

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23R-0408EG

IN THE MATTER OF TEMPORARY RULES AMENDING THE COMMISSION’S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, AND ITS RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4, TO IMPLEMENT CERTAIN PROVISIONS IN SENATE BILL 23-291 ADDRESSING RATE TREND REPORTS AND FILING REQUIREMENTS FOR BASE RATE TARIFF FILINGS.

**COMMISSION DECISION
ADOPTING TEMPORARY RULES**

Mailed Date: August 14, 2023
Adopted Date: August 9, 2023

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

1. By this Decision, the Commission adopts temporary rules to amend provisions in the Commission's Rules Regulating Electric Utilities (Electric Rules), 4 *Code of Colorado Regulations* (CCR) 723-4 and provisions in the Commission's Rules Regulating Gas Utilities (Gas Rules), 4 CCR 723-3. The temporary rules implement the provisions in § 40-3-102.5(1)(b), C.R.S requiring the filing of certain information with a utility's base rate tariff filing. The temporary rules also implement § 40-3-102.5(2)(a), C.R.S., requiring the filing of rate trend reports when an electric or gas utility seeks to increase a rate or charge. The temporary rules further implement the annual reporting requirement related to costs prohibited from utility rates in § 40-3-114, C.R.S. The statutory provisions requiring these temporary rules were enacted by Senate Bill (SB) 23-291 effective August 7, 2023.

2. As discussed below, the temporary rules are adopted by this Decision without compliance with the procedures prescribed in § 24-4-103, C.R.S. to provide continuity in the process by which electric and gas utilities change their rates for providing service to their Colorado customers. The annual reporting provisions in these temporary rules are likewise necessary because the statute requires the utilities to file reports on certain costs prohibited from their rates pursuant to a directive from the Commission. As indicated *supra*, we find on the record the adoption of these rules is imperatively necessary to protect the public health, welfare, and safety.

3. These temporary rules are effective for 210 days from the effective date of this Decision, August 14, 2023, or until the Commission's permanent rules implementing SB 23-291 are effective. See § 40-2-108(2), C.R.S. The Commission will, by separate order,

open a rulemaking to adopt permanent rules, which it expects to issue on or around November 1, 2023.

4. The temporary rules in legislative (strikeout and underline) format and in final version format are available through the Commission's website at:

5. https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=23R-0408EG.

6. Attachments A and C to this Decision are the temporary rules in legislative (strikeout and underline) format modifying the Electric Rules and the Gas Rules, respectively. Attachments B and D to this Decision are the temporary rules in final version format modifying the Electric Rules and the Gas Rules, respectively.

B. Discussion, Findings, and Conclusions

7. Consistent with the requirements enacted in SB 23-291, the temporary rules adopted through this Decision require Colorado electric and gas utilities to file certain information with a base rate tariff filing and require the submission of rate trend reports when an electric or gas utility seeks to increase a rate or charge. They also require utilities to file reports annually demonstrating that they do not use ratepayer funds to subsidize nonregulated activities or to recover certain costs prohibited from rates as set forth in statute, including a percentage of costs associated with compensation for the utility's board of directors, certain other expenses incurred by such boards, tax penalties or fines, investor-relation expenses, certain advertising and public relations expenses, certain other communication expenses, lobbying expenses, charitable expenses, certain organizational or membership dues, political contributions, entertainment and gift expenses.

8. SB 23-291 became effective on August 7, 2023, the day following the expiration of the 90-day period after final adjournment of the Colorado General Assembly. Consequently, in order to avoid disruption of the continuity in the process by which electric and gas utilities change rates for the provision of service to their customers, it is imperative the Commission adopt temporary rules at this time to comply with state law, until permanent rules can be promulgated under the requirements of § 24-4-103, C.R.S. We find on the record it is imperatively necessary to adopt these rules on a temporary basis in order to allow such utilities to continue to file for necessary changes in rates and comply with the requirements set forth in SB23-291 codified at § 40-3-102.5, C.R.S. We further find that without adoption of these temporary rules, electric and gas utilities may find it difficult to continue to operate effectively in the ordinary course of business, which would be contrary to the public interest. For these reasons, and as authorized by § 24-4-103(6)(a), C.R.S., the Commission finds immediate adoption of these temporary rules is imperatively necessary to comply with state law and to provide for the health, safety, and welfare of the public.

9. The statutory authority for adoption of these rules is set forth in §§ 40-3-102.5(1)(b) and 40-3-102.5(2)(a), C.R.S., and SB 23-291.

10. The adopted temporary rules are described below along with discussion of the statutory and policy reasons for adopting each rule.

1. Applicability

11. Section 40-3-102.5(1)(d), C.R.S., defines “utility” to mean “an investor-owned electric or gas utility.” Accordingly, these temporary rules apply to the investor-owned electric and gas utilities subject to the Commission’s Electric Rules or Gas Rules.

2. Definitions

12. Section 40-3-102.5(1)(d), C.R.S., introduces new defined terms that are commonly used in electric and gas proceedings before the Commission but are absent from the Electric Rules and the Gas Rules.

13. SB 23-291 defines a “base rate” to mean: “charges used to recover costs of utility infrastructure and operations, including a return on capital investment, not otherwise recovered through a utility rate rider or rate adjustment mechanism.”¹

14. The term “test year” is further defined to mean: “a twelve-month period that is examined to determine a utility’s costs of service in a rate case.”²

15. Accordingly, we add definitions for the terms “base rate” and “test year” within Rule 3001 of the Electric Rules and within Rule 4001 of the Gas Rules.

16. We also add a definition of “rate adjustment mechanism” for clarity, since the term is used in the rule provisions that relate to the filing of utility rates and charges in both the Electric Rules and the Gas Rules as modified by this Decision. The definition of rate adjustment mechanism derives from § 40-3-114(6)(i), C.R.S., also enacted by SB 23-291.

3. Certification of the Completeness of a Base Rate Tariff Filing

17. Section 40-3-102.5(1)(b), C.R.S., requires the Commission to certify that a filing from an electric or gas utility to modify its base rates is complete. The Commission must determine whether the base rate tariff filing includes sufficient information both to compare test years presented by the utility and prospective parties in the case to what is commonly called a “historic test year” and whether the filing includes sufficient information to satisfy other

¹ Section 40-3-102.5(1)(d)(I), C.R.S.

² Section 40-3-102.5(1)(d)(II), C.R.S.

purposes as established by the Commission. At a minimum, the filing must include a comprehensive cost and revenue requirement analysis based on actual, auditable, historic data, or, in other words, a historic test year. Such analysis also must be accompanied by workpapers and other supporting materials.

18. Section 40-3-102.5(1)(b), C.R.S., specifically identifies “an investor-owned utility’s application to modify base rates.” In accordance with the use of the term “application” both in Title 40 and in the Commission’s rules, the statute implicitly references the Commission’s practice of determining whether an application filing is “complete.” The determination of completeness of an application is principally governed by § 40-6-109.5, C.R.S., and the purpose of the Commission’s determination of completeness pursuant to § 40-6-109.5, C.R.S., is to establish a deadline for the Commission’s decision on the application.

19. The process by which the Commission determines the completeness of an application filed by an electric or gas utility is set forth in paragraph 1303(c) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1. For an application, the determination of completeness is not, and shall not be taken or assumed to be, a decision on the merits of the application.³ Subparagraph 1303(c)(II) sets forth the process by which the Commission determines an application to be complete, short of a determination on the application’s merits, including an opportunity for the utility to cure the application filing. Notably, “The Commission shall not issue a decision granting an application that has been determined to be incomplete until any deficiencies are cured.”⁴

³ 4 CCR 723-1-1303(c)(I).

⁴ 4 CCR 723-1-1303(c)(II).

20. Notwithstanding the language in § 40-3-102.5(1)(b), C.R.S., the filing mechanism for an electric or gas utility seeks to modify its base rates is not an application, as generally used in Title 40 and as defined in the Commission's rules, but is instead an advice letter tariff filing.⁵ Advice letter filings are distinct from application filings in terms of critical process and procedures as specified in the Commission's Rules of Practice and Procedure as well as its Electric Rules and Gas Rules. Advice letter tariff filings for rates and charges are further governed by several statutes in Title 40 and by provisions in the Commission's rules that are separate from the statutes and provisions applicable to application filings with the Commission.

21. Paragraph 3109(b) of the Electric Rules and paragraph 4109(b) of the Gas Rules as modified by this Decision specify the filing mechanisms required for utilities to introduce or change tariffs. Neither the Electric Rules nor the Gas Rules specifically define the term tariff; instead, the rules state that: "'Regulated charges' means charges billed by a utility to a customer if such charges are approved by the Commission or contained in a tariff of the utility."⁶

22. We find it necessary to modify paragraphs 3109(b) of the Electric Rules and paragraph 4109(b) of the Gas Rules to properly implement § 40-3-102.5(1)(b), C.R.S.⁷ These changes are necessary to reflect the distinctions between utility filings to modify base rate tariffs from utility filings to modify non-base rate tariffs, including tariffs that implement a rate adjustment mechanism.

23. We modify paragraph 3109(b) and paragraph 4109(b) to specifically address the situations where the utility seeks to add a new tariff other than a base rate tariff. The two filing

⁵ 4 CCR 723-1-1210.

⁶ 4 CCR 723-3-3001(dd) and 4 CCR 723-4-4001(rr).

⁷ As discussed below, the modifications to paragraph 3109(b) of the Electric Rules and paragraph 4109(b) of the Gas Rules are also necessary to implement the provisions in § 40-3-102.5(2), C.R.S.

mechanisms available to the utility include: (1) a tariff filing with an advice letter filed on not less than 30-days' notice in accordance with Rule 1207 of the Commission's Rules of Practice and Procedure; or (2) an application that includes a pro forma tariff that takes effect upon an advice letter compliance tariff filing in accordance with a decision of the Commission on the application. The introduction of the application process in these rules is necessary to clarify the potential role of an application relative to a utility's tariffs given the language used in § 40-3-102.5(1)(b), C.R.S. As explained below, the introduction of the application process is further necessary to fulfill the new statutory requirement for informing the public about potential increases in utility rates and the historical context for such rate increases pursuant to § 40-3-102.5(2)(a), C.R.S.

24. We introduce paragraph 3109(c) to the Electric Rules and paragraph 4109(c) to the Gas Rules to address the situations where the utility seeks to change an existing rate adjustment mechanism. This paragraph includes the same filing options for rate adjustment mechanism as in the currently effective paragraphs 3109(b) in the Electric Rules and 4109(b) in the Gas Rules.

25. We further introduce paragraph 3109(d) to the Electric Rules and paragraph 4109(d) to the Gas Rules to clarify that a filing to modify a base rate tariff remains an advice letter as well as to apply the new certification process for determining the completeness of a base rate tariff filing in accordance with § 40-3-102.5(1)(b), C.R.S.

26. The process by which the Commission shall certify the completeness of an advice letter filing is set forth in paragraph 3109(f) of the modified Electric Rules and 4109(f) of the modified Gas Rules. Specifically, the Commission shall certify by written decision that a utility

base rate tariff filing made in accordance with paragraph 3909(d) includes sufficient information to compare test years and to satisfy other purposes as determined by the Commission.

27. Subparagraphs 3109(f)(I) and 4109(f)(I) list the required elements in the advice letter filing informed by the elements listed in § 40-3-102.5(1)(a)(IV), C.R.S., linking the Commission's determination of completeness of the advice letter tariff filing with respect to certain information necessary to compare test years with the information the Commission requires the utility to disclose to parties in its base rate proceedings to reduce time and costs associated with the discovery process, at least with respect to test year analyses. This paragraph is further required to set a standard by which the completeness of a base rate tariff filing will be determined by the Commission. In contrast to an application, where completeness is generally a function of whether the applicant has stated the relief requested, identified all applicable requirements of Commission rule and decision(s), and address each of those respective requirements,⁸ completeness for an advice letter tariff filing requires the Commission to analyze the prospects for test year comparability in the rate proceeding and to specify what other purposes the information required from the utility will serve.

28. Subparagraphs 3109(f)(II) and 4109(f)(II) offer the utility a means to mitigate the risk of the Commission suspending the effective date of the base rate tariff and a finding by the Commission that the filing is incomplete. To prevent a delay in a base rate tariff proceeding and the potential for a Commission decision deeming the base rate tariff filing incomplete, the utility may confer with Commission Staff and the Office of Utility Consumer Advocate and file in the advice letter proceeding an unopposed motion for an order certifying the base rate tariff filing to be complete.

⁸ 4 CCR 723-1-1303(b).

29. Subparagraphs 3109(f)(III) and 4109(f)(III) set forth the process by which the Commission will certify a utility base rate tariff filing as complete.

30. First, the utility shall serve a copy of the utility base rate tariff filing on all parties to its previous base rate proceeding within three business days of the utility's base rate tariff filing with the Commission.

31. Second, any person affected by the base rate tariff filing may submit a written protest addressing the certification of the filing with respect to completeness. Such protest must be filed sufficiently in advance of the effective date of the base rate tariffs.

32. Third, the Commission will address the certification of utility's base rate tariff filing at a regular weekly meeting prior to the effective date of the base rate tariffs. The filing of advice letters for utility tariffs is governed, in part, by the provisions in § 40-6-111, C.R.S. For instance, pursuant to § 40-6-111(1), C.R.S., the Commission may suspend tariff sheets for 120 days by setting the matter for hearing. Subparagraphs 3109(f)(III)(c) of the modified Electric Rules and subparagraph 4109(f)(III)(c) of the modified Gas Rules thus incorporate the suspension provisions for advice letter tariff filings in § 40-6-111, C.R.S., so that the utility and the parties are afforded the time to implement procedures in order for the Commission to resolve whether a base rate tariff filing is complete pursuant to § 40-3-102.5(1)(b), C.R.S.

33. Finally, subparagraphs 3109(f)(III)(d) of the modified Electric Rules and subparagraph 4109(f)(III)(d) of the modified Gas Rules provide the utility an opportunity to remedy its base rate tariff filing so that the Commission may determine that the filing is complete. The Commission may condition the certification of the remedied utility base rate tariff

filing on the utility's filing of an amended advice letter extending the proposed effective date of the base rate tariffs.

34. In accordance with § 40-3-102.5(1)(b), C.R.S., subparagraphs 3109(f)(IV) and 4109(f)(IV) state that the Commission shall not issue a decision approving a modified base rate if the base rate tariff filing has been determined to be incomplete and the filing has not been cured by the utility. Likewise, subparagraphs 3109(f)(V) and 4109(f)(V) specify that the Commission may permanently suspend the effective date of the proposed base rate tariffs and the proposed tariffs shall not go into effect if the Commission deems the utility's base rate tariff filing incomplete.

35. Due to the modifications to Rule 3109 of the Electric Rules and Rule 4109 of the Gas Rules described above, we strike the provisions in subparagraph 3109(b)(III) and 4109(b)(III) because they are no longer necessary.

4. Rate Trend Report

36. Section 40-3-102.5(2), C.R.S., requires electric and gas utilities to provide a "rate trend report" when filing any request to increase a rate, charge, fee, fare, toll, rental, or classification. A rate trend report presents changes in the rate, charge, etc., over the previous ten years and includes: (1) the amount of increase relative to the amount in effect on the date of the utility's filing; (2) the "annual total amount" of the rate, charge, etc.; and (3) a chart, graph, or "other visualization" of each of the utility's rates, charges, etc., including the total of all utility bill line items such as base rates and rate adjustment mechanisms, for the ten years prior to the date of the utility filing. In addition, a rate trend report must include, for the same rate, charge, etc., over the ten years prior to the date of the utility's filing: (1) the dates when a previous increase or decrease went into effect; (2) the amount of the rate, charge, etc. before a previous

increase or decrease went into effect; (3) the amount of increase or decrease relative to the amount before the previous increase or decrease went into effect; and (4) the proceeding number for the tariff filing where the rate, charge, etc. either was allowed to go into effect by operation of law or was approved by the Commission.

37. Section 40-3-102.5(2)(b), C.R.S., emphasizes the role of the rate trend report plays in informing the public about potential increases in utility rates and about the historical context for such rate increases. The utility is required to post on its website the rate trend report data, including the chart, graph, or pictographic demonstration for the ten-year historical trend submitted as part of each filed rate trend report.

38. Paragraph 3109(e) of the modified Electric Rules and paragraph 4109(e) of the modified Gas Rules implement the provisions in § 40-3-102.5(2)(a), C.R.S. Most of the provisions in these modified rules correspond directly to the language in the statute, however some terms are modified to match the common ratemaking lexicon of the Commission, the utilities, and the parties to rate cases.

39. Notably, the temporary rules make a specific clarification in the rules to implement the provision requiring the rate trend report provide the “the annual total amount of the rate, charge, fee, fare, toll, rental, or classification.” We conclude that the “annual total amount” is best represented by the annual revenues collected or expected to be collected from the rate as proposed in the utility’s filing and that the historic trend is demonstrated by the collected annual revenues in the ten years prior to the filing. This interpretation of “annual total amount” aligns with the new statutory definition of a test year and the concept of a revenue requirement being calculated for a given test year

40. In accordance with § 40-3-102.5(2)(a), C.R.S., a rate trend report is required only in instances where a utility files a request to increase any rate, charge, etc. The rules that address the types of filings a utility makes to request to change a rate or tariff are therefore modified to cross-reference paragraph 3109(e) of the Electric Rules and paragraph 4109(e) of the Gas Rules.

5. Annual Rate Compliance Report

41. Section 40-3-114, C.R.S., requires the Commission to prohibit electric and gas utilities from using ratepayer funds to subsidize nonregulated activities. The new statute further prohibits utilities from recovering several types of expenses from ratepayers.

42. Although we conclude that temporary rules are not necessary to implement the provisions in §§ 40-3-114(1) through (4), C.R.S, upon the effective date of SB 23-291, § 40-3-114(5), C.R.S, states that the Commission shall require electric and gas utilities to file an annual report to ensure their compliance with the requirements in § 40-3-114, C.R.S. The report must include the purpose, payee, and amount of any expenses associated with the costs and activities that are not permitted to be recovered from customers as set forth in the statute.

43. Accordingly, through these temporary rules adopted by this Decision, we introduce a new Rule 3350 in the Electric Rules and Rule 4350 in the Gas Rules to cause the annual reporting to take effect pursuant to a Commission requirement upon the effective date of SB 23-291. Rule 3350 and 4350 will be the location of the rules promulgated in the permanent rulemaking to fully implement the rate-related provisions of SB 23-291.

II. ORDER

A. The Commission Orders That:

1. The rules in final version format available in this proceeding, through the Commission's E-Filings system, are hereby adopted as temporary rules, consistent with the discussion above.

2. The temporary rules shall be effective on the Mailed Date of this Decision. Such rules shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

3. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 9, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

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Commissioners