

Decision No. C21-0408

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0326EG

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

NOTICE OF PROPOSED RULE MAKING

Mailed Date: July 15, 2021

Adopted Date: July 7, 2021

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission to consider permanent updates to the rules governing low-income programs offered by electric and natural gas utilities, Rules 4 *Code of Colorado Regulations* 723-3-3412 (Rules Regulating Electric Utilities) and 723-4-4412 (Rules Regulating Gas Utilities).

2. In August 2016, the Commission opened Proceeding No. 16R-0607EG to update the low-income section of the electric and gas rules to “make these rules more effective and efficient.”¹ Numerous provisions were adopted in the Recommended Decision,² which took effect in January 2017, including Rules 3412(k) and 4412(k), which established a triennial evaluation for low-income energy assistance programs operated by qualifying retail utilities. While Rules 3412 and 4412 have been in effect since 2017, the triennial evaluation discussed in

¹ Decision No. C17-0744 issued in Proceeding No. 16R-0607EG on August 11, 2016 at ¶ 7.

² See Decision No. R16-1034 issued in Proceeding No. 16R-0607EG on November 10, 2016.

subsections (k) was implemented and began in 2019 to review the utility low-income Percentage of Income Payment plans, concluding in 2020.

3. On October 28, 2020, the Commission held a Commissioners' Information Meeting where ADM Associates presented the Triennial review report including recommendations for change; the Colorado Department of Human Services (CDHS) provided program updates on the low-income Energy Assistance Program (LEAP); and Energy Outreach Colorado (EOC) provided an update on their low-income outreach efforts. The Triennial Review Report was filed into Proceeding No. 20M-0013EG on October 13, 2020.

4. In March 2021, Commission Staff specifically raised the Triennial review recommendations with the Low-Income Ratepayer Assistance Coalition for discussions on potential Commission rule changes. All jurisdictional utilities as well as CDHS/LEAP, the Colorado Energy Office (CEO), and EOC were present and provided input in the discussion.

5. In Proceeding No. 20R-0537EG in December 2020, the Commission adopted emergency rules to increase the permissible maximum surcharge which funds low-income programs from \$0.31 to \$1.00 for residential customers. The implementation of emergency rules is appropriate "only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with [permanent rulemaking] requirements . . . would be contrary to the public interest." § 24-4-103(6)(a), C.R.S. The matters did require immediate attention in order to protect public health, safety, and welfare. The emergency rules were intended to minimize adverse impacts on the health, safety, and welfare of low-income Coloradans and helped to ensure that low-income energy assistance programs continued to provide assistance to those who needed it in the winter and spring of 2021.

6. House Bill 21-1105 (HB 1105), which was signed into law by Governor Polis on July 7, 2021, made modifications to the eligibility standards for low-income programs under § 40-3-106, C.R.S. HB 1105 also created a new energy assistance system benefit charge to be collected pursuant to § 40-8.7-104(2.5), C.R.S., with that charge to be shared between EOC and CEO's Weatherization Assistance Program with funding levels determined in detail by the provisions of HB 1105. Pertinent to the Commission, the system benefit charge is to be set at 50 cents in October 2021, 75 cents in October 2022, and adjusted for inflation thereafter beginning in October 2023, presumably annually.

7. The following permanent rules accordingly take into account the considerations that were in place in that emergency rulemaking, and incorporate the documents which were filed into that proceeding. They also take into account the considerations of the Triennial Review Report and HB 1105.

a) The permanent rules for electric utilities 4 CCR 723-3 and for gas utilities 4 CCR 723-4 in legislative (strikeout/underline) format and (clean format) are available through the Commission's Electronic Filings system³ at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0326EG

II. **ORDER**

A. **The Commission Orders That:**

1. This Notice of Proposed Rulemaking including Attachments A, B, C, and D shall be filed with the Colorado Secretary of State for publication in the July 25, 2021 edition of *The Colorado Register*.

³ From the *Electronic Filings* system page (<https://www.dora.state.co.us/pls/efi/EFI.homepage>), the rules can be accessed by selecting "Search" and entering this proceeding number (21R-0326EG) in the "Proceeding Number" box and then selecting "Search".

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

DATE: August 23, 2021

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

PLACE: Join by video conference using Zoom
PARTICIPATING BY COMPUTER (PREFERRED METHOD):

3. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Commission deems oral presentation unnecessary. The Commission prefers and encourages interested persons to pre-file comments in this proceeding through its Electronic Filings System at:

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

4. The Commission requests that initial pre-filed comments be submitted no later than August 6, 2021, and that any pre-filed comments responsive to the initial comments be submitted no later than August 13, 2021. The Commission will consider all submissions, whether oral or written.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 7, 2021.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners