

The following comments were prepared for use of the Colorado Energy Assistance Foundation by Ron Binz, based in part on draft comments prepared by Roger Colton, on research and on other sources, including contributions from CEAF staff and counsel.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02R-196G

**IN THE MATTER OF THE PROPOSED REPEAL AND REENACTMENT OF THE
RULES REGULATING GAS UTILITIES, 4 CCR 723-4.**

COMMENTS OF THE COLORADO ENERGY ASSISTANCE FOUNDATION

The Colorado Energy Assistance Foundation (CEAF) appreciates this opportunity to offer comments on the Commission’s proposed repeal and reenactment of the rules regulating gas utilities. CEAF is a 501(c)(3) corporation whose mission as a foundation is to ensure that Colorado's low-income households can meet their home energy needs. CEAF has been assisting Coloradans since its establishment in 1989. The foundation makes energy assistance grants to low-income persons and facilitates various kinds of energy assistance through other organizations and agencies. CEAF knows how important the terms and condition of gas service are to the customers we serve. Our comments focus on those rules that most significantly affect low-income customers, such as those rules that deal with deposits, shutoffs, and deferred payment programs.

Our comments are presented in three sections. Section 1 contains specific edits and changes to the proposed rules attached to Commission Decision No. C02-324. These changes are presented in “redline” format, showing how the changes relate to the proposed rules issued by the Commission. Section 2 contains new rules that CEAF recommends the Commission add to the proposed rules. These are presented as specific additions within the existing rules format. Section 3 contains additional new rules that CEAF recommends that the Commission add to its

proposed rules. Since the recommendations in this section do not directly reference the Commission's proposed rules, they are presented as unnumbered new rules.

SECTION 1 – CEAF'S RECOMMENDED MODIFICATIONS TO PROPOSED RULES

1-A. Modify Rule 4001 (Definitions) by including a definition of residential customer.

Rule 4001(f) “Customer,” when used to refer to a person who purchases gas service under a residential tariff, means a person in whose name a residential service account is listed and who is responsible for payment of bills rendered for that service. Such term includes a person transferring or seeking to transfer service from a residence or dwelling to another within the service area of the utility or seeking to reinstitute service at the same location within 60 days following discontinuance of service.

Discussion: In many situations, it is necessary to have a clear definition of who the utility's “customer” actually is. This definition makes clear that the “customer” is the person with whom the utility has an explicit contractual relationship. Colorado does not recognize the doctrine of implicit contracts where a direct contract exists. A gas utility should have the same contractual rights as other merchants in this regard.

The proposed definition further clarifies that a person does not lose his or her status as a “customer” by transferring service from one residence or dwelling to another within the same utility service area. Similarly, the discontinuance of service does not change the person's status as a “customer” unless the person goes without service for more than 60 days following the discontinuance.

1-B. Modify Rule 4402(a) (Customer Deposits) to specify conditions under which a deposit may be required of an existing customer.

Rule 4402(a) A utility shall not require customers who have previously received service within the past two years to make new or additional deposits to guarantee payment of current bills, unless their previous payment records include, ~~recent or substantial delinquencies~~ within the

immediately preceding twelve months, either a discontinuance for nonpayment or four or more notices of discontinuance.

Discussion: The proposed rule has two deficiencies. First, the terms “recent” and “substantial” are undefined and ambiguous. The rule offers no objective measure of what constitutes a “substantial” arrearage. This problem is compounded by the fact that “substantial” is context-specific: a \$300 July arrearage might mean that the customer has not paid a bill for five months. A \$300 February arrearage might mean that the customer missed only one monthly payment. Further, \$300 in arrears for a low-income or low-use customer may be much more “substantial” than the same amount for a high-income or high-use customer. CEAF submits that the deposit requirement must be tied to some objective, measurable indicator of risk.

The second problem is more fundamental. The function of cash deposits for utility customers is generally related to the potential for bad debt. Setting aside any questions of fairness, a deposit policy must pass a *business* threshold: does the policy reduce uncollectible amounts in a cost-effective way? For this to occur, deposits must be targeted toward the customers who represent a risk of loss to the utility.¹ In other words, if the customer does not represent a potential situation where the utility will experience a permanent loss of revenues, any deposit collected from that customer --whatever the size-- has no relation to the risk of loss due to uncollectibles.

A 1994 study by the firm Fisher Sheehan & Colton examined the relationship between prior nonpayment and the risk of bad debt.² The FSC study presented data from 25 utilities in Colorado, Massachusetts, Michigan, New York, Vermont and Ohio. It presented data for gas,

¹ This risk is only a significant problem to the extent that it is not "set right" after the fact. A default on payments is not necessarily a risk of permanent loss of the entire remaining balance of payments. Either a complete late payment or a partial payment reduces the risk of loss. A utility's deposit must be adequate, but no more than adequate, to offset the losses on that fraction of bills which are in default and on which losses are accrued.

electric and combination (gas/electric) companies; geographically disaggregated data; data from small and large companies. The study presented data using 30-day arrears and 60-day arrears to determine whether a customer who pays late poses a risk to the company of ultimately losing revenue due to discontinuance and bad debt

The FSC study demonstrated empirically that late payment is a poor predictor of the potential loss of revenue from discontinuance and bad debt. The number of delinquent accounts that are eventually disconnected (and become bad debts) ranged from one to five percent of customers who paid late. In the *best* case of prediction, therefore, late payment as a predictor of the loss of revenue would be wrong 95 of 100 times. The experience at other companies was worse: in six of the 25 companies, use of late payment as a predictor would be wrong 96 percent of the time; in eight of the companies, it would be wrong 97 percent of the time; in seven of the companies, it would be wrong 98 of 100 times; and in three of the companies, it would be wrong 99 percent of the time.

Being consistently late on one's payment may represent an unsatisfactory payment history from several different perspectives. Such a payment history may impose working capital costs on a utility and cause a utility to incur credit and collection costs. But late payment situations are not the circumstances against which a deposit is designed to protect. And, from the perspective of whether a customer is going to ultimately contribute to the permanent loss of revenue through bad debt, the fact that a customer has been late in his or her payment is no predictor at all.

Simply put, late payers are only rarely bad risks.

In sum, the proposed revisions incorporate objective, measurable indicators of whether a customer poses a risk of loss to the utility. Only in such cases should a utility be entitled to seek a deposit.

² Roger Colton (1994). *Customer Deposit Demands by U.S. West: Reasonable Rationales and Proper Assessment of Risk*, prepared for Staff of the Washington Utilities and Transportation Commission, Docket No. UT-930482.

1-C. Modify Rule 4402(b) (Customer Deposits) and insert new Rule 4402(c) to clarify status of a third-party guarantor and the terms under which a guarantee operates.

Rule 4402(b) No utility shall require any security other than a cash deposit to secure payment for utility services. ~~However, a third-party guarantee of payment may be accepted instead of a cash deposit. The customer may mail or deliver to the utility the third-party guarantee form, signed by both the customer and the third-party guarantor.~~ In no event shall the furnishing of utility services or extension of utility facilities or any indebtedness in connection therewith result in a lien, mortgage, or other security interest in any real or personal property of the customer, unless such indebtedness has been reduced to judgment.

New Rule 4402(c) In lieu of a cash deposit, a utility shall accept the written guarantee from a third party to secure payment in an amount not greater than that required for the deposit. Both the customer and the guarantor shall sign the written guarantee. The guarantor shall not, at the time of providing such guarantee, be in arrears to the utility. The liability of the guarantor shall be limited to the amount guaranteed and shall be discharged under the same conditions as would result in the refund of a deposit posted by the customer.

Discussion: These proposed changes move the topic of a third-party guarantee into a new section.

The proposed language retains the requirements of the Commission's proposed rules, but requires the utility to accept a third-party guarantee from a qualified entity in lieu of a deposit. The changes specify who can become a guarantor, permitting any person or entity not currently in arrears to the utility to serve as a guarantor. Thus, a customer may seek to have a church, a community-based organization, or other responsible ratepayer be a guarantor. Finally, the new language clarifies that the guarantee will be discharged at the same time (and under the same circumstances) as a deposit would have been discharged. In other words, the rules that apply to a cash deposit should also apply to a guarantee.

1-D. Modify Rule 4402(c) (Customer Deposits) to clarify how a deposit is calculated.

Rule 4402(c) A deposit shall not exceed an amount equal to three times an estimated average monthly ~~an estimated 90 days²~~ bill of the customer over a calendar year, except in the case of a customer whose bills are payable in advance of service, in which case the deposit shall not exceed ~~an estimated 60 days²~~ two times an estimated average monthly bill of the customer over a calendar year.

Discussion: This change specifies that the utility is to use a multiple of an *average* monthly bill to calculate the deposit. The choice of which months to use in calculating the deposit is not a matter of discretion: it should be an average monthly bill measured over a calendar year.

1-E. Modify Rule 4403(a)(II) (Installment Payments) to clarify when an installment payment arrangement must be made to avoid discontinuance of service.

Rule 4403(a)(II): If the customer pays at least 10 percent of the amount shown on a notice of discontinuance and enters into an installment payment agreement ~~on or~~ before the ~~expiration date of the notice~~ day on which the discontinuance actually occurs.

Discussion: This change allows a customer to enter into an installment payment agreement through the day before the day on which discontinuance actually occurs. If discontinuance is scheduled for a Thursday, for example, the customer could enter into an installment payment agreement anytime before the end of Wednesday and thereby avoid the discontinuance.

This suggested change recognizes the fact that service terminations do not always occur on the day after the “expiration” date of a notice of discontinuance. Instead, a utility might prioritize the terminations based on the amount of the arrears and the length of time it has been outstanding. There is no reason to deny a customer the ability to make an installment payment agreement after a notice has expired but before the actual disconnection occurs.

CEAF’s proposed language should not create operational problems for utilities. The proposed language does not require a utility employee dispatched to terminate service to accept less than full payment to avoid the termination. Nor does it require a utility employee dispatched to terminate service to determine whether a customer has entered into an installment payment agreement that same day. The change would simply extend the time for making installment payment agreements through the end of the day before a customer’s service will be terminated.

1-F. Modify Rule 4406(e) (II) (Discontinuance of Service) to clarify when an installment payment arrangement must be made to avoid discontinuance of service.

Rule 4406(e)(II): If a residential customer pays, ~~on or~~ before the ~~expiration date of the notice of discontinuance~~ day on which the discontinuance actually occurs, at least one-tenth of the amount shown on the notice and enters into an installment payment agreement with the utility, as provided in rule 343.

Discussion: This recommended change is consistent with the recommended change to Rule 4403(a)(II) above. It would simply extend the time for making an installment payment agreement through the end of the day before a customer's service is scheduled to be terminated.

1-G. Modify Rule 4403(d) (Installment Payments) to provide additional options for the utility's use in designing installment payment plans and to address the maximum size of installment payments.

Rule 4403(d): An installment payment plan agreement shall consist of ~~equal regular~~ monthly installments, for a term selected by the customer not to exceed 6 months. To the extent necessary, the term shall be extended so that the average monthly installment payments do not exceed a one-month average bill.

Discussion: This change increases the options for the utility in structuring an installment payment plan. The changed language *permits* equal monthly installments, but eliminates the *requirement* that installment payments be in equal amounts.

To see why this additional option may be valuable to the utility, consider recent research sponsored by the National Fuel Funds Network (NFFN). This research documents that the working poor, who often reside in households that do not qualify for public or private energy assistance, have erratic incomes. NFFN reported:

Income for the working poor, in particular, can be erratic and unpredictable. . . . Working poor families tend to find themselves in lower quality hourly wage jobs, often marked by considerable income fluctuations due to the number of hours they are called upon to work. The Urban Institute quantified the types of occupations that characterize the working poor. Even aside from the level of

wages, the presence of hourly wages and unpredictable hours mark occupations that are the province of the working poor. Three times as many working poor families (as compared to non-poor families) are in service occupations (11.5% vs. 4.1%) and laborer occupations (11.5% vs. 4.1%), while nearly twice as many working poor (compared to non-poor) families have workers who are in operator/transportation occupations (18.9% vs. 11.1%).³

While a customer should be required to make an installment payment each month (and is required to do so under the proposed language), the utility and the customer should have the option to negotiate a payment arrangement that matches the customer's anticipated income and expenses, even if the amount of the arrears payment might vary by month.

The proposed language also caps monthly installment payments at a level equal to a one-month average bill. Keeping total bills at an affordable level increases the likelihood that the bill will be paid and the installment payment agreement will be maintained. If an arrearage is large enough that its retirement over six months would require a payment larger than a one-month average bill, not only has there been nonpayment by the customer, but also non-collection by the utility.

1-H. Modify Rule 4406(b) (II) and (III) so that gas service may not be disconnected for collateral matters.

Rule 4406(b)(II) Any amount due on another account presently or previously held ~~or guaranteed~~ by the customer, or with respect to which the customer received service, unless the customer has agreed to transfer the amount ~~has first been transferred~~ to an account which is for the same class of service, ~~or which the customer has agreed will secure the other account. . .~~

Rule 4406(b)(III) Any amount due on any other account on which the customer is or was ~~neither~~ not the customer of record ~~nor a guarantor~~....

Discussion: A customer's utility service should not be disconnected for a "collateral" matter.

These changes incorporate this principle into the proposed rule. First, the change clarifies that a

³ National Fuel Funds Network (March 2002). *A Fragile Income: Deferred Payment Plans and the Ability to Pay of Working Poor Utility Customers*, National Fuel Funds Network: Washington D.C. (citations omitted).

customer who serves as a guarantor for another account does not place his or her own service in jeopardy because of the guarantee. Agreeing to be a guarantor is collateral to the delivery of utility service to that customer. For this reason, service should not be disconnected for nonpayment of a guarantee, although other collection options would apply.

A related change prohibits discontinuance of service at one address for nonpayment of a bill at a different address. An exception to this prohibition would occur only when the customer voluntarily agrees to have an amount from an account held by the customer at a different service address transferred to the subject account.

It is well accepted that the law of contracts governs the provision of utility service. Provision of service at a different address represents a separate and independent contract for service. A utility clearly may not discontinue service at one address for nonpayment of service at a separate address when service is contemporaneous since these represent separate transactions (and separate contracts) between the utility and the customer. The principle should not be different when the separate transactions (and separate contracts) are differentiated not only by address, but by time as well.

1-I. Modify Rule 4406(b)(V) to limit use of service discontinuance to collect past due amounts more than two years old.

Rule 4406(b)(V): Any delinquent amount that is more than two years old, unless the utility can supply detailed billing records from the time the delinquency occurs and can show that failure to collect was due to customer's affirmative actions to conceal the customer's whereabouts; or

Discussion: The Commission's proposed rule creates a period of repose for past due utility bills.

CEAF has modified the rule to include the traditional equitable tolling of a statute of limitations.

Under this doctrine, a person may not invite the delay of a potential litigant, nor affirmatively act

to lull the litigant into inaction. In this analogy, the utility seeking to discontinue service stands in the shoes of a litigant seeking to enforce a claim.

However, under this doctrine there is more to concealment than a mere change of residence or change of account name. The fact that a utility has not located a customer (and there has been no attempt at concealment) is not sufficient to toll a statute of limitations. Unless the utility can show that there was a dishonest purpose behind the change, no tolling occurs.

The modified rule, as before, leaves the utility with all other lawful remedies that it would otherwise have available. The utility simply may not use the discontinuance of service as a collection device for such past due amounts.

1-J. Modify Rule 4406(e) (III) to account for days on which the utility’s business office is closed.

Rule 4406(e)(III): Between 12 Noon on Friday and 8 a.m. the following Monday, or between 12 Noon on the day prior to and 8:00 a.m. on the day following any state or federal holiday or following any day on which the main business office of the utility is closed for business.

Discussion: CEAF’s new language extends the prohibition on discontinuance of service to include *any* day on which the main business office of the utility is closed, not simply holidays and weekends. The policy basis is the same as the existing language.

1-K. Modify Rule 4406(e) (IV) to update medical exception language to conform to current medical practice.

Rule 4406(e)(IV): If discontinuance would aggravate an existing medical condition or create a medical emergency for the customer or a permanent resident of the customer’s household, as evidenced by a written medical certification from a ~~Colorado licensed physician or health practitioner acting under a physician’s authority~~ licensed medical professional.

Discussion: This language updates the medical emergency exception to reflect current medical practice, especially in managed care situations. Existing medical practice often involves primary care being offered by licensed nurses, or nurse practitioners, who may not be acting under the “authority” of a physician. This is especially relevant to low-income customers in Colorado: the 1997 Colorado general assembly established the goal of moving 75% of all Medicaid recipients to managed care.

1-L. Modify Rule 4407(b) (III) to clarify the amount that must be paid to avoid discontinuance of service.

Rule 4407(b)(III): The date by which ~~full~~ payment must be received to avoid discontinuance and the dollar amount that must be received.

Discussion: The amount of arrears stated on a notice of discontinuance may differ from the total arrears on an account. In addition, the portion of the bill that is outstanding — current charges in addition to arrears — may be different from the amount subject to the notice of discontinuance. Given these circumstances, it may be incorrect and potentially misleading to say that the notice of discontinuance should provide the date by which “full” payment must be received. The information on the notice of discontinuance should be only the required dollar amount and the date by which it must be paid to prevent the discontinuation of service.

1-M. Modify Rule 4403(b)(V) to clarify which extra fees may be included in the amount due stated on the discontinuance notice.

Rule 4403(b)(V): Any collection fees as provided for in the utility’s tariff, whether or not such fees have appeared on a regular monthly bill, provided that any late payment fee or collection fee is cost-based.

Discussion: The purpose of a late payment fee should be to allow a utility to recoup the costs caused by a customer’s late payment. These may include the cost of working capital associated

with arrears, the collection costs associated with the arrears, or other direct costs caused by the nonpayment or late payment.

Across the country, an increasing number of regulatory bodies have approved utility requests for late payment fees that exceed costs caused by nonpayment. In these cases, the late fee is usually characterized as an “incentive” for customers to pay in a timely fashion. Many companies set these non-cost-based fees at 1.5% per month to ensure that the cost of not paying a utility bill is roughly equal to the cost of not paying a credit card.

Without raising here the issue of how large a late payment fee should be, CEAF’s proposed language says that, when late payment fees are not cost-based, a utility should not be allowed to make their payment a prerequisite for the reconnection of service.

SECTION 2 – CEAF’S RECOMMENDED ADDITIONAL NUMBERED RULES

CEAF recommends that the Commission adopt the following set of additional rules for the Colorado natural gas customer service regulations. These changes recommended by CEAF add to the Commission’s proposed rules and are presented here as specific additions within the structure of those proposed rules.

2-A. Insert new Rule 4006(h) to require gas utilities to collect and report basic data concerning bill payment problems of low-income consumers.

Rule 4006(h) Each gas utility shall file with the commission on or before March 1 of each year one copy of the following statistics on its residential accounts for each calendar month of the prior calendar year:

- (1) Number of accounts;
- (2) Number of accounts certified as eligible for energy assistance;
- (3) Number of accounts past due;
- (4) Number of accounts eligible for energy assistance and past due;
- (5) Total revenue owed on accounts past due;
- (6) Total revenue owed on accounts eligible for energy assistance and past due;
- (7) Number of discontinuance for nonpayment notices issued;
- (8) Number of discontinuance for nonpayment notices issued on accounts eligible for energy assistance;
- (9) Number of discontinuances for nonpayment;
- (10) Number of discontinuances for nonpayment for accounts eligible for energy assistance;
- (11) Number of customers who entered into installment payment agreements;
- (12) Number of customers who entered into installment payment agreements and were determined to be eligible for energy assistance;
- (13) Number of customers defaulting on payment agreements;
- (14) Number of customers defaulting on payment agreements and were determined to be eligible for energy assistance;
- (15) Number of disconnected accounts restored for payment in full or cure;
- (16) Number of disconnected accounts restored for payment in full or cure and were determined to be eligible for energy assistance;

- (17) Number of disconnected accounts restored for payment arrangements;
- (18) Number of disconnected accounts restored for payment arrangements and were determined to be eligible for energy assistance;
- (19) Number of accounts determined uncollectible; and
- (20) Number of accounts eligible for energy assistance and determined uncollectible.

Discussion: Good policy making relies on good information. An ongoing policy discussion in Colorado, and elsewhere in the country, is how to provide affordable home energy for low-income customers and prevent discontinuance of service for nonpayment.

A May 2002 study by Fisher Sheehan & Colton found that most states, including Colorado, do not systematically collect the data necessary to make informed decisions about this issue:⁴

While the notion that payment-troubled customers are disproportionately low-income is commonly accepted conventional wisdom,⁵ remarkably little empirical data has been collected to verify or to challenge that conventional wisdom. National data reported by the U.S. Census Bureau indicates that the proportion of households in arrears at any given point in time is substantially higher for the low-income population than for the population as a whole. One 1995 census study, for example, reported that while 9.8% of non-poor families could not pay their utility bills in full, 32.4% of poor families could not do so. According to the Census Bureau, while 1.8% of non-poor families had their electric and/or natural gas service disconnected for nonpayment, 8.5% of poor families suffered this same deprivation.⁶ Unfortunately, systematic information on the arrears of low-income customers is not collected on a state level basis.⁷

CEAF's proposed language requires utilities to compile and report basic data on the payment troubles of residential customers with a focus on the payment troubles of customers that are

⁴ Roger Colton (May 2002). *Payment Problems, Income Status, Weather and Prices: Costs and Savings from a Capped Bill Program*, Fisher Sheehan & Colton: Belmont, MA.

⁵ This is not to say that all low-income customers are payment-troubled, or that all payment-troubled customers are low-income. It is merely to say that low-income customers are disproportionately payment-troubled.

⁶ U.S. Census Bureau, *Extended Measures of Well-Being: 1992*, P70-50RV (November 1995).

⁷ There is sporadic corroborative information from the states. One 1998 Illinois report, for example, indicated that while 44.5% of LIHEAP-assisted natural gas customers were in arrears, only 28.9% of "general households" were. Department of Energy and Community Affairs, *Residential Energy Costs and Assistance in Illinois: The 1997 – 98 Winter*, at 6, Springfield (IL). So, too, has an analysis by the staff of the New Hampshire Public Utilities Commission estimated that roughly 35% of the low-income *electric* customers entering the Electric Assistance Program (EAP) entered the program with arrears. As a general rule, estimates place the average number of customers in arrears at any given point in time at around 12% of the total customer base.

eligible for federal fuel assistance. Utilities will be required to file this information only once a year; however, the data should reflect monthly statistics on the utilities' residential accounts.

This information is essential to making informed decisions on issues such as those being considered in these rules.

2-B. Insert new Rules 4403(f) and 4403(g) to address the circumstances in which the utility shall modify a deferred payment agreement.

News Rule 4403(f): If the gas customer's economic or financial circumstances change during the effective period of a deferred payment agreement, and if not more than 14 days has elapsed since the customer defaulted on the deferred payment agreement, the company shall, at the request of the customer, renegotiate the terms and conditions of the deferred payment agreement, considering the changed economic and financial circumstances substantiated by the customer.

New Rule 4403(g): If a gas customer defaults on a deferred payment agreement but has not yet had service discontinued by the gas utility, the utility shall permit such customer to be reinstated on the deferred payment agreement if the customer pays in full the amount that should have been paid under the original payment agreement (including any amounts for current usage which have become past due). A utility is required to permit such reinstatement only once during the course of a deferred payment agreement.

Discussion: The basis for this proposed language is found in the recent National Fuel Funds Network publication *A Fragile Income: Deferred Payment Plans and the Ability to Pay of Working Poor Utility Customers* (March 2002). A copy of that publication is attached as Appendix A.

2-C. Insert new Rule 4403(h) to prohibit finance charges from being applied to a deferred payment agreement.

New Rule 4403(h): An installment payment agreement on which timely payments have been made shall not include a finance charge.

Discussion: A finance charge (or late payment fee) imposed by a utility serves two possible functions. First, the late fee is to compensate a utility for the costs it incurs as a result of late

payment. Second, as discussed above, a late fee may serve as an incentive for customers to make timely payments.

Neither of these functions applies to an installment payment agreement on which the customer is making timely payments. To the extent that timely payments are being made, the company is incurring no credit and collection expenses for which compensation should be provided. If timely payments are being made, there is no need for an “incentive” for persons to pay on time. Indeed, when a utility negotiates an installment payment agreement, it has agreed to the payment schedule underlying the agreement. There is no basis for the utility to provide an incentive to accelerate that agreed-upon schedule.

If a customer falls into arrears on the installment payment agreement, a late fee or finance charge is justified (or not) on the same policy basis as a finance charge or late fee in any other arrearage situation.

2-D. Insert new Rule 4402(h) to require refund of a deposit following twelve months in which no notice of discontinuance has been issued.

New Rule 4402(h) If a customer does not receive a notice of discontinuance for nonpayment for twelve consecutive months, the deposit shall be refunded within 30 days of the end of the twelve-month period.

Discussion: While the Commission’s rules contain extensive provisions regarding the imposition of a cash security deposit by Colorado gas utilities, the rules do not describe the circumstances under which a deposit shall be returned to the customer. This proposed rule provides that, if a customer maintains service for a year without putting the utility’s revenue at risk due to the discontinuance of service for nonpayment, the deposit shall be returned. For the reasons set out in the preceding discussion of deposits, the return of the deposit should not be tied to whether payments have been timely. Since the purpose of a deposit is to protect against the loss of

revenue due to bad debt, not to protect against late payment, and since late payment has been shown to be an inaccurate indicator of the potential loss of revenue to bad debt, the decision to return a deposit should be tied to disconnection notices, not to timing of payments.

2-E. Insert new Rule 4407(i) to specify the form of a discontinuance notice when the resident is not the customer of record.

New Rule 4407(i):

- a. Except as provided in Rules 4407(h), no utility shall terminate service without providing written notice to the residents or occupants of a residence where the customer billed for service is not a resident or occupant of the premises being served.
- b. The utility must notify the residents or occupants of its intent to terminate service at least thirty days before the proposed date of termination. The notice shall be delivered to the premises and shall state:
 - (i) The date of the notice;
 - (ii) The proposed termination date;
 - (iii) The amount due for the most recent billing period; and
 - (iv) That the resident or occupant can negotiate directly with the utility to purchase future service at that location in the resident's or occupant's own name.

Discussion: The policy basis for this proposed language is the same as the policy basis for the Commission's proposed Rule 4407(h), which this new language supplements. However, Rule 4407(h), by its terms, applies only to multifamily situations. This proposed rule extends the same notice provisions to the occupants of all housing units where the address of the customer of record differs from the address at which service is provided. This can occur when utility costs are included in rent and the property owner or manager has a different service address. This new rule creates no new substantive protections, but merely extends the notice provisions of Rule 4407(h) to tenants in single-family rental housing.

SECTION 3 – CEAF’S RECOMMENDED NEW (UNNUMBERED) RULES

CEAF recommends that the Commission adopt the following new rules for the Colorado natural gas customer service regulations. Since these new rules do not amend or reference the Commission’s proposed rules, they are presented as unnumbered proposed new rules.

3-A. Insert a New Rule 4XXX-1 limiting the effective period of a utility’s notice of termination of service.

New Rule 4XXX-1: The written notice shall become void if the utility has not disconnected service within 15 days of the date indicated on the notice for termination. If termination of service is not undertaken within 15 days following the final notice required before service discontinuances, the utility must follow the procedures for issuing a new notice.

Discussion: A notice of discontinuance serves several different functions. The suggested language recognizes that, at some point after the notice of discontinuance is issued and no action has occurred, the efficacy of the notice deteriorates and the purposes of the notice are no longer served. Under these circumstances, a new notice should be issued using the same procedures as the initial notice.

3-B. Insert a new Rule 4XXX-2 concerning the retention of “customer” status.

Rule 4XXX-2: Whenever a residential customer, whose service has not been discontinued for nonpayment, moves to another residence within the territory served by a utility, the request for service at the new residence shall not be considered an application for new service under this regulation. Such service shall be provided at the new residence and shall be considered a continuation of the prior service. A utility shall not have the right to accelerate collection, to terminate service, or to change the terms of service to any customer by virtue of the change in the customer’s residence.

Discussion: Gas customers should not lose their status as “customers” merely because they change addresses. This is especially important for low-income customers, who are much more

mobile than their higher-income counterparts. Information from the most recent American Housing Survey for the City of Denver (Table 2-12), for example, shows the following data⁸:

Income as a Percentage of Poverty Level	Percent Who Moved in Previous Year
Below 50%	41%
50-99%	32%
100-149%	27%
150-199%	23%
200% and above	21%

Without this rule, low-income customers could be subjected to more frequent deposit demands, might find it more difficult to receive deposit refunds (since the time interval would start over at the new address), and may face high customer service fees (for voluntarily disconnecting and reconnecting service). In addition, shutoff protections for extreme weather might arguably not apply.⁹

3-C. Insert a New Rule 4XXX-3 concerning the level of late payment fees charged to low-income customers.

New Rule 4XXX-3 For customers known to the utility to have received assistance from the Colorado Low-income Energy Assistance Program (LEAP) within the past twelve months, or to have an annual income at or below 185% of the federal poverty level, a utility shall not charge a late payment charge in excess of a rate found by the Commission to be necessary to compensate the utility for actual costs which the late payment has caused the utility to incur.

Discussion: Utility late payment charges are sometimes justified not as a means to cover expenses, but rather as a means to induce prompt payments on the part of customers. If this

⁸ American Housing Survey, 1995. H170/95-46. Table 2-12, p. 23. U.S. Census Bureau.

⁹ Earlier this year, Iowa utilities, argued – unsuccessfully – that while they were prohibited from *disconnecting* service in extreme weather, the regulation did not require them to reconnect service if a customer chose to change addresses during the winter months.

rationale is proffered, it is a legitimate inquiry whether this is fair or sensible rational when nonpayment occurs in households who are unable to pay because of chronic poverty.

It is beyond question that low-income households often lack sufficient funds to pay all household bills. Thus it is unsurprising that low-income households are disproportionately in arrears to their utility companies. National data reported by the U.S. Census Bureau indicates that the proportion of households in arrears at any given point in time is substantially higher for the low-income population than for the population as a whole. One 1995 census study, for example, reported that while 9.8% of non-poor families could not pay their utility bills in full, while 32.4% of poor families could not do so.¹⁰ Unfortunately, systematic information on the arrears of low-income customers is not collected on a state level basis.¹¹

To the extent that non-cost-based late payment charges are intended to induce customers to pay utility bills before paying other bills, this purpose does not apply to low-income customers.

Low-income households do not fail to pay their utility bill payments in order to pay other bills. A seminal study on this issue was performed in Wisconsin. The research segmented the study population into groups and found that, if the customer had to make choices in which bills to pay first, they would pay the bills in the following order:¹²

¹⁰ U.S. Census Bureau, *Extended Measures of Well-Being: 1992*, P70-50RV (November 1995).

¹¹ There is sporadic corroborative information from the states. One 1998 Illinois report, for example, indicated that while 44.5% of LIHEAP-assisted natural gas customers were in arrears, only 28.9% of “general households” were. Department of Energy and Community Affairs, *Residential Energy Costs and Assistance in Illinois: The 1997 – 98 Winter*, at 6, Springfield (IL). So, too, has an analysis by the staff of the New Hampshire Public Utilities Commission estimated that roughly 35% of the low-income *electric* customers entering the Electric Assistance Program (EAP) entered the program with arrears. As a general rule, estimates place the average number of customers in arrears at any given point in time at around 12% of the total customer base.

¹² Wisconsin Public Service provided the survey firm of Bergo & Matousek with a sample of 1,700 customers in Green Bay who had a history of bill payment problems. Some of these customers had been disconnected. From this sample, 200 door-to-door interviews were completed. The questionnaire took thirty to forty-five minutes to complete and did not identify the utility as the sponsor of the survey.

	Group 1	Group 2	Group 3
Pay utility bill first	79%	77%	79%
Pay telephone bill second	74%	71%	71%
Pay gas credit card third	68%	74%	67%
Pay credit card last	76%	81%	71%

The reason the utility bill was paid first, the study found, was because it is an essential service and is subject to disconnection for nonpayment.

Even if a late payment fee *were* effective in inducing low-income customers to pay their utility bills before other bills, this result is not necessarily in the public interest. The Iowa Department of Human Rights (the Iowa LIHEAP agency) studied the impacts of home energy bills in the 1999/2000 winter heating season and documented that:

- ? More than 12% of the more than 3,000 Iowa survey respondents reported going without food for at least one meal a week to try to save enough money to pay their utility bills.
- ? More than 20% reported going without medical care, by either not filling prescriptions, taking prescription medicines in lower than prescribed doses, or by skipping or postponing doctor's appointments in order to save money to pay for utility bills.
- ? Nearly 10% reported not making their rent or mortgage payments in order to pay their home heating bills.

Thus, imposing a non-cost-based late payment charge as an inducement for customers to pay their utility bills in a timely fashion may push low-income customers into dangerous, unsafe and unhealthy actions.

CEAF believes that low-income households do not pay their utility bills because they cannot afford to pay. Attempting to create an incentive to pay promptly by making unaffordable bills even higher is not only ineffective, it is counterproductive. The proposed language does not

exempt low-income households from late payment charges, but merely limits late payment charges for low-income households to those charges that are found to be cost-based.

CONCLUSION

CEAF appreciates the opportunity to comment on the Commission's proposed new gas rules. We have offered several recommendations that we believe will improve the welfare of low-income consumers, improve regulation and make it more likely that low-income consumers will be able to pay their gas service bills. We respectfully recommend that the Commission incorporate these changes and additions into its rules regulating gas utilities.

Dated this 4th day of October 2002.

Respectfully submitted,

COLORADO ENERGY ASSISTANCE FOUNDATION

BY: _____

Karl Kumli
ATTORNEY FOR THE COLORADO
ENERGY ASSISTANCE FOUNDATION