

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0168EG

IN THE MATTER OF THE PROPOSED AMENDMENTS TO 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 TARIFF FILINGS, RATE TREND REPORTS, COSTS PROHIBITED FROM RATES, AND BASE RATE PROCEEDINGS.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: April 30, 2024
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TABLE OF CONTENTS

I.	BY THE COMMISSION	2
A.	Statement	2
B.	Utility Tariff and Rate Provisions in SB 23-291	3
C.	Temporary Rules Adopted in Proceeding No. 23R-0408EG	7
D.	Stakeholder Outreach Prior to Permanent Rulemaking.....	10
E.	Proposed Rule Changes	12
1.	Applicability	13
2.	Definitions	13
3.	New or Changed Tariffs/Rate Trend Reports	14
4.	Base Rate Proceedings	18
a.	Definitions.....	18
b.	Certification of the Completeness of a Base Rate Tariff Filing.....	19
c.	Procedural Schedule and Discovery.....	24
d.	Costs Prohibited from Rates	30
e.	Recovery of Rate Case Expenses	33
F.	Conclusion.....	34
II.	ORDER.....	36

A. The Commission Orders That:	36
B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING March 27, 2024.....	37

I. **BY THE COMMISSION**

A. **Statement**

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to amend the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules), and its Rules Regulating Gas Utilities, 4 CCR 723-4 (Gas Rules), to implement certain statutory provisions enacted by Senate Bill (SB) 23-291. The proposed amendments to the Electric Rules and Gas Rules are intended to implement the following recently-enacted statutory provisions: § 40-3-102.5(1)(a), C.R.S., requiring the Commission to promulgate rules to limit the amount of rate case expenses that a utility may recover from its ratepayers; § 40-3-102.5(1)(b), C.R.S., requiring the filing of certain information with a utility's base rate tariff filing made to the Commission; § 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; and § 40-3-114, C.R.S., addressing certain costs that are prohibited from utility rates.

2. The statutory authority for the proposed rules is found generally at § 40-1-103.5, C.R.S. (authorizing the Commission to promulgate implementing rules) and § 40-2-108, C.R.S. (authorizing the Commission to promulgate rules necessary to administer and enforce Title 40). The statutory authority for these rules is also set forth specifically in SB 23-291, as codified at §§ 40-3-102.5 and 40-3-114, C.R.S.

3. The proposed changes to the Electric Rules are set forth in legislative (*i.e.*, ~~strikeout~~ and underline) format in Attachment A to this Decision, and in final format in Attachment B to this

Decision. The proposed changes to the Gas Rules are set forth in legislative (*i.e.*, ~~strikeout~~ and underline) format in Attachment C to this Decision, and in final format in Attachment D to this Decision. The proposed changes to the Electric Rules and Gas Rules also require certain proposed modifications to the Commission's Rules of Practice and Procedure, 4 CCR 723-1, which are set forth in legislative format in Attachment E to this Decision and in final format in Attachment F to this Decision.

4. The Commission refers this matter to an Administrative Law Judge (ALJ) for a recommended decision. The ALJ will hold a public hearing on the proposed rules at 11:30 a.m. on June 3, 2024.

5. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. Initial written comments are to be filed no later than May 17, 2024, and any written comments responsive to the initial comments are to be filed no later than May 23, 2024.

B. Utility Tariff and Rate Provisions in SB 23-291

6. Colorado legislators convened a Joint Select Committee on Rising Utility Rates (Joint Select Committee) during the first regular session of the 2023 General Assembly. The Joint Select Committee was charged with investigating the root cause of the recent increases in utility rates facing Coloradans and with considering potential policy interventions. The Joint Select Committee sought to better understand current utility rates and customer bills, how rates and bills increased to current levels, and various policy means to prevent future unexpected and steep utility

rate increases. The efforts of the Joint Select Committee culminated in the passage and enactment of SB 23-291.¹

7. SB 23-291 includes several sections that added provisions to or modified existing provisions within Title 40 and thus alters the Commission's regulation of Colorado's investor-owned electric and natural gas utilities. Only certain provisions within SB 23-291 will be addressed in this rulemaking proceeding. Other provisions of SB 23-291 have already been implemented by the Commission, are being implemented in other ongoing proceedings, or are slated to be implement in future proceedings in the next few years.

8. For example, Section 4 of SB 23-291 requires each investor-owned gas utility to file with the Commission, on or before November 1, 2023, a Gas Price Risk Management (GPRM) plan that includes proposals for addressing the volatility of fuel costs recovered from the utility's customers pursuant to the utility's Gas Cost Adjustment (GCA) filings.² A GPRM was established for each of Colorado's four investor-owned gas utilities in brief proceedings that concluded in November 2023.³

9. Section 4 also requires the Commission to adopt rules, on or before January 1, 2025, to help protect customers of investor-owned electric or gas utilities from the volatility of gas prices "by establishing mechanisms that align an investor-owned utility's financial incentives with the financial interests of its customers regarding incurred fuel costs."⁴ The Commission initiated pre-rulemaking in Proceeding No. 23M-0493EG in October 2023 to receive comments,

¹ Description of committee and committee schedule, materials, and documents available at: <https://leg.colorado.gov/committees/joint-select-committee-rising-utility-rates/2023-regular-session>.

² § 40-3-120(1), C.R.S.

³ See, Proceeding No. 23A-0533G for Public Service Company of Colorado; Proceeding No. 23A-0538G for Colorado Natural Gas, Inc.; Proceeding No. 23A-0539G for Atmos Energy Corporation; and Proceeding No. 23A-0540G for Black Hills Colorado Gas, Inc.

⁴ § 40-3-120(2), C.R.S.

suggestions, and proposals for modifications to the GCA Rules within the Gas Rules at 4 CCR 723-4-4600, *et seq.*, and for the development of new provisions in the Electric Rules to govern fuel cost recovery. That ongoing proceeding is intended to inform the development of one or more separate notices of proposed rulemaking to implement § 40-3-120(2), C.R.S.⁵

10. Section 4 further requires a future Commission proceeding to investigate whether and how residential and other development in certain geographic areas drive natural gas infrastructure costs for Public Service Company of Colorado (Public Service).⁶ After completing the investigation, the Commission is required to consider whether alternative infrastructure, service investments, or other actions by Public Service could mitigate impacts of such development on nonparticipating or income-qualified utility customers.

11. Section 5 of SB 23-291 requires each investor-owned gas utility to remove from its tariffs, through a filing submitted on or before December 31, 2023, the incentives offered to an applicant applying for natural gas service to establish gas service to a property.⁷ Proceedings are currently underway to implement these requirements for each of the four investor-owned gas utilities operating in Colorado.⁸

12. Section 5 also requires the Commission to conduct a study, to be completed no later than March 15, 2024, examining existing investor-owned electric utility tariffs and interconnection policies and practices to determine whether: (1) tariffs, policies, and practices pose a barrier to the beneficial electrification (BE) of transportation and buildings and the offsetting of that energy use with distributed energy resources (DERs); (2) the use of traditional cost-causation and cost

⁵ Decisions No. C23-0670, issued October 6, 2023, Proceeding No. 23M-0493EG.

⁶ § 40-3-121, C.R.S.

⁷ § 40-3.2-104.3, C.R.S.

⁸ See, Proceeding No. 23AL-0579G for Atmos Energy Corporation; Proceeding No. 23AL-0631G for Black Hills Colorado Gas, Inc; Proceeding No. 23AL-0635G for Colorado Natural Gas, Inc.; and Proceeding No. 23AL-0636G for Public Service Company of Colorado.

recovery principles pose a barrier to such BE and the offsetting of that energy use with DERs; and (3) requiring a customer seeking to interconnect DERs or BE resources to the electric utility's grid to bear the full incremental cost of transformers or other service upgrades needed at the time of interconnection imposes an undue burden on the customer, with consideration given to methods for sharing the cost recovery among customers.⁹ In September 2023, the Commission opened Proceeding No. 23M-0464EG¹⁰ to facilitate that study with the intent to examine: (1) transformer, substation, service upgrades, and distribution system planning to accommodate future BE and DERs, including the associated cost allocation and timelines for new service; (2) to otherwise support the examination of investor-owned electric utility tariffs, policies, and practices to identify potential barriers to BE and DERs; (3) to collect information on potential requirements for dual-fuel utilities to provide customers with information about and options for electric space and water heating; (4) to examine the elimination of incentives for gas service to properties;¹¹ and (5) to prepare for the promulgation of rules to establish standards for the voluntary disconnection from an investor-owned gas utility's system and to prohibit penalties or charges for the voluntary termination of gas service.¹²

13. As explained below, the rulemaking we open by this Decision will focus on the implementation of Sections 2 and 3 of SB 23-291. Section 2 requires the Commission to establish rules to limit the amount of rate case expenses that an investor-owned electric or gas utility may recover from the utility's customers.¹³ Likewise, Section 3 prohibits an investor-owned electric or

⁹ § 40-3.2-104.6, C.R.S.

¹⁰ Decision No. C23-0627, issued September 18, 2023, Proceeding No. 23M-0464EG.

¹¹ § 40-3.2-104.3, C.R.S.

¹² § 40-3.2-104.5(2), C.R.S.

¹³ § 40-3-102.5, C.R.S.

gas utility from recovering certain types of costs from its customers and requires each utility to file an annual report on its compliance with these cost recovery prohibitions.¹⁴

C. Temporary Rules Adopted in Proceeding No. 23R-0408EG

14. 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.

15. Through Decision No. C23-0538, issued on August 14, 2023, the Commission adopted temporary rules to implement a subset of the provisions in SB 23-291 relating to utility rates and tariff filings. The temporary rules were adopted without compliance with the rulemaking procedures prescribed in § 24-4-103, C.R.S., in order to provide necessary continuity in the process by which electric and gas utilities change their rates for providing service to their Colorado customers after the statutory provisions enacted by SB 23-291 took effect. The temporary rules further set forth annual reporting provisions on certain costs prohibited from utility rates pursuant to a directive from the Commission.

16. As discussed in Decision No. C23-0714, issued on October 20, 2023, Public Service, Black Hills Colorado Electric, LLC (Black Hills Electric), and Black Hills Colorado Gas, LLC (Black Hills Gas) (collectively, the Utilities) filed an application for rehearing, reargument, or reconsideration of Decision No. C23-0538 (RRR Application). The Utilities favored a more limited set of procedures to implement the rate-related provisions in SB 23-291, based on the philosophy that the temporary rules are only intended to bridge the gap until permanent rules are established through a more participatory rulemaking process.¹⁵ They also claimed that certain

¹⁴ § 40-3-114, C.R.S.

¹⁵ RRR Application, p. 3.

provisions in the temporary rules are not “imperatively necessary in order to comply with SB 23-291 or for the preservation of public health, safety, or welfare.”¹⁶

17. The Utilities primarily objected to the certification process for the completeness of a base rate filing (*i.e.*, the filing of a new rate case) as set out in the temporary rules in paragraph 3109(f). They requested that the temporary rules instead implement a minimal three-point check on whether the utility’s initial rate case filing includes: (1) a cost of service study for a historic test year (2) in executable format (3) with workpapers.¹⁷ They likewise objected to the Commission determining on a case by case basis what other information must be included in its base rate tariff filing before certifying the filing as complete.¹⁸

18. The Utilities further wanted the temporary rules to limit the Commission’s determination of the completeness of a base rate tariff filing only to filings where a utility seeks to change base rates based on its presentation of a higher overall revenue requirement.¹⁹ The Utilities’ proposed certification process would also not involve any protests from ratepayers or reviews by the Staff of the Colorado Public Utilities Commission (Commission Trial Staff) and the Colorado Office of the Utility Consumer Advocate as set forth the subparagraph 3109(f)(II).²⁰ Moreover, their certification process would not have any impact on the 30-day window between the filing of the rate case and the effective date of the tariff sheets or on the 250-day statutory suspension period in § 40-6-111, C.R.S.²¹ Their proposals for the temporary rules further entail a written order issued

¹⁶ RRR Application, p. 8.

¹⁷ RRR Application, Attachment 1, pp. 9-10.

¹⁸ RRR Application, pp. 6-7 and 9.

¹⁹ RRR Application, Attachment 1, pp. 9-10.

²⁰ RRR Application, p. 9.

²¹ RRR Application, p. 7.

by the Commission ten days prior to the filed effective date, with those ten days available to the utility to remedy any alleged absence of an item from the three-point check.²²

19. The Utilities also faulted the temporary rules for failing to account for filings intended to amend existing tariffs that are non-rate-related or textual.²³

20. With respect to the temporary rule implementing § 40-3-102.5(2)(a), C.R.S., the Utilities objected to preparing rate trend reports for rates that apply to non-residential customers as required by paragraph 3109(e).²⁴ They argued that most of their customers are residential customers and that the multitude of rates for the non-residential rate classes makes the rate trend reports burdensome and confusing.

21. The Utilities also illustrated in legislative format more than twenty specific modifications they seek to the rule language of the temporary rules.²⁵ These changes generally support the three main objections raised in their RRR Application, but also include: modifications to definitions and the addition of new terms²⁶ and the removal of the provision in subparagraph 3109(f)(III)(C) that: “The Commission may suspend the proposed tariff’s effective date by ordering that a hearing be held on the certification of the utility base rate tariff filing in accordance with § 40-6-111(1), C.R.S.”²⁷

22. The Commission denied the Utilities’ RRR Application by Decision No. C23-0714. However, the Commission stated that it intended to address the issues and concerns raised by the Utilities in the forthcoming rulemaking to adopt permanent rules to replace the temporary rules.

²² RRR Application, Attachment 1, p. 10.

²³ RRR Application, p. 5.

²⁴ RRR Application, Attachment 1, p. 6.

²⁵ RRR Application, Attachment 1.

²⁶ RRR Application, Attachment 1, pp. 3-4.

²⁷ RRR Application, Attachment 1, p. 10.

23. The temporary rules adopted through Decision No. C23-0538 were in effect through March 11, 2024, or 210 days from the effective date of that decision. *See* § 40-2-108(2), C.R.S. On March 6, 2024, the Commission issued Decision No. C24-0139 in Proceeding No. 24R-0107EG, adopting the same rules on a temporary basis to maintain the necessary continuity in the processes by the electric and natural gas utilities change their rates for the provision of service to their customers as well as to maintain the annual reporting provisions required by statute.

D. Stakeholder Outreach Prior to Permanent Rulemaking

24. Following the adoption of the temporary rules in Proceeding No. 23R-0408EG, members of Commission staff began conducting conversations with various stakeholders who have participated in utility base rate proceedings over the past several years in preparation of this NOPR.

25. The stakeholders included both of Colorado's investor-owned electric utilities, *i.e.*, Public Service and Black Hills Electric, and each of the state's four investor-owned natural gas utilities, *i.e.*, Public Service, Atmos Energy Corporation, Black Hills Gas, and Colorado Natural Gas, Inc.

26. Commission staff also held discussions with members of Commission Trial Staff who participate in rate cases, members of the Colorado Office of the Utility Consumer Advocate, and representatives of the Colorado Energy Office. Each of these three stakeholders may intervene as of right in a utility's base rate proceeding.

27. Commission staff also discussed SB 23-291 and the development of this NOPR with the legal representatives in recent rate cases for stakeholders including the Colorado Energy Consumers, Climax Molybdenum Company, Molson Coors Beverage Company, The Kroger

Company, and the Federal Executive Agencies. Commission staff additionally met with the environmental organizations Western Resource Advocates and Sierra Club. Commission staff further discussed the temporary rules and the upcoming permanent rulemaking with the City of Boulder, the City and County of Denver, and other representatives of local governments who participate regularly in utility base rate proceedings.

28. Based on its statements before the Joint Select Committee that are echoed in § 40-3-114, C.R.S., Commission staff met with David Pomeranz of the Energy and Policy Institute. And based on her longstanding interests in utility bill presentation and the disclosure of information regarding utility costs and the environmental profiles of their resources, staff specifically discussed with Ms. Leslie Glustrom the implementation of the rate trend reports pursuant to the temporary rules.

29. A handful of themes emerged from these discussions, and these themes helped guide the development of the proposed rules attached to this Decision. All stakeholders shared concerns about the high cost of litigating rate cases, but these concerns did not seem to lead to a universal embrace of performance-based regulation, performance incentive mechanisms, or automatic disallowances of some or all of rate case expenses. Among the stakeholders who frequently participate in Colorado utility rate cases, there was little desire to abandon Colorado's traditional methods for establishing rates, as these methods are viewed as constructive in helping the state maintain its utility rates below national averages, which may also explain why many provisions in SB 23-291 are clearly grounded in those well-established cost-of-service methods. Stakeholders familiar with rate cases in other states also noted that Colorado is not viewed as having problematic or substandard rate case procedures and practices, especially in terms of the length or expense.

30. Significantly, the stakeholders showed general agreement on the intent of the requirement in § 40-3-102.5(1)(a), C.R.S., that the Commission adopt rules to “limit the amount of rate case expenses that a utility may recover from ratepayers.” They accordingly support an approach where the Commission considers in this rulemaking two types of limits: (1) *prohibitions* from revenue requirements and rates (*e.g.*, “limiting the amount of expenses for outside experts, consultants, and legal resources that are recoverable”²⁸) and (2) *reductions* in incurred expenses through the adoption of more efficient processes and procedures. Many of the ideas shared by stakeholders, whether or not or specifically identified in SB 23-291, are reflected in the proposed rules attached to this Decision. We also appreciate their guidance that these new rules will not be the sole solution for achieving significant reductions in rate case expenses, because much depends on how the parties interact with one another in each individual rate case proceeding.

31. Notwithstanding the common themes across the discussions between Commission staff members and the diverse stakeholders, the outreach conducted before the development of this NOPR uncovered little of what might emerge as consensus proposals. Instead, as indicated below, several topics require additional comments and analysis over the course of this rulemaking. Strong divisions among the stakeholders are expected in comments addressing certain topics stemming from SB 23-291.

E. Proposed Rule Changes

32. The changes to the Electric Rules and Gas Rules proposed in the attachments to this Decision largely incorporate the changes accomplished by the temporary rules described above. However, the permanent rules proposed here include certain modifications to some of the

²⁸ § 40-3-102.5(1)(a)(ii), C.R.S.

temporary rules as well as certain additions that stem from provisions in SB 23-291 that were not necessary to implement on a temporary basis.

33. For each category of rule, we identify and explain the proposed rule change, provide analysis of the change, and, as applicable, pose questions for comments by rulemaking participants.

1. Applicability

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

2. Definitions

35. 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.

36. 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.”²⁹

37. Accordingly, we propose to retain the definition for the term “base rate” within Rule 3001 of the Electric Rules and within Rule 4001 of the Gas Rules.

38. We also propose to retain the 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. The definition of rate adjustment mechanism derives from § 40-3-114(6)(i), C.R.S., also enacted by SB 23-291. We invite comment on whether the

²⁹ § 40-3-102.5(1)(d)(I), C.R.S.

terms “rate adjustment mechanisms” and “rate riders” are synonymous or instead require further definitions with respect to their application in the Commission’s rules.

39. In the temporary rules, the Commission also added to Rules 3001 and 4001 the term “test year” as defined by SB 23-291 to mean: “a twelve-month period that is examined to determine a utility’s costs of service in a rate case.”³⁰ In the proposed rules attached to this Decision, this same term is moved to the definitions that are specific to base rate proceedings as addressed in proposed Rules 3350 through 3355 and Rules 4350 through 4355.

3. New or Changed Tariffs/Rate Trend Reports

40. The temporary rules included several modifications to Rules 3109 and 4109 that address new or changed tariff sheets. As explained in Decision No. C23-0538 that adopted the temporary rules, the filing mechanism for an electric or gas utility to modify its base rates is an advice letter tariff filing.³¹ Advice letter tariff filings for rates and charges are 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.

41. For the permanent rules to implement the rate-related provisions in SB 23-291, we proposed fewer changes to Rules 3109 and 409, largely because of the further development of the proposed Rules 3350 through 3355 and 4350 through 4355 that govern base rate proceedings.³² This more streamlined approach to Rules 3109 and 4109 nevertheless requires a modification to the Commission’s notice requirements for utilities as set forth in the Rules of Practice and Procedure, 4 CCR 723-1.

³⁰ § 40-3-102.5(1)(d)(II), C.R.S.

³¹ 4 CCR 723-1-1210.

³² The development of Rules 3350 through 3355 explain the striking of paragraph 3109(f) of the temporary rules.

42. Specifically, the proposed modifications to the Rules of Practice and Procedure shown in Attachments E and F to this Decision, involve paragraph 1207(a) that governs the utility's notice of a change to any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility in accordance with the requirements of § 40-3-104(1)(c)(I), C.R.S. The proposed modification is to clarify that application filings in which a proposed tariff change will impact customer bills if the application is approved require notice just like an advice letter filing would require if the utility had chosen that method for submitting the change in rate, etc., for Commission consideration and review. The proposed change addresses the issues raised by the Colorado Office of the Utility Consumer Advocate in prior proceedings³³ and further permits the filing of compliance tariff filings on less than 30 days' notice, whereas no notice related to the potential for rate or bill impacts would otherwise occur. As explained in Decision No. C23-0538 adopting the temporary rules, 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., as explained below.

43. 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

³³ See Proceeding No. 20M-0546ALL.

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.

44. Section 40-3-102.5(2)(b), C.R.S., emphasizes the role that 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.

45. Consistent with the temporary rules adopted by Decision No. C23-0538, paragraph 3109(c) of the modified Electric Rules and paragraph 4109(c) 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.³⁴

46. Notably, the proposed 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

³⁴ We also propose an addition to Rule 3405 of the Electric Rules and Rule 4405 of the Gas Rules that address service, rate, and usage information required to be available to a utility's customers. Specifically, to implement § 40-3-102.5(2)(b), C.R.S., we propose to add paragraphs 3405(d) and 4405(d) that require the utility to post and keep current on its website the data required to produce the rate trend reports included with tariff filings, including the chart, graph, or other pictographic demonstration showing the total of all utility bill line items such as base rates and rate adjustment mechanisms for the prior ten years.

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.

47. For the rate trend analysis rules to be adopted on a permanent basis, we propose to augment the filing requirements to include a presentation of total residential revenues and sales. Subparagraphs 3109(c)(V) and 4109(c)(V) require the presentation of the utility's total residential retail revenues, including base rates and all rate adjustment mechanisms, and its total residential retail sales over the ten years prior to the date of the utility's filing. In addition to that data, the rule further requires the presentation of the utility's projected increase in residential revenues from the increase in the rate, charge, etc. addressed in the tariff filing, as well as the projected residential sales for the first year after the increase is proposed to take effect. The rate trend analysis would further include a presentation of the ten-year historic and one-year projected total residential revenue per sales unit calculated using such data. This addition to the rate trend analysis is intended to combine the statutorily-required data into a key residential rates metric that is easily understood by the utility's customers.

48. 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(c) of the Electric Rules and paragraph 4109(c) of the Gas Rules.

49. In light of the Commission's commitment to address the issues and concerns raised by the Utilities in their RRR Application to the order adopting temporary rules, we solicit

comments on whether the statute permits the Commission to limit the rate trend report to rates, charges, etc., that apply to residential and small commercial customers only.

50. In addition, based on certain feedback Commission staff received in its pre-rulemaking outreach, we also seek comment on whether the Commission should endeavor to explore in a separate miscellaneous proceeding the development of a standard rate trend report format, consistent with statute, and whether further rule changes would be required to accommodate a standardized approach.

4. Base Rate Proceedings

51. In this permanent rulemaking, we intend to fully develop filing requirements and procedures for base rate tariff filings in accordance with SB 23-291. The proposed provisions in Rules 3350 through 3355 and in Rules 4350 through 4355 incorporate key elements adopted in the temporary rules for the certification of the completeness of a base rate tariff filing. The proposed rules also include provisions not addressed in the temporary rules, such as the new series of rules intended to reduce rate case expenses.³⁵ The proposed rules further address provisions in SB 23-291 that are intended to reduce revenue requirements or otherwise ensure that utilities do not recover through rates certain “prohibited expenses.”³⁶

a. Definitions

52. As explained above, we propose to include a definition of the term “test year” to this new section of the Electric Rules and Gas Rules governing base rate proceedings. A test year means a twelve-month period that is examined in a cost of service study to determine a utility’s base rate revenue requirement.

³⁵ § 40-3-102.5(1)(a), C.R.S.

³⁶ § 40-3-114(2), C.R.S.

53. We further add a definition for a cost of service study, or “a calculation, typically made using a spreadsheet model, of the utility’s costs of providing service to its customers as a measure the amount of revenue to be collected from base rates.”

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

54. 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 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.

55. 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.

56. 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.³⁷ 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."³⁸

57. 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.³⁹ 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.

58. As explained in Decision No. C23-0538 adopting temporary rules, Rule 3109 of the Electric Rules and Rule 4109 of the Gas Rules were modified to implement § 40-3-102.5(1)(b), C.R.S.⁴⁰ The same rules addressing the certification of a base rate tariff filing are proposed to be adopted on a permanent basis by this Decision. We further 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.

³⁷ 4 CCR 723-1-1303(c)(I).

³⁸ 4 CCR 723-1-1303(c)(II).

³⁹ 4 CCR 723-1-1210.

⁴⁰ 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.

59. The process by which the Commission shall certify the completeness of an advice letter filing is set forth in Rule 3352 of the modified Electric Rules and 4352 of the modified Gas Rules. Specifically, the Commission shall certify by written decision that a utility base rate tariff filing made includes sufficient information to compare test years and to satisfy other purposes as determined by the Commission.

60. Paragraphs 3352(b) and 4352(b) 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. The paragraphs are 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,⁴¹ 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.

61. With respect to proposed paragraphs 3352(b) and 4352(b), we solicit comments on whether the Commission should specify by rule any other information that is required to make a base rate tariff filing complete "for other purposes" in accordance with § 40-3-102.5(1)(b), C.R.S.

⁴¹ 4 CCR 723-1-1303(b).

62. We further ask for comments addressing whether it is necessary for the rules to set forth a specific list of adjustments necessary for a source cost of service study either in lieu of or in addition to the requirements described in proposed subparagraphs 3352(b)(I)(B) and 4352(b)(I)(B).

63. We further recognize based on the stakeholder outreach that a “source cost of service study” as defined by subparagraph 3352(b)(I)(A) and subparagraph 4352(b)(I)(A) could differ from what a utility or intervening party to a base rate tariff proceeding may seek to establish as a “historic test year” or “HTY” as part of its advocacy in the base rate proceeding. We clarify that the inclusion of a “source cost of service study” is intended to provide a foundation for the development of an HTY within the base rate proceeding and should not be viewed as requiring a utility per the certification process to provide a particular HTY as envisioned by any intervening party.

64. We also solicit comments on whether the Commission should specify the latest acceptable time period for the source cost of service study in order to avoid “stale data” from being used for the comparison of test years as contemplated in § 40-3-102.5(1)(b), C.R.S.

65. For the purpose of soliciting comments given the objections raised by the Utilities in their RRR Application directed at the temporary rules, we retain the provisions now set forth in paragraphs 3352(c) and 4352(c) that are intended to 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. Specifically, 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 Trial Staff and the Colorado Office of the 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. We clarify that the proposed rules are intended to encourage meetings between the utility and interested stakeholders prior to the filing of a base rate proceeding to minimize the possibility of disputes over the fundamental filing elements included in the certification process required by SB 23-291. We also solicit comments on a related concept raised during the stakeholder outreach regarding more prescriptive rules that further define a pre-filing stakeholder process.

66. Paragraphs 3352(d) and 4352(d) set forth the process by which the Commission will certify a utility base rate tariff filing as complete. As under the temporary rules, 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. The Commission will then address the certification of utility's base rate tariff filing at a regular weekly meeting prior to the proposed effective date of the base rate tariffs. (We seek comment on the proposal here to eliminate the requirement under the temporary rules for the utility to 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.)

67. As explained in Decision No. C23-0538 adopting temporary rules, 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 3552(d)(II) of the modified Electric Rules and subparagraph 4552(d)(II) 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.

68. In addition, subparagraphs 3552(d)(III) of the Electric Rules and subparagraph 4552(d)(III) of the 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.

69. In accordance with § 40-3-102.5(1)(b), C.R.S., paragraphs 3352(e) and 4352(e) 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, paragraphs 3352(f) and 4352(f) 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.

c. Procedural Schedule and Discovery

70. Section § 40-3-102.5(1)(a), C.R.S., requires the Commission to adopt rules to "limit the amount of rate case expenses that a utility may recover from ratepayers." Consistent with the discussion above, one objective of the stakeholder outreach conducted prior to the issuance of this Decision was the solicitation of ideas or vetting of ideas for reducing the costs incurred by all parties to base rate proceedings. Proposed Rules 3353 in the Electric Rules and 4353 in the Gas Rules reflect the suggestions discussed with stakeholders prior to the issuance of this Decision and are intended to solicit further ideas and comments.

71. Proposed paragraphs 3353(a) and 4353(a) are intended to speed up the time when a procedural schedule including discovery procedures is normally adopted in a base rate proceeding.

72. Section § 40-3-102.5(1)(a)(V), C.R.S., states that the Commission may consider the adoption of rules that require “a technical conference with intervening parties to address intervening parties’ questions and to provide the ability for interveners to analyze the utility’s assumptions and calculations supporting a rate case filing.” Proposed paragraphs 3353(b) and 4353(b) thus include provisions that govern such a technical conference in base rate proceedings. We seek comment on whether additional or more prescriptive rules are necessary regarding such technical conferences.

73. Section § 40-3-102.5(1)(a)(IV), C.R.S., states that the Commission may establish discovery parameters that help reduce incurred expenses in base rate proceedings. Proposed subparagraphs 3353(c)(II) and 4353(c)(II) require the utility to file a template for discovery and data requests and instructions for using its electronic systems for the exchange of data request, interrogatories, and responses. Proposed subparagraphs 3353(c)(III) and 4353(c)(III) require parties to serve discovery requests and responses on all parties so that parties do not need to issue discovery requests to achieve the same end.

74. Section § 40-3-102.5(1)(a)(IV), C.R.S., also states that the Commission may specify what information in a base rate proceeding must be disclosed to interveners or to the Commission to reduce time and costs associated with a lengthy discovery process. Proposed paragraphs 3353(d) and 4353(d) propose such required disclosures based on the feedback from the stakeholder outreach and the examples listed in § 40-3-102.5(1)(a)(iv), C.R.S. We solicit further suggestions for other types of required disclosures, with recommendations on whether the

disclosure should be accomplished by filings into the base rate proceeding's administrative record or instead through the discovery process to the parties to the proceeding.

75. Proposed subparagraphs 3353(d)(I) and 4353(d)(I) list the items that the utility must provide or disclose by making filings into each base rate proceeding's administrative record. The propose rules set a deadline for the filing of five business days and list six types of disclosures: (1) a summary table of the utility's requests for approvals with a corresponding index to the utility's testimony; (2) an index to the utility's testimony identifying where key items and adjustments made in the utility's cost of service models are addressed; (3) worksheets summarizing forecasted base rates and rate adjustment mechanisms; (4) worksheets summarizing forecasted revenues collected through base rates and revenues; (5) a summary of all active performance incentive mechanisms; and (6) an index to the utility's testimony identifying the portions claimed to be confidential and an index to the testimony that the utility claims is highly confidential.

76. Proposed subparagraphs 3353(d)(II) and 4353(d)(II) list additional items that the utility must provide or disclose by making filings into the base rate proceeding's administrative record when the proceeding entails a change (generally an increase) in the utility's base rate revenue requirements. Within five days, the utility must disclose seven additional elements: (1) credit ratings and credit rating reports; (2) a four-year forecast of the financial metrics used by the credit rating agencies based on certain specified assumptions listed in the rule⁴² (such as Moody's CFO-WC/debt metric and Standard & Poor's FFO/debt metric); (3) an executable worksheet model, preferably in the form of Moody's CFO-WC/debt metric or an equivalent, demonstrating the impact of changes in capital structure, authorized return on equity, regulatory

⁴² The assumption that the utility's base rate tariff filing is approved without modification means that the utility's full requested increase in revenue requirements, including the proposed authorized return on equity and capital structure, are approved.

lag, depreciation expenses, and other factors as identified by the utility on the utility's credit metrics; (4) equity analyst reports addressing the utility or its holding company issued in the three years prior to the base rate tariff filing; (5) investor presentations addressing the utility or its holding company for the three years preceding the date of the base rate tariff filing; (6) the return on equity for the utility's holding company in the most recent quarter prior to the base rate tariff filing as measured by the relevant stock price, dividend yield, and growth expectations as represented in relevant investor presentations; and (7) the most recent annual reports as filed with the Securities and Exchange Commission for the utility's holding company and the utility, as applicable, in the three years prior to the base rate tariff filing. With respect to the four-year forecasts listed in subparagraphs 3353(d)(II)(B) and 4353(d)(II)(B), the utility should provide in Direct Testimony a discussion of: the credit rating the Commission should be targeting; the credit rating metric and value of such metric the Commission should be targeting, including any appropriate buffer; the manner to evaluate unique electric and gas operations, either in combination or as separate entities, if relying upon credit metrics to inform revenue requirements; and the manner to evaluate Colorado operations if the applicant's holding company serves operations in other states.

77. We further propose in subparagraphs 3353(d)(II)(H) and 4353(d)(II)(H) to require the state's largest electric and gas utility to disclose its projection of total residential retail revenues, including base rates and all rate adjustment mechanisms, and its projection of total residential retail sales over each of the fifteen years following the date of the utility's base rate tariff filing. The

Commission has required a demonstration of the cumulative impact on revenue requirements and average residential rates from Public Service in recent base rate proceedings.⁴³

78. Proposed subparagraphs 3353(d)(III) and 4353(d)(III) list the items that the utility must provide or disclose to the parties to the base rate proceeding no later than five business days following the issuance of the Commission's decision establishing the parties in the rate case. The required disclosures include worksheets summarizing the capital expenditures and operations and maintenance expenditures historically in each of the nine previous twelve-month periods as well as forecasted for each of the ten future twelve-month periods. The required disclosures would further address: any improvements or changes made to forecasting and budgeting; instructions for toggling between year-end and 13-month average valuations of the rate base in each cost of service study filed by utility; a list of all active regulatory assets, deferred accounts, and trackers; and the underlying data for rate trend report filed with the advice letter pursuant to paragraph 3109(e).

79. Proposed subparagraphs 3353(d)(III)(H) and 4353(d)(III)(H) would further require the utility to present the salaries (base pay), incentive compensation, and total compensation of the utility's ten highest compensated executives whose compensation is included, in whole or in part (*e.g.*, an employee of the utility, its holding company, or an affiliated shared services company) in each cost of service study filed by the utility. This provision would serve to clearly identify executive compensation for the parties in the rate case and to facilitate the presentation of any recommendations to the Commission regarding whether and how such levels of executive compensation should be addressed in the development of base rates. Along these lines, we also

⁴³ Decision No. C21-0534-I, issued on September 1, 2021, Proceeding No. 21AL-0317E, pp. 13-14. Decision No. C22-0232-I, issued on April 15, 2022, Proceeding No. 22AL-0046G, p.16.

seek comments regarding what, if any, further concepts or parameters the Commission should consider adopting in rules addressing rate recovery of executive compensation.

80. With respect to both historic and forecasted capital expenditures, we seek comments on how such spending can be linked to previous proceedings granting Certificates of Public Convenience and Necessity (CPCNs), electric resource plans (ERPs), electric distribution system plans (DSPs), and gas infrastructure plans (GIPs). The Commission is interested in the critical linkage between where capital expenditures are planned, throughout various planning proceedings before the Commission, and expenditures appearing in a utility's calculation of its test year rate base. We further invite comments to identify if there are specific considerations for capital expenditures that should or could have been presented in prior planning proceedings before the Commission, but instead appeared in a base rate proceeding for the first time.

81. More generally, we seek comments on the merits of the proposed length of the historic and future periods identified in subparagraphs 3353(d)(III) and 4353(d)(III).

82. We further seek comments addressing whether the disclosures required by subparagraphs 3353(d)(III) and 4353(d)(III) should be filed into the base rate proceeding's administrative record in addition to being served on the parties to the proceeding.

83. Paragraphs 3353(e) and 4353(e) require the utilities to update the items set forth in subparagraphs 3353(d)(I) and (II) and subparagraphs 4353(d)(I) and (II) and with its submission of Rebuttal Testimony as applicable. These paragraphs further require the utility to provide parties updates to the items set forth in subparagraphs 3353(d)(III) and 4353(d)(III) as available prior to the first day of the scheduled evidentiary hearing.

84. Finally, during the pre-rulemaking outreach, several stakeholders mentioned a potential need for the Commission to update provisions related to discovery in rule 1405 of the

Commission's Rules of Practice and Procedure. We have not included these provisions in Attachments E and F to this Decision, because the focus of this Proceeding is the promulgation of rules that specifically reduce rate case expenses. Nevertheless, we invite comment on whether the Commission should engage in additional rulemaking activities with respect to the discovery-related provisions in 4 CCR 723-1.

d. Costs Prohibited from Rates

85. Section 40-3-114(1), C.R.S., requires the Commission to prohibit electric and gas utilities from using ratepayer funds to subsidize nonregulated activities. This is a longstanding statutory requirement that is addressed by several provisions in the Commission's rules regulating electric and natural gas utilities, including the section within each set of rules titled Unregulated Goods and Services found in rules 3500 through 3505 in the Electric Rules and rules 4500 through 4505 in the Gas Rules. We solicit comments on whether it is necessary to update or otherwise modify these well-established rules, particularly if such changes are required to properly implement SB 23-291.

86. Section 40-3-114(2), C.R.S., is a new provision enacted by SB 23-291 that further prohibits utilities from recovering several types of expenses from ratepayers. The temporary rules adopted by Decision No. C23-0538 did not include provisions to implement § 40-3-114(2), C.R.S. However, feedback from certain stakeholders during the pre-rulemaking outreach suggested that the permanent rules examine new potential provisions in the Electric Rules and Gas Rules that would address the prohibitions set forth in SB 23-291. Most stakeholders acknowledged that many of the prohibited costs had not been recovered through rates for decades because of Commission decisions and widely accepted practices and policies. Most stakeholders further acknowledged

that the prohibited costs do not total significant amounts when viewed in terms of the level of rates paid by customers (*e.g.*, on a per customer or per unit of energy consumed basis).

87. Paragraphs 3354(a) and 4354(a) list the costs and expenditures that are prohibited from rates. The rules are intended to accomplish the requirement by excluding the costs and expenditures listed in § 40-3-114(2), C.R.S., from the revenue requirement calculations generated by the utility's class cost of service studies presented in a base rate proceeding. Specifically, subparagraphs 3354(a)(I) through (XIV) and 4354(a)(I) through (XIV) correspond to the excluded costs listed in §§ 40-3-114(2)(a) through (1), C.R.S.

88. We seek comments on whether the prohibited costs listed in paragraphs 3354(a) and 4354(a) sufficiently implement in § 40-3-114(2), C.R.S., from SB 23-291. We further seek comments on whether it is necessary to include in the Electric Rules and Gas Rules the definitions from § 40-3-114(6), C.R.S., such as "advertising," "expenses," "lobbying," and "rate cases." The definitions for these terms included in SB 23-291 are not included in the proposed rules attached to this Decision since they are already plainly defined in statute.

89. Paragraphs 3354(b) and 4354(b) specify that the prohibited costs listed in paragraphs 3354(a) and 4354(a) shall not be otherwise recovered through a rate adjustment mechanism or through other utility charges.

90. Paragraphs 3354(c) and 4354(c) were included in the temporary rules to implement § 40-3-114(5), C.R.S., that requires the Commission to cause each utility to file an annual report to ensure the utility's compliance with in § 40-3-114(2), C.R.S. In accordance with the statute, the rule specifies that the utility's report must include the purpose, payee, and amount of any expenses associated with the prohibited costs and activities. The proposed permanent rules require the report to be filed concurrently with and in the same proceeding as the investor-owned utility's annual

report filed in accordance with rule 3006 of the Electric Rules and rule 4006 of the Gas Rules. These provisions mirror the requirements adopted for the temporary rules.

91. The implementation of § 40-3-114(5), C.R.S., was a topic of controversy raised by several stakeholders in the pre-rulemaking outreach. For instance, the utilities raised general concerns about the prospect of additional rule provisions that would inappropriately delve into their affairs regarding communications as well as practices and principles around lobbying. Other stakeholders suggested that additional requirements were necessary within paragraphs 3354(c) and 4354(c) for reporting and within rules 3354 and 4354 generally, citing, for example, the need to examine costs more granularly than is often done in a base rate proceeding. For instance, certain stakeholders suggested that the Commission develop a system of forms to disaggregate time and expenses of utility personnel who engage in both recoverable activities and non-recoverable activities such as lobbying because the uniform system of accounts used for ratemaking is insufficiently granular. Critics of such an approach expressed concerns about the time and expense required to separate out recoverable versus non-recoverable activities, particularly when the likely overall amount of any newly revealed spending on non-recoverable activities will likely fail to cause a significant positive impact to customer bills.

92. Given the divergence of views expressed during the pre-rulemaking outreach, we invite robust comments regarding proposed paragraphs 3354(c) and 4354(c) and any additional rules or clarifications to ensure the costs and expenditures that are prohibited from rates by SB 23-291 have been properly removed or otherwise excluded.

93. Proposed paragraphs 3354(d) and 4354(d) implement the provisions in § 40-3-114(4)(a), C.R.S., stating that if the Commission determines that a utility improperly recovered costs, the Commission may assess a nonrecoverable penalty against the utility.

The proposed rule relies on the existing civil penalty provisions in the Electric Rules and Gas Rules.

94. Likewise, proposed paragraphs 3354(e) and 4354(e) implement the provisions in § 40-3-114(4)(b), C.R.S., that requires the Commission to order the utility to refund the amount of improperly recovered costs and expenditures, plus interest, to customers. The proposed rule states that if the Commission assesses a civil penalty against the utility in accordance with paragraph 3355(d), the Commission shall also order the utility to submit for approval a refund plan pursuant to rule 3410 of the Electric Rules and 4410 of the Gas Rules.

e. Recovery of Rate Case Expenses

95. Several of the proposed changes to the Electric Rules and Gas Rules described above are intended to reduce the amount of rate case expenses incurred by the utility. However, § 40-3-102.5(1)(a), C.R.S., suggests that the Commission also consider rules that either implement a symmetrical incentive to motivate the utility to limit expenses or instead that cap the amount of the utility's rate case expenses that are recoverable. The limits could be specific to certain types of costs incurred (*e.g.*, for outside experts, consultants, and legal resources), or the limits could take the form of a cap on the overall amount of the utility's expenses in a rate case that are recoverable.

96. Proposed rules 3355 in the Electric Rules and 4355 in the Gas Rules are intended to be the location any rule the Commission promulgates to limit the recovery of rate case expenses in terms of caps or disallowances on the one hand and symmetrical incentives on the other hand.

97. The pre-rulemaking stakeholder outreach revealed no consensus on the approach the Commission should take with respect to an overall cap on recoverable rate case expenses, expressed either as a percentage or an absolute dollar amount. Certain stakeholders expressed

support for limits on the recovery of utility rate case expenses for outside experts, consultants, and attorneys, however some raised doubts about fairness and due process as well as about such limits potentially favoring less efficient insourcing of various rate case specialties within the utility's own ranks.

98. Few stakeholders warmed to the implementation of a symmetrical incentive, and all recognized the challenge of establishing a proper baseline for shared savings or unrecoverable amounts, particularly given the unique aspects of each base rate proceeding and the uncertainties surrounding the efforts necessary to resolve disputed issues through settlements versus protracted litigation. The pre-rulemaking outreach thus persuades us not to pursue an incentive mechanism for rate case expenditures at this time.

99. Nevertheless, we intend to further explore the use of caps and other limits to recoverable rate case expenses in this rulemaking proceeding given that caps and limits have been proposed by certain intervening parties in past utility rate cases and it is likely that a record can be developed here to help establish potential rules for either overall expenditure limits or targeted allocations of costs borne by ratepayers versus the utility's shareholders. Therefore, we seek further comment and proposals for controls over recoverable rate case expenses given the directive in SB 23-291 that the Commission promulgate rules that limit rate case expenses recovered from ratepayers.

F. Conclusion

100. Through this NOPR, the Commission solicits comments from interested persons on the amendments proposed in this Decision and its attachments. Interested persons may file written comments including data, views, and arguments into this Proceeding for consideration. The Commission also welcomes submission of alternative proposed rules, including both

consensus proposals joined by multiple rulemaking participants and individual proposals. Participants are encouraged to provide redlines of any specific proposed rule changes.

101. The Commission refers this matter to an ALJ for the issuance of a recommended decision. The ALJ will hold a hearing on the proposed rules at the below-stated time and place. In addition to submitting written comments, participants will have an opportunity to present comments orally at the hearing, unless the ALJ deems oral presentations unnecessary.

102. The proposed rules in legislative (*i.e.*, strikeout/underline) format (Attachments A, C, and E) and final format (Attachments B, D, and F) are available through the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0168EG

103. Initial written comments on the proposed rule changes are requested by May 17, 2024. Any person wishing to file comments responding to the initial comments is requested to file such comments by May 23, 2024. These deadlines are set so that the comments and responses may be considered at the public hearing, nonetheless, persons may file written comments into this Proceeding at any time.

104. The Commission prefers comments be filed using the Commission's E-Filings System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> under this Proceeding No. 24R-0168EG.

105. The Commission will consider all comments submitted in this Proceeding, whether oral or written.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachments A through F) shall be filed with the Colorado Secretary of State for publication in the May 10, 2024 edition of the *Colorado Register*.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

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

DATE June 3, 2024

TIME: 11:30 a.m. until no later than 5:00 p.m.

PLACE: By video conference using Zoom at a link in the calendar of events on the Commission's website:
<https://puc.colorado.gov/puccalendar>

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Commission deems oral comments unnecessary.

5. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than May 17, 2024, and that any pre-filed comments responsive to the initial comments be submitted no later than May 23, 2024. The Commission will consider all submissions, whether oral or written. The Commission prefers that participants file comment into this Proceeding using the Commission's E-Filings System at: <https://www.dora.state.co.us/pls/efi/EFI.homepage>.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 27, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners