

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03V-117EG

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE COMPANY OF COLORADO
FOR A PERMANENT WAIVER OF A PORTION OF RULE 11, CUSTOMER DEPOSITS, OF
THE RULES REGULATING ELECTRIC UTILITIES AND THE RULES REGULATING GAS
UTILITIES.

ORDER GRANTING PETITION IN PART

Mailed Date: April 30, 2003

Adopted Date: April 16, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Petition for a Waiver of a Portion of Rule 11, Customer Deposits of the Rules Regulating Electric Utilities and the Rules Regulating Gas Utilities and for Expedited Determination (Petition), filed by Public Service Company of Colorado (PSCo) on March 24, 2003.

2. According to PSCo's original Petition, it sought an order from the Commission granting a permanent waiver of that portion of Rule 11 of the Rules Regulating Electric and Gas Utilities found at 4 *Code of Colorado Regulations* (CCR) 723-3-11 and 4 CCR 723-4-11 respectively. PSCo stated that it would implement a new billing system starting in its Mountain, Western, Pueblo, and San Luis divisions on May 1, 2003. The new system, as represented in the Petition, is programmed to refund to customers, on an annual basis, the accrued interest on deposits held by PSCo. The new billing system will automatically review accounts holding deposits each January and credit customers' accounts any accrued interest. PSCo further represents that any accrued interest that has not been returned to a customer through the annual

review process will continue to be paid to customers upon return of the deposit as required by Commission rules.

3. Rules 4 CCR 723-3-11 and 4 CCR 723-4-11 state in relevant part:

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 as provided in this rule, payable upon the return of the deposit, or annually at the request of the customer.

4. PSCo explains that customers who have paid a deposit will benefit from the new billing system change by receiving interest on their deposit annually instead of only at the time of refund of the deposit or annually if requested by the customer. Any customer who holds a deposit will receive the total accrued interest, credited to the customer account, during the first year's annual review as a "catch-up," then annually in January thereafter. PSCo cites the example of when its new billing system is implemented for the Mountain, Western, Pueblo, and San Luis divisions, on or around May 1, 2003, the billing system will review all accounts that hold a deposit and will credit to the next bill, the amount of the accrued interest.

5. Commission Staff subsequently sent a "Deficiency Letter" to PSCo on March 28, 2003, indicating the deficiencies of several areas of PSCo's Petition. The letter further requested that PSCo submit a supplement to its Petition correcting the identified deficiencies.

6. In response, on April 9, 2003, PSCo submitted a supplement to its Petition, indicating further statements of good cause as to why the Commission should grant the permanent waiver of gas and electric Rule 11. In addition to reiterating the assertions from its original Petition, the supplement indicated that while PSCo still holds the deposit of the customer, the customer will be able to receive a refund of the accrued interest automatically on an annual basis, instead of having to go to the time and expense of requesting a refund annually,

or having to wait until the account is terminated. This feature, according to PSCo, will put accrued interest into the customer's "pocket" quicker and more conveniently than having a customer request the interest refund. Because the Commission's rules provide less favorable treatment for the customer than the company's new software is capable of providing, PSCo asserts that good cause exists for taking advantage of this new software feature to return accrued interest on customer deposits to the customers.

7. PSCo further supplemented its Petition on April 16, 2003. In this supplement, PSCo indicates that it is seeking additional flexibility to refund interest on customer deposits beyond situations currently provided in Rule 11. PSCo indicates that it will continue to refund any accrued and unpaid interest on deposits at the time that a deposit is returned to the customer as provided in the current rule. Additionally, it will continue to refund interest on deposits annually at the customer's request. Since, according to PSCo, its new customer information system has been implemented statewide, all customers for whom PSCo is retaining a deposit will receive any accrued interest on such deposit in January of each year. Thus, PSCo claims that there will be no need for any customer to request a refund or interest on a deposit annually, since such interest refunds will occur automatically.

II. ANALYSIS

8. While we are persuaded that good cause exists to grant a waiver of Rule 11, we are nonetheless loathe to grant a permanent waiver. We agree with PSCo that its new accounting system will benefit ratepayers by automatically reviewing and returning accrued interest on customer deposits to customers, without a customer having to specifically request the interest refund.

9. We are further persuaded that customers who are required to pay a deposit will benefit from the new billing system by receiving interest on their deposit annually, rather than only receiving interest payment at the time of refund of the deposit or annually, if requested by the customer. This method of paying interest on gas and electric customer deposits is clearly a benefit to ratepayers that should be encouraged by the Commission.

10. While we applaud PSCo's efforts in easing the requirements for customers to obtain interest payments on deposits with the company, we find that a permanent waiver of gas and electric Rule 11 is not appropriate. As a general policy consideration, we do not typically grant permanent waivers of our rules, except for extraordinary circumstances. Such a finding is tantamount to a rulemaking proceeding. We do not find that such extraordinary circumstances exist here.

11. As PSCo is aware, Rule 11 of the gas and electric rules addressing the interest rates on customer deposits are temporary rules adopted by the Commission on January 23, 2003.¹ We adopted these emergency rules in response to the cancellation of a publication by the Federal Reserve Bank that was crucial in determining the annual interest rate on customer deposits. As such, Rule 11 of the gas and electric rules will expire prior to the end of 2003, or when we adopt our revised gas and electric rules.

12. Therefore, we find that granting a permanent waiver of an emergency rule would not be appropriate. Instead, we find that because PSCo states good cause to implement the changes to the rules that alter the method of paying interest on customer deposits, we will grant a

¹ The rule relating to customer deposits for Electric Utilities was adopted in Decision No. C03-0081, in Docket No. 03R-028E. The rule relating to customer deposits for Gas Utilities was adopted in Decision No. C03-0082, in Docket No. 03R-029G.

temporary waiver of gas and electric Rule 11. This temporary waiver of gas and electric Rule 11 will remain in effect until we adopt revised gas and electric rules.

13. In the meantime, we encourage PSCo to work with Commission Staff to incorporate the substance of its revised method of paying interest on customer deposits into the revised gas and electric rules, while ensuring that any change in language to Rule 11 does not prejudice other gas and electric utilities required to pay interest on customer deposits.

14. Therefore, we grant PSCo's petition in part consistent with the discussion above.

III. ORDER

A. The Commission Orders That:

1. The Petition of Public Service Company of Colorado for a Waiver of a Portion of Rule 11, Customer Deposits of the Rules Regulating Electric Utilities and the Rules Regulating Gas Utilities and for Expedited Determination is granted in part consistent with the discussion above.

2. A temporary waiver of Rule 4 *Code of Colorado Regulations* 723-3-11 of the Commission's Rules Regulating the Service of Electric Utilities, pertaining to the time and method interest shall be paid on a customer deposit is granted consistent with the discussion above.

3. A temporary waiver of Rule 4 *Code of Colorado Regulations* 723-4-11 of the Commission's Rules Regulating the Service of Gas Utilities, pertaining to the time and method interest shall be paid on a customer deposit is granted consistent with the discussion above.

4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 16, 2003**

(S E A L)



ATTEST: A TRUE COPY

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners