

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03R-030W

IN THE MATTER OF EMERGENCY AMENDMENTS TO THE RULES REGULATING
WATER UTILITIES, 4 CCR 723-5.

**DECISION REPEALING EMERGENCY RULES AND
ADOPTING NEW EMERGENCY RULES**

Mailed Date: January 23, 2003

Adopted Date: January 22, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for adoption of an emergency rule amending the Commission's Rules Regulating the Water Utilities (Water Rules), 4 *Code of Colorado Regulations* (CCR) 723-5. The emergency rule amends Rule 11.1 of the Water Rules to require that the interest rate for customer deposits that water utilities must pay be calculated utilizing U.S. Treasury constant maturities averages for the previous year, as published in the *Federal Reserve Bulletin*. For the reasons set forth in this decision, we now adopt, on an emergency basis (*i.e.*, without compliance with the rulemaking requirements for permanent rules set forth in § 24-4-103, C.R.S.) the rule appended to this order as Attachment A. We take this emergency action in accordance with the provisions of § 24-4-103(6), C.R.S.

2. We find that adoption of the rule is necessary for the preservation of public health, safety, and welfare, and compliance with the rulemaking requirements associated with permanent rules, as set forth in § 24-4-103, C.R.S., would be contrary to the public interest.

3. As grounds for these findings, we state: It is necessary to adopt this emergency rule due to the termination of the publication of the monthly interest rates for the previous year of one-year U.S. Treasury Bill by the Federal Reserve System, that served as the benchmark for setting the interest rates that water utilities were required to pay on customer deposits.

4. Pursuant to 4 CCR 723-5-11.1, a water utility may require customers to maintain a cash deposit with it to ensure payment for services. The utility is required to pay simple interest on the deposit held.

5. Staff of the Commission calculates the interest rate to be paid on customer deposits pursuant to guidelines in Rule 4 CCR 723-5-11.1. Specifically, the interest to be paid on deposits for the forthcoming year is to be the average monthly rate in the secondary market for 1-year U.S. Treasury Bills for the previous 12-month period beginning October 1 and ending September 30, as posted in the Federal Reserve Bulletin, Board of Governors of the Federal Reserve System, Washington D.C., from the page entitled, *Interest Rate, Money and Capital Markets*.

6. The Board of Governors of the Federal Reserve Bank no longer publishes the information on the secondary market for one-year U.S. Treasury Bills necessary to establish the interest rate for customer deposits held by electric utilities.

7. Further, the Proposed Repeal and Reenactment of the Rules for Electricity, Gas, Water and Telephone Services will address the interest rate on customer deposits, however, the process for establishing those rules is ongoing and will not be completed in the coming month. The existing rate of 4.32 percent terminates on December 31, 2002. Therefore, a regulatory gap

in determining the interest rate on customer deposits will exist without this emergency rule to set interim rates.

8. To avoid such a regulatory gap, it is essential that a method to calculate short-term interest rates on customer deposits be in place as rapidly as possible in order for water utilities to have a specific interest rate in place for customer deposits. Therefore, simple interest on customer deposits shall be calculated by Commission Staff utilizing U.S. Treasury constant maturities averages for the period October 1 through September 30 of the immediately preceding year, as published in the *Federal Reserve Bulletin*.

9. Each year, Commission Staff will calculate the interest rate to be paid. The rule also provides that if the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is less than 25 basis points, the existing customer deposit interest rate shall continue for the next calendar year.

10. Implementation of the emergency rule will serve to establish an interest rate until the proposed new water utilities rules become effective.

11. Therefore, emergency adoption of the attached rules is appropriate. The statutory authority for adoption of these rules is set forth in §§ 40-2-108, 40-3-102, 40-3-103 and 40-3-104.4, C.R.S. The rule attached to this order shall be effective immediately upon the mailed date of this decision, and shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

II. ORDER

A. The Commission Orders That:

1. The rule appended to this Decision as Attachment A is hereby adopted as an emergency rule consistent with the above discussion.

2. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 22, 2003.**

(S E A L)



ATTEST: A TRUE COPY

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

POLLY PAGE

JIM DYER

Commissioners

RULE (4 CCR) 723-5-11. CUSTOMER DEPOSITS.

723-5-11.1 A utility may require at any time from a customer or prospective customer, a cash deposit intended to guarantee payment of current bills, but only in accordance with this rule. A deposit intended to guarantee payment of current bills shall not exceed an amount equal to an estimated ninety days' bill of the customer, except in the case of a customer whose bills are payable in advance of service, in which case, the deposit shall not exceed an estimated sixty days' bill of the customer. A deposit required pursuant to this rule may be in addition to any advance, contribution, or guarantee in connection with construction of lines or facilities, as provided in the extension policy of the utility's tariffs on file with the Commission. Simple interest shall be paid by the utility upon a deposit at the percentage rate per annum as calculated by the Staff of the Commission and in the manner provided in this rule, payable upon the return of the deposit, or annually at the request of the customer. Interest on a deposit shall be earned for the time such deposit is held by the utility, and shall be calculated from the date the deposit is received by the utility to the date of payment to the customer or to the date an amount equal to the deposit is credited to the customer's account. Interest payments, at the option of the utility, may be paid directly to the customer or by a credit to the customer's account. Simple interest to be paid on a deposit during any calendar year shall be at a rate equal to the average for the period October 1 through September 30 (of the immediately preceding year) of the twelve monthly average rates of interest expressed in percent per annum, as quoted ~~in the secondary market~~ in the secondary market for one-year United States Treasury ~~Bills~~ constant

maturities, as published in the *Federal Reserve Bulletin*, by the Board of Governors of the Federal Reserve System. Each year, the Staff of the Commission shall compute the interest rate to be paid. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is less than 25 basis points, the existing customer deposit interest rate shall continue for the next calendar year. If the difference between the existing customer deposit interest rate and the newly calculated customer deposit interest rate is 25 basis points or more, the newly calculated customer deposit interest rate shall be used. ~~—and~~ The Commission shall send a letter to each utility within the State stating the rate of interest to be paid on deposits during the calendar year. Annually, following receipt of Staff's letter, each utility, ~~no later than December 1 of each year,~~ shall file by advice letter, or application, as appropriate, a revised tariff, effective the first day of January of the following year, or an alternative date set by the Commission, containing the new rate of interest to be paid upon customers' deposits, except when there would be no change in the rate of interest to be paid on such deposits as calculated in this paragraph of Rule 11.