

Decision No. C04-0375

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04R-170EG

IN THE MATTER OF THE PROPOSED REPEAL AND REENACTMENT OF ALL RULES
REGULATING MASTER METER OPERATORS.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: April 13, 2004

Adopted Date: April 13, 2004

BY THE COMMISSION:

A. Statement

1. The Colorado Public Utilities Commission gives notice of proposed rulemaking regarding its rules regulating Master Meter Operators (MMOs). The intent of the proposed rules is to repeal and reenact, with additions and modifications such as those described in this order and in the attachments, the rules currently found at 4 *Code of Colorado Regulations* (CCR) 723-3-33 and 723-4-31. A copy of the proposed rules is attached to this notice of proposed rulemaking.

2. These proposed rules will supersede the MMO section of the recently proposed rules regulating gas utilities and pipeline operators, 4 CCR 4800-4805 and the recently proposed rules regulating electric utilities and steam utilities, 4 CCR 3800-3805 which are the subject of ongoing rulemaking proceedings that were noticed in December of 2003 in Docket Nos. 03R-520G and 03R-519E, respectively. Therefore, the MMO rules proposed in this notice of proposed rulemaking are shown in redline format to highlight changes to the recently proposed rules. That is, the redline rules do not show changes from rules that are currently effective, but show changes to the rules proposed in December of 2003.

3. The proposed repeal and reenactment is part of a greater Commission effort to revise and recodify its current rules. The proposed rules are intended: to update existing rules related to master meter operators; to make the rules related to master meter operators consistent, to the extent possible, with other Commission rules; to improve administration and enforcement of relevant provisions of Title 40 of the Colorado Revised Statutes; to eliminate unnecessary or burdensome regulation; and to improve the regulation proceedings before the Commission.

4. The statutory authority for the proposed rules is found at §§ 40-1-103.5, 40-2-108, 40-3-101, 40-3-102, 40-3-103, 40-3-110, 40-4-101, 40-4-102, 40-6-108, 40-7-105, 40-7-107, C.R.S.

5. Pursuant to § 40-1-103.5 (1), C.R.S., the Commission may upon its own motion exempt a master meter operator from regulation of rates under the Public Utilities Law, so long as the operator meets the requirements in that statute. The Commission believes that rate regulation of MMO's is unnecessarily burdensome, and does not make sense, provided that MMO's meet the requirements set forth in statute. Therefore, through the rules attached to this NOPR, we propose to exempt all MMO's from rate regulation under the Public Utilities Law provided that they meet the requirements in § 40-1-103.5, C.R.S.

6. An Administrative Law Judge (ALJ) for the Commission will conduct a hearing on the proposed rules and related issues at the below stated times and place. These hearing times and place are set to be the same as rulemaking hearings recently set by the ALJ as part of the ongoing gas and electric rulemakings that were noticed in December of 2003. We direct the ALJ to include the attached proposed changes as a part of the ongoing gas and electric rulemakings. Interested persons may submit written comments on these proposed rules and present these

orally at hearing, unless the ALJ deems oral presentations unnecessary. The Commission also encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before the hearing, the Commission requests that such comments be filed no later than June 1, 2004. Reply comments should be filed no later than June 14, 2004. The Commission requests that interested persons submitting comments do so both in paper and electronic format, on a CD or 3-1/2" floppy disc. The Commission may post electronically submitted comments to its web site. The Commission will consider all submissions.

7. Because the proposed rules will result in the repeal of the Commission's existing rules regulating master meter operators, interested persons may also submit comments regarding whether specific provisions in the presently existing rules should be retained in the reenacted rules.

8. Appendix A, attached hereto, sets forth all the proposed MMO rules. As part of its overall objective to improve consistency between rules, the Commission proposes language that consolidates the rules that are common among the various types of utilities. We have also intentionally made changes to certain rules. Although it is not possible to list every change to the language of the rules, we highlight several major areas of substantive change, as follows:

9. Under proposed rules 3802 and 4802, MMOs will not be subject to rate regulation because the Commission has by its own motion, pursuant to § 40-1-103.5 (1), C.R.S., exempted all MMOs from rate regulation.

10. Because all MMOs would be exempt from rate regulation under the proposed rules, filing requirements under the existing rules have been eliminated because an application for exemption is not necessary.

11. Proposed rules 3803 and 4803 set forth what is required of MMOs, namely that they comply with the provisions set forth in § 40-1-103.5 (1), C.R.S.

12. Under proposed rules 3804 and 4804, MMOs would be required to comply with the provisions set forth in § 40-1-103.5 (2) concerning rebates and rate reductions, and that an MMO would be subject to civil penalties for failure to do so.

13. Under proposed rules 3805 and 4805, customers subject to MMOs may file complaints with the Commission, and the Commission may, if an investigation determines that the MMO has violated any of the requirements in the proposed rules, revoke the exempt status of the MMO and/or impose a civil penalty as set forth in § 40-7-107, C.R.S.

II. ORDER

A. The Commission Orders That:

1. Pursuant to § 40-1-103.5 (1), C.R.S. the Commission proposes to exempt each Master Meter Operator from rate regulation under the Public Utilities Law, provided that the MMO meets the requirements set forth in § 40-1-103.5 (1), C.R.S.

2. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the May 10, 2004 edition of *The Colorado Register*.

3. 3. A hearing on the proposed rules and related matters shall be held as a part of the gas and electric rule hearings that have been scheduled to be heard before an Administrative Law Judge as follows:

Gas

HEARING DATES: July 19 and 20, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
Office Level 2 (OL2)
Logan Tower
1580 Logan Street
Denver, Colorado

Electric

HEARING DATES: July 13 and 14, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
Office Level 2 (OL2)
Logan Tower
1580 Logan Street
Denver, Colorado

At the times set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Administrative Law Judge deems oral comments unnecessary. At the hearings referenced above, the Administrative Law Judge may set further hearing dates to continue the discussion and comment.

4. Interested persons may file written comments in this matter before the hearing. The Commission requests that such prefiled comments be submitted in both paper and electronic format no later than June 1, 2004. Reply comments should be submitted by June 14, 2004. The Commission will consider all submissions, whether oral or written.

5. This order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING April 13, 2004.

(SEAL)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

Commissioners

COMMISSIONER JIM DYER
ABSENT.

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Bruce N. Smith'.

Bruce N. Smith
Director

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3

RULES REGULATING ELECTRIC UTILITIES AND STEAM UTILITIES

[THIS DOCUMENT SHOWS PROPOSED CHANGES TO MASTER METER OPERATOR RULES 3800-3805. CHANGES FROM THE RULES ISSUED AS A PART OF THE NOTICE OF PROPOSED RULEMAKING IN DECISION NO. C03-1370, DOCKET NO. 03R-519E, ISSUED DECEMBER 15, 2003, ARE SHOWN IN REDLINE FORMAT.]

MASTER METER OPERATORS

3800. Applicability.

These rules are applicable to any person who purchases electric service from a utility for the purpose of delivery of such service to end users whose aggregate usage is to be measured by a master meter or other composite measurement device.

3801. Definitions.

The following definitions apply only in the context of Rules 3900 - 3903, unless a specific statute or rule provides otherwise.

- (a) "Check-meter" means a meter or other composite measurement device, used by a master meter operator who is exempt from rate regulation, to determine usage of those served.
- (b) "Master meter" means the meter or other composite measurement device used to bill the MMO by the regulated utility.
- (c) "Master meter operator" means any person who purchases electric service from a regulated utility for the purpose of delivery of such service to end users, whose aggregate usage is to be measured by a master meter.
- (d) "Refunds" means any refunds, rebates, rate reductions, or similar adjustments.

3802. Exemption from Rate Regulation. ~~Contents. Either upon its own motion or upon the application of any master meter operator (MMO), t~~The Commission has, pursuant to its own motion under § 40-1-103.5, C.R.S., and Decision No. [insert Commission order adopting rules], exempted all MMOsmay exempt a MMO from rate regulation under Articles 1 to 7 of Title 40, C.R.S., provided they comply with rules 3803 and 3804. ~~, if the Commission finds that the MMO has adopted adequate policies and~~

~~procedures. All applications for master meter exemption from regulation shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attached exhibits:~~

3803. MMO Requirements.

(a) In order to retain its exemption from rate regulation a MMO must have policies and procedures in place which ensure that:

~~(I) All of information required in rules 3002(b) and (c):~~

~~(II)~~ (I) As part of its billing for utility service, ~~the each~~ MMO shall charge the end-users only the actual cost billed to the MMO by the serving utility. ~~The Each~~ MMO shall not charge end-users for any other costs, such as the costs of construction, maintenance, financing, administration, metering, or billing for the equipment and facilities owned by the MMO.

~~(III)~~ (II) If the MMO bills the end-users separately for service, the sum of such billings shall not exceed the amount billed to the MMO by the serving utility. ~~The Each~~ MMO shall pass on to the end-users any refunds it receives from the serving utility.

~~(IV)~~ (III) ~~The Each~~ MMO shall establish procedures for giving notice of refunds to those who are not current end-users, but who were end-users during the subject time period.

(b) Resale of electricity for profit by a MMO exempt from rate regulation is strictly prohibited. A MMO may check-meter tenants, lessees, or other persons to whom ultimately the electricity is distributed, for the purpose of reimbursing the MMO by an appropriate allocation procedure, provided the MMO does not receive more than the actual cost billed to the MMO by the serving utility. Resale activity is a basis for revocation of an exemption ~~order~~ from rate regulation.

3804. MMO Refunds.

(a) In passing on refunds to end-users, ~~a each~~ MMO shall notify its end-users of any refunds and inform the end-users that they may claim the refunds within 90 days after receipt of the notice. The notification shall be made by first-class mail with a certificate of mailing, or by inclusion in any monthly or more frequent written communication. ~~The Each~~ MMO shall also notify former customers who were end-users during the subject time period.

(b) If the aggregate amount of refunds remaining unclaimed after 90 days exceeds 100 dollars, the MMO shall contribute such unclaimed amount to the energy assistance organization. If the aggregate amount does not exceed 100 dollars, the MMO may retain such

aggregate amount. ~~A~~Each MMO may retain any portion of such refunds that rightfully belongs to the MMO.

- (c) ~~A~~Each MMO shall pay interest on undistributed refunds in accordance with the Commission's Customer Deposit Interest Rate Rule 3402(1).

3805. Complaints and Penalties.

- (a) Any customer subject to a master meter may file a complaint with the respect to alleged violations of the requirements set forth in rules 3803 and 3804 above. This complaint shall be filed with the Commission, formally or informally Pursuant to Rules 1301 and 1302.
- (b) The Commission shall investigate complaints concerning MMOs, and if after investigation, the Commission finds that an MMO has violated any of the requirements set forth in rules 3803 and 3804 above, the MMO may have its exempt status revoked, and/or may be subject to penalties as set forth in § 40-7-107, C.R.S.

3805.3806. -3899 [Reserved].

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-4

PART 4

RULES REGULATING GAS UTILITIES AND PIPELINE OPERATORS

[THIS DOCUMENT SHOWS PROPOSED CHANGES TO MASTER METER OPERATOR RULES 4800-4805. CHANGES FROM THE RULES ISSUED AS A PART OF THE NOTICE OF PROPOSED RULEMAKING IN DECISION NO. C03-1371, DOCKET NO. 03R-520E, ISSUED DECEMBER 15, 2003, ARE SHOWN IN REDLINE FORMAT.]

MASTER METER OPERATORS.

4800. Applicability.

These rules are applicable to any person who purchases gas service from a utility for the purpose of delivery of such service to end users whose aggregate usage is to be measured by a master meter or other composite measurement device. Gas Pipeline Safety Rules, including Incident Reporting Rule 4911 and Safety Standards Rule 4940, also apply to master meter operators.

4801. Definitions.

The following definitions apply only in the context of Rules 4900 - 4903, unless a specific statute or rule provides otherwise.

- (a) "Check-meter" means a meter or other composite measurement device, used by a master meter operator who is exempt from rate regulation, to determine usage of those served.
- (b) "Master meter" means the meter or other composite measurement device used to bill the MMO by the regulated utility.
- (c) "Master meter operator" means any person who purchases gas service from a regulated utility for the purpose of delivery of such service to end users, whose aggregate usage is to be measured by a master meter.
- (d) "Refunds" means any refunds, rebates, rate reductions, or similar adjustments.

4802. Exemption from Rate Regulation. ~~Either upon its own motion or upon the application of any master meter operator (MMO),~~ The Commission has, pursuant to its own motion under § 40-1-103.5, C.R.S., and Decision No. [insert Commission order adopting rules], exempted all MMOs ~~may exempt a MMO~~ from rate regulation under Articles 1 to 7 of Title 40, C.R.S.,

~~provided that they comply with Rules 4803 and 4804. if the Commission finds that the MMO has adopted adequate policies and procedures. In its application requesting an exemption from rate regulation, the MMO must show that it complies with the~~

4803. following MMO Requirements.

(a) In order to retain its exemption from rate regulation a MMO must have policies and procedures in place which ensure that:

(I) As part of its billing for utility service, ~~the each~~ MMO shall charge the end-users only the actual cost billed to the MMO by the serving utility. ~~The Each~~ MMO shall not charge end-users for any other costs, such as the costs of construction, maintenance, financing, administration, metering, or billing for the equipment and facilities owned by the MMO.

(II) If the MMO bills the end-users separately for service, the sum of such billings shall not exceed the amount billed to the MMO by the serving utility. ~~The Each~~ MMO shall pass on to the end-users any refunds it receives from the serving utility.

(III) ~~The Each~~ MMO shall establish procedures for giving notice of refunds to those who are not current end-users, but who were end-users during the subject time period.

(b) Resale of gas for profit by a MMO exempt from rate regulation is strictly prohibited. A MMO may check-meter tenants, lessees, or other persons to whom ultimately the gas is distributed, for the purpose of reimbursing the MMO by an appropriate allocation procedure, provided the MMO does not receive more than the actual cost billed to the MMO by the serving utility. Resale activity is a basis for revocation of an exemption ~~order from rate~~ regulation.

4803.4804. MMO Refunds

(a) In passing on refunds to end-users, ~~a each~~ MMO shall notify its end-users of any refunds and inform the end-users that they may claim the refunds within 90 days after receipt of the notice. The notification shall be made by first-class mail with a certificate of mailing, or by inclusion in any monthly or more frequent written communication. ~~The Each~~ MMO shall also notify former customers who were end-users during the subject time period.

(b) If the aggregate amount of refunds remaining unclaimed after 90 days exceeds 100 dollars, the MMO shall contribute such unclaimed amount to the energy assistance organization . If the aggregate amount does not exceed 100 dollars, the MMO may retain such aggregate amount. ~~A Each~~ MMO may retain any portion of such refunds that rightfully belongs to the MMO.

- (c) ~~A~~ Each MMO shall pay interest on undistributed refunds in accordance with the Commission's Customer Deposit Interest Rate Rule 4409(b)(I).

4805. Complaints and Penalties.

- (a) Any customer subject to a master meter may file a complaint with the respect to alleged violations of the requirements set forth in rules 4803 and 4804 above. This complaint shall be filed with the Commission, formally or informally Pursuant to Rules 1301 and 1302.
- (b) The Commission shall investigate complaints concerning MMOs, and if after investigation, the Commission finds that an MMO has violated any of the requirements set forth in rules 4803 and 4804 above, the MMO may have its exempt status revoked, and/or may be subject to penalties as set forth in § 40-7-107, C.R.S.

~~3805.4806.~~ -4899 [Reserved].