

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 07R-371G

IN THE MATTER OF THE PROPOSED RULES REGARDING NATURAL GAS DEMAND-SIDE MANAGEMENT, PURSUANT TO HOUSE BILL 07-1037, ENACTED AS §40-3.2-103.

DECISION ADOPTING FINAL RULES

Mailed Date: March 7, 2008
Adopted Date: March 5, 2008

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I. BY THE COMMISSION

A. Background

1. On June 27, 2007, we issued Decision No. C07-0562 opening Docket No. 07I-251G, to investigate issues associated with the natural gas Demand Side Management (DSM) requirements contained in § 40-3.2-103, C.R.S. In that Decision, we established dates for: (1) an informal workshop; (2) stakeholder comments and proposed rules; and (3) stakeholder reply comments.

2. Commission Staff held an informal workshop on July 18, 2007. Initial comments were filed by Ratepayers United of Colorado (RUC), Energy Outreach Colorado (EOC),

Colorado Natural Gas, Inc.(CNG), Atmos Energy Corporation (Atmos), Southwest Energy Efficiency Project (SWEEP), the Colorado Office of Consumer Counsel (OCC), SourceGas Distribution, LLC, (SourceGas), Public Service Company of Colorado (Public Service), Aquila Networks-PNG (Aquila), and the Energy Science Center. RUC, OCC, Public Service, and SourceGas filed reply comments. We issued a Notice of Proposed Rulemaking (NOPR) by Decision No. C07-0830.

3. The basis and purpose of the proposed rules is to implement the recent legislation codified at §40-3.2-103, C.R.S., which directs the Commission to implement rules to establish specific natural gas DSM requirements for jurisdictional natural gas utilities.

4. Section 40-3.2-103, C.R.S., provides that, on or before September 30, 2007, the Commission is required to commence a rule-making proceeding to develop expenditure and natural gas savings targets, funding and cost-recovery mechanisms, and a financial bonus structure for DSM programs implemented by investor-owned gas distribution utilities.¹

5. We requested that interested persons file comments no later than November 1, 2007, and reply comments no later than November 20, 2007. We took additional general comments at a hearing on December 3, 2007. Additionally, we sought comments in written or oral form based on questions attached to Decision No. C07-1009, and comments to those questions were also addressed at the December 3, 2007 hearing. Ten parties provided written and oral comments, including Colorado Energy Efficiency Business Coalition (CEEBC); SWEEP; EOC; the OCC; RUC; Public Service;² Aquila; SourceGas; Atmos and CNG.

¹ See, HB 07-1037, §§ 40-3.2-103(1) and (2), C.R.S.

² Public Service filed comments on behalf of Colorado Natural Gas, Inc., Atmos Energy Corporation, SourceGas Distribution, LLC, and Aquila Networks-PNG.

6. At the December 3, 2007 hearing, we concluded that an additional comment hearing on February 13, 2008 was necessary to gather further comments on the current issues and concerns regarding this rulemaking.

7. On January 16, 2008, we issued Decision No. C08-0066 which was a Supplement to the Notice of Proposed Rulemaking (Supplemental NOPR). In that Decision we released a revised version of the proposed rules, requested written comments be submitted by February 8, 2008, and set forth the details concerning a hearing to take oral comments on the revised proposed rule.

8. Five parties submitted written comments in response to the Supplemental NOPR, including Public Service; the OCC; Aquila; SWEEP; and the Energy Efficiency Business Coalition of Colorado (EEBC). At the February 13, 2008 comment hearing these five parties offered additional comments, or made themselves available for questions, along with representatives of SourceGas and Atmos Energy.

B. Deliberations on the Final Rule

9. On February 27, 2008, we convened a Deliberation Meeting to review the proposed rule and the comments received. The Deliberation Meeting was continued on March 5, 2008.

10. Comments were received from all of the participating utilities concerning the issues they perceived regarding the proposed rules. General comments made specific reference to various rules (4755, 4756, 4758 and 4759). Public Service proposed deletion of those rules in their entirety and this opinion was supported by other utilities. We have reviewed the proposed rules from the perspective of their alleged inflexibility and the burden they place upon utilities. As noted in the Decision accompanying the Supplement NOPR (Decision No. C08-0066), we are

attempting to strike a balance between competing needs and demands. As it pertains to burden and flexibility, our objective is to create a framework and a process sufficient to carry out the legislative intent while not interfering where utilities should be provided discretion.

11. Concerning Rule 4406, various utilities commented in response to the first NOPR that the suggested language should be deleted. The language in Rule 4406(b)(II)(D) was retained so that customers would be informed of the additional DSM costs being incurred. Oral comments received from Public Service in response to the Supplemental NOPR clarified its position, in terms of objecting to a “per-unit” cost being itemized on customer bills. We concur that this level of detail is not necessary. Consequently, it has been eliminated.

12. Concerning Rule 4750, Aquila and Public Service both commented that the language in this rule exceeded the parameters of the statute and suggested deletion of specific words and phrases. While we view the statute as providing a fair amount of latitude to the Commission, we modified the language in this rule (as indicated in rules attached to the Supplemental NOPR) to better reflect the legislative intent and Commission’s objectives. The edits also included changes to this rule concerning the schedule for utility filings, reflecting proposed changes in other rules. No additional comments concerning Rule 4750 were received in response to our rule changes as indicated in the Supplemental NOPR. Therefore, we adopt the language of Rule 4750 as provided in the Supplemental NOPR, with minor grammatical changes.

13. Concerning Rule 4751, Public Service suggested several changes to the definitions of terms, including the deletion of some definitions, in response to the NOPR. Most of these suggestions were incorporated into the subsequent rule changes. Also, the definitions of “Cost effective” and “DSM Education” were modified to reflect the statutory definition

contained in §40-1-102, C.R.S. Several comments were received from various parties concerning the definitions of benefits and costs within the cost-effectiveness test. The definition of “Modified Total Resource Cost test” was revised in response to these comments. The OCC proposed deleting references to “residential or commercial” from the definition of “sales customer” or “full service customer” so as to not preclude the possibility of a sales customer from another class. We find that the definition as proposed in the Supplemental NOPR adequately covers all likely gas customers.

14. Aquila offered amended language for the definition of “DSM program” to include information and services. We agree with this proposed change. SWEEP requested that net economic benefits should be calculated at the program level as well as the portfolio level. Since net economic benefits are calculated as a component of the bonus calculation, and since the bonus applies to the portfolio not individual programs, we do not see a need to revise the definition as proposed by SWEEP. Furthermore, program level performance data (expenditures and cost effectiveness) will be included in the annual reports, which provide the basis from which a program-specific net economic benefit can be determined. Also, EEBC commented that the definitions should incorporate all possible benefits of DSM. The topic of including all possible benefits is addressed in Rule 4753(I)(I).

15. Concerning Rule 4752, the various utilities and SWEEP expressed opposition to the proposed filing schedule. SWEEP recommended that DSM plans be filed every three years, as is the practice in Nevada. Aquila also commented that, based upon their experience administering gas DSM programs in other states, multiple year programs filings are significantly better and more workable than annual filings. The rule as amended in the Supplemental NOPR reflected these comments. Public Service, on behalf of all Colorado Local Distribution

Companies (LDCs), opposed the proposed March 1 filing deadline for annual reports and bonus applications. Public Service expressed a concern that some of the data needed for these filings may not be available by March 1, and instead suggested April 1 as a deadline. We agree with this proposed change. Also, the Supplemental NOPR set forth a staggered filing schedule (April and July) for subsequent DSM plans from four of the gas utilities and was silent on when the others were to file. For clarity and simplicity, we modify the schedule so that all DSM plans are filed by May 1 of the final year of the current DSM plan.

16. Concerning Rule 4753, several comments were received concerning the required contents of a DSM plan filing. Various parties expressed concerns that the proposed rule was overly burdensome, requiring excessive content and was inflexible. In response to these comments we revised Rule 4753 to reduce the content requirements, while achieving the objective of receiving DSM plan filings that clearly describe the utility's DSM planning process and substantiate the proposed DSM programs, without being overly burdensome. In response to the proposed rule amendments, SWEEP commented that the expenditure projections within a DSM plan should be provided for each program, not just the overall portfolio. Pursuant to §40-3.2-103 (6)(a) the utilities are required to submit annual reports to the Commission which include program expenditures. In order to fulfill this requirement, utilities will need to develop program level budgets and track expenditures by program. As a result, we find that requiring DSM plans to include program level budgets is a reasonable additional requirement which should not be a significant burden.

17. Based upon comments received, Rule 4753(e) was amended to reduce the content required in a DSM plan. The objective of these changes was to focus the plan contents on just the DSM programs being proposed. Public Service commented on the "market assessment"

requirement, expressing concern about the burden of regularly conducting such an assessment. Public Service proposed greater flexibility. Oral comments received during the February 13, 2008, hearing served to further clarify this concern. Our objective is to receive within DSM plan filings, the data and information sufficient to identify the distinct market segments within a gas utility's total customer base. It was not meant to require an assessment of the market potential for DSM as a prerequisite to each DSM plan filing. Consequently, we revised the wording of Rule 4753, substituting the language "descriptions of identifiable market segments, with respect to gas usage and unique characteristics" in place of the term "market assessment." We conclude that all utilities should be able to provide such data and information within their DSM plans without having to conduct a formal market assessment.

18. Various parties commented on the process by which the DSM plan targets will be established. The essence of the concern expressed pertains to whether the utility sets the targets or proposes the targets, especially since the targets are the basis for awarding a bonus. We clarified that the utility proposes targets in their DSM plan filing, which is filed as an application that can be set for hearing in which parties can intervene. Through the adjudicatory process the targets will be decided by the Commission.

19. Concerning Rule 4753(e), review of the initial comments led us to conclude that the information and data being required in a DSM plan is necessary. Specifically, we revised the language in sub-paragraph (II) to narrow the focus to only the DSM measures that the utility is proposing (as opposed to potential DSM measures). We agree that the language is unclear concerning how the utility is to rank possible DSM programs. Further, we conclude that the language in this sub-paragraph needs to be refocused to apply only to the DSM programs that the utility is proposing, as opposed to "possible DSM programs" as stated in the Supplemental

NOPR. We also revise the ranking process required in Rule 4753 (e)(IV) to clarify how proposed DSM programs are to be compared. This ranking of proposed DSM programs is keyed to the value and potential of each program, based upon the analysis conducted of each program pursuant to Rule 4753(e)(III).

20. Also regarding Rule 4753(e), we find that there is an inadvertent omission regarding the expectation that each proposed DSM program have a projected modified TRC test value of at least 1.0. Consequently, we incorporate this concept into Rule 4753(e)(IV).

21. EOC provided comments as to how the gas DSM rules should address access to DSM programs by low-income customers, whether to require utilities to include low-income DSM programs in their portfolios and whether to exempt low-income customers from DSM cost adjustments. Other parties offered comments in response to EOC's recommendations. We find that there are not grounds for excluding low-income customers from the DSM cost adjustment. However, we do expect gas utilities to include the low-income customer segment in their gas DSM program planning. Section 40-3.2-103 (3)(a) provides options for how gas utilities can target low-income customers and we strongly encourage utilities to develop gas DSM plans that include a low-income component.

22. Several comments were received concerning the minimum expenditure requirement set forth in the proposed rules. One particular concern was the definition of revenue, particularly since the expenditure minimum is defined as a percentage of the utility's gas revenues. Several parties suggested that revenue be defined as the non-commodity, or base-rate portion, of a gas utility's revenues. We agree with the rationale that removing commodity from the definition will reduce the volatility in calculating a minimum DSM expenditure level, and that this can improve multi-year DSM planning. On the other hand, §40-3.2-103(2)(a),

clearly sets the minimum expenditure as “at least one-half of one percent of a natural gas utility’s revenues” without any reference to exempting commodity sales from revenues. Based upon a review of Colorado gas utility revenues, it is evident that, on average, the commodity portion is about seventy-five percent of total revenue. Using this average, we calculate that two percent of base rate revenue is equivalent to one-half of one percent of total revenue. We substituted two percent of base revenue as the expenditure minimum in the draft rule. Nevertheless, we are concerned that, given the variation among Colorado utilities regarding the portion of revenues derived from commodity sales, using two percent of base revenue as the minimum may result in some utilities being out of compliance with the statutory minimum. Therefore, we amend Rule 4753(g)(I) to include language setting the minimum expenditure target at the higher of two percent of base rate revenue or one-half of one percent of total revenue. We are aware that for at least one utility (Colorado Natural Gas), this calculation of the expenditure minimum may greatly increase its required expenditure level due to its relatively high ratio of commodity to base rate revenues. If the expenditure minimum is unattainable, the utility should consider requesting a waiver of this rule as part of its initial DSM plan application.

23. Our objective with the expenditure minimum rule is to promote substantial DSM implementation, which may require expenditures well beyond the statutory minimum. We are aware that the Colorado gas utilities are diverse in terms of their size, experience with DSM and market characteristics and that some will require a phase-in period in order even to achieve the minimum expenditure level. As a result, while we do not increase the expenditure minimum beyond the statutory level at this time, we nonetheless anticipate reviewing this rule to reconsider the minimum expenditure level, if necessary, after initial DSM plans have been approved and implemented.

24. Rule 4753(g)(IV) pertains to DSM activities such as education and program planning, which must be independently verified as cost-effective. A limit on how much a utility can expend on these activities was deleted in the Supplemental NOPR in response to comments received. Also, the terms “impact and process evaluations” were included in this section to more completely reflect the statutory language of §40-3.2-103(5). In response to the Supplemental NOPR, SWEEP commented that the term “market transformation programs” should also be included in this sub-paragraph. We agree, particularly since it is our intent to encourage utilities to not only consider DSM programs with short term impacts but also DSM programs that would yield the longer term impact of transforming how a specific market, such as the new housing market, approaches gas consumption or leads to adoption of transformation technologies, such as solar, hot water heaters. SWEEP also suggested that an expenditure limit of twenty percent be placed upon this overall category of DSM expenses. While we agree that a DSM plan with a disproportionately large quantity of these types of expenditures may not be sound, we believe that the overall Total Resource Cost (TRC) test and bonus incentives will serve to limit a utility’s expenditure on these activities. We also find that the term “market transformation” must be defined so that its inclusion in this rule is clear. As a result, we include it in the definition section under Rule 4751.

25. With regard to expenditures beyond the expenditure target, the rules proposed limiting such expenditures by their impact upon the rate increase approved in the utility’s DSM plan. Based upon comments received, we amended the rule to allow for a five percent overage, after which the utility’s energy target would have to increase proportionately. SWEEP and Public Service commented that this did not provide adequate flexibility to utilities in achieving their energy targets and that the utilities should have the discretion to exceed their expenditure

targets. We agree that the five percent is overly restrictive. Rather, we find that the 25 percent variance proposed by Public Service is reasonable.

26. The comments were mixed concerning whether an over-expenditure should also trigger an increased energy target. We find that an adjustment in the energy target is not necessary. The TRC and the net economic benefits calculations will serve to restrain over-expenditures, since additional expenditures without some amount of additional energy saved will adversely affect a DSM portfolio's overall cost-effectiveness and bonus.

27. Rule 4753(j) proposed that the utility would quantify and justify any proposed non-energy benefits. In response to comments from various parties, we amended the rule to list which specific non-energy benefits the utility was expected to include and quantify, and deferred to "current market values" when including these benefits into the TRC calculation. Comments received from SWEEP urged the Commission to determine specific values for avoided emissions, since they are specifically referenced in §40-1-102(5)(b)(II) in regards to calculating the DSM benefit-cost ratio. EEBC also urged that the Commission include all benefits possible within the evaluation of DSM programs. Several parties referenced examples from other states regarding the defining and quantifying of non-energy benefits within DSM benefit-cost calculations. A review of these sources yielded a wide range of approaches. For example, Utah excludes non-energy benefits, while Iowa establishes a factor representing the general value of these benefits, to be applied to the avoided energy and capacity cost values. Minnesota created specific ranges of values for various emissions, while New York values other societal benefits resulting from DSM, such as employment and wage increases, improved housing resale values and health/comfort factors.

28. We find that, because the statute calls for the “valuation of avoided emissions” and for the inclusion of “nonenergy benefits as determined by the Commission” (*See* §40-1-102(5)(b)(II) and (III)), we must provide guidance regarding valuing and inclusion of these benefits. Further, we find that, while there is a myriad of non-energy benefits that potentially could be identified, it is not feasible to provide specific values or ranges for many of these to a degree that will meaningfully assist in calculating the TRC. Consequently, we conclude that the Iowa approach, with modifications, is the most effective way to acknowledge the value of non-energy benefits. However, rather than providing a non-energy adjustment factor that is applied to avoided cost values which fluctuate with the price of energy, we find it to be more effective to provide an adjustment value to be applied to the overall TRC benefit value. We conclude that a TRC should be scaled by a factor of 1.05 to represent avoided emissions and societal benefits. Further, we find that a utility should retain the option to propose a different value for these benefits, so long as they provide documentation to substantiate the value proposed.

29. The language originally proposed in Rule 4754 was substantially revised in response to comments from the parties concerning the bonus calculation. The new language, starting with paragraph (g), serves to explain and delineate the process through which a bonus amount is calculated, the connection between the bonus and the targets, and what the bonus should reward.

30. The OCC commented that the bonus should be “two-tiered” with one part tied to performance and the other tied to the utility’s specific lost revenue value. We disagree with the need to create utility-specific bonus structures. The bonus structure proposed in the Supplemental NOPR adequately addresses concerns regarding lost revenue resulting from DSM.

Furthermore, the utilities did not express objections with this aspect of the proposed bonus structure.

31. The OCC, Public Service and SWEEP commented on the proposal to allow a bonus to be earned starting when a utility achieves 80 percent of its energy target. Some comments supported this approach while others suggested that the bonus not be earned until 100 percent of the energy target is achieved. We are not convinced that the 80 percent approach as proposed needs to be revised. We find that it is a reasonable balance between the competing objectives, of motivating utility DSM performance across various utilities, acknowledging the occurrence of some lost revenues due to DSM and encouraging utilities to meet, if not exceed, their energy targets.

32. Public Service commented that the “savings factor” component creates unnecessary complexity and that the costs associated with this factor are not totally under the control of the utility. While we acknowledge that this factor does add to the complexity of the bonus calculation, we believe that this complexity is worthwhile since it yields a bonus calculation that motivates the two desired outcomes of gas DSM - maximum amounts of energy saved and cost-effective expenditure of funds in the pursuit of energy savings. Also, while there may be some costs outside of the control of the utility, we find that the utility should be able to make the management decisions necessary to respond to such changes in costs, and that this factor will serve to encourage sound management.

33. We clarified Rule 4754(g)(II), to indicate that a utility must first achieve the minimum expenditure threshold in order to earn a bonus. Public Service commented that the bonus should not be tied to spending, but rather only to energy savings and net economic benefits. We agree that our objective is not to reward spending, but to reward performance

relative to saving energy cost effectively. However, we find that §40-3.2-103 (2)(a) clearly sets forth a minimum expenditure expectation and this rule serves to reinforce that statutory expectation.

34. SWEEP recommended revising the terms “Energy Factor” and “Savings Factor” as set forth in Rule 4754(g)(III). We are not convinced that the terms as proposed require revision. Further, those terms, as currently defined, serve to reinforce the primary emphasis on saving energy (through an energy factor), and is consistent with the concept that savings (as a target or factor) pertains to the ratio of energy saved per dollar expended.

35. In response to comments received, we included Rule 4754(h). The intent of the rule is to mitigate any conflicting directives in the rules, specifically concerning motivating utilities to seek out cost-effective DSM programs and simultaneously incorporating a low-income DSM component which may not be as cost-effective as other options.

36. In response to this language SWEEP commented that if the cost and benefits of low-income programs can be excluded from the bonus calculation, then they should also be excluded from the targets. We find that there is a need to ensure that low-income programs are not adversely affecting a utility’s bonus calculation. We also find that any low-income DSM program with a TRC greater than 1.0 will have a positive affect upon net economic benefits and, consequently, a positive impact on the utility’s potential bonus. However,, we are also aware that a low-income program could adversely affect a utility’s Savings Factor, since such programs tend to operate relatively close to a TRC break-even. As a result, we revise the language of Rule 4754(h) to ensure that low-income programs do not adversely affect the Savings Factor.

37. Rule 4755(b) was revised to balance the impact, especially upon smaller DSM programs, of the costs of an independent third party with the benefits of using an independent

third party. Public Service commented that the use of an independent third party is unnecessary and is not the most effective use of DSM funds. Through oral comments received on February 13, 2008, it was indicated that other states such as Minnesota, Iowa and Utah, do not require an independent third party evaluation. While we are sensitive to maintaining impartiality in the evaluation of DSM programs, we find that requiring an independent third party evaluation is unnecessary. Further, we find that, through the transparency of the evaluation data provided to the Commission through annual reports and DSM plan filings, we can ascertain the accuracy of evaluation results. If it subsequently appears that there is reason for concern, those concerns can be addressed through a subsequent rulemaking.

38. Public Service and Aquila also commented on the frequency of evaluations and how evaluations are to be scheduled relative to the utilities' preparation and filing of subsequent DSM plans as contemplated in Rule 4755(b). We agree with Public Service and Aquila in part and find that these comments present sound reasoning for modifying this portion of the rule. However, we do not agree with the recommendation that an evaluation occur only once every five years. Rather, we agree with the language proposed by Aquila that proposes a schedule of one evaluation per DSM plan period. We also agree to the proposed language that includes the evaluation of findings within subsequent DSM plan filings.

39. Rule 4755(c) sets forth what shall be included in the measurement and evaluation of a DSM plan. The Supplemental NOPR expanded upon the original proposed rule language and more explicitly delineated tasks to be accomplished through measurement and evaluation, as well as focusing the evaluation on DSM programs versus measures. In response to this proposal, SWEEP commented that an evaluation should specifically address free ridership, spillover and

the net-to-gross ratio. We find that these are all aspects of conventional DSM measurements and evaluations and therefore they will be specifically included in the rule.

40. EEBC urged the Commission to require the independent evaluator to establish upper and lower values for all DSM benefits. Based upon our determination that an independent evaluator will not be required, this suggestion is moot. Further, our findings on the definition and valuation of non-energy benefits (*see* paragraph 27) addresses this concern. Therefore, we find that Rule 4755(c)(IV) should be deleted.

41. SWEEP commented that the phrase “education and/or” should be inserted into Rule 4755(c)(VI). This serves to expand the focus of measurement and evaluation, as it pertains to indirect impact programs beyond market transformation to also include assessing the impact of educational activities. We agree with this recommendation and modify Rule 4755(c)(VI) to include the phrase as suggested.

42. Comments were received from various parties in response to Rule 4756 as presented in the original NOPR. Changes reflecting these comments were incorporated into the Supplemental NOPR. Portions of the content originally in Rule 4756 were moved into other rules to improve clarity and consistency. Also, other paragraphs, such as the original paragraph (a) which addressed the cost/benefit test, were deleted since that topic was addressed elsewhere in the rules.³ Also, proposed changes to the “Amortization Periods” paragraph were incorporated into the rule, as well as suggested language acknowledging the positive interplay between gas and electric DSM programs.

43. In response to those changes, Public Service suggested that the amortization period as proposed in Rule 4756(a) should be more flexible and not tied to the lifetime of the

³ The “cost/benefit” test language was moved into Rules 4751 and 4753.

DSM measure or program. We agree with Public Service and find that this proposed rule should be amended to allow the utility to propose an amortization period within its DSM plan filing.

44. Public Service offered comment concerning the requirement that Gas Purchase Plans be adjusted to reflect reduced energy needs resulting from DSM programs. It commented that the DSM impacts will not be of a magnitude to impact overall gas purchases and that the DSM impacts are already factored into forecast sales. We agree and find that Rule 4756(b) should be deleted.

45. Public Service commented that the definition of the term “full” in Rule 4756(d) is unclear, as it pertains to giving “full consideration.” We find that the intent of the rule will still be achieved without the use of the word “full” and, therefore, we delete that word.

46. Comments were received from various parties in response to Rule 4757. Paragraph (c) was amended in response to comments that a TRC value of 1.0 or greater is a basis for determining prudence concerning DSM expenses. Several parties objected to the proposed language objecting to the denial of cost recovery based upon the TRC value. We find that the language as proposed may be excessive in its presumption of imprudence. We conclude that the language should be amended to convey that costs yielding a TRC below 1.0 will be “subject to review” and that “the presumption of prudence is lost.”

47. The Supplemental NOPR also proposed revised language concerning existing low-income DSM programs, in response to comments received from EOC. The intent of this revised language is to implement the option set forth in the statute concerning existing programs as contained in §40-3.2-103(7), particularly concerning continuation of existing cost recovery practices. There is a fifteen-year practice of recovering the costs of the Energy Saving Partners (ESP) Program from all Public Service customers. We find that this is a reasonable approach to

cost recovery for E\$P and that it should continue. To do otherwise would increase the burden upon some customers. We are sensitive to the fact that this requires Public Service to continue an existing DSMCA practice for E\$P while implementing a new one for all other DSM expenditures. However, the E\$P cost recovery is already in place, and the new DSMCA will be necessary for all other DSM expenditures regardless. Therefore, we find the resulting obligation nominal and appropriate.

48. Public Service and Aquila both commented on the terminology used concerning DSMCA filings in Rule 4757(i) Rule 4757(g). The parties object to the term “application” within the context of filing a cost adjustment. The parties suggest that the reference to Rule 4110 in paragraph (h) was vague and ambiguous. While we find that the intent of this language and reference, in its current form, was not meant to change how utilities file cost adjustments, we agree that the language proposed by Public Service and Aquila clarifies the intent and it should therefore be substituted into the rule. We further agree to delete the reference to Rule 4110 in paragraph (h).

49. The language in Rule 4757 (paragraph (n) in the original NOPR, and (l) in the Supplemental NOPR) addresses interest on over- or under-recovery. Comments were received in response to this language expressing a concern that the asymmetry undermines the purpose of the interest payment and would provide a perverse incentive of encouraging the utility to never under-collect. We are sensitive to the possible disincentive resulting from this approach to accruing interest, and we find that, since it may encourage maximum investments in cost-effective DSM, the interest on over- or under-recovery should be symmetrical.

50. Comments were also received expressing concerns with the amount of content and detail required when filing a Gas DSM Cost Adjustment as proposed in Rule 4758. In

response to these concerns the rule was substantially rewritten, reducing the content requirements and specificity concerning these filings. Further, for consistency, the revised rule referenced the “detail and scope of information supplied in support” of Gas Cost Adjustment filings. Public Service commented that this language was vague and ambiguous and suggested that 4758(b) was sufficient to provide the information needed. Public Service also commented that 4758(a)(III) violates the procedure set forth in rule 1303(b). While we are concerned that a lack of detail and scope in cost adjustment filings impedes effective regulatory oversight, we support deleting sub-4758(a)(II) and (III). We expect utilities to provide details in their filings sufficient to support thorough and expedient processing of these filings.

51. Public Service also commented that Rule 4758(a)(IV) gives excessive power to Commission Staff to determine whether a filing is sufficient, and conflicts with Rule 1303(b). We do not agree with Public Service’s comments regarding the role of the Staff. The role of Staff here is to make a recommendation to the Commission, and the proposed language does not alter that role. However, we do find that the language of proposed Rule 4758(a)(IV), while more directly conveying the desire of the Commission to receive complete filings, is somewhat duplicative of existing rule 1303(b). Therefore, Rule 4758(a)(IV) is deleted.

52. No changes were proposed to Rule 4759. Rule 4760 was changed in response to comments received concerning the process for awarding a bonus. The bonus calculation language was deleted from this section. Instead, all of the bonus calculation language was incorporated into Rule 4754 for clarity. No comments were received in response to the proposed changes to Rules 4759 and 4760. Therefore, we find that these rules should be adopted as presented in the Supplemental NOPR.

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

1. The Commission adopts the Rules regarding Natural Gas Demand-side Management, pursuant to House Bill 07-1037, enacted as §40-3.2-103 attached to this Order as Attachment A.

2. The rules shall be effective 20 days after publication by the Secretary of State.

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

4. 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 to the committee on legal services, if the General Assembly is not in session, for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

5. The 20-day time period provided by § 40-6-114(1), 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.

6. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 5, 2008**

(SEAL)



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

RON BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners

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COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-4

PART 4

RULES REGULATING GAS UTILITIES AND PIPELINE OPERATORS

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BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to set forth rules describing the service to be provided by jurisdictional gas utilities and master meter operators to their customers and describing the manner of regulation over jurisdictional gas utilities, master meter operators, and the services they provide. These rules address a wide variety of subject areas including, but not limited to, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, master meter operations, transportation service, flexible regulation, procedures for administering the Low-Income Energy Assistance Act, cost allocation between regulated and unregulated operations, recovery of gas costs, demand side management, and appeals regarding local government land use decisions. The statutory authority for these rules can be found at §§ 29-20-108, 40-1-103.5, 40-2-108, 40-2-115, 40-3-102, 40-3-103, 40-3-104.3, 40-3-111, 40-3-114, 40-3-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, 40-7-117, and 40-8.7-105(5), C.R.S.

GENERAL PROVISIONS

* * *

[indicates omitted material]

4005. Records.

(a) Except as a specific rule may require, every utility shall maintain, for a period of not less than three years, and shall make available for inspection at its principal place of business during regular business hours, the following:

* * *

(XV) Records concerning demand side management, pursuant to Rule 4750 through 4760.

(XVI) As applicable, the records and documents required to be created pursuant to rules 4910 through 4920.

* * *

4006. Reports.

* * *

(h) A utility shall file demand side management reports pursuant to rule 4754.

- (i) A utility shall file reports required by rules 4910 through 4917.
- (j) A utility shall file with the Commission any report required by a rule in this 4000 series of rules.
- (k) A utility shall file with the Commission such special reports as the Commission may require.

* * *

BILLING AND SERVICE

* * *

4406. Itemized Billing Components.

- (a) A utility shall provide itemized gas cost information to all customers commencing with the first complete billing cycle in which the new rates are in effect. The information may be provided in the form of a bill insert or a separate mailing.
- (b) The information provided pursuant to this rule shall include the following:
 - (I) For transportation customers:
 - (A) The per-unit and monthly local distribution company costs billed to the customer.
 - (B) If applicable, the per-unit and monthly gas cost adjustment transportation costs.
 - (II) For all other customers:
 - (A) The per-unit and monthly local distribution company costs billed to the customer.
 - (B) The per-unit and monthly gas commodity costs for that customer.
 - (C) The per-unit and monthly costs of upstream services for that customer.
 - (D) The ~~per-unit and~~ monthly gas demand side management costs for that customer.

* * *

4708. – 4749. [Reserved].

DEMAND SIDE MANAGEMENT

4750. Overview and Purpose.

These rules implement §§ 40-1-102, 40-3.2-101, 40-3.2-103, and 40-3.2-105, C.R.S. for gas utilities required by statute to be rate-regulated. Consistent with statutory requirements, the purpose of these Demand Side Management (DSM) rules is to reduce end-use natural gas consumption in a cost effective manner, in order to save money for consumers and utilities, and protect the environment by encouraging the reduction of emissions and air pollutants. These rules direct natural gas utilities in the design and implementation of programs that will enable sales customers s to participate in DSM. The utility shall design DSM programs for its full service customers to achieve cost-effective energy savings, considering factors such as: achievable energy savings, customer benefits, cost effectiveness ratios, adoption potential, market transformation capability and ability to replicate in the utility service territory.

- (a) Each utility shall file a DSM plan and application for cost recovery, within the parameters set forth in these rules. Within the application, the utility shall propose an expenditure target, savings target, funding mechanism, and cost-recovery mechanism.
- (b) Each utility shall also file an annual DSM report and an application for bonus.
- (c) Each utility shall file a measurement and verification report that evaluates the actual implementation and performance associated with its DSM program.

4751. Definitions.

The following definitions apply to rules 4750 through 4760, unless § 40-1-102 provides otherwise

- (a) "Amortization" means the systematic spreading of expenditures or capital costs incurred for DSM programs, through regular accounting entries over a specified period of time..
- (b) "Benefit/cost ratio" means the ratio of the net present value of benefits to the net present value of costs, as calculated using the modified TRC test.
- (c) "Cost effective" means a benefit/cost ratio of greater than one.
- (d) "Demand side management" (DSM) means the implementation of programs or measures which serve to shift or reduce the consumption of, or demand for, natural gas.
- (e) "DSM education" means a program, including but not limited to an energy audit, that contributes indirectly to a cost-effective DSM program by promoting customer awareness and participation..
- (f) "DSM measure" means an individual component or technology, such as attic insulation or replacement of equipment.
- (g) "DSM period" means the effective period of an approved DSM plan.
- (h) "DSM plan" means the DSM programs, goals, and budgets over a specified DSM period, generally considered in one year increments, as may be proposed by the utility.

- (i) “DSM program” means any combination ~~group~~ of DSM measures, information and services generally offered ~~together~~ to customers- to reduce natural gas usage.
- (j) “Energy efficiency program” see DSM program.
- (k) “Gas Demand-Side Management Cost Adjustment” (G-DSMCA) is means a rate adjustment mechanism designed to compensate a utility for its DSM program costs.
- (l) “Gas Demand-Side Management bonus” (G-DSM bonus) is means a bonus awarded to a utility in accordance with C.R.S. § 40-3.2-103(2)(d), C.R.S.
- (m) “Market Transformation” means a strategy for influencing the adoption of new techniques or technologies by consumers. The objective is to overcome barriers within a market through coordinating tactics such as education, training, product demonstration and marketing, often conducted in concert with rebates or other financial incentives.
- ~~(mn)~~ “Modified Total Resource Cost test” or “modified TRC test” means an economic cost-effectiveness test used to compare the net present value of the benefits of a DSM program or measure over its useful life, to the net present value of costs of a DSM measure or program for the participant and the utility, consistent with § 40-1-102(5), C.R.S. In performing the modified TRC test, the benefits shall include, but are not limited to, as applicable: the utility’s avoided production, distribution and energy costs; the participant’s avoided operating and maintenance costs; the valuation of avoided emissions; and non-energy benefits as set forth in rule 4753. Costs shall include utility and participant costs. The utility costs shall include the net present value of costs incurred in accordance with the budget set forth in rule 4753.~~–~~
- ~~(no)~~ “Net economic benefits” is means the net present value of all benefits in the modified TRC test, as applied to the utility’s portfolio of DSM programs, less the net present value of the costs in the modified TRC test associated with that same portfolio.
- ~~(op)~~ “Sales customer” or “full service customer” means a residential or commercial customer that purchases a bundled natural gas supply and delivery service from a utility but does not include customers served under a utility’s gas transportation service rate schedules.

4752. Filing Schedule.

- (a) Within 120 days of the effective date of this rule, each utility shall file its DSM plan and application for cost recovery.
 - (l) The utility shall implement its DSM plan and G-DSMCA, as approved by the Commission, by January 1, 2009.
- (b) Beginning ~~March~~ April 1, 2010 and each ~~April~~ March 1st thereafter, each utility shall submit its annual DSM report, application for bonus and DSMCA ~~application~~ adjustment filing.
 - (l) The DSMCA shall take effect July 1 of each year for a period of 12 months.
- (c) The initial DSM plan filings of natural gas-only utilities shall cover a DSM period of two years. The initial DSM plan filings of natural gas and electric combination utilities shall cover a DSM

period of three years. The subsequent DSM plan filings of all utilities shall cover a DSM period of three years unless otherwise specified by the Commission. ~~Atmos Energy Corporation and SourceGas Distribution LLC, or their successors, shall file subsequent plan applications by April 1 in the years when a plan is filed. Colorado Natural Gas, Inc., and Eastern Colorado Utilities, or their successors, shall file subsequent plan applications by July 1 in the years when a plan is filed.~~ Subsequent DSM plan applications are to be filed by May 1 of the final year of the current DSM plan.

4753. Periodic DSM Plan Filing.

On the schedule set forth in rule 4752, the utility shall file by application a prospective natural gas DSM plan for Commission approval. The plan shall detail:

- (a) The utility's proposed expenditures by year for each DSM program, by budget category; the sum of these expenditures represents the utility's proposed expenditure target as required by § 40-3.2-103(2)(a), C.R.S.
- (b) The utility's estimated annual natural gas energy savings for the DSM plan years, expressed in dekatherms per dollar of expenditure, and presented for each DSM program proposed for Commission approval; this represents the utility's proposed savings targets required by § 40-3.2-103(2)(b), C.R.S.
- (c) The anticipated annual units of energy to be saved, which equals the product of the proposed expenditure target and proposed savings target; this is referred to herein as the energy target.
- (d) The utility shall include in its DSM plan application data and information sufficient to describe the design, implementation, oversight and cost effectiveness of the DSM programs. Such data and information shall include, at a minimum, program budgets delineated by year, estimated participation rates and program savings (in therms).
- (e) In the information and data provided in a proposed DSM plan, the utility shall reflect consideration of the factors set forth in the Overview and Purpose, rule 4750. At a minimum the utility shall provide the following information detailing how it developed its proposed DSM program:
 - (I) ~~A-Descriptions of identifiable market segments, assessment in regards with respect to~~ gas usage and unique characteristics across customer classes.
 - (II) A comprehensive list of ~~potential~~ DSM measures that the utility ~~evaluated~~ is proposing for ~~possible~~ inclusion in its ~~proposed~~ DSM plan
 - (III) A detailed analysis of ~~proposed~~ selected DSM programs for a utility's service territory in terms of markets, customer classes, anticipated participation rates (as a number and a percent of the market), estimated energy savings- and cost effectiveness.
 - (IV) A ranking of ~~proposed~~ possible DSM programs, from greatest value and potential to least, based upon the ~~analysis conducted data required~~ in subparagraph (III), above, ~~and identification of which DSM programs and measures the utility is proposing.~~
 - (V) Proposed marketing strategies to promote participation based on industry best practices.

- (VI) Calculation of cost effectiveness of the proposed DSM programs using a modified TRC test. Each proposed DSM program is to have a projected value greater than or equal to 1.0 using a modified TRC test, except as provided for in paragraph (f), below.
 - (VII) An analysis of the impact of the proposed DSM program expenditures on utility rates, assuming a 12-month cost recovery period.
- (f) In its DSM plan, the utility shall address how it proposes to target DSM services to low-income customers. The utility shall also address whether it proposes to provide DSM services directly or indirectly through financial support of conservation programs for low-income households administered by the State of Colorado, as authorized by § 40-3.2-103(3)(a), C.R.S. The utility may propose one or more low-income DSM programs that yield a modified TRC test value below 1.0.
- (g) In proposing an expenditure target for Commission approval, pursuant to § 40-3.2-103 (2)(a), C.R.S., the utility shall comply with the following:
- (I) The utility's annual expenditure target for DSM programs shall be, at a minimum, two percent of a natural gas utility's base rate revenues, (exclusive of commodity costs), from its sales customers in the 12-month calendar period prior to setting the targets, or one-half of one percent of total revenues from its sales customers in the 12-month calendar period prior to setting the targets, whichever is greater.
 - (II) The utility may propose an expenditure target in excess of two percent of base rate revenues.
 - (III) The utility may propose an expenditure target lower than ~~two percent of base revenue~~ the amount required in sub-paragraph (I), above, during an initial phase-in period. The utility must achieve at least the ~~minimum two percent~~ expenditure target within three years of implementing the initial DSM plan.
 - (IV) Funds spent for education programs, market transformation programs and impact and process evaluations and program planning related to natural gas DSM programs may be recovered without having to show that such expenditures, on an independent basis, are cost-effective; such costs shall be included in the overall benefit/cost ratio analysis.
- (h) The utility shall propose a budget to achieve the expenditure target proposed in paragraph (a), above. The budget shall be detailed for the overall DSM plan and for each program for each year and shall be categorized into:
- (I) Planning and design costs;
 - (II) Administrative and DSM program delivery costs;
 - (III) Advertising and promotional costs, including DSM education;
 - (IV) Customer incentive costs;
 - (V) Equipment and installation costs;

- (VI) Measurement and verification costs; and
- (VII) Miscellaneous costs.
- (i) The budget shall explain anticipated increases/decreases in financial resources and human resources from year to year.
- (j) A utility may spend more than the annual expenditure target established by the Commission up to twenty-five percent over the target, without being required to submit a proposed DSM plan amendment. Expenditures in excess of twenty-five percent over the expenditure target shall require ~~either a proportional increase in the energy target defined in rule 4753 or~~ submittal of a proposed DSM plan amendment.
- (k) As a part of its DSM plan each utility shall propose a DSM plan with a benefit/cost value of unity (1) or greater, using a modified TRC test.
- (l) ~~For the purposes of calculating a modified TRC, the non-energy benefits of avoided emissions and societal impacts shall be valued incorporated as follows. The utility shall quantify any proposed non-energy benefits in the utility's DSM plan. Quantification shall be presented as a dollar value per unit.~~
 - (l) ~~The utility shall quantify non-energy benefits based on best available standard industry practices. The utility is expected to make reasonable efforts to incorporate measurable non-energy savings, such as reduced emissions of CO₂, NOX, methane, or gallons of water saved, for example, and apply current market values to the non-energy benefits. An amount equal to five percent (5%) of total costs shall be added to the benefits within the modified TRC test calculation. The initial TRC ratio, which excludes consideration of avoided emissions and other societal benefits, shall be multiplied by 1.05 to reflect the value of the avoided emissions and other societal benefits. The result shall be the modified TRC. A utility may propose a different factor for avoided emissions and societal impacts, but must submit documentation substantiating the proposed value.~~
- (m) Measurement and verification plan. The utility shall describe in complete detail how it proposes to monitor and evaluate the implementation of its proposed programs. The utility shall explain how it will accumulate and validate the information needed to measure the plan's performance against the standards, pursuant to rule 4755. The utility shall propose measurement and verification reporting sufficient to communicate results to the commission in a detailed, accurate and timely basis.

4754. Annual DSM Report and Application for Bonus and Bonus Calculation.

On the schedule set forth in rule 4752, the utility shall provide the Commission a detailed DSM report and application for bonus.

- (a) In the annual DSM report the utility shall describe its actual DSM programs as implemented. For each DSM program, the utility shall document actual program expenditures, energy savings, participation levels and cost-effectiveness.

- (b) Annual program expenditures shall be separated into cost categories contained in the approved DSM plan.
- (c) For each DSM program, the utility shall compare the program's proposed and actual expenditures, savings, participation rate, and cost-effectiveness; in addition, the utility shall prepare an assessment of the success of the program, and list any suggestions for improvement and greater customer involvement.
- (d) The utility shall provide actual benefit/cost results for the overall DSM plan and individual DSM programs implemented during the plan year. The benefit/cost analysis shall be based on the costs incurred and benefits achieved, as identified in the modified TRC test. Benefit values are to be based upon the results of M & V evaluation, when such has been conducted as set forth in rule 4755. Otherwise, the benefit values of the currently approved DSM plan are to be used.
- (e) If the annual report covers a year within which an M & V evaluation was completed, the complete M & V results are to be included as part of the annual report.
- (f) The utility may file an application for bonus, pursuant to rule 4760. The application for bonus shall include the utility's calculation of estimated bonus applying the methodology set forth in this rule to the utility's actual performance.
- (g) The Commission shall determine the level of bonus, if any, that the utility is eligible to collect on the basis of the information included in the report, pursuant to the bonus criteria and process set forth, below.
 - (I) The primary objective of the bonus is to encourage cost-effective energy savings. The amount of bonus earned, if any, will correlate with the utility's performance relative to the approved savings target (dekatherms saved per dollar expended) and the energy target.
 - (II) As a threshold matter, the utility must expend at least ~~two percent of base revenues~~the minimum amount set forth in rule 4753 (g)(I), except during a phase-in period as set forth in rule 4753 (g)(~~III~~), in order to earn a bonus.
 - (III) The bonus amount is a percentage of the net economic benefits resulting from the DSM plan over the period under review. The percentage value is the product of the two factors:
 - (A) The Energy Factor is determined by the percentage of the energy target achieved by the utility. The energy factor is zero plus 0.5% for each one percent above 80 percent of the energy target achieved by the utility.
 - (B) The Savings Factor is the actual savings achieved divided by the approved savings target. Each of these quantities is expressed in dekatherms saved per dollar expended.
 - (IV) The following is provided as an example of the bonus calculation, using these illustrative numbers: utility achieves 106% percent of its energy target; the utility's savings target is 15,000 dekatherms per \$1 million expended, and the utility's actual savings is 18,000 dekatherms per \$1 million.

The energy factor would be: $0.5\% \times (106 - 80)$, or 13%

The savings factor would be: $18,000/15,000$ or 1.2

The bonus percentage would be $13\% \times 1.2$, or 15.6%. Thus, 15.6% percent of net economic benefits would be the bonus amount.

(h) For the purposes of calculating ~~these factors~~ the bonus, the costs and benefits associated with DSM programs targeted to low-income customers may be excluded as follows:-

(I) The costs and benefits associated with a low-income DSM program may be excluded from the calculation of the net economic benefits for the entire DSM portfolio if the modified TRC value for the low-income program is below 1.0

(II) The expenditures and therms saved associated with a low-income DSM program may be excluded from the calculation of the Savings Factor if the therms saved per dollar expended for the low-income program is below the planned savings target for the overall DSM portfolio.

(i) The maximum bonus is twenty percent of net economic benefits or twenty-five percent of expenditures, whichever is less.

(j) Any awarded bonus shall be authorized as a supplement to a utility and not count against its authorized rate of return or be considered in rate proceedings. The awarded bonus shall be recovered through the G-DSMCA over a twelve-month period after approval of the bonus.

4755. Measurement and Verification.

(a) Each utility shall implement a measurement and verification (M & V) program to evaluate the actual performance of its DSM program. The utility shall present its M & V plan as a part of its DSM plan application, pursuant to rule 4753, and shall include the complete M & V evaluation results with its annual DSM report in those years when the M&V is conducted.

(b) As a part of its M & V program, the utility shall, at a minimum, ~~employ a qualified independent third party to~~ design an M&V plan to evaluate the effectiveness of the actual DSM measures and programs implemented by the utility. The M&V plan ~~designed by the third party~~ shall address: sampling bias; a data gathering process sufficient to yield statistically significant results; and generally accepted methods of data analysis.— The M&V plan shall also include an evaluation of free ridership, spillover and the net-to-gross ratio. The M & V evaluation shall be implemented at least once per the DSM plan period. Subsequent DSM plan applications shall reflect the results of all completed M&V evaluations, and be completed prior to the utility's submitting a subsequent DSM plan application so that the results of the M & V evaluation are reflected in the subsequent DSM plan application.

(c) The M & V evaluation shall, at a minimum, include the following:

(I) An assessment of whether the DSM programs have been implemented as set forth in its Commission approved DSM plan;

- (II) A measurement of the actual energy savings for each DSM program, in dekatherms per dollar expended and in total dollars, and a comparison to the corresponding utility projections in ~~the~~ approved DSM plan;
- (III) To the extent feasible, an assessment of the period of time that each DSM measure actually remains in service, and a comparison to the corresponding utility projections in the approved DSM plan;
- ~~(IV) Verification (or modification) of the values assigned to each of the non-energy benefits set forth in the utility's approved DSM plan;~~
- (IV) A summary of the actual benefit/cost ratio for each DSM program within the approved DSM plan;
- (V) An assessment of the extent to which education and market transformation efforts are achieving the desired results; and
- (VI) Recommendations for how the utility can improve the market penetration and cost effectiveness of individual DSM programs.

4756. General Provisions Concerning Cost Allocation and Recovery.

- (a) Amortization periods.
 - (I) For the base rate method, the utility shall ~~propose~~establish the amortization period ~~to match the average of the expected lifetimes of the DSM measures within each DSM program.~~ The utility shall specify and explain the rationale for the amortization period proposed for each DSM program as a part of its DSM plan application, filed pursuant to rule 4753.
 - (II) For the expense method, the utility shall recover the annual expenditures projected for that year over a one-year period.
- ~~(b) GPP adjustment. The utility shall make a corresponding reduction in its gas supply needs in its Gas Purchase Plan required in rule 4605, to account for the reduced energy needs projected in its annual DSM filing, pursuant to rule 4753.~~
- (b) Fuel switching. Fuel switching from natural gas to other fossil fuel derived energy sources shall not be included in the gas utility's DSM program. Programs to save natural gas through switching to renewable energy sources such as solar heating and ground source heat pumps are allowed.
- (c) A utility that provides both regulated gas and electric service shall give ~~full~~ consideration to the administrative benefits and reduced costs associated with combining gas and electric DSM activities and shall assign costs and benefits appropriately to each plan.
- (d) Distribution of DSM program expenses.

- (I) The utility shall include in its portfolio-level benefit/cost analysis all indirect costs relating to DSM, including but not limited to DSM customer education, program design, and evaluation costs.
- (II) A utility's existing gas efficiency and conservation customer education tools, such as on-line energy assessment tools or other similar internet based tools, may be included in a utility's gas DSM plan and costs recovered pursuant to the Gas DSMCA rule.

4757. Funding and Cost Recovery Mechanism.

The purpose of the G-DSMCA is to enable utilities to recover prudently incurred gas DSM program expenses without reflecting requiring a change in their base rates for gas sales in order to recover costs associated with the funding of DSM programs. All such costs, plus any G-DSM bonus approved by the Commission, shall be recovered through the G-DSMCA that is set on an annual basis, and collected from July 1 through June 30. The G-DSMCA allows for prospective recovery of prudently incurred costs of DSM programs within the DSM program expenditure target approved by the Commission in order to provide for funding of the utility's DSM programs, as well as recovery of deferred G-DSMCA costs, without having to file a rate case.

- (a) A utility may spend a disproportionate share of total expenditures on one or more classes of customers, provided, however, that cost recovery for programs directed at residential customers are to be collected from residential customers only and that cost recovery for programs directed at nonresidential customers are to be collected from nonresidential customers only, except as provided for in paragraph (f), below.
- (b) The utility may recover its DSM program expenditures either through expensing or by adding DSM program expenditures to base rates as a part of, or outside of, a rate case, with an amortization period as determined by the Commission. The amortization period shall be as set forth in rule 4756.
- (c) There shall be no financial penalty assessed on a utility for failing to reach its approved DSM program expenditure target, nor shall there be a bonus simply for meeting its DSM program expenditure target. All prudently incurred expenditures for the utility's portfolio of DSM programs are recoverable, provided, however, that the overall DSM portfolio yields a modified TRC test value of 1.0 or greater. The portion of costs yielding a modified TRC test value below 1.0 loses their presumption of prudence and is subject to special review. scrutiny are excluded from recovery.
- (d) Amounts not spent under the DSM program expenditure target shall not roll-over to the next DSM period.
- (e) A utility has the discretion and the responsibility of managing the portfolio of DSM programs to meet the benefit to cost ratio and the energy and savings targets. In implementing DSM programs, a utility shall use reasonable efforts to maximize energy savings consistent with the approved DSM plan.
- (f) A utility may continue DSM programs that were in existence on or before May 22, 2007, the effective date of § 40-3.2-402103, C.R.S. concerning measures to promote energy efficiency, and shall not be required to obtain approval from the Commission for recovery of costs associated

with such programs. Any new expenditure for such programs must be included in the annual DSM plan filing and G-DSMCA application. Existing low-income DSM programs that recover costs from all customer classes shall continue such recovery.

- (g) A utility shall file ~~an application~~ a request to adjust its G-DSMCA factor either through an application or an advice letter and tariffs, pursuant to application the relevant provisions of title 40, articles 1 through 7 of Colorado Public Utilities Law the Colorado Public Utilities Law [A1] and this Commission's rules. The G-DSMCA ~~adjustment~~ application shall be filed pursuant to the schedule provided in rule 4752.
- (h) A G-DSMCA application shall include information and exhibits as required in rule ~~4140 and~~ 4758. If the M & V evaluation required by rule 4755 yields benefit/costs test results that impact the allowable recovery of costs or currently approved bonus, then the utility shall include such adjustments in the G-DSMCA application.
- (i) If the projected DSM program costs have changed from those used to calculate the currently effective G-DSMCA cost or if a utility's deferred G-DSMCA cost balance increases or decreases sufficiently, the utility may file an application to revise its currently effective G-DSMCA factor to reflect such changes, provided that the resulting change to the G-DSMCA factor equates to a base rate change of at least one cent (\$0.01) per Mcf or Dth. A utility has the burden of proof to justify any interim G-DSMCA filings and the Commission has the discretion to consolidate the interim G-DSMCA filing with the next regularly scheduled annual G-DSMCA filing.
- (j) Applicability of the G-DSMCA factor. The G-DSMCA factor shall be separately calculated and applied to the utility sales gas base rate schedules of residential and non-residential customers.
- (k) Return on DSM program expenditures to be amortized. For utilities that choose to amortize the DSM program expenditure, the balance of a utility's investments in cost-effective DSM programs shall earn a return equal to the utility's current after-tax weighted average cost of capital.
- (l) Interest on under- or over-recovery. The amount of net interest accrued on the average monthly balance in sub-accounts of Account No. 186 (whether positive or negative), is determined by multiplying the monthly balance by an interest rate equal to the Commission-authorized after-tax weighted average cost of capital. ~~If net interest is positive, it will be excluded from the calculation of the deferred G-DSMCA cost.~~
- (m) Calculation of the G-DSMCA factor. The G-DSMCA factor shall be calculated separately for residential and non-residential customers to at least the accuracy of two significant places.

4758. Contents of Gas DSM Cost Adjustment Applications.

(a) General Provisions

- (I) An application for a gas DSM cost adjustment (G-DSMCA) shall contain justifying exhibits sufficient in detail to permit the Commission to determine the accuracy of the calculation.
- ~~(II) The information provided to the Commission in support of a G-DSMCA shall be comparable in detail and scope to the information supplied in support for the GCA, as detailed in rule 4600.~~

- (II) As part of its application for approval of its G-DSMCA, the applicant shall file a complete set of work papers and all other documents relied on in preparing its application.
 - ~~(IV) If the information provided in support of the G-DSMCA is insufficient for the Staff of the Commission to verify the calculations supporting the application, the application will be subject to dismissal without prejudice by the Commission.~~
 - (~~V~~III) The provisions of this rule do not supersede other Commission rules that contain additional applicable filing requirements.
- (b) Specific Provisions. An application shall contain detailed schedules and supporting documents that establish, at a minimum, the following:
- (I) The detailed calculation of the G-DSMCA for each customer class based on the following general formula:
 - (A) ~~Current G-DSMCA factor = (current G-DSMCA cost + deferred G-DSMCA cost) / (forecasted sales customer x monthly service charge + forecasted sales gas quantity x base rate).~~
 - (B) The G-DSMCA factor will also include the current G-DSM bonus plus any adjustment necessary to previously approved G-DSM bonuses.
 - (II) A detailed schedule showing the computation of interest, as applicable, to deferred amounts.
 - (III) The absolute and percentage impact of the proposed rate on the base rates and on the total monthly bills of typical customers in each customer class.
 - (IV) A schedule detailing the allocation of costs to each customer class.
 - (V) Proposed customer notice detailing rate impact and effective date.
 - (VI) Proposed tariff implementing the proposed G-DSMCA.
 - (VII) If any gas DSM costs are proposed to be recovered by rate base treatment, with a return on the unamortized balance, a statement of current net operating earnings, a detailed calculation of the related revenue requirement and an exhibit detailing any differences in the proposed rate base treatment compared to the regulatory practices employed by the Commission in its last general rate case for the applicant.

4759. Bill Itemization.

Consistent with rule 4406, a utility shall provide itemized gas cost information with gas DSM costs to all customers commencing with the first complete billing cycle in which the new rates are in effect.

4760. Gas DSM Bonus (G-DSM Bonus) Applications.

The Commission shall review each G-DSM bonus application submitted and shall determine the level of bonus, if any, for which the utility is eligible. The Commission's determination shall be made within 120 days after receiving the G-DSM bonus application. Any such bonus shall be authorized as a supplement to the DSMCA cost adjustment mechanism and shall be applied over a twelve-month period after approval of the G-DSM bonus and DSMCA. The collection on any G-DSM bonus awarded will be apportioned between residential and nonresidential customers based on the proportion of residential and nonresidential net economic benefits used to calculate the G-DSM bonus. A utility that implements a new DSM program in phases shall be eligible to receive a bonus during its phase-in period.

- (a) G-DSM bonus filing requirements. The utility shall file its G-DSM bonus application as part of the annual report submitted to the Commission on the timetable set forth in rule 4752. The utility may request a G-DSM bonus not to exceed the lower of 25 percent of the expenditures or 20 percent of the net economic benefits of the DSM programs, applying the bonus calculation procedure set forth in rule 4754. The G-DSM bonus, as modified and approved by the Commission, shall not count against a gas utility's authorized rate of return or be considered as net operating earnings in rate proceedings.
- (b) Contents of G-DSM bonus filing. In the G-DSM bonus filing, the utility shall submit to the Commission the following, at a minimum:
 - (I) Documented expenditures on DSM programs for the current G-DSMCA period.
 - (II) Gas savings for the calendar year for which the bonus is to be awarded estimated following and the techniques approved in the DSM plan. The utility shall explain whether the actual gas savings are validated through the measurement and verification process as approved in the utility's DSM plan.
 - (III) Estimated cost-effectiveness of program expenditures for the current G-DSMCA period in terms of the amount of gas saved per unit of program expenditures.
 - (IV) Actual gas savings and the techniques used to calculate these gas savings for the prior G-DSMCA period. The utility shall explain whether the actual gas savings are validated through the measurement and verification process, pursuant to rule 4755.
 - (V) Actual cost-effectiveness of program expenditures for the prior G-DSMCA period in terms of the amount of gas saved per unit of program expenditures. The utility shall explain whether the actual cost effectiveness of program expenditures is validated through the measurement and verification process, pursuant to rule 4755.
 - (VI) Proposed tariffs containing rates to collect the bonus over 12 months.
- (c) Commission procedures for processing filings. Upon receipt of a G-DSM bonus application, the Commission shall assign a docket number and shall review the submittal for completeness as well as for substance, if a request for bonus is made by a utility. The Commission shall entertain interventions by interested parties, require the oral testimony and the filing of exhibits, and permit expedited discovery, and hold a hearing, as necessary. The Commission shall render a decision

approving or disapproving the request for bonus within three months after receiving the G-DSM bonus filing.

- (d) Accounting for G-DSM bonus. Accounting for G-DSM bonus shall follow what has been prescribed for G-DSMCA costs, specifically in regard to interest on over- and under- recovery. A separate sub-account in Account No. 186 shall be created for any deferred G-DSM bonus amount.
- (e) Prudence review and adjustment of G-DSM bonus. If the Commission finds that the actual performance varies from performance values used to calculate the G-DSM bonus in rule 4754, then an adjustment shall be made to the amount of G-DSM bonus award. Any true-up in G-DSM bonus will be implemented on a prospective basis.

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[indicates omitted material]