

Decision No. R02-128

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 01R-492W

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IN THE MATTER OF PROPOSED RULES REGARDING SIMPLIFIED REGULATORY  
TREATMENT FOR SMALL, PRIVATELY OWNED WATER COMPANIES.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
WILLIAM J. FRITZEL  
ADOPTING RULES**

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Mailed Date: February 6, 2002

**I. STATEMENT**

A. By Decision No. C01-1109, mailed on October 30, 2001, the Commission issued Notice of Proposed Rulemaking. The Commission stated that the proposed rules concerning regulatory treatment for small, privately owned water companies are proposed to implement the legislative directives pursuant to § 40-3-104.4, C.R.S. The legislation provides for regulatory treatment that is less comprehensive than otherwise provided to privately owned water companies that serve fewer than 1,500 customers.

B. In its order, the Commission referred the matter to an Administrative Law Judge for hearing and scheduled a hearing in this matter for December 10, 2001.

C. Written comments were filed by Durango Metropolitan District No. 1 ("DW1") on December 3, 2001.

D. A hearing was held on the proposed rules at the scheduled time.

E. Appearances were entered by DW1 and by Staff of the Colorado Public Utilities Commission ("Staff").

F. Pursuant to § 40-6-109, C.R.S., the record of this proceeding and a written recommended decision are transmitted to the Commission.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A. DW1 generally agrees with the proposed rules, however, it has some specific concerns and suggestions. DW1 believes that the rules should include a provision that requires small privately owned water companies with fewer than 1,500 customers to make a preliminary showing that the granting of simplified regulatory treatment is consistent with the public interest, quality of service, financial condition of the company, and just and reasonable rates.

B. This suggestion will not be adopted. Rule 4 *Code of Colorado Regulations* ("CCR") 723-5-30.1.2 of the proposed rules adequately address the concern expressed by DW1. Proposed Rule 4 CCR 723-5-30.1.2 states:

The application shall include the requirements of the respective option, as set forth below, and an explanation of how approval of the application will balance reasonable regulatory oversight with the costs and benefits of regulation, while continuing to

consider the public interest, quality of service, financial condition, and just and reasonable rates.

C. DW1 next comments that Proposed Rule 4 CCR 723-5-30.1.4 be changed to state that an application shall either be scheduled for hearing or, at the Commission's discretion, decided without a hearing under the provisions of the Commission's modified procedure pursuant to Rule 24 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1-24.

D. The suggestion will be adopted. The Commission's modified procedure is normally used for noncontested cases.

E. DW1 recommends that the Resource Cost Pass-Through Option contained in proposed Rule, 4 CCR 723-5-30.3.2 be modified to require that an applicant who purchases its wholesale water, or other pass-through commodities from an affiliate be required to show that both the price change and the base price for the water are reasonable.

F. DW1 also recommends that Rule 4 CCR 723-5-30.3.3, Operating Ratio Methodology Option should be modified to add language that states that the use of the methodology will be examined by the Commission for unusual one time expenditures, including expenses due to transactions with a company's affiliates.

G. The above suggestions of DW1 contained in paragraph nos. 3 and 4 will not be adopted. These suggestions are

apparently related to, and with reference to a specific water company. The proposed rules are rules of general applicability, and therefore a provision addressing concerns related to particular water company should not be included in the rules.

H. DW1 next comments that 4 CCR 723-5-30.3.4.1 should be modified to remove the underlined language of the proposed rules as follows:

Funds from the [reserve for major Improvements] account shall not be employed for a purpose other than those permitted under this option without specific written permission from the commission.

DW1 believes that a company who seeks approval for the use of the option should be required to dedicate the funds to the use stated in the original application.

I. The suggestion is a good one and will be recommended for adoption.

J. It is found and concluded that the proposed rules are reasonable and calculated to implement the directives of the General Assembly as contained in § 40-3-104.4, C.R.S.

K. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

### **III. ORDER**

#### **A. The Commission Orders That:**

1. The proposed rules regarding simplified regulatory treatment for small, privately owned water companies,

4 *Code of Colorado Regulations* 723-5 attached to this Decision and Order are adopted.

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

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

4. A copy of the rules adopted by this Decision shall be filed with the Office of the Secretary of State for publication in *The Colorado Register*. The rules shall be submitted to the appropriate committee of reference of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or to the committee on legal services, if the General Assembly is not in session, for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized,

or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

( S E A L )

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO



WILLIAM J. FRITZEL

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "Bruce N. Smith".

Bruce N. Smith  
Director

**THE  
 PUBLIC UTILITIES COMMISSION  
 OF THE  
 STATE OF COLORADO  
 WATER UTILITIES**

**4 CODE OF COLORADO REGULATIONS (CCR) 723-5**

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**4 CCR 723-5-PART I. - SERVICE TO BE PROVIDED BY JURISDICTIONAL WATER UTILITIES TO THEIR CUSTOMERS**

*[Rules 4 CCR 723-5-1 through 723-5-27.7 become Part I as titled above. No other changes are proposed for Part I in this rulemaking.]*

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*[Rules 4 CCR 723-5-28 through 723-5-31, proposed for Part II, are entirely new.]*

**[NEW]**

**4 CCR 723-5-PART II - RULES REGULATING APPLICATIONS BY SMALL PRIVATELY OWNED WATER COMPANIES FOR SIMPLIFIED REGULATORY TREATMENT**

**BASIS, PURPOSE AND STATUTORY AUTHORITY**

The basis and purpose of these rules is to establish regulations regarding applications for simplified regulatory treatment by small, privately-owned water companies that serve fewer than one thousand five hundred customers. These rules are intended to balance reasonable regulatory oversight with the cost of regulation in relation to the benefit derived from such regulation while continuing to consider the public interest, quality of service, financial condition, and just and reasonable rates.

These rules are issued pursuant to §§ 40-3-104.4, C.R.S.

1 **RULE (4 CCR) 723-5-28. APPLICABILITY.**

2 These rules apply to all small, privately-owned water  
3 companies serving fewer than one thousand five hundred  
4 customers that request simplified regulatory treatment.

5 **RULE (4 CCR) 723-5-29. DEFINITIONS.**

6 The meaning of terms used in these rules shall be consistent  
7 with their general usage in the water utility industry unless  
8 specifically defined by Colorado statute or by this rule. In  
9 addition to the definitions in this section, the statutory  
10 definitions apply. In the event the general usage of terms in  
11 the water utility industry or definitions in this rule  
12 conflict with the statutory definitions, the statutory  
13 definitions control. As used in these rules the following  
14 definitions apply:

15 723-5-29.1 Advice letter - Filing made by a water  
16 utility with the Commission that proposes a new or changed  
17 tariff.

18 723-5-29.2 Applicant - Any provider of jurisdictional  
19 water utility services, or any person seeking to be authorized  
20 by the Commission to offer water utility services, who files  
21 an application with the Commission pursuant to these rules and  
22 who serves less than one thousand five hundred customers.

23 723-5-29.3 Customer - Any person, group of persons,  
24 partnership, firm, corporation, institution, any agency of the  
25 Federal, State or local governments, their lessees, trustees,  
26 or receivers appointed by any court, contracting for water  
27 service from any utility for domestic, commercial, or  
28 industrial use or for wholesale distribution.

29 723-5-29.4 Small Water Company - A water company that  
30 serves fewer than one thousand five hundred customers.

1           723-5-29.5   Privately- Owned Water Company -   A water  
2 service provider that is owned by one or more persons or a  
3 corporation.           “Privately-owned water company” does not  
4 include any company owned or operated by any political  
5 subdivision of the state, a special district, or any  
6 municipal, quasi-municipal, or public corporation organized  
7 pursuant to Colorado law.

8   **RULE (4 CCR) 723-5-30.   SIMPLIFIED REGULATORY TREATMENT.**

9 Five options will be available for small privately-owned water  
10 companies seeking simplified regulatory treatment. The *Annual*  
11 *Rate Adjustment, Resource Cost Pass-Through, Operating Ratio*  
12 *Methodology,* and the *Capital Improvement Reserve Options,* as  
13 identified in this rule, will be presumed by the Commission to  
14 be reasonable methods of simplified regulatory treatment  
15 unless data and evidence is provided to demonstrate that the  
16 option is not reasonable for the applicant. A small,  
17 privately owned water company seeking a *Company Specific,*  
18 *Customized Option* shall have the burden of proving that such  
19 an option is reasonable for the applicant and its customers,  
20 and that such an option is not discriminatory.

21           **723-5-30.1   Procedures.**

22 The simplified regulatory treatment shall be implemented as  
23 follows:

24           723-5-30.1.1   The small, privately-owned water  
25 company shall file an application with the Commission  
26 requesting one or more of the options identified above. The  
27 application shall be filed in accordance with Commission Rules  
28 of Practice and Procedures, 4 CCR 723-1. However, a small,  
29 privately-owned water company is prohibited from participating

1 in both the *Annual Rate Adjustment Option* and the *Resource*  
2 *Cost Pass-Through Option* at the same time.

3 723-5-30.1.2 The application shall include the  
4 requirements of the respective option, as set forth below, and  
5 an explanation of how approval of the application will balance  
6 reasonable regulatory oversight with the costs and benefits of  
7 regulation, while continuing to consider the public interest,  
8 quality of service, financial condition, and just and  
9 reasonable rates.

10 723-5-30.1.3 Within five days of the filing of the  
11 application, the small, privately-owned water company shall  
12 provide notice to its customers of the filing of the  
13 application. Such notice shall be given by filing with the  
14 Commission and keeping open for public inspection at the small  
15 water company's local business office the form established by  
16 the Commission. Additionally, the small, privately-owned  
17 water company shall either cause the notice to be published in  
18 each newspaper of general circulation in each county in which  
19 the water company provides service, or shall include a bill  
20 insert containing the same information contained in the  
21 notice. An applicant electing to provide notice with a bill  
22 insert must take appropriate measures to provide each and  
23 every customer with the insert. Providing a bill insert to  
24 only the master meter operator is not sufficient customer  
25 notice. This notice shall allow interested parties 30 days to  
26 intervene or file comments regarding the filing. If the  
27 small, privately-owned water company elects to provide notice  
28 through publication, proof of said publication shall be  
29 provided to the Commission. Failure to provide the Commission  
30 with proof of publication may cause the Commission to deem the  
31 application incomplete.

1           723-5-30.1.4       The Commission may grant the  
2 application, if unopposed, without a hearing, pursuant to  
3 Rule (4 CCR) 723-1-24, or set the application for hearing in  
4 accordance with the Rules of Practice and Procedure relating  
5 to applications, 4 CCR 723-1.

6           723-5-30.1.5   A small, privately-owned water company  
7 may file an application to change to an alternative simplified  
8 regulatory treatment at any time. The application shall  
9 request authorization to terminate the existing simplified  
10 regulatory treatment and shall request a new simplified  
11 regulatory treatment.

12          723-5-30.1.6   A small, privately-owned water company  
13 may file an application to terminate an existing simplified  
14 regulatory treatment and return to traditional rate base  
15 regulation at any time. The Commission may set the  
16 application for hearing and existing rates for water services  
17 may be adjusted. At the conclusion of such a rate case  
18 proceeding, the rates and conditions established in the rate  
19 case proceeding will replace the rates and conditions  
20 developed under any simplified regulatory treatment option.

21          723-5-30.1.7   A small, privately-owned water company  
22 shall not be permitted to terminate participation in one or  
23 more simplified regulatory treatment options for the purpose  
24 of avoiding a potential decrease in rates to its customers.

25          723-5-30.1.8   Nothing in these rules shall limit a  
26 customer's right to file a formal complaint against a small  
27 water company. Nothing in these rules shall prohibit or  
28 restrict the Commission from initiating an investigation or  
29 show cause proceeding against a small privately-owned water  
30 company.

1           **723-5-30.2           Additional   Eligibility   Criteria,   and**  
2 **Reporting Requirements**

3           723-5-30.2.1   For the purpose of determining whether  
4 a water utility meets the definition of a small water company,  
5 multi-residential or multi-commercial units, including  
6 wholesale purchasers of water from a small water company  
7 subject to a master meter operating agreement, shall not be  
8 aggregated and counted as one customer.   Instead, the number  
9 of singular units in the complex or served under the master  
10 meter operating arrangement is to be used in determining  
11 compliance with this rule.

12           723-5-30.2.2   Consistent with the requirement of  
13 paragraph 1 above, the small water company shall require  
14 multi-residential or multi-commercial entities or master meter  
15 operators to annually furnish the small water company with a  
16 numeric listing of the number of singular units receiving  
17 water services directly or indirectly from such entities.   In  
18 the event the small water company fails to obtain and annually  
19 submit this information to the Commission, the Commission may  
20 revoke or deny simplified regulatory treatment for that  
21 company.

22           **723-5-30.3   Simplified Regulatory Treatment Options.**

23   The Commission may grant to a small, privately-owned water  
24 company authority to participate in any of the following  
25 simplified regulatory treatment options:

26           **723-5-30.3.1   Annual Rate Adjustment Option.**

27           723-5-30.3.1.1   The Commission on or before  
28 March 31 of each year, by letter, shall inform all  
29 participants in the Annual Rate Adjustment Option of the rate

1 adjustment to be effective May 1, of each year. The  
2 percentage adjustment shall be determined by the net,  
3 positive or negative, of the difference between:

4 · the annual percent change in the United States Gross  
5 Domestic Product Chain-Type Price Index ("GDPPI") as published  
6 by the United States Department of Commerce, Bureau of  
7 Economic Analysis, and as published in the Economic Report Of  
8 The President,<sup>1</sup> and;

9 · an appropriate measure of productivity, specifically  
10 the "Private And Non-Farm Business Multifactor Productivity  
11 Percentage Change" ("PNFBMPP") as published by the Bureau of  
12 Labor Statistics, and as published in The Economic Report Of  
13 The President.<sup>2</sup>

14 This Price Adjustment Formula is as follows:

15 
$$\text{Price Adjustment} = \text{GDPPI} - \text{PNFBMPP}$$

16

17 723-5-30.3.1.2 On or before April 15 of each  
18 year, each small, privately-owned water company participating  
19 in this simplified regulatory treatment shall file an advice  
20 letter and accompanying tariff sheets with the Commission to  
21 implement the change effective May 1.

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<sup>1</sup> For the edition published in January 2001, the GDPCTPI appears in the third column (GDP chain-type price index) of Table -3 "Quantity and price indexes for gross domestic product, and percent changes, 1959-2000 [quarterly data seasonally adjusted],. Source: Department of Commerce, Bureau Of Economic Analysis." The index also is available from the Bureau Of Economic Analysis,

<sup>2</sup> Source: Department Of Labor, Bureau Of Labor Statistics.

1                   **723-5-30.3.2 Resource Cost Pass-Through Option.**

2 Under this option, the small, privately-owned water company  
3 may seek Commission authority to pass-through price changes  
4 (increases and decreases) relating to the acquisition cost for  
5 wholesale water from a local municipality, other governmental  
6 entity, or other source as approved by the Commission.  
7 Following Commission approval to participate in this  
8 simplified regulatory treatment option, the water company  
9 shall timely inform the Commission of all increases or  
10 decreases in the cost of water and shall file an advice letter  
11 to implement any resulting change in customer rates within 30  
12 days of the effective date of the price change for wholesale  
13 water. For good cause, the water company may seek Commission  
14 approval to include other water company expenditures ordered  
15 by a governmental entity. Examples of such other expenditures  
16 could include, but would not necessarily be limited to,  
17 changes in water augmentation assessments and changes in costs  
18 associated with compliance with provisions of the Safe  
19 Drinking Water Act of 1974.

20                   **723-5-30.3.3 Operating Ratio Methodology Option.**

21 Under this option the water company may request that the  
22 Commission employ an operating ratio methodology in  
23 determining appropriate rates to be charged by the water  
24 company. An operating ratio methodology for setting rates  
25 differs from a traditional rate base methodology, and may be  
26 an acceptable tool in evaluating rates when little or no rate  
27 base exists.



1                   **723-5-30.3.4     Reserve Account for Major Capital**  
2 **Improvements Option.**

3 A small, privately owned water company may file an application  
4 seeking Commission authority to establish a reserve account to  
5 fund future major capital expenditures. Under this option,  
6 the water company may be authorized to implement a monthly  
7 surcharge to fund a reserve account for future capital  
8 improvement expenditures. In filing an application to initiate  
9 this option or to amend any provisions of this option, the  
10 water company should clearly identify the proposed method for  
11 collecting funds to be contributed to the reserve account, and  
12 the expected use of such funds.

13                   723-5-30.3.4.1     The level and method for  
14 collecting money for the reserve account for major capital  
15 improvements must be specifically approved by the Commission.  
16 Accordingly, the water company in applying to implement this  
17 option must submit sufficient financial information for the  
18 Commission to review the company's proposed capital  
19 improvement needs and explain the merits of its funding  
20 methodology. Funds in the reserve account shall be kept in a  
21 separate interest bearing cash account. Interest accrued  
22 shall be credited to the reserve account and become part of  
23 the corpus of the reserve account. Funds from the account  
24 shall not be employed for a purpose other than those permitted  
25 under this option ~~without specific written permission from the~~  
26 ~~Commission~~. Disbursements from the fund shall be restricted  
27 to the uses identified in a the application approved by the  
28 Commission. The burden of demonstrating that actual or  
29 proposed expenditures are reasonable and in the public  
30 interest shall be borne by the water company.

1                   723-5-30.3.4.2   The water company shall report  
2 all disbursements from the reserve account by written notice  
3 to the Commission and to other persons as the Commission may  
4 direct. Disbursements from the reserve account that are found  
5 by the Commission to have been made improperly, or in  
6 violation of any statute, regulation or order of the  
7 Commission shall be returned to the account or refunded to  
8 ratepayers as the Commission may direct.

9                   723-5-30.3.4.3   Plant capitalized by means of  
10 the reserve account shall be accounted for as a contribution  
11 in aid of construction.

12                   **723-5-30.3.5   Company Specific, Customized Option.**

13                   723-5-30.3.5.1   A small, privately-owned water  
14 company may file an application seeking Commission  
15 authorization to implement provisions of a company specific,  
16 customized option plan. The Commission shall consider the  
17 merits of any specific option presented and determine whether  
18 such provisions are consistent with the objectives of these  
19 rules. In presenting an option for the Commission's  
20 consideration, the small water company shall bear the burden  
21 of proving that: (1) the proposals appropriately balance  
22 reasonable regulatory oversight with the costs and benefits of  
23 regulation; (2) the provisions are not discriminatory; and (3)  
24 implementation of such provisions is in the public interest,  
25 improves the quality of water service to customers, is  
26 financially compensatory, and promotes the development and  
27 maintenance of just and reasonable rates.

28                   723-5-30.3.5.2   The small, privately-owned  
29 water company must maintain accounting records to provide  
30 sufficient financial information for the commission to assess

1 the merits of the proposal and its projected impact on the  
2 company.

3 **RULE 4 (CCR) 723-5-31. TRANSITIONAL PROVISIONS.**

4 When the number of customers, as reported in its annual report  
5 to the Commission, served by the water company meets or  
6 exceeds one thousand five hundred, the water company shall  
7 immediately notify the Commission and provide the Commission  
8 with a proposed transitional regulatory plan. For good cause  
9 shown, the Commission's regulatory oversight of the small  
10 water company may continue to permit the water company to  
11 participate in regulatory treatment options as described in  
12 this rule when its customer count exceeds the established  
13 limit.

14 L:\DECISION\!MOVING\R02-0128A\_01R-492W.DOC