Decision No. R11-0606

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 11R-110EG

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

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE KEN F. KIRKPATRICK ADOPTING RULES

Mailed Date: June 3, 2011

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I. STATEMENT

1. This proceeding concerns low-income assistance programs of electric and gas utilities. In Docket No. 08I-420EG, the Commission conducted an investigation into regulatory and rate incentives for customers of gas and electric utilities. One of the areas of inquiry was

rate design as a method of providing assistance to low-income customers. In Decision No. C09-0172 in that Docket, issued February 27, 2009, the Commission determined that a rulemaking was the appropriate next step in implementing this policy.

2. In Dockets Nos. 10M-473E and 10M-475G, Energy Outreach Colorado (EOC) petitioned the Commission to commence rulemakings for the promulgation of low-income energy assistance rules. The Commission granted EOC's petitions in part; it took comments in those Dockets; and it committed to issuing a Notice of Proposed Rulemaking (NOPR) in the near future that would address the subject. This proceeding resulted. The Commission issued its NOPR in this docket regarding its Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR), 723-3 and its Rules Regulating Gas Utilities and Pipeline Operators, 4 CCR 723-4 in Decision No. C11-0154 on February 14, 2011. The proposed rules were published in *The Colorado Register* on February 25, 2011, along with notice of a hearing to be held on April 21, 2011 in a Commission hearing room in Denver, Colorado.

3. At the assigned place and time the hearing was held. Several interested entities presented oral comments, and Exhibits 1 through 9 were identified, offered, and admitted into the record. In addition, many written comments had been filed prior to the hearing.[1] At the conclusion of the hearing, the Administrative Law Judge (ALJ) announced that he would extend the comment period through April 28, 2011. Additional comments were received during the extended comment period.[2] Staff of the Commission's witness in this proceeding had been ordered to file additional comments further explaining his testimony about the development of

[1] Written comments were received in advance of the hearing from EOC; Colorado Office of Consumer Counsel; Public Service Company of Colorado (Public Service); Colorado Natural Gas, Inc.; Atmos Energy Corporation; Black Hills/Colorado Electric Utility Company, L.P. and Black Hills/Colorado Gas Utility Company, L.P. (Black Hills); AARP; Climax Molybdenum Company (Climax); CF&I Steel LP, doing business as Evraz Rocky Mountain Steel (CF&I); and SourceGas Distribution LLC.

[2] Written comments were received after the hearing from Colorado Division of Low-Income Energy Assistance; Climax; CF&I; Public Service; and EOC.

the maximum impact on non-participants. Due to administrative error at the Commission, the comments were not entered into the e-filing system until April 29, 2011. The ALJ will deem the comments timely filed.

II. AUTHORITY OF THE COMMISSION TO MANDATE LOW-INCOME ASSISTANCE PROGRAMS

4. Black Hills/Colorado Electric Utility Company, L.P. and Black Hills/Colorado Gas Utility Company, L.P. (Black Hills) challenge the authority of the Commission to mandate low-income energy assistance programs, such as those in the proposed rules.[3] It notes that a previous effort by the Commission to require gas utilities to implement a discount rate plan for low-income elderly and low-income disabled persons, financed by remaining customers, had been found by the Colorado Supreme Court to have exceeded the Commission's authority.[4] The Supreme Court there noted that while Article XXV of the Colorado Constitution gave the Commission full legislative authority to regulate public utilities, that authority could be limited by statute.[5] The Supreme Court held that the then-existing version of § 40-3-106(1), C.R.S. 1973,[6] as well as § 40-3-102, C.R.S.,[7] acted as a legislative limitation that would prohibit

[3] *See*, Initial Comments of Black Hills, pp. 7-12.

[4] *Mountain States Legal Foundation v. Public Utilities Commission*, 197 Colo. 56, 590 P.2d 495 (1979) (hereafter, *Mountain States Legal Foundation*).

[5] 197 Colo. at 59, citing *Mountain States Telephone and Telegraph Co. v. Public Utilities Commission*, 576 P.2d 544 (Colo. 1978).

[6] The version then in effect read as follows:

"Advantages prohibited – graduated schedules. (1) No public utility, as to rates, charges, service, or facilities, or in any other respect, shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any respect, either between localities or as between any class of service. The commission has the power to determine any question of fact arising under this section."

[7] "The power and authority is hereby vested in the Public Utilities Commission of the State of Colorado and it is hereby made its duty to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of every public utility of this state *to correct abuses; to prevent unjust discriminations* and extortions in the rates, charges, and tariffs of such public utilities of this state; to generally supervise and *regulate every public utility in this state;* and to do all things, whether specifically designated in articles 1 through 7 of this title or in addition thereto, which are necessary or convenient in the exercise of such power . . . ." (Emphasis added.)

programs such as the Commission had mandated because they were both preferential and unduly discriminatory.

5. Section 40-3-106(1), C.R.S., was subsequently amended and currently reads in pertinent part as follows:

> (1)(a) Except when operating under paragraph (c) or (d) of this subsection (1) or pursuant to article 3.4 of this title, no public utility, as to rates, charges, service, or facilities, or in any other respect, shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any respect, either between localities or as between any class of service. The commission has the power to determine any question of fact arising under this section.
>
> (b) Repealed.
>
> (c) …
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> (d)(I) Notwithstanding any provision of articles 1 to 7 of this title to the contrary, the commission may approve 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, and the implementation of such commission-approved rate, charge, service, classification, or facility by a public utility shall not be deemed to subject any person or corporation to any prejudice, disadvantage, or undue discrimination.
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> (II) As used in this paragraph (d), a "low-income utility customer" means a utility customer who:
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> (A) Has a household income at or below one hundred eighty-five percent of the current federal poverty line; and
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> (B) Otherwise meets the eligibility criteria set forth in rules of the department of human services adopted pursuant to section 40-8.5-105.
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> (III) When considering whether to approve a rate that makes or grants a reasonable preference or advantage to low-income utility customers, the commission shall take into account the potential impact on, and cost-shifting to, utility customers other than low-income utility customers.

6. Black Hills interprets the new language of § 40-3-106(1)(d)(I), C.R.S., as only giving the Commission the authority to approve plans that are voluntarily submitted by the utility. Black Hills notes first that nothing in the statute requires the utility to file a plan.

It also notes that nothing in the statute requires the Commission to mandate a plan. It then concludes that the Commission is prohibited from mandating a plan.

7. EOC and OCC take issue with Black Hills' logic. Both point to the broad powers conferred on the Commission by § 40-3-102, C.R.S.[8] They suggest § 40-3-106(1)(d)(I), C.R.S., has removed the legislative restrictions that the Supreme Court found fatal to adoption of the low income rate structure in *Mountain States Legal Foundation*.

8. The ALJ concludes that the Commission has the power and authority to mandate such programs. This power comes both from § 40-3-102, C.R.S., and Article XXV of the Colorado Constitution. The Supreme Court in *Mountain States Legal Foundation* referred to the Commission's full legislative authority over public utilities granted by Article XXV, subject to legislative limitation. With the adoption of a revised § 40-3-106(1)(d)(I), C.R.S., the legislature has removed the limitation. The full legislative authority of Article XXV, as well as the power and authority to govern and regulate all rates and charges granted by § 40-3-102, C.R.S., fully empower and authorize the Commission to mandate low income energy assistance programs.

III. NEED FOR THE RULES

9. EOC has been dealing with energy affordability in Colorado for many years. It provided this record with substantial data that supports the need for the proposed rules. Among them are the following:[9]

> In 2007 the University of Colorado Health Science Center released a report on the causes of homelessness in Colorado.[10] This report concluded that the cost of home energy is the second leading cause of homelessness in the state for families with children, just behind domestic violence.
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> In 2007 the Children's Sentinel Nutrition Assessment Program published a report concerning the "Impacts of Energy Insecurity on Children's Health,

[8] *See* Fn. 6, *infra*.

[9] The following bullet points are taken verbatim from EOC's Opening Comments.

[10] *See* p. 9 of Exhibit 4 attached to EOC's Opening Comments.

> Nutrition, and Learning."[11] Principal investigators from the University of Maryland School of Medicine, University of Arkansas for Medical Sciences, Drexel University School of Public Health, and the Boston University School of Public Health concluded that "low-income families must struggle constantly to protect their children from multiple threats to their health and growth, of which energy insecurity may be the most immediately life-threatening." Focused on children under 3 years old, the study concluded that babies and toddlers who live in energy insecure households are more likely to be in poor health, have a history of hospitalizations, be food insecure, and have problems with cognitive development. Further, according to the study, children living in LEAP[12]-eligible homes who do not receive assistance are significantly more likely to be underweight.
>
> The U.S. Department of Labor, Bureau of Labor Statistics published information that, for low-income households, as energy expenditures increase, food expenditures decrease.[13] This information shows that between 2000 and 2005, for families of four with total annual incomes between $20,000 and $29,000, spending for energy rose 22% while at the same time spending for food dropped 10%.
>
> In 2009, the National Energy Assistance Directors Association published the "National Energy Assistance Survey Report."[14] Based on a survey of households that received LEAP assistance, the report concluded that in order to pay for home energy, 42% of households went without medical or dental care, and 38% went without filling a prescription or taking the full dose of a prescribed medicine. Additionally 32% of households went without food for at least one day, 44% closed off part of their home in order to save energy, and 33% used unsafe methods to heat their homes.
>
> The resource and referral system (211) run by Mile High United Way has consistently listed energy assistance as the second highest request.[15] While many believe that the inability to pay for home energy is a problem in the winter months, it is a year-round issue for low-income households.

10. The above-quoted material gives a fair picture of what effect energy bills and expenditures can have on low-income persons. They are too often faced with a Hobson's choice when the energy bill comes due; they must pay the energy bill, but forego paying for food,

[11] *See* Exhibit 5 attached to EOC's Opening Comments.

[12] LEAP stands for Low-income Energy Assistance Program. LEAP is a primarily federally-funded, county-administered program supervised by the Colorado Department of Human Services, Division of Low Income Energy Assistance. It provides cash grants during the heating season to income-qualified households.

[13] *See* p. 2 of Exhibit 5 attached to EOC's Opening Comments.

[14] *See* Exhibit 6 attached to EOC's Opening Comments.

[15] *See* Exhibit 7 attached to EOC's Opening Comments.

medicine, transportation, or other essentials. The Colorado Legislature recognized this when it amended § 40-3-106(1)(d)(I), C.R.S., as discussed above, to remove the prohibition against the Commission allowing a preference or advantage to low-income customers. No comments were filed opposing the concept in general. The ALJ finds and concludes that rules implementing such a program are in the public interest and should be adopted.

IV. TYPES OF PROGRAMS

11. Having determined above that the Commission has the power and authority to adopt low-income assistance programs, and that there is a need for such programs, the question becomes, what type of program should the rules require? The proposed rules attempted to allow for considerable flexibility by requiring a utility to either craft its own specific program, subject to certain principles, or to adopt a "Safe Harbor" plan that contained the specifics of a program that the Commission deemed sufficient. Not all commenters agreed with this approach. EOC and AARP are firmly convinced that a percentage-of-income program (PIP) is more effective and efficient when compared to a rate discount program. A PIP generally attempts to limit the amount that a ratepayer pays for energy to a certain percentage of the ratepayer's income. Other types of programs function differently, for example, providing a rate discount to low-income customers, or giving a cash stipend not tied to a percentage of the recipient's income. There are advantages and disadvantages to each type of program.

12. EOC and AARP argue that a PIP is more efficient at targeting those that need help the most. For example, assume that there are two, four-person households with similar energy usage, whose monthly energy bills are $200 per month. One household has a monthly income of $860 per month (about 50 percent of the federal poverty line (FPL)[16]) and the second has a

[16] The FPL is an annual calculation that varies by household size. Under § 40-3-106(1)(d)(II)(A), C.R.S., the Commission may grant rate preferences or advantages to utility customers who have a household income at or below 185 percent of the FPL. This example is based on the 2007 FPL guidelines contained in Exhibit 9.

monthly income of $2150 per month (about 125 percent of the FPL.) Under a rate discount approach that provided a 50 percent rate discount to participants, the second household, with two and one-half times the income as the first household, would receive the same benefits as the first household, namely, $100 per month. Under a PIP, assume a household pays no more than 6 percent of its income on energy. The first household would pay $52 per month for energy and receive program benefits of $148; the second household would pay $129 per month for energy and receive program benefits of $71 per month. EOC and AARP would suggest the latter program is more efficient. [17]

13. The example above compared only two simple program types. There are variations of these types; for example, the proposed Safe Harbor program had a PIP with a sliding scale. Households at or below 75 percent of the FPL would pay 4 percent of income; those above 75 percent but at or below 125 percent of the FPL would pay 5 percent; and those above 125 percent but at or below 185 percent of the FPL would pay 6 percent. Similar types of features could be put into a rate discount approach as well.

14. Several commenters pointed out that different utilities have different customer demographics. Black Hills notes that the median household incomes in the Black Hills service territory are substantially below the State average and below the averages in the two largest cities served by Public Service. It also notes that in Crowley County, which it serves, approximately 46 percent of customers have income below the poverty line. [18] Public Service has by far the most customers, and hence a greater ability to "spread out" program administrative costs. Several utility commenters are concerned with the administrative aspects of any program,

[17] The reader will note that the total benefits to both households are not the same in both examples. This is part of a larger discussion on budgets and program cost caps. See *infra*.

[18] Initial Comments of Black Hills, p. 11.

particularly the need to deal with confidential customer financial information that would be needed to determine eligibility. The ALJ agrees that the different utility profiles as well as the different customer bases are compelling reasons to allow the utilities the greatest possible flexibility when designing a program. The rules governing the utility-specific programs have been modified to reflect this need for flexibility.

15. The Safe Harbor rules proposed a PIP generally based on proposals made by EOC. The rules are adopted essentially as they were proposed, with some clarifying changes. The significant change from the proposal by EOC, discussed below, is that the adopted Safe Harbor rules limit participation to LEAP participants.

V. EFFECT ON NON-PARTICIPANTS

16. Section 40-3-106(1)(d)(III), C.R.S., mandates that the Commission consider the "…potential impact on, and cost-shifting to, utility customers other than low-income utility customers." The proposed rules attempted to address this. The proposed electric rules included limits to non-participants of $0.0008/kWh, $0.0009/kWh, and $0.0010/kWh during the phase-in.[19] The proposed gas rules included limits to non-participants of $0.0074/therm, $0.0082/therm, and $0.0093/therm.[20]

17. Staff explained the origin of these proposed maximum impacts. Staff attempted to develop a cap so that during the initial phase-in, an average electricity user (632 kWh/month) would pay $0.50 per month. This rises to $0.56/month in the second phase, and to $0.63 per month in the final phase. Similarly, an average gas user (68 therms/month) would pay an additional $0.50, $0.56, and $0.63 per month during the phase in. Staff further explained that this was based on the original cost limitations for Amendment 37, which established a

[19] *See* proposed Rules 3412(c)(III) and 3412(g)(III)(K).
[20] *See* proposed Rules 4412(c)(III) and 4412 (g)(III)(K).

Renewable Energy Requirement for certain providers of retail electric service in the State. The ALJ is concerned that these programs are not comparable, and he believes the caps are too high. Therefore he has reduced them by 50 percent. According to EOC's calculations,[21] these reduced caps would still fund a program participated in by 40 percent of LEAP eligible customers.[22]

18. Commenters expressed confusion about the operation of the cap, and how the cap would be coordinated with the phase-in. A budget cap that is based on a rate cap is problematic. First, the budget cap will vary depending on the amount of energy used system-wide, and hence it is not a hard cap. Second, while not dictating a form of cost recovery, it may be difficult to translate to a form of cost recovery that is not volume based.[23]

19. Commenters indicated a need for an overall hard budget cap, with program recipients being accepted until the budget cap is met. The ALJ agrees that a hard budget cap is needed to give the utilities certainty, and to give certainty to the effect on non-participants. The rules as adopted require each utility to have a hard dollar cap as part of either an individual utility plan or the Safe Harbor plan.

VI. SAFE HARBOR PLAN

20. The Safe Harbor program described in the proposed rules was designed to offer utilities, in effect, a pre-approved program. It is a PIP that had a sliding scale, as noted above. Almost all of the elements of the Safe Harbor plan drew some comments.

[21] *See* Exhibits 6, 7, and 8.

[22] Exhibits 6, 7, and 8 state that Public Service experienced a 20 percent participation rate in a pilot Electric Assistance Program. *See* Fn. 21, *infra*.

[23] For example, Public Service currently is conducting a gas pilot energy assistance program (PEAP) and a pilot Electric Assistance Program (EAP) that provide low-income assistance to residential gas and electric customers. These programs are funded through charges included in its service and facilities charges and are not volume based. It would be difficult develop a meaningful cost of the EAP and PEAP programs on a volume basis.

21. The Safe Harbor program contained a phased-in approach that had three phases. During phase I, the number of participants was limited to 50 percent of the utility's LEAP participants; during phase II, the number of participants was limited to 100 percent of the utility's LEAP participants; and in phase III, was to be "available to all participants within the service territory of a utility."[24]

22. Commenters differ as to whether LEAP participation should be a condition of participation in either the utility specific plan or the Safe Harbor plan. EOC strongly opposes such a requirement. It states that LEAP funding is frequently limited, enrollment periods are limited to a narrow window of months during winter, and it is targeted to the very young, aged, and disabled. EOC agrees that any utility assistance program should be integrated and coordinated with LEAP. Other commenters believe LEAP participation is a legitimate requirement, and it could greatly simplify the administrative costs of the program, while also keeping the utility from having to obtain the confidential information of its customers. On balance, the ALJ finds that requiring LEAP participation in the Safe Harbor program accomplishes many goals while sacrificing little. In addition, the State Division of Low-Income Energy Assistance clarified at hearing that it would be able to share program qualification information with the utilities. Therefore LEAP participation will be a requirement of participating in the Safe Harbor program.

23. The phase-in periods have been clarified in the rules. Several commenters suggested that the limited dollars should go to the neediest customers first, a sentiment the

[24] Proposed Rules 3412(g)(III)(A) and 4412(g)(III)(A). The proposed rules did not state how long each phase was to last. This was different from the phase in proposed for the utility specific program, which was tied to a percentage of the FPL. *See* Proposed Rules 3412(c)(II)(A) and 4412(c)(II)(A).

ALJ shares. Therefore the phase-in for the Safe Harbor has been changed, and it is based on the customer's household income, with the neediest customers phased in first.[25]

24. The proposed energy income burdens in the gas and electric Safe Harbor programs did not dovetail. As EOC notes,[26] the proposed rules effectively raised the maximum energy burden to 12 percent, and they did not address household use of electricity other than as a primary heating fuel. The adopted rules restore the proposal put forth by EOC in Dockets Nos. 10M-473E and 10M-475G. That is, for low income customers using electricity as their primary heating source, the percent of income burden for electricity is set at 6 percent; for low income customers using gas or other bulk heating fuels as their primary heating source, the maximum percent of income burden is set at 3 percent for electricity. The maximum income burden is set at 3 percent for gas for all circumstances. This will ensure that the maximum percent of income burden is close to 6 percent.

25. Public Service has proposed that arrearage credits should be in an amount, when combined with participant copayments, to reduce the pre-existing arrearage to $0.00 within 12 months, rather than the 24 months contained in the proposed rules. The ALJ is concerned that recovery over the shorter period may exhaust program dollars to the detriment of potential participants. Therefore the recovery period is left at 24 months.

VII. COST RECOVERY

26. Many comments addressed the issues of cost allocation, cost caps, and rate design. Most emphasized the need for flexibility. Some comments went so far as to suggest that

[25] Some commenters suggested that the rules should incorporate the annual Federal Poverty Guidelines as adjusted each year. The Colorado Administrative Procedures Act prohibits this sort of ongoing incorporation by reference in § 24-4-103(12.5)(a)(II), C.R.S. Therefore the ALJ has obtained the latest Federal Poverty Guidelines and inserted them directly into the rules.

[26] EOC Initial Comments, p. 14.

such issues should be determined entirely on an individual utility basis and not included in the rules.[27] Cost recovery specifics have been removed from the individual utility plan. This is consistent with making those types of plans as flexible as possible. However, in the Safe Harbor plan, program costs are to be allocated to all retail classes based on usage. Cost recovery is also to be based on usage.[28]

27. Some commenters expressed concern about the effects of these rules on gas transportation customers. As noticed, the low-income rules did not apply to gas transportation customers. The ALJ is concerned that adding them in at this point in the proceeding, when they were not included in the NOPR, is problematic. Therefore they remain excluded by Rule 4400 as contained in the notice of this proceeding.

VIII. EFFECTIVE DATE

28. Public Service is currently conducting pilot programs dealing with low-income energy assistance programs.[29] Public Service and others believe that before requiring any additional programs by adopting rules, there should be time to review and learn from Public Service's pilot programs. The ALJ agrees that the results of the pilot programs will be useful. Public Service expects that it will be filing the follow-up report on the pilot programs by January 17, 2012. The rules as adopted to allow a two-month period to analyze the report and to incorporate its teachings into any utility low-income proposal.

[27] *See, e.g.,* Supplemental Comments of Climax and CF&I.

[28] Of course, a utility could seek approval of an individual utility plan that contained all of the elements of the Safe Harbor Plan except for a different cost recovery provision.

[29] *See* Fn. 22.

29. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.[30]

IX. ORDER

A. The Commission Orders That:

1. The rules attached to this Order as Attachment A and Attachment B are adopted.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

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.

[30] The Electric and Gas rules adopted are included in Attachments A and B to this Order in "clean" format. Copies of the Electric and Gas rules in legislative format, showing changes from the rules as originally proposed in the NOPR, are available in the Commission's E-Filings system as a miscellaneous document in this docket.

4. 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

KEN F. KIRKPATRICK

_____

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director

Decision No. C11-1025

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 11R-110EG

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

ORDER ON EXCEPTIONS

Mailed Date: September 21, 2011
Adopted Date: August 11, 2011

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I. STATEMENT

1. This matter comes before the Commission for consideration of Exceptions to Recommended Decision No. R11-0606 filed on June 23, 2011 by Black Hills/Colorado Electric Utility Company, L.P., d/b/a Black Hills Energy (Black Hills), Energy Outreach Colorado (EOC) and Climax Molybdenum and CF&I Steel (collectively, Climax/CF&I). On July 7, 2011, EOC and the Office of Consumer Counsel (OCC) each filed Responses to Exceptions. Being fully advised in the matter, we address these exceptions in turn.

II. DISCUSSION AND FINDINGS OF FACT

A. Black Hills Energy

1. Commission Authority

2. As a threshold matter, Black Hills questions the Commission's authority to promulgate rules that require jurisdictional electric and gas utilities to file low income energy assistance programs. In considering this argument below, the ALJ found

> . . . the Commission has the power and authority to mandate such programs. This power comes both from § 40-3-102, C.R.S., and Article XXV of the Colorado Constitution. This Supreme Court in *Mountain States Legal Foundation* [*v. Public Utilities Commission*, 197 Colo. 56, 590 P.2d 495 (1979),] referred to the Commission's full legislative authority over public utilities granted by Article XXV, subject to legislative limitation. With the adoption of a revised § 40-3-106(1)(d)(I), C.R.S., the legislature has removed the limitation. The full legislative authority of Article XXV, as well as the power and authority to govern and regulate all rates and charges granted by § 40-3-102, C.R.S., fully empower and authorize the Commission to mandate low income energy assistance programs.
>
> Recommended Decision No. R11-0606, at ¶ 8.

Black Hills disagrees with the ALJ's legal conclusions, relying on principles of statutory interpretation. Black Hills points out that the language of § 40-3-106(1)(d)(I), C.R.S., neither expressly requires nor specifically authorizes the Commission to mandate the establishment of low income assistance programs. In the absence of such an explicit declaration, Black Hills claims the limitation on the Commission's authority recognized by

Mountain States Legal Foundation, is still in partial effect. Black Hills argues this outcome is required by the canons of statutory interpretation. In other words, Black Hills believes the legislature, in enacting § 40-3-106(1)(d)(I), C.R.S., removed the limitation only insofar as that limitation restricted the Commission's authority to approve low income assistance programs, but the limitation is still in full force on the subject of mandating low income assistance programs. *See* Black Hills' Exceptions, at 1-9.

3. In its Response to Exceptions, EOC takes issue with Black Hills' legal reasoning. EOC generally agrees with the reasoning adopted by the ALJ in the Recommended Decision. In addition, the EOC argues that the rules of statutory interpretation support the ALJ's result. EOC argues that the Public Utilities Law gives the Commission broad authority to regulate the rates, services, and practices of jurisdictional utilities. As a result, EOC argues that where such utilities are permitted to exercise an option to be regulated are exceptions to the general rule, which are expressly set forth in statute. Citing § 40-2-112, C.R.S., as an example, EOC argues that, where the legislature intends to establish a voluntary regulatory environment, it explicitly does so. EOC goes on to point out that § 40-3-106(1)(d)(I), C.R.S., does not include any language expressly categorizing the establishment of low income assistance plan as voluntary. EOC Exceptions, at 1-4.

4. The OCC also disagrees with Black Hills and generally agrees with the reasoning contained in the Recommended Decision. OCC Response to Exceptions, at 3.

5. We agree with the EOC that § 40-3-106(1)(d)(I), C.R.S., does not contain language that expressly states the establishment of a low income assistance is voluntary on the part of the utility. Yet, we also agree with Black Hills that § 40-3-106(1)(d)(I), C.R.S., does not contain language expressly indicating that low income assistance programs must be mandatory.

In the presence of this lack of clarity, the Commission must undertake its own statutory interpretation. We agree with the ALJ that the purpose of the statute was to remove the legal limitations imposed by *Mountain States* in the context of low income customers. Further, while it appears the legislature did not intend that the statute itself would mandate any particular rates or programs, we believe it did intend to allow the Commission, as the expert agency, to mandate the establishment of low income assistance programs, at its discretion. As a result, we will deny Black Hills' Exceptions on this issue.

2. Process for Commission Consideration of Safe Harbor Filings

6. Black Hills requests that the Commission clarify the rules in order to provide additional guidance concerning the process by which the Commission will review applications that conform with the safe harbor option. Black Hills suggests that any filing to implement the safe harbor option should be subject only to a "plenary audit process" to verify that the proposed program does in fact comply with the safe harbor option as set forth in the Rules. To this end, Black Hills recommends that the following language be added to both Rule 3412(h) and Rule 4412(h):

> Each utility electing the Safe Harbor Program option shall file a Notice pursuant to rules 1206 and 1210 applicable to tariff filings and applicable Tariff sheets describing the Safe Harbor Program. If after review the Commission verifies the Program is in compliance with rule 3412(h) [4412(h)], the Commission will deem the filing in compliance with rule 3412(h) [4412(h)], and approve the Safe Harbor Program without setting it for evidentiary hearing or otherwise subjecting the tariff filing to any further adjudicatory process.
>
> Black Hills Exceptions, at 10.

7. The OCC strongly objected to this proposal in its Response to Exceptions, and argues it violates both the Public Utilities Law and existing Commission rules. The OCC argues that, in accordance with § 40-3-111(1), C.R.S., any tariff filing must be subject to a procedure

that provides for a hearing upon complaint or on the Commission's own motion. The OCC further points out that, under § 40-6.5-104, C.R.S., the OCC is charged with intervening in cases that affect rates, which it would be precluded from doing under Black Hills' proposal. Further, the OCC states Black Hills' proposal would violate Rules 1206(b), and 1210(a) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. OCC Response to Exceptions, at 4-7.

8. We agree with Black Hills that the scope of review concerning any program that complies with the safe harbor option should be limited. However, we also agree with the OCC that Black Hills' proposed procedure is too limited. Therefore, the Commission will grant Black Hills' Exceptions on this issue in part, by adding the following language to both Rule 3412(h) and Rule 4412(h):

> Each utility electing the Safe Harbor Program option shall file a Notice pursuant to rules 1206 and 1210 applicable to tariff filings and applicable tariff sheets describing the Safe Harbor Program. Any hearing on the safe harbor program tariff sheets shall be limited in scope to evaluating compliance with this subparagraph (h).

3. Rules 3412(h)(II)(O) and 4412(h)(II)(O)

9. In its Exceptions, Black Hills also seeks clarification of the sentence in Rules 3412(h)(II)(O) and 4412(h)(II)(O), which read, "Nonpayment shall not result in the automatic removal of a participant from Safe Harbor." Black Hills believes this sentence suggests that a participant could default on payment yet continue to receive utility service and the Safe Harbor bill benefits. Black Hills argues this prohibits reasonable utility practices, including the termination of service for payment defaults. Black Hills suggests this sentence be changed to read: "Partial payment shall not result in the automatic removal of a participant from Safe Harbor." Black Hills Exceptions, at 10-11.

10. In its Response to Exceptions, the OCC agrees with Black Hills. The OCC believes customers who make no effort to make payments on their outstanding utility bill should not continue to receive utility service for free. However, the OCC suggests an alternative change to the Rule language, which would read: "Partial or late payment shall not result in the automatic removal of a participant from Safe Harbor." OCC Response to Exceptions, at 8.

11. We agree with both Black Hills Energy and the OCC, and find Rules 3412(h)(II)(O) and 4412(h)(II)(O) should be clarified. These rules will be amended to read: "A single missed, partial or late payment shall not result in the automatic removal of a participant from Safe Harbor."

4. Rules 3412(d)(I) and 4412(d)(I)

12. In its Exceptions, Black Hills seeks modification of the Rules 3412(d)(I) and 4412(d)(I), which currently state "Each utility shall file tariffs containing its proposed Program no later than March 19, 2012." Black Hills argues more time is needed, in order to fully reap the benefits of the forthcoming report by Public Service Company of Colorado concerning its low income assistance pilot program. Black Hills therefore requests that the Commission amend the due date for the program tariff filings, in order to provide more than two months for the jurisdictional utilities to review the report and to adjust their own low-income energy assistance program designs, as necessary. Black Hills requests that the Commission modify Rules 3412(d)(I) and 4412(d)(I) to read as follows: "Each utility shall file tariffs containing its proposed Program no later than, May 31, 2012." Black Hills Exceptions, at 11-12.

13. Given the length of time that has passed since EOC filed its original petition in this matter in Docket Nos. 10M-473E and 10M-475G and given the amount of

procedural interaction that has occurred among the parties in this matter, we are not persuaded by Black Hills' arguments on this issue. Therefore, we will deny Black Hills' Exceptions on this issue.

5. Rules 3412(e)(IV) and 4412(e)(IV)

14. In its Exceptions, Black Hills further expresses concern with Rules 3412(e)(IV) and 4412(e)(IV), which require the utility to apply all program expense reductions attributable to the low income assistance program as an offset to cost recovery. Black Hills Energy argues this language is not practicable. Black Hills believes a utility designing a low-income assistance program will not have observable data to attribute as offsets to a low income assistance program. Black Hills further states any offsets would be merely speculative, as the true impact of the program would not become proven or known until it had been implemented over many accounting periods. Black Hills therefore requests that Rules 3412(e)(IV) and 4412(e)(IV) be deleted. Black Hills Exceptions, at 12.

15. The OCC disagrees with Black Hills' Exceptions on this issue. The OCC points out that § 40-3-106(1)(d)(III), C.R.S., requires the Commission to consider the "…potential impact on, and cost-shifting to, utility customers other than low-income customers." The OCC believes that, by waiting until a utility files a rate case to capture the operational cost reductions associated with a low income program, a utility may collect costs from non-participating customers in excess of actually incurred costs. The OCC believes this would conflict with §40-3-106(1)(d)(III), C.R.S., because costs that are no longer being incurred would continue to be charged to non-participating customers until the utility's next rate case. OCC Response to Exceptions, at 9.

16. We agree with the OCC's arguments, as well as the reasoning of the Recommended Decision. We will therefore deny Black Hills' Exceptions on this issue. However, we will defer the requirement to submit required data concerning program expense reductions attributable to the low income assistance program until the utilities' electric and natural gas service low income programs become fully implemented during their phase III filings as determined in Rules 3412(c)(II)(B)(iii) and 4412(c)(II)(B)(iii).

B. EOC

1. Rules 3412(b)(I)(A) and 4412(b)(I)(A)

17. In Rules 3412(b)(I)(A) and 4412(b)(I)(A), an "eligible low-income customer" is defined as one with a household income at or below 185 percent of "the federal poverty level." The federal poverty level is annually computed and published by the U.S. Department of Health and Human Services (U.S. DHS). In the Recommended Decision, the ALJ incorporated this definition by setting forth the actual dollar values of the latest poverty levels, published in January 2011. Recommended Decision, at ¶ 23, n. 25.

18. In its Exceptions, the EOC disagrees with this methodology. Because the federal poverty levels change annually, the 2011 federal poverty level will not accurately represent the federal poverty level in years to come. The EOC believes this is problematic in the determination of Phase I, II, and III eligibility. EOC suggests that, as an alternative, the rules should require the Commission staff each year to compute and distribute to utilities the federal poverty level thresholds that are relevant to the rules, and then require utilities to issue tariffs containing the new thresholds (similar to the manner in which staff annually computes the interest rate required to be paid that year on utility customer deposits). EOC Exceptions, at 3-4.

19. The OCC, in its Response to Exceptions, agrees with EOC that the current rules will not represent the true federal poverty level calculations in future years. As a result, the OCC supports EOC's proposed solution.

20. We concur with the logic in the comments made by the EOC and OCC and will therefore accept the recommendation, changing the Rules to direct Staff to seek annual Commission authorization to obtain and distribute to utilities the most current federal poverty level income thresholds that are relevant to the Rules. Affected utilities will then be required to file updated tariff sheets containing the new household income thresholds.

2. Definition of "LEAP Participant"

21. In its Exceptions, the EOC suggests that "LEAP participant" should be defined. This is because the determination of eligibility for LEAP participation is a onetime decision based on a single application filed during the six-month heating season, November 1 through April 30. Applications for LEAP participation are not determined or reviewed outside those six months, and as a result no Department determinations of LEAP participation eligibility occurs from May 1 through September 30. If LEAP participation is a condition for participation in safe harbor programs, EOC believes the LEAP participation eligibility determination process needs to be harmonized with LEAP-based eligibility requirements. To this end, EOC suggests adding the following definition under Rules 3412(b) and 4412(b):

> (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 (a) 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 (b) the Department's most recently closed six-month (November 1 – April 30) LEAP application period, if that period is closed a 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 clause (b) 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.

EOC Exceptions, at 6-7.

22. We agree with EOC that the definition of LEAP participant should be added to Rules 3412(b) and 4412(b) and therefore grant EOC's Exceptions on this issue.

3. Zero Income Customers Minimum Payments

23. EOC proposes, in its Exceptions, that a minimum payment be required from customers with no income in the Safe Harbor program. This amendment would require electric heating program participants with zero income to make a minimum bill payment of $20 per month, while electric non-heating program participants would make a minimum payment of $10 per month. EOC suggests the following new provision be added as Rule 3412(h)(II)(B)(i)(3),

> (3) Notwithstanding the percentage of income limits established in Rule 3412(h)(II)(B)(i)(1) and (2), a utility may establish minimum monthly payments amounts for Participants with household income of $0, provided that:
>
> (1) The Participant's minimum payment for an electric heating account shall be no more than $20 per month; and
>
> (2) The Participant's minimum payment for an electric non-heating account shall be no more than $10 a month.

EOC Exceptions, at 7-8.

24. We agree with the arguments presented by EOC. We see value in a requirement that a minimum payment be required of each program participant. Therefore, we will accept the EOC's recommended solution. We further find such a change would benefit the natural gas rules, and therefore we will add a similar subparagraph to natural gas service low-income program rule.

C. Climax/CF&I

1. Rules 3142(h)(II)(G) and 4412(h)(II)(G)

25. In its Exceptions, Climax/CF&I objects to the requirement, contained in Rules 3142(h)(II)(G) and 4412(h)(II)(G), that cost recovery under the safe harbor program be based on usage. Climax/CF&I argues the usage-based approach to cost recovery set forth in the safe harbor program requires large energy users and high load factor customers to pay a disproportionate share of the subsidies to eligible customers. Climax/CF&I argues this is inappropriate because there is no correlation between the cost of assistance to low-income customers and the amount of electricity or natural gas any particular customer uses. Further, Climax/CF&I argues the usage-based approach is inequitable because it places a financial burden associated with the program on large users, who are ineligible to benefit from the low income assistance program. As an alternative, Climax/ CF&I suggests that cost recovery issues be decided on case-by-case basis, or based on a per-customer charge allocated by program costs within each rate class. Climax/CF&I Exceptions, at 2-4.

26. In its Response to Exceptions, EOC states usage-based cost recovery was well supported in the record. EOC further argues that Climax/CF&I's Exceptions should be rejected because, under the rules, each utility has a choice as to whether to choose the safe harbor program, with its associated cost recovery provisions, or to opt for another type of program, which may be very similar to the safe harbor program, but for an alternative method of cost recovery. EOC Response to Exceptions, at 5-6.

27. After reviewing Climax/CF&I's Exceptions, we find it is appropriate to revise the method for cost recovery contained within the safe harbor program. In so doing, we are attempting to balance equity concerns with ease of implementation and cost recovery and

tracking certainties. The difference in rate structures across the rate classes makes it hard to achieve these goals with a pure usage allocation.

28. We, therefore, will revise the safe harbor program's cost recovery provisions to allocate the costs of the program to each rate class, less transportation customers, on an equitable basis. We direct utilities to allocate the costs of the Safe Harbor program to each rate based on each rate class' share of the test year revenue requirement. Each utility will then collect those costs within the rate class on a fixed fee per customer basis. Each rate class in total will then bear an equitable percentage of the costs of the program, and a per-customer charge will allow for more certain cost recovery and easier cost recovery accounting.

29. Commission Decision No. C11-0154 that promulgated the NOPR of rules 3412 and 4412, indicated a maximum budget impact for non-participants whereby during the initial phase-in, an average electricity user (632 kWh/month) would pay $0.50 per month. This rises to $0.56 per month in the second phase, and to $0.63 per month in the final phase. Similarly, an average gas user (68 therms/month) would pay an additional $0.50, $0.56, and $0.63 per month during the phase in. The ALJ in his Recommended Decision R11-0606 in ¶17 was concerned that the proposed caps were too high and therefore he reduced them by 50 percent, or$.25, $.28, and $.315 for each of the three phases for electric and natural gas customers. We make no change to the caps adopted by the ALJ.

30. However, we clarify the intent of the maximum budget impact sections of the safe harbor provisions found in rules 3412 (h)(II) and 4412 (h)(II). The safe harbor provisions require that the benefits to program participants as stated in rules 3412(h)(II)(M) and 4412 (h)(II)(M) shall not exceed the maximum budget impact to non-participants, as described in ¶29 above. Any deviation from the safe harbor provisions of rules 3412 (h) and 4412 (h) will be

classified as utility specific low-income assistance programs and therefore subject to greater Commission review and scrutiny.

D. Rules 3006 and 4006 Revisions by Commission's Own Motion

31. The Commission, on its own motion, will modify rules 3006 and 4006 adding the annual reports filing requirements of rules 3412 and 4412.

32. All other rules not discussed in this decision are adopted without change from Decision No. R11-0606, and as attached.

III. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R11-0606 (Recommended Decision) filed on June 23, 2011 by Black Hills/Colorado Electric Utility Company, L.P., d/b/a Black Hills Energy are granted, in part, and denied, in part, consistent with the discussion above.

2. The exceptions to the Recommended Decision filed on June 23, 2011 by Energy Outreach Colorado are granted, consistent with the discussion above.

3. The exceptions to the Recommended Decision filed on June 23, 2011 by Climax Molybdenum and CF&I Steel are granted in part, consistent with the discussion above.

4. The Commission modifies and adopts the electric service low-income program rules attached to this Order as Attachment A and natural gas service low-income program rules attached to this Order as Attachment B, consistent with the above discussion.

5. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

6. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

7. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in the Colorado Register. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

8. 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 Order.

9. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING AUGUST 11, 2011.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

MATT BAKER

Commissioners

ATTEST: A TRUE COPY

Doug Dean,
Director

Decision No. C11-1217

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 11R-110EG

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

ORDER DENYING APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION

Mailed Date: November 10, 2011
Adopted Date: October 20, 2011

I. BY THE COMMISSION

A. Statement and Preliminary Matter

1. This matter comes before the Commission for consideration of Applications for Rehearing, Reargument or Reconsideration ("RRR") of Decision No. C11-1025.

2. Decision No. C11-1025, issued on September 21, 2011 granted, in part, and denied, in part, the exceptions filed by interested parties.

3. Applications for RRR were timely filed under § 40-6-114, C.R.S., on October 11, 2011 by Energy Outreach Colorado ("EOC") and jointly by Climax Molybdenum Company ("Climax") and CF&I Steel, LP, d/b/a Evraz Rocky Mountain Steel ("CF&I"). On October 12, 2011, Climax/CF&I filed an erratum to their joint Applciation for RRR.

4. On October 17, 2011, EOC filed a Motion for Leave to File a Response to Climax and CF&I Application's for RRR ("Motion for Leave"). In addition, EOC filed its response to Climax/CF&I's Application for RRR assuming it was granted leave to do so by the Commission.

Because Rule 1506 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, does not provide for the filing of responses to Applications for RRR, we must find good cause to grant EOC's Motion for Leave if we are to consider its response to Climax/CF&I's Application for RRR. In this instance, we find that the additional proposed information offered by EOC would not assist us in rendering our decision on the pending Applications for RRR. Thus, we will deny EOC's Motion for Leave. EOC's response is therefore stricken and will not be considered.

B. EOC's Application for RRR

5. Decision No. R11-0606 recommended adopting Rules 3412(h)(II)(O) and 4412(h)(II)(O) that state "nonpayment shall not result in the automatic removal of a participant from safe harbor." By Decision No. C11-1025 at ¶11, we granted exceptions in part and revised the rules to read"[a] single missed, partial or late payment shall not result in the automatic removal of a participant from safe harbor."

6. EOC argues in its Application for RRR that the language of Rules 3412(h)(II)(O) and 4412(h)(II)(O) stating "[a] single missed, partial or late payment shall not result in the automatic removal of a participant from safe harbor," that we adopted in Decision No. C11-0125 will unintentionally impact program participants negatively by changing the intent of the empirically proven benefits of the payment default provisions. EOC requests that the Commission reinstate the original language that was approved in Decision No. R11-0606 with additional clarifying language.

7. We decline to grant RRR on this point. We considered in Decision No. C11-1025 EOC's concern regarding the impact the adopted language may have on safe harbor program participants and their future participation in the safe harbor program should a participant be

disconnected by its utility for missing bill payments. It is not our intent for the regulated utilities governed by this rule to deny former safe harbor program participants from future participation in low income assistance programs for natural gas and electric utility service. Further, we believe the language modification adopted in Decision No. C11-1025 captures a balance between the program providers and participants, and will not preclude a customer from re-entering the safe harbor program at a later date should the customer be disconnected from service for non-payment.

8. Second, EOC in its Application for RRR indicates that there are typographical errors in Rules 3412(h)(II)(M) and 4412(h)(II)(M).

9. We decline to grant RRR on this point since the typographical errors in the rules are not substantive in nature. However, the rules appended to this Order will correct the typographical errors identified by the EOC in its Application for RRR. The corrected rules are attached as Attachment A (Electric, 4 CCR 723-3-3412) and Attachment B (Natural Gas, 4 CCR 723-4-4412) to this decision.

10. Third, EOC argues that the last sentence of Paragraph 30 of Decision No. C11-1025 is unclear. This sentence provides that "[a]ny deviation from the safe harbor provisions of Rules 3412(h) and 4412(h) will be classified as utility specific low-income assistance programs and therefore subject to greater Commission review and scrutiny."

11. We decline to grant RRR on this point since the Commission is clear as to its intent. Any regulated natural gas or electric utility that does not file for the "pre-approved" safe harbor program will be required to prove to the Commission the merits of its custom, utility specific low-income program, including how it will comply with Rule 3412 and/or Rule 4412.

C. Climax and CF&I's Application for RRR

12. Climax/CF&I seek reconsideration of that aspect of Decision No. C11-1025 where the Commission modified the safe harbor maximum cost cap provisions of the rules from a volumetric usage charge to a fixed fee based on each rate class' share of the test year revenue requirement. Climax/CF&I argues that the modification "is a slight improvement, but still will result in an unreasonable outcome." Climax/CF&I continues to advocate that the cost recovery within the safe harbor rules should be determined on a case-by-case approach.

13. We deny the request for RRR filed by Climax/CF&I since the safe harbor rules are intended to set forth a well-defined, "pre-approved" option for regulated utilities to consider as long as the regulated electric and/or natural gas utility complies with the safe harbor rule provisions. Allowing the maximum cost cap to be determined on a case-by-case basis eliminates the original intent of this Commission's vision for the safe harbor component of the rules. In addition, the modification from a volumetric usage to a fixed fee approach as adopted in Decision No. C11-1025 is the same fixed fee methodology that is being used in the Public Service pilot program ordered in Decision No. C08-1311, ¶63.

14. Climax/CF&I also request in its Application for RRR that the terms "test year revenue requirement" and "rate class" be clarified.

15. We deny the request of by Climax/CF&I to define the terms "test year revenue requirement" and "rate class" as these are terms used regularly in conducting business with the Public Utilities Commission. Therefore, Staff and regulated utilities are very familiar with the use of these terms in rate case filings as well as applications filed with the Commission.

16. In the event the Commission grants the Climax/CF&I Application for RRR as to the fixed fee/case-by-case basis, Climax/CF&I requests that the Commission adopt cost caps to protect large load customers from unreasonable rates, similar to what the Commission has done for residential customers.

17. We will deny the request by Climax/CF&I since it is conditioned on approval of Climax/CF&I's request described in ¶12 above and is therefore moot.

II. ORDER

A. The Commission Orders That:

1. The Motion for Leave to File a Response filed by Energy Outreach Colorado ("EOC") filed on October 17, 2011 is denied, consistent with the discussion above. The response, which was attached as Exhibit 1 to the motion for leave, is therefore stricken.

2. The Application for Rehearing, Reargument, and Reconsideration filed by EOC, on October 11, 2011 is denied, consistent with the discussion above.

3. The Application for Rehearing, Reargument, and Reconsideration filed jointly by Climax Molybdenum Company and CF&I Steel, LP, d/b/a Evraz Rocky Mountain Steel on October 11, 2011, as corrected by the errata filing, is denied, consistent with the discussion above.

4. The rules previously adopted, but modified to reflect the non-substantive corrections discussed above, are attached to this Order as Attachment A (electric service low-income program rules) and Attachment B (natural gas service low-income program rules).

5. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

6. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

7. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in the Colorado Register. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

8. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 20, 2011

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

MATT BAKER

Commissioners

ATTEST: A TRUE COPY

Doug Dean,
Director