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office.
- (III) If a participant's household income is \$0, the utility may establish a process that verifies income on a more frequent basis.
- (IV) Program participants shall not be required to make payment on their utility account as a condition of entering into the program.
- (d) Enrollment. Utilities shall be responsible for the methods by which participant enrollment in their approved low-income program is obtained and sustained, however the utility should engage in enrollment processes that are efficient and attempt to maximize the potential benefits of participation in the low-income program by low-income customers.
- (e) Payment plan.
- (I) Participant payments for natural gas bills rendered to participants shall not exceed an affordable percentage of income payment. For accounts for which natural gas is the primary heating fuel, participant payments shall be no lower than two percent and not greater than three percent of the participant's household income. For accounts for which electricity is the primary heating fuel but the participant also has natural gas service, utility participant payments for gas service shall not be greater than one percent of the participant's household income.
  - (II) In the event that a primary heating fuel for any particular participant has been identified by LEAP, that determination shall be final.
  - (III) Notwithstanding the percentage of income limits established in subparagraph 4412(e)(I), a utility may establish minimum monthly payment amounts for participants with household income of \$0, provided that the participant's minimum payment for a natural gas account shall be no more than \$10.00 a month.
  - (IV) Full annual bill calculation. The utility shall be responsible for estimating a participant's full annual bill for the purpose of determining the unaffordable portion of the participant's full annual bill delivered as a fixed credit on the participant's monthly billing statement.
  - (V) Fixed credit benefit. The fixed credit shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges change to the extent

that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.

- (VI) Levelized budget billing participation. A utility may enroll participants in its levelized budget billing program as a condition of participation in the program, though the utility shall also allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits, which option shall be available to the participants where the utility's automated billing system is capable. Utilities without automated billing systems capable of permitting opt out of levelized budget billing shall reasonably and prudently modify their systems to facilitate opt out of levelized budget billing. Should a participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.
- (VII) Arrearage credits.
  - (A) Arrearage credits shall be applied to pre-existing arrearages.
  - (B) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to \$0.00 over a period not less than one month and not more than twenty-four months.
  - (C) Application of an arrearage credit to a participant account may be conditioned by the utility on one or more of the following:
    - (i) the receipt of regular participant payments toward bills for current usage; or
    - (ii) the payment of a participant copayment toward the arrearages so long as the participant's copayment total dollar amount does not exceed one percent of gross household income.
  - (D) Should the participant exit the program prior to the full forgiveness of all pre-existing arrearages, the amount of remaining pre-existing arrearages shall become due in accordance with the utility's tariff filed under rules 4401, 4407, and 4408.
  - (E) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity while the customer is participating in the program.
  - (F) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills.
- (VIII) Portability of benefits. A participant may continue to participate without reapplication should the participant change service addresses but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the billing amount to reflect the changed circumstances. A participant who changes

service addresses and does not remain within the service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.

- (IX) Payment default provisions. Failure of a participant to make his or her monthly bill payments may result in a utility placing the participant in its regular collection cycle. Partial or late payments shall not result in the removal of a participant from the program.

- (f) Program implementation.

Each utility shall maintain effective terms and conditions in its tariffs on file with the Commission describing its low-income program.

- (g) Cost recovery.

- (I) Each utility shall include in its low-income tariff terms and conditions how costs of the program will be recovered.

- (II) Program cost recovery.

- (A) Program cost recovery shall be based on a fixed monthly fee.

- (B) The maximum impact on residential rates shall be no more than \$1.00 per month.

- (C) In order to determine monthly rates applicable to rate classes other than residential, program costs shall be allocated to each retail rate based on each rate class's share of the test year revenue requirement established in the utility's last Phase II rate case, or under another reasonable methodology supported by quantifiable information. The monthly rate per this subparagraph to be charged each rate schedule customer shall be clearly stated on a tariff sheet.

- (D) Utilities shall separately account for the program year's program cost recovery and program and administrative costs to determine if the net of program cost recovery and program and administrative cost are in balance during the program year.

- (i) No later than December 31 of each year, the utility shall file a report with the Commission in the most recent miscellaneous proceeding for annual low-income filings detailing the net difference between program cost recovery and program costs as of October 31 of each year.

- (1) Should the net difference of program cost recovery over program and administrative costs be greater than 50 percent derived in D) above, either positive or negative, and the utility is not currently at the maximum impact for non-participants, the utility shall file with the Commission an advice letter and tariff pages seeking approval for the rates determined in subparagraph 4412(g)(II)(D) in order to bring the projected recovery in balance for the ensuing 12 month period. The revised Residential charge shall not exceed the maximum impact for non-participants in subparagraph 4412(g)(II)(C).
- (III) The following costs are eligible for recovery by a utility as program costs:
    - (A) program credits or discounts applied against bills for current usage;
    - (B) program credits applied against pre-existing arrearages;
    - (C) program administrative costs; and
    - (D) Commission-sponsored program evaluation costs required under paragraph 4412(k).
  - (IV) The utility shall apply, as an offset to cost recovery, all program expenses attributable to the program. Program expenses include utility operating costs; changes in the return requirement on cash working capital for carrying arrearages; changes in the cost of credit and collection activities directly related to low-income participants; and changes in uncollectable account costs for these participants.
  - (V) LEAP grants.
    - (A) The utility may apply energy assistance grants provided to the participant by the LEAP program to the dollar value of credits granted to individual program participants.
    - (B) If applying LEAP grants first, a utility shall apply any energy assistance benefit granted to the participant by LEAP to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.
    - (C) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:
      - (i) first, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding; and
      - (ii) second, to the account of the program participant as a benefit to the participant.

- (D) No portion of an energy assistance or LEAP grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.
- (h) Other programs. In addition to the utility's low-income program, with Commission approval, a utility may offer other rate relief options to eligible households.
  - (I) Other programs offered by the utility under rule 4412 must be intended to reach low-income households that do not substantially benefit from the provisions of the low-income program. Such programs may take the form of discount rates, tiered discount rates or other direct bill relief methods where the low-income household benefitting from the program is granted a reasonable preference in tariffed rates assessed to all residential utility customers.
  - (II) Cost recovery for other programs combined with the Percentage of Income Payment Plan shall not exceed the maximum impact on residential rates described in subparagraph 4412(g)(II)(C).
- (i) Energy efficiency and weatherization.
  - (I) The utility shall provide all program participants with information on energy efficiency programs offered by the utility or other entities and existing weatherization programs offered by the state of Colorado or other entities.
  - (II) The utility shall provide the Colorado Energy Office with the name and service address of participant households for which annual natural gas usage exceeds 600 therms annually.
- (j) Stakeholder engagement. A utility shall conduct annual meetings with low-income stakeholders for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders.
- (k) Program evaluation. A triennial evaluation of the program provisions under rule 4412 beginning in 2019 shall be undertaken in order to review best practices in similar low-income assistance programs in existence in other regulatory jurisdictions, as well as evaluate operation of each utility's program for effectiveness in achieving optimum support being provided to low-income participants. The evaluation shall also recommend modifications if available that improve the delivery of benefits to participants and increase the efficiency and effectiveness of each program as they exist at the point of evaluation. The program evaluation shall include a customer needs assessment provided that adequate funds are available.
  - (I) Procurement of the third-party vendor that will perform the evaluation will be undertaken by the Colorado Energy Office. The CEO shall seek the involvement of interested stakeholders including, but not limited to, Commission staff, all Commission regulated electric and gas utilities, LEAP, the Office of Consumer Counsel, and Energy Outreach Colorado in the design of the requirements regarding study focus and final reporting.

- (II) Approval of the third-party vendor shall be the responsibility of the Commission. The CEO shall file with the Commission in the most recent annual report proceeding, a request for approval of the contract of the vendor selected. The Commission shall review and act on the request within 30 days.
  - (III) \$00.0013 per customer per month shall be set aside by the utility in order to cover the cost of the program evaluation described in paragraph 4412(k).
  - (IV) The dollars resulting from the \$00.0013 charge shall be recovered as a program cost under subparagraph 4412(g)(III).
  - (V) The evaluation will be filed by Commission staff in the most recent miscellaneous proceeding for annual low-income filings.
  - (VI) Staff and the CEO will assess the individual utilities' deferred balances set aside for the program evaluation starting in 2019 at the conclusion of the third program year and each three years thereafter and will determine the amounts each utility is to remit to the third party evaluator based on the contractual terms approved by the Commission for the evaluation.
- (I) Annual report. No later than December 31 of each year, each utility shall file a report in the most recent miscellaneous proceeding established by the Commission to receive annual low-income filings using the form available on the Commission's website, based on the 12-month period ending October 31 and containing the following information below:
- (I) monthly information on the program including number of participants, amount of benefit disbursement, type of benefit disbursement, LEAP benefits applied to the unaffordable portion of participant's bills, administrative costs, and revenue collection;
  - (II) the number of applicants for the program;
  - (III) the number of applicants qualified for the program;
  - (IV) the number of participants;
  - (V) the average assistance provided, both mean and median;
  - (VI) the maximum assistance provided to an individual participant;
  - (VII) the minimum assistance provided to an individual participant;
  - (VIII) total cost of the program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;
  - (IX) the number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;

- (X) an estimate of utility savings as a result of the implementation of the program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, etc.);
  - (XI) the average monthly and annual total natural gas consumption in PIPP participants' homes;
  - (XII) the average monthly and annual total natural gas consumption in the utility's residential customer's homes;
  - (XIII) the number of program participants referred to the weatherization program;
  - (XIV) the total dollar value of participant arrearages forgiven, the number of customers who had arrearage balances forgiven, and the maximum and minimum dollar value of arrears forgiven;
  - (XV) a description of the ways in which the program is being integrated with existing energy efficiency, DSM, or behavioral programs offered by the utility;
  - (XVI) a description of the ways in which the program is being integrated with existing weatherization programs offered by the state of Colorado;
  - (XVII) a description of program outreach strategies and metrics that illustrate the effectiveness of each outreach strategy;
  - (XVIII) a description of participant outreach, education, and engagement efforts, including descriptions of communications and materials, and key findings from those efforts;
  - (XIX) the number of participants at the start of the program year that the utility removed for any reason, the number of participants who opted out of the program after enrollment, the number of potential participants rejected because of the existence of a cap on the program, the period of arrearage time from date participants became eligible and were granted arrearage forgiveness, and the number of participants who came back as eligible participants in the program year after being eligible in a prior program year and were provided arrearage credits in the program year;
  - (XX) a narrative summary of the utility's recommended program modifications based on report findings; and
  - (XXI) a statement regarding whether the utility is accommodating PIPP participants' requests to opt out of levelized budget billing pursuant to subparagraph 4412(e)(VI) and, if not, an explanation of why the utility believes it is not reasonable and prudent to modify its automated billing system to accommodate such requests. If the utility plans to accommodate such requests at any point in the upcoming year, a description of the plan, including the anticipated cost of the plan and the date that the functionality in its automated billing system will go online, must be included.
- (m) Energy Assistance System Benefit Charge. Beginning October 1, 2021, each utility shall include on its monthly bills a flat energy assistance system benefit charge of 50 cents, with this amount

rising to 75 cents on October 1, 2022, and being adjusted for inflation in accordance with changes in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood beginning on October 1, 2023. The disposition of money collected by the Energy Assistance System Benefit Charge is determined by § 40-8.7-108, C.R.S.

- (l) Prior to October 1, 2023, and each year following, Commission staff shall compute the charge adjusted by the index and shall send a letter to each utility stating the charge to be paid by customers during the next calendar year.