

Decision No. C10-0698

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 09R-847G

IN THE MATTER OF THE PROPOSED RULES REGULATING FINING OF GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4 UNDER HOUSE BILL 08-1227.

ORDER LIFTING STAY AND ADOPTING RULES

Mailed Date: July 7, 2010

Adopted Date: June 23, 2010

I. BY THE COMMISSION

A. Statement

1. The Commission initiated this proceeding on November 20, 2009 by issuing a Notice of Proposed Rulemaking (NOPR) regarding its Rules Regulating Gas Utilities and Pipeline Operators, 4 *Code of Colorado Regulations* (CCR) 723-4. By Decision No. C09-1304, we stated that the basis and purpose of the rulemaking proceeding was to make changes to the Commission's rules necessitated by the passage of House Bill 08-1227 (the bill). The bill adds, *inter alia*, § 40-7-113.5 and § 40-7-116.5, C.R.S., giving the Commission the statutory authority for the proposed rules.

2. We assigned this proceeding to an Administrative Law Judge (ALJ) and scheduled a hearing by Decision No. C09-1304. The hearing took place on February 4, 2010.

3. The Natural Gas Local Distribution Company Group and Office of Consumer Counsel offered written comments into the record of this proceeding. The Natural Gas Local Distribution Company Group offered oral comments in addition to their written comments at the hearing. The hearing in this matter was held simultaneously with the hearings for the proposed

fining rules in the telecommunications, electric, and water and combined water and sewer industries, Docket Nos. 09R-845T, 09R-846E, and 09R-848W respectively. Oral comments were provided during this hearing by the telecommunications, electric, and gas industries.

4. ALJ Ken F. Kirkpatrick issued his Recommended Decision Adopting Rules on April 16, 2010 (Decision No. R10-0358 or Recommended Decision).

5. We stayed the Recommended Decision and set a deadline for the filing of exceptions by Decision No. C10-0433, mailed on May 5, 2010.

6. No exceptions to the Recommended Decision were filed in this matter.

7. In our review of the rules adopted by the Recommended Decision in this matter in conjunction with the rules adopted by the recommended decisions in Docket Nos. 09R-845T, 09R-846E, and 09R-848W, we are making minor changes to these rules on our own motion to ensure consistency of the fining rules across the telecommunications, electric, gas, and water and combined water and sewer rules.

8. Rule 4009 adds the definitions for civil penalty, civil penalty assessment, civil penalty assessment notice, and intentional violation. We have revised the definition for intentional violation to match the definition in the rules adopted by the recommended decision in Dockets 09R-845T and 09R-848W regarding the fining rules for telecommunications utilities and water and combined water and sewer utilities respectively.

9. We have also reformatted the tables of finable offenses to make them consistent with the tables adopted by the recommended decision in Docket No. 09R-846E regarding the fining rules for electric industry.

II. ORDER

A. The Commission Orders That:

1. The stay of Decision No. C10-0433 is hereby vacated.
2. The Commission adopts a modification to the rules attached to Recommended Decision R10-0358 consistent with the above discussion. The Commission adopts the rules attached to this Order as Attachment A.
3. The rules shall be effective 20 days after the publication in the Colorado Register by the Office of the Secretary of State. (The rules shall be effective August 30, 2010 if published in the August 10, 2010 edition of the *Colorado Register* by the Office of the Secretary of State.)
4. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.
5. A copy of the rules adopted by the Order 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 the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.
6. The 20-day time period provided by § 40-6-114(1), C.R.S. to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.
7. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 23, 2010.**

(SEAL)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners

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

BASIS, PURPOSE, AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to set forth rules describing the service to be provided by jurisdictional gas utilities and master meter operators to their customers and describing the manner of regulation over jurisdictional gas utilities, master meter operators, and the services they provide. These rules address a wide variety of subject areas including, but not limited to, service interruption, meter testing and accuracy, safety, customer information, customer deposits, rate schedules and tariffs, discontinuance of service, master meter operations, transportation service, flexible regulation, procedures for administering the Low-Income Energy Assistance Act, cost allocation between regulated and unregulated operations, recovery of gas costs, appeals regarding local government land use decisions, and authority of the Commission to impose civil penalties on public utilities. The statutory authority for these rules can be found at §§ 29-20-108, 40-1-103.5, 40-2-108, 40-2-115, 40-3-102, 40-3-103, 40-3-104.3, 40-3-111, 40-3-114, 40-3-101, 40-4-101, 40-4-106, 40-4-108, 40-4-109, 40-5-103, 40-7-117, 40-7-113.5, 40-7-116.5; and 40-8.7-105(5), C.R.S.

* * *

[indicates omission of unaffected rules]

[new rule follows]

CIVIL PENALTIES

4009.-_Definitions.

The following definitions apply to rules 4009, 4010, and 4976, unless a specific statute or rule provides otherwise. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) "Civil penalty" means any monetary penalty levied against a public utility because of intentional violations of statutes in Articles 1 to 7 and 15 of Title 40, C.R.S., Commission rules, or Commission orders.
- (b) "Civil penalty assessment" means the act by the Commission of imposing a civil penalty against a public utility after the public utility has admitted liability or has been adjudicated by the Commission to be liable for intentional violations of statutes in Articles 1 to 7 and 15 of Title 40, C.R.S., Commission rules, or Commission orders.
- (c) "Civil penalty assessment notice" means the written document by which a public utility is given notice of an alleged intentional violation of statutes in Articles 1 to 7 and 15 of Title 40, C.R.S., Commission rules, or Commission orders and of a proposed civil penalty.
- (d) "Intentional violation." A person acts "intentionally" or "with intent" when his conscious objective is to cause the specific result proscribed by the statute, rule, or order defining the violation.

4010.- Regulated Gas Utility Violations, Civil Enforcement, and Enhancement of Civil Penalties.

- (a) The Commission may impose a civil penalty in accordance with the requirements and procedures contained in § 40-7-113.5, C.R.S., § 40-7-116.5, C.R.S., and paragraph 1302(b), 4 Code of Colorado Regulations 723-1, for intentional violations of statutes in Articles 1 to 7 and 15 of Title 40, C.R.S., Commission rules, or Commission orders as specified in §§ 40-7-113.5 and 40-7-116.5, C.R.S., and in these rules.
- (b) The director of the commission or his or her designee shall have the authority to issue civil penalty assessments for the violations enumerated in § 40-7-113.5, C.R.S., subject to hearing before the Commission. When a public utility is cited for an alleged intentional violation, the public utility shall be given notice of the alleged violation in the form of a civil penalty assessment notice.
- (c) The public utility cited for an alleged intentional violation may either admit liability for the violation pursuant to § 40-7-116.5(1)(c) or the public utility may contest the alleged violation pursuant to § 40-7-116.5(1)(d), C.R.S. At any hearing contesting an alleged violation, trial staff shall have the burden of demonstrating a violation by a preponderance of the evidence.
- (d) In any written decision entered by the Commission pursuant to § 40-6-109, C.R.S., adjudicating a public utility liable for an intentional violation of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order, the Commission may impose a civil penalty of not more than two thousand dollars, pursuant to § 40-7-113.5(1), C.R.S. In imposing any civil penalty pursuant to § 40-7-113.5(1), C.R.S., the Commission shall consider the factors set forth in Rule 1302(b).
- (e) The Commission may assess doubled or tripled civil penalties against any public utility, as provided by § 40-7-113.5(3), C.R.S., § 40-7-113.5(4), C.R.S., and this rule.

- (f) The Commission may assess any public utility a civil penalty containing doubled penalties only if:
- (I) the public utility has admitted liability by paying the civil penalty assessment for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted an intentional violation of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
 - (II) the conduct for which doubled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has admitted liability by paying the civil penalty assessment, or conduct for which the public utility has been adjudicated by the Commission in an administratively final written decision to be liable; and
 - (III) the conduct for which doubled civil penalties are sought occurred within one year after conduct for which the public utility has admitted liability by paying the civil penalty assessment, or conduct for which the public utility has been adjudicated by the Commission in an administratively final written decision to be liable
- (g) The Commission may assess any public utility a civil penalty containing tripled penalties only if:
- (I) the public utility has admitted liability by paying the civil penalty assessment for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted two or more prior intentional violations of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
 - (II) the conduct for which tripled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted liability by paying the civil penalty assessment or been adjudicated by the Commission in an administratively final written decision to be liable, in at least two prior instances; and
 - (III) the conduct for which tripled civil penalties are sought occurred within one year after the two most recent prior instances of conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.
- (h) When more than two instances of prior conduct exist, the Commission shall only consider those instances occurring within one year prior to the date of such alleged conduct for which tripled civil penalties are sought.
- (i) Nothing in this rule shall preclude the assessment of tripled penalties when doubled and tripled penalties are sought in the same civil penalty assessment notice.
- (j) The Commission shall not issue a decision on doubled or tripled penalties until after the effective date of the administratively final Commission decision upon which the single civil penalty was based.

- (k) The civil penalty assessment notice shall contain the maximum penalty amount provided by rule for each individual violation noted, with a separate provision for a reduced penalty of 50 percent of the penalty amount sought if paid within ten days of the public utility's receipt of the civil penalty assessment notice.
- (l) The civil penalty assessment notice shall contain the maximum amount of the penalty surcharge pursuant to § 24-34-108(2), C.R.S., if any.
- (m) A penalty surcharge referred to in paragraph (l) of this rule shall be equal to the percentage set by the Department of Regulatory Agencies on an annual basis. The surcharge shall not be included in the calculation of the statutory limits set in § 40-7-113.5(5), C.R.S.
- (n) Nothing in these rules shall affect the Commission's ability to pursue other remedies in lieu of issuing civil penalties.

4011. – 4099. [Reserved].

* * *

[indicates omission of unaffected rules]

[new rule follows]

4976. – Regulated Gas Utility Rule Violations, Civil Enforcement, and Civil Penalties.

An admission to or Commission adjudication for liability for an intentional violation of the following may result in the assessment of a civil penalty of up to \$2,000.00 per offense. Fines shall accumulate up to, but shall not exceed, the applicable statutory limits set in § 40-7-113.5, C.R.S.

Citation	Description	Maximum Penalty Per Violation
	Articles 1-7 of Title 40, C.R.S.	\$2000
	Commission Order	\$2000
Rule 4005	Records and Record Retention	\$2000
Rule 4100(a)	Obtaining a Certificate of Public Convenience and Necessity for a Franchise	\$2000
Rule 4101(a)	Obtaining a Certificate of Public Convenience and Necessity or Letter of Registration to operate in a service	\$2000

	territory	
Rule 4102(a)	Obtaining a Certificate of Public Convenience and Necessity for facilities	\$2000
Rule 4103(a), (c), (d)	Amending a Certificate of Public Necessity for changes in service territory or facilities	\$2000
Rule 4108(a), (c)	Keeping a Current Tariff on File with the Commission	\$2000
Rule 4109	Filing a New or Changed Tariff with the Commission	\$2000
Rule 4110(b),(c)	Filing an Advice Letter to Implement a Tariff Change	\$2000
Rule 4200	Construction, Installation, Maintenance and Operation of Facilities in Compliance with Accepted Engineering and Industry Standards	\$2000
Rule 4208	Anticompetitive Conduct and Unacceptable Practices	\$2000
Rule 4210	Line Extensions	\$2000
Rule 4303	Meter Testing	\$2000
Rule 4306	Record Retention of Tests and Meters	\$2000
Rule 4309	Provision of Written Documentation of Readings and Identification of When Meters Will be Read	\$2000
Rule 4404	Billing Information, Procedures, and Requirements	\$2000
Rule 4754(a)-(e)	Annual DSM Report and Application for Bonus and Bonus Calculation	\$2000
Rule 4803(c)	Master Meter Exemption Requirements	\$2000

Citation	Description	Maximum Penalty per
Rule 4004(b)-(f)	Disputes and Informal Complaints	\$1000
Rule 4202	Maintaining Heating Value, Purity and Pressure Standards	\$1000

Rule 4203(a)-(f)	Trouble Report Response, Interruptions and Curtailments of Service	\$1000
Rule 4405	Provision of Service, Rate, and Usage Information to Customers	\$1000
Rule 4406	Provision of Gas Cost Component Information to Customers	\$1000
Rule 4603(a),(d)	Gas Cost Adjustments	\$1000
Rule 4605(a),(b),(e),(f)	Gas Purchase Plans	\$1000
Rule 4607(a)	Gas Purchase Reports and Prudence Reviews	\$1000

<u>Citation</u>	<u>Description</u>	<u>Maximum Penalty Per Violation</u>
	<u>Articles 1-7 of Title 40, C.R.S.</u>	<u>\$2000</u>
	<u>Commission Order</u>	<u>\$2000</u>
<u>Rule 4005</u>	<u>Records and Record Retention</u>	<u>\$2000</u>
<u>Rule 4100(a)</u>	<u>Obtaining a Certificate of Public Convenience and Necessity for a Franchise</u>	<u>\$2000</u>
<u>Rule 4101(a)</u>	<u>Obtaining a Certificate of Public Convenience and Necessity or Letter of Registration to operate in a service territory</u>	<u>\$2000</u>
<u>Rule 4102(a)</u>	<u>Obtaining a Certificate of Public Convenience and Necessity for facilities</u>	<u>\$2000</u>
<u>Rule 4103(a), (c), (d)</u>	<u>Amending a Certificate of Public Necessity for changes in service territory or facilities</u>	<u>\$2000</u>
<u>Rule 4108(a), (c)</u>	<u>Keeping a Current Tariff on File with the Commission</u>	<u>\$2000</u>
<u>Rule 4109</u>	<u>Filing a New or Changed Tariff with the Commission</u>	<u>\$2000</u>
<u>Rule 4110(b),(c)</u>	<u>Filing an Advice Letter to Implement a Tariff Change</u>	<u>\$2000</u>

<u>Rule 4200</u>	<u>Construction, Installation, Maintenance and Operation of Facilities in Compliance with Accepted Engineering and Industry Standards</u>	<u>\$2000</u>
<u>Rule 4208</u>	<u>Anticompetitive Conduct and Unacceptable Practices</u>	<u>\$2000</u>
<u>Rule 4210</u>	<u>Line Extensions</u>	<u>\$2000</u>
<u>Rule 4303</u>	<u>Meter Testing</u>	<u>\$2000</u>
<u>Rule 4306</u>	<u>Record Retention of Tests and Meters</u>	<u>\$2000</u>
<u>Rule 4309</u>	<u>Provision of Written Documentation of Readings and Identification of When Meters Will be Read</u>	<u>\$2000</u>
<u>Rule 4401</u>	<u>Billing Information, Procedures, and Requirements</u>	<u>\$2000</u>
<u>Rule 4754(a)-(e)</u>	<u>Annual DSM Report and Application for Bonus and Bonus Calculation</u>	<u>\$2000</u>
<u>Rule 4803(c)</u>	<u>Master Meter Exemption Requirements</u>	<u>\$2000</u>

<u>Citation</u>	<u>Description</u>	<u>Maximum Penalty Per Violation</u>
<u>Rule 4004(b)-(f)</u>	<u>Disputes and Informal Complaints</u>	<u>\$1000</u>
<u>Rule 4202</u>	<u>Maintaining Heating Value, Purity and Pressure Standards</u>	<u>\$1000</u>
<u>Rule 4203(a)-(f)</u>	<u>Trouble Report Response, Interruptions and Curtailments of Service</u>	<u>\$1000</u>
<u>Rule 4405</u>	<u>Provision of Service, Rate, and Usage Information to Customers</u>	<u>\$1000</u>
<u>Rule 4406</u>	<u>Provision of Gas Cost Component Information to Customers</u>	<u>\$1000</u>
<u>Rule 4603(a),(d)</u>	<u>Gas Cost Adjustments</u>	<u>\$1000</u>
<u>Rule 4605(a),(b),(e),(f)</u>	<u>Gas Purchase Plans</u>	<u>\$1000</u>
<u>Rule 4607(a)</u>	<u>Gas Purchase Reports and Prudence Reviews</u>	<u>\$1000</u>

<u>Citation</u>	<u>Description</u>	<u>Maximum Penalty Per Violation</u>
<u>Rule 4403(a)-(q)</u>	<u>Applications for Service, Customer Deposits, and Third Party Guarantees</u>	<u>\$500</u>
<u>Citation</u>	<u>Description</u>	<u>Maximum Penalty Per Violation</u>
<u>Rule 4006</u>	<u>Annual Reporting Requirements</u>	<u>\$100</u>
<u>Rule 4304</u>	<u>Scheduled Meter Testing</u>	<u>\$100</u>
<u>Rule 4305</u>	<u>Meter Testing Upon Request</u>	<u>\$100</u>
<u>Rule 4402(a),(c),(d)</u>	<u>Meter and Billing Error Adjustments</u>	<u>\$100</u>
<u>Rule 4404(a)-(f)</u>	<u>Availability of Installation Payments to Customers</u>	<u>\$100</u>
<u>Rule 4407</u>	<u>Discontinuance of Service</u>	<u>\$100</u>
<u>Rule 4408(a)-(g): (i)</u>	<u>Notice of Discontinuation of Service</u>	<u>\$100</u>
<u>Rule 4409</u>	<u>Restoration of Service</u>	<u>\$100</u>
<u>Rule 4411(c)(IV),(d)(I), d(II),(e)</u>	<u>Low-Income Energy Assistance Act</u>	<u>\$100</u>

Citation	Description	Maximum Penalty Per Violation
Rule 4403(a)-(q)	Applications for Service, Customer Deposits, and Third Party Guarantees	\$500

Citation	Description	Maximum Penalty Per Violation
Rule 4006	Annual Reporting Requirements	\$100
Rule 4304	Scheduled Meter Testing (mis-labeled in NOPR; 4304 in with title of 4305)	\$100
4305	Meter Testing Upon Request	\$100

Rule 4402(a),(c),(d)	Meter and Billing Error Adjustments	\$100
Rule 4404(a)-(f)	Availability of Installation Payments to Customers	\$100
Rule 4407	Discontinuance of Service	\$100
Rule 4408(a)-(g); (i)	Notice of Discontinuance of Service	\$100
Rule 4409	Restoration of Service	\$100
Rule 4411(c)(IV),(d)(I), d(II),(e)	Low-Income Energy Assistance Act	\$100

4977. – 4999. [Reserved].

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[indicates omission of unaffected rules]