

(Decision No. C94-377)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF PROPOSED RULES	)	
REGULATING APPLICATIONS FILED IN	)	
ACCORDANCE WITH § 40-3-104.3,	)	DOCKET NO. 94R-153EG
C.R.S., CONCERNING THE AUTHORITY	)	
OF THE PUBLIC UTILITIES	)	
COMMISSION TO FLEXIBLY REGULATE	)	
GAS, ELECTRIC, OR STEAM	)	
UTILITIES, 4 CCR 723-10.	)	

NOTICE OF PROPOSED RULEMAKING

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Mailed Date: March 29, 1994  
Adopted Date: March 16, 1994  
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BY THE COMMISSION:

The Colorado Public Utilities Commission hereby gives notice of proposed rulemaking regarding flexible regulation of gas, electric, or steam utilities. The intent of the proposed rules is to revise existing regulations due to legislative changes made in § 40-3-104.3, C.R.S. A copy of the proposed rules is included as part of the attached Decision No. R93-1401. The statutory authority for the proposed rules is found at § 40-2-108, 40-3-102, and 40-3-104.3, C.R.S.

The Commission will conduct a hearing before an administrative law judge on the proposed rules and related issues beginning at 11 a.m., May 16, 1994. The hearing will be conducted in a Commission hearing room, Office Level (OL) 2, 1580 Logan Street,

Denver, Colorado. Interested persons may submit written comments on the rules at that time, or may file written comments before the hearing in this Docket No 94R-153EG. All submissions will be considered by the Commission.

The Commission previously conducted a rulemaking proceeding concerning the attached proposed rules. This proceeding was denominated Docket No. 93R-343EG. An administrative law judge for the Commission entered Decision No. R93-1401 recommending adoption of certain rules attached to the decision. See attachment. Since no exceptions were filed to the recommended decision, that recommendation became the decision of the Commission by operation of law pursuant to §§ 40-6-109(2) and 40-6-114, C.R.S. In accordance with the rulemaking requirements set forth in § 24-4-103, C.R.S., the Commission was required to obtain an opinion of the Attorney General regarding the legality of the proposed rules and to file copies of the rules with the office of the Secretary of State. Due to administrative error, the opinion was not obtained nor was the filing made. Therefore, the Commission is initiating the present proceeding. The attached proposed rules are those recommended for adoption in Recommended Decision No. R93-1401. The Commission, in the present proceeding, will take administrative notice of the record established in Docket No. 93R-343EG.

Section 24-4-103(4)(a), C.R.S., provides that an agency may deem oral comments at the rulemaking hearing unnecessary. Since the Commission has already conducted a hearing at which oral comments were presented on the proposed rules, the Commission now determines that oral comments on the proposals here are unnecessary. Therefore, the scheduled public hearing in this matter will be limited to presentation of written data, views, or arguments. As noted above, interested persons need not attend the public hearing, but may submit written comments in this docket on or before the date for the scheduled hearing.

THEREFORE THE COMMISSION ORDERS THAT:

1. This Notice of Proposed Rulemaking shall be filed with the Secretary of State for publication in the April 10, 1994 copy of *The Colorado Register*. At the time of filing with the Secretary of State, this notice shall also be filed with the Office of Regulatory Reform.

2. Hearing on the proposed rules and related matters shall be held beginning at:

DATE: May 16, 1994

TIME: 11 am

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

At the time set for hearing, interested persons may submit written comments. The Commission deems oral comments unnecessary consistent with the above discussion. Interested persons may also submit written comments in this docket on or before the time scheduled for public hearing in this matter. All submissions will be considered.

3. The Commission hereby takes administrative notice of the record established in Docket No. 93R-343EG.

This order is effective upon its Mailed Date.

ADOPTED IN OPEN MEETING ON March 16, 1994.

(SEAL)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

CHRISTINE E. M. ALVAREZ

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VINCENT MAJKOWSKI

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Commissioners

ATTEST: A TRUE COPY

CHAIRMAN ROBERT E. TEMMER RESIGNED  
EFFECTIVE MARCH 1, 1994

Handwritten signature of Bruce N. Smith in cursive.

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Bruce N. Smith  
Director

(Decision No. C94-377-E)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF PROPOSED RULES )  
REGULATING APPLICATIONS FILED IN )  
ACCORDANCE WITH § 40-3-104.3, )  
C.R.S., CONCERNING THE AUTHORITY )  
OF THE PUBLIC UTILITIES )  
COMMISSION TO FLEXIBLY REGULATE )  
GAS, ELECTRIC, OR STEAM )  
UTILITIES, 4 CCR 723-10. )

DOCKET NO. 94R-153EG

ERRATA NOTICE

Decision No. C94-377  
(Adopted Date: March 16, 1994)

Page 1, caption, amend the mailed date of this Decision to read:

March 30, 1994

(SEAL)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

BRUCE N. SMITH  
Director

Dated at Denver, Colorado this  
7th day of April, 1994.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF PROPOSED RULES )  
REGULATING APPLICATIONS FILED IN) )  
ACCORDANCE WITH § 40-3-104.3, )  
C.R.S., CONCERNING THE AUTHORITY) )  
OF THE PUBLIC UTILITIES COMMI- )  
SSION TO FLEXIBLY REGULATE GAS, )  
ELECTRIC, OR STEAM UTILITIES, )  
4 CCR 723-10. )

DOCKET NO. 93R-343EG  
RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
WILLIAM J. FRITZEL

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Mailed Date: November 16, 1993  
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Appearances: Thomas R. O'Donnell, Esq.,  
Denver, Colorado, for Public  
Service Company of Colorado;

Richard L. Fanyo, Esq., Denver,  
Colorado, for CF&I Steel,  
L.P.;

Steven H. Denman, Esq., Denver,  
Colorado, for WestPlains  
Energy; and

Robert J. Hix, Senior Engineering  
Analyst of the Office of  
Consumer Counsel.

STATEMENT

The Commission instituted rulemaking concerning rules to implement the provisions of § 40-3-104.3, C.R.S. Notice of the proposed rulemaking was issued by the Commission in Decision No. C93-756, mailed on August 11, 1993.

The Commission stated that the intent of the proposed rules is to revise existing regulations due to legislative changes in House Bill 92-1243, codified as § 40-3-104.3, C.R.S. Since House Bill 92-1243 made significant revisions to the statute which allowed gas, electric, and steam utilities to provide services under certain circumstances without regard to filed tariffs, the proposed rules were necessary to make the Commission's Rules Regulating Applications Filed in Accordance With § 40-3-104.3, C.R.S., consistent with the revisions of the statute. A copy of the proposed rules was attached to the Commission's notice of

proposed rulemaking. The statutory authority for the proposed rules found at §§ 40-2-108, 40-3-102, and 40-3-104.3, C.R.S.

The notice of proposed rulemaking was published in the September 10, 1993, Colorado Register. The Commission set the proposed rules for hearing for October 8, 1993, at 9:00 a.m. at the Commission hearing room in Denver. Written comments were filed prior to the hearing by John J. Conway, Attorney at Law, WestPlains Energy (WP), and by Public Service Company of Colorado (Public Service).

On October 8, 1993, the hearing was held as scheduled. Oral comments were made by CF&I Steel, L.P. (CF&I), Public Service, WP, and the Office of Consumer Counsel (OCC). CF&I filed written comments and WP filed corrected written comments. OCC asked for, and was granted, permission to file supplemental comments, and the other participants in the rules hearing were provided an opportunity to respond to the OCC's written comments. On October 15, 1993, OCC filed its comments and on October 20, 1993, Public Service filed its reply comments.

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

#### FINDINGS OF FACT AND CONCLUSIONS THEREON

The participants in the rules hearing generally favored the concept of the proposed rules which is to modify the Commission's existing rules concerning § 40-3-104.3, C.R.S., in order to make the rules consistent with the changes enacted by the Legislature in House Bill 92-1243. It is found and concluded that the proposed rules should be modified as follows:

#### BASIS, PURPOSE, AND STATUTORY AUTHORITY

Many of the commentators pointed out that the basis and purpose statement of the proposed rules retains the old concept of "negotiate prices and terms" rather than the new statutory concept of "provide service by contract without reference to its tariffs." This suggested change is necessary to track with the statute and should be adopted.

#### RULE 1 - APPLICABILITY

Most of the commentators suggested that the proposed Rule 1 be changed to provide consistency with the concept of the statute which allows the Commission to flexibly regulate gas, electric, and steam utilities in certain circumstances. Accordingly, they recommended that the proposed rules language of "refrain from regulating" be deleted and that "flexibly regulate" be

substituted in order to maintain consistency with the changes in § 40-3-104.3. This recommendation will be adopted.

## RULE 2 - DEFINITIONS

OCC recommended an addition of a new subsection (a) to define "Applicant." OCC recommends that the new subsection (a) should read as follows:

"Applicant": Any utility requesting an order from the Commission that invokes its authority to flexibly regulate gas, electric, or steam services in accordance with § 40-3-104.3, C.R.S.

This suggestion is well taken and should be adopted.

Proposed Rule 2(a) "Application" uses the term "refrain from regulating." Since this language does not track the statute, it should be deleted and "flexibly regulate" be added. This suggestion should be adopted.

Most of the commentators urge that the definition of "potential customer" found proposed Rule 2(d) be modified and expanded to include a person or a business who may wish to relocate into the service territory of a utility. It was also pointed out that it should be made clear that under the terms of the statute, the definition should make it clear that a potential customer can only be a potential electric or steam customer. These suggested changes should be adopted since they are consistent with the statute.

## RULE 3 - APPLICATION PROCESS

The second and third lines of the opening paragraph of Rule 3.1 should state "flexibly regulate" rather than the proposed "refrain from regulating" in order to maintain consistency of the rules and conformity with the statute.

Public Service suggests that Rule 3.1, Sections (e), (f), and (g) be modified as follows:

- 3.1(e) The name of the customer or potential customer for service:
- 3.1(f) A description of the services which the Applicant seeks the right to provide to a customer or to a potential customer;



- 3.1(g) A statement of the means by which the Applicant will provide its services if it is successful in obtaining a contract with a customer or potential customer;

Public Service suggests that it is unnecessary to refer to electric, steam, or gas services since the definition of customer and potential customer and the description of services being offered are adequately defined in the OCC's suggested definition for the terms customer and potential customer in Rule 2. The suggestion of Public Service should be adopted.

WP suggests that in Rule 3.1(h)1 the term "variable cost" for electric or steam and in Rule 3.1(i)4 the term "marginal cost" should be modified to establish a consistent standard so that one form of energy may not have a competitive advantage over the other. WP also suggests that the Commission should consider using incremental costs in addition to the above two costing methodologies in determining the flexible price of the services. This suggestion should not be adopted since § 40-3-104.3(I)(A), C.R.S., refers to variable cost concerning contracts for electric and steam service and subsection II(D) refers to marginal cost concerning gas contracts.

Commentators John Conway, CF&I, and Public Service suggests that proposed Rule 3.1(h)2 be modified to add the word "decline" to describe the intention of a customer or potential customer. This suggestion should be adopted since it tracks the language of the statute.

CF&I suggests that the proposed Rule 3.1(h)3, 3.1(i)2 and (i)4 be modified to substitute the word "Applicant" for "public utility" in order to make it clear that the rule refers to the Applicant. The suggestion is well taken and will be adopted.

OCC and CF&I proposes that proposed Rule 3.1 (i)4, first sentence should be revised to read:

The price of such service is justified and is not less than the marginal cost to the Applicant.

This suggestion should be adopted.

WP commented that proposed Rule 3.2 relating to prefiled testimony and exhibits would be burdensome in the context of the application process authorized by the statute and rules. Proposed Rule 3.2 concerning prefiled testimony and exhibits should be adopted without change.

WP comments that proposed Rule 3.4 concerning the treatment of confidential information should be adopted and the confidential information should be protected under the Commission's existing procedures. The suggestion is a good one, therefore, proposed Rule 3.4 should be adopted without change.

WP comments that proposed Rule 3.5 concerning the requirement that Applicant shall furnish a copy of the application to any public utility furnishing service to the customer is unnecessary since Rule 4.1.2 gives sufficient notice. It does not appear that proposed Rule 3.5 is unduly burdensome, therefore proposed Rule 3.5 should be adopted without change.

RULE 4 - GENERAL RULES CONCERNING APPLICATIONS FILED IN ACCORDANCE WITH § 40-3-104.3, C.R.S.

Public Service comments that proposed Rule 4.1.2 concerning notice and form notices C and D should be modified to provide a five-day notice period rather than the ten-day notice period contained in the proposed rules. This suggested change is appropriate since § 40-3-104.3(1)(b), C.R.S., establishes a five-day notice period.

RULE 5 - SEGREGATION OF INVESTMENTS, EXPENSES, AND REVENUES

CF&I proposes that the word "shall" be substituted for "may" in the first sentence, third line of Rule 5.1 making it mandatory to require the utility to file with the Commission an accounting plan that segregates investments, revenues, and expenses. WP and Public Service disagree stating that § 40-3-104.3(2)(a), C.R.S., states that the Commission shall specify fully distributed cost methodology to be used to segregate rate base, expenses, and revenues associated with utility service only at the time of any proceeding in which the utility's overall rate levels are determined. Thus WP and Public Service contend that the proposed Rule 5.1 use of the permissive "may" is appropriate and consistent with the statute. It is found that the use of the permissive "may" in proposed Rule 5.1 is correct and should be adopted.

CF&I proposes that the last sentence of proposed Rule 5.1 be modified to add the words "under a contract" in order to clarify the sentence. This suggestion will be adopted.

Public Service proposes that the wording of proposed Rule 5.1 be modified to change the filing of an accounting plan to an accounting plan that generally describes how the Applicant would segregate investments, revenue, and expenses rather than requiring the actual segregation. Public Service also recommends that proposed Rule 5.2 relating to gas have a similar provision. This recommendation should not be adopted.

## RULE 6 - PRICES OF SERVICES

Proposed Rules 6.1 and 6.2 are consistent with § 40-3-104.3, C.R.S., and therefore should be adopted except for clarifying changes suggested by CF&I and OCC, referring to Applicant rather than a utility and to specify that service is under a contract.

It is found and concluded that the rules as modified based on the comments submitted to the Commission contained in Appendix A, attached to this decision should be adopted.

Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

### ORDER

#### THE COMMISSION ORDERS THAT:

1. The Rules Regulating Applications Filed in Accordance With § 40-3-104.3, C.R.S., Concerning the Authority of the Public Utilities Commission to Flexibly Regulate Gas, Electric, or Steam Utilities attached as Appendix A to this Decision are adopted.
2. The rules shall be effective 20 days after publication by the Secretary of State.
3. An opinion of the Attorney General of the State of Colorado shall be properly sought regarding the constitutionality and legality of the rules found in Appendix A of this Decision.
4. The Commission Director shall file with the Office of the Secretary of State of Colorado, for publication in the Colorado Register, a copy of the rules found in Appendix A adopted by this Decision, and when obtained, a copy of the opinion of the Attorney General of the State of Colorado regarding the constitutionality and legality of these rules.
5. The rules found in Appendix A should be submitted by the Commission's Director 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 the opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.
6. 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.
7. 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.

8. 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

WJF:srs

PROPOSED REVISIONS TO:

RULES REGULATING APPLICATIONS FILED IN ACCORDANCE WITH  
§ 40-3-104.3, C.R.S., CONCERNING THE AUTHORITY OF THE  
PUBLIC UTILITIES COMMISSION TO FLEXIBLY REGULATE  
GAS, ELECTRIC, OR STEAM UTILITIES

**BASIS, PURPOSE, AND STATUTORY AUTHORITY**

These rules are issued under the authority of § 40-2-108, C.R.S., and § 24-4-103, C.R.S. The rules establish the information required by the Commission in an application filed in accordance with § 40-3-104.3, C.R.S., so that a public utility will be authorized to provide service by contract without reference to its tariffs for a gas, electric or steam customer or potential electric or steam customer under the specific conditions authorized by these rules and so that a complete application can then be processed within thirty days.

**RULE 1-APPLICABILITY**

These rules provide the exclusive means by which a person may seek an order from the Commission that invokes its authority to flexibly regulate gas, electric, or steam utilities in accordance with § 40-3-104.3, C.R.S.

**RULE 2-DEFINITIONS**

As used in these rules, unless the context otherwise requires:

- (a) "Applicant": Any utility requesting an order from the Commission that invokes its authority to flexibly regulate gas, electric, or steam services in accordance with § 40-3-104.3, C.R.S.
- (b) "Application": A pleading requesting an order from the Commission that invokes its authority to flexibly regulate gas, electric, or steam services in accordance with § 40-3-104.3, C.R.S. An application does not include, for example, an advice letter or any other form of tariff filing as an initial request. Applications must be noticed to the public by the Commission in accordance with § 40-3-104, C.R.S., and Rule 63(g) of the Commission's Rules of Practice and Procedure found at 4 CCR 723-1 so persons have an opportunity to intervene.

- (c) "Person": Any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity. (CF. § 40-1-102(5))
- (d) "Customer": A person currently receiving electric, natural gas, or steam service from an applicant.
- (e) "Potential Customer": A person who does or may reside within, or whose business facility is or may be located within, the service area of an applicant who reasonably might become an electric or steam customer of an applicant, but who may in fact, elect not to become a customer of such applicant.

### RULE 3-APPLICATION PROCESS

#### Rule 3.1 - General Information in Application

Any applicant requesting an order from the Commission that invokes its authority to flexibly regulate gas, electric or steam utilities in accordance with § 40-3-104.3, C.R.S., shall file a verified application for such an order. The application shall contain the following information, unless the Commission grants a waiver to omit any specific piece of information in accordance with Rule 7 of these rules:

- (a) The name, address, and telephone number of the applicant;
- (b) The name under which the applicant will provide its services if different from that provided in response to in subparagraph (a);
- (c) If the applicant is a corporation:
  - (1) The state in which it is incorporated, and, if an out-of-state corporation, a copy of the authority qualifying it to do business in Colorado;
  - (2) Location of its principal office; and
  - (3) A copy of its Articles of Incorporation (unless a current copy is already on file with the Commission);
- (d) If the applicant is a partnership, the name, title, and business address of each partner, both general and limited, and a copy of the partnership agreement establish-

ing the partnership and later amendments, if any (unless a current copy is already on file with the Commission);

- (e) The name of the customer, or potential customer for service;
- (f) A description of the services which the applicant seeks the right to provide to a customer, or to a potential customer; services;
- (g) A statement of the means by which the applicant will provide its services if it is successful in obtaining a contract with a customer, or potential customer;
- (h) ELECTRIC OR STEAM. The facts upon which the applicant will rely to demonstrate that:
  - 1. The price of such electric or steam service is not below the variable cost of providing that service. The applicant will maintain, in its tariff on file with the Commission, a definition of how the variable cost will be computed;
  - 2. A customer, or potential customer for electric or steam service, has expressed an intention to decline or discontinue, or partially discontinue the services of the applicant, or that such customer will obtain alternative services if the authorization is not granted to the applicant;
  - 3. The approval of the application will not adversely affect the remaining customers of the applicant; and
  - 4. Approval of the application is in the public interest.
- (i) GAS. The facts upon which the applicant will rely to demonstrate that:
  - 1. The customer has the ability to provide its own service or has competitive alternatives available from other providers of the same or substitutable service, except from another public utility providing or proposing to provide the same type of service;

2. The customer will discontinue using the services of the applicant if the authorization is not granted;
  3. Approval of the application will not as adversely affect the remaining customers of the public utility as would the alternative; and
  4. The price of such service is justified and is not less than the marginal cost to the applicant. The applicant will maintain, in its tariff on file with the commission, a definition of how the marginal cost will be computed; and
  5. The approval of the application is in the public interest.
- (j) The name and address of the applicant's representative, if any, to whom all inquiries should be made.

**Rule 3.2** - Prefiled Testimony and Exhibits

3.2.1 At the time the application is filed, the applicant shall file ten copies of its direct testimony and ten copies of exhibits to be offered at the hearing, except as permitted in Rule 3.4.2. If an exhibit is too large or cumbersome to prefile, the location of the exhibit shall be disclosed where parties may inspect it, and the applicant shall file ten copies of the title of each exhibit and a summary of the information contained in the exhibit.

3.2.2 Prefiled testimony or exhibits shall not be modified once filed except for typographical errors or mistakes or where all parties to the proceeding agree to the change. In the event a substantive change is made without the agreement of all parties, the Commission may consider the effect of the substantive change as a basis for a motion to continue in order to allow the Staff of the Commission and any other party a reasonable opportunity to properly address the change.

3.2.3 In the event a person intervenes in a proceeding initiated under § 40-3-104.3, C.R.S., upon notice to the applicant, either in writing, by facsimile, or by any other method, the applicant shall hand deliver or otherwise provide to the intervenor, copies of all prefiled testimony and exhibits filed in accordance with Rule 3.2.1 within two working days.



3.2.4 In the event the applicant has reason to believe that its application filed in accordance with § 40-3-104.3, C.R.S. will be noncontested and unopposed, it may omit prefiling its testimony and exhibits with its application, and if the notice period expires without the matter being contested or opposed, the application may be processed in accordance with § 40-6-109(5), C.R.S., and Rule 24 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, unless otherwise ordered by the Commission. However, any delay in processing the application because applicant elected not to prefile testimony and exhibits may be proper grounds for a motion to continue a hearing date.

Rule 3.3 - Incomplete Applications

Should an application be filed which the Commission determines is not complete, the Commission shall notify the applicant within ten days from the date the application is filed of the need for additional information. The applicant may then supplement the application so that it is complete. Once complete, the application will then be processed as of the date the application is completed.

Rule 3.4 - Confidential Information

3.4.1 Any subject contract, filed with an application, shall be filed under seal and treated as confidential by the commission in accordance with § 40-3-104(3)(1)(b), C.R.S.

3.4.2 The applicant shall indicate any information which is claimed to be confidential and shall state the grounds with specificity and cite the legal authority for the claim of confidentiality in a motion for protective order. If the motion for protective order is not filed with the application, any claim of confidentiality of information filed in the application or as prefiled testimony and exhibits shall be deemed waived.

3.4.3 If an applicant contends any portion of the application, prefiled testimony, or exhibits is confidential, it shall file six copies of the application, prefiled testimony and exhibits without the asserted confidential information, together with the motion for protective order. This information will be available to the public immediately. The applicant shall also file under seal six copies of the complete application, prefiled testimony, and exhibits claimed to be confidential and the subject of a motion for protective order.

3.4.4 The motion for protective order will be decided within ten calendar days from the date the application is filed.

Response time to the motion shall be shortened to five calendar days. If the motion is granted, a protective order shall be issued as stated in Exhibit 1 to these rules unless otherwise ordered by the Commission.

**Rule 3.5** ADDITIONAL FILING REQUIREMENTS

At the time the applicant files an application or contract with the commission, the applicant shall also furnish a copy of the application to any public utility then providing electric, gas, or steam service in the state of Colorado to the customer, as the case may be, and also furnish a copy to the office of consumer counsel. If a contract is submitted with the application, the office of consumer counsel shall treat the contract as confidential.

**RULE 4 - GENERAL RULES CONCERNING APPLICATIONS FILED  
IN ACCORDANCE WITH § 40-3-104.3, C.R.S.**

**Rule 4.1** - Notice

4.1.1 Section § 40-3-104.3(5), C.R.S., requires the Commission to issue its order approving or disapproving an application filed within thirty days after its filing, unless extended in accordance with that statutory section. Therefore, the Commission will issue an order granting less-than-statutory notice for all applications appropriately filed pursuant to § 40-3-104(2), C.R.S. and these rules.

4.1.2 In accordance with § 40-3-104, C.R.S., and Rule 63(g) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, the Commission will issue notice to all persons affected by any application filed under these rules in a manner similar to that stated in Form A if the application is one relating to electric or steam services, and in a manner similar to that stated in Form B if the application is related to gas services. Persons may intervene in the relevant docket within five days after the date of the notice.

4.1.3 Upon the filing of an application in accordance with § 40-3-104.3, C.R.S., the applicant must provide within three days proof of a single notice in accordance with Form C (electric or steam) or Form D (gas) in the "legal notice" section in a newspaper of general circulation. The notice shall comply in all respects with the requirements of § 40-3-104(c)(I)(D), C.R.S., unless the Commission approves an alternative means of notification. Required Forms C and D are appended to this rule. A draft copy of applicant's legal notice must be included in its application.

Rule 4.2 - Non-Action by the Commission Effect of Failure to Comply with Procedural Requirements

No application or request filed with the Commission shall be deemed granted by non-action of the Commission or by the Commission's failure to comply with any procedural requirement in these Rules except as specifically required by statute.

RULE 5 - SEGREGATION OF INVESTMENTS, EXPENSES AND REVENUES

Rule 5.1 - ELECTRIC OR STEAM.

If a utility is successful in its negotiations and enters into a contract with a customer, or potential customer, the Commission may require the utility to file with the Commission an accounting plan that segregates investments, revenues, and expenses associated with utility service provided by the contract from other regulated utility operations. In order to determine if revenues from a service provided under a contract are at least equal to the cost of service, a fully distributed cost methodology shall be specified by the Commission. If revenues from a service provided by an electric or steam utility under a contract are less than the cost of service as provided by a fully distributed cost methodology, the rates for other regulated utility operations may not be increased to recover the difference between costs and revenues.

RULE 5.2 - GAS

If a gas utility is successful in its negotiations and enters into a contract with a customer, the Commission may require the utility to file with the Commission an accounting plan that segregates investments, expenses and revenues associated with the gas utility's service by the contract to ensure that such gas services are not subsidized by revenues from other utility operations. If the Commission requires such segregation of such investment and expenses, it shall specify a fully distributed cost allocation methodology.

RULE 6 - PRICES OF SERVICES

RULE 6.1 - ELECTRIC AND STEAM

The price of any electric and steam utility service provided to a customer, or potential customer, for whom the commission has authorized the applicant to provide service under a contract in accordance with § 40-3-104.3(1)(A), C.R.S. shall not be below the

electric or steam service's variable cost of the service to the applicant.

RULE 6.2 - GAS

The price of any gas utility service provided to a customer for whom the commission has authorized the applicant to provide service under a contract in accordance with § 40-3-104.3(1)(A), C.R.S. shall not be less than the gas service's marginal cost of the service to the applicant.

RULE 7 - WAIVER OF RULES

The Commission may permit variance from these rules, if not contrary to law, for good cause shown or if it finds compliance to be impossible, impracticable, or unreasonable.

Form A

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

THE APPLICATION OF \_\_\_\_\_ )  
FOR AN ORDER AUTHORIZING IT TO \_\_\_\_\_ ) NOTICE OF APPLICATION  
PROVIDE SERVICE UNDER CONTRACT \_\_\_\_\_ ) FILED  
WITH \_\_\_\_\_ ) DOCKET NO. 94A-\_\_\_\_\_  
FOR \_\_\_\_\_ SERVICE \_\_\_\_\_ )

TO ALL INTERESTED PERSONS, FIRMS OR CORPORATIONS:

YOU ARE NOTIFIED THAT THIS APPLICATION HAS BEEN FILED WITH THE COLORADO PUBLIC UTILITIES COMMISSION BY \_\_\_\_\_ (NAME)  
, \_\_\_\_\_ (ADDRESS) IN ACCORDANCE WITH § 40-3-104.3(1)(A), C.R.S. FOR AN ORDER AUTHORIZING IT TO PROVIDE SERVICE UNDER CONTRACT WITHOUT REFERENCE TO ITS TARIFFS WITH \_\_\_\_\_ (CUSTOMER OR POTENTIAL CUSTOMER'S NAME) FOR (ELECTRIC OR STEAM) SERVICE BECAUSE \_\_\_\_\_ (CUSTOMER OR POTENTIAL CUSTOMER'S NAME) HAS EXPRESSED ITS INTENTION TO DECLINE OR DISCONTINUE, OR PARTIALLY DISCONTINUE SERVICE, TO PROVIDE ITS OWN SERVICE, OR TO OBTAIN PURSUE ALTERNATIVE SERVICES FROM ANOTHER PROVIDER, AS MORE SPECIFICALLY STATED IN THE APPLICATION WHICH IS AVAILABLE FOR PUBLIC INSPECTION AT THE COMMISSION OFFICE LOCATED AT 1580 LOGAN STREET, OL2, DENVER, COLORADO 80203.

Any person desiring to intervene or participate as a party in this proceeding shall file his petition for leave to intervene, or under the Commission's Rules of Practice and Procedure, file other appropriate pleadings to become a party, within five days after the date of this notice,. If you do not wish to intervene or become a party, but desire to file comments, you may send written comments addressed to the Public Utilities Commission, 1580 Logan Street, OL2, Denver, Colorado 80203, (303) 894-2070. This application will be processed on an expedited basis in accordance with the Commission's Rules Regulating Applications filed in accordance with § 40-3-104.3, C.R.S., concerning the authority of the Public Utilities Commission to Flexibly Regulate Gas, Electric, or Steam Utilities, found at 4 CCR 723-\_\_\_\_.

This proceeding may be processed by the Commission without a hearing if no interventions or petitions to intervene are timely filed in accordance with § 40-6-109(5), C.R.S.

In the event interventions are filed or if the Commission upon its own motion sets this matter for hearing, the Applicant shall certify, in writing, to the Commission Secretary that it desires either to proceed to hearing or to withdraw its application. This certification shall be filed within three days after the notice period expires, where interventions have been filed, or within three days after the Applicant has been notified that this matter will be set for hearing upon the Commission's own motion.

If the Applicant has not already done so, the Applicant shall file ten copies of the testimony of each witness who is expected to testify in the Applicant's direct case and a list of exhibits and ten copies of each of its exhibits with the Commission at the time it files its certification. Copies of the foregoing documents shall be served upon all parties to the proceeding in accordance with the Commission's Rules Regulating Applications filed in accordance with § 40-3-104.3, C.R.S., concerning the authority of the Public Utilities Commission to Flexibly Regulate Gas, Electric or Steam Utilities.

Parties to a proceeding are responsible for reviewing the Commission's file to determine who are the parties in this proceeding in order to properly serve parties with copies of pleadings. No witness shall be permitted to testify, nor shall any document be received in evidence on behalf of the Applicant, except in rebuttal, unless filed and served as provided in this notice.

If a party does not meet these requirements, those found in the Commission's Rules of Practice and Procedure where applicable, and those found in the Commission's Rules Regulating Applications filed in accordance with § 40-3-104.3, C.R.S., concerning the authority of the Public Utilities Commission to Flexibly Regulate Gas, Electric, or Steam Utilities, the Commission may dismiss the application or intervention upon motion filed by any other party, unless good cause is shown. No motion or continuance shall be granted, except for good cause shown, and in accordance with the Commission's Rule Regulating Applications filed in accordance with § 40-3-104.3, C.R.S., concerning the authority of the Public Utilities Commission to Flexibly Regulate Gas, Electric, or Steam Utilities.

The Commission Secretary shall consider hearing dates and places within five days after the Applicant's certification has been received, and each party shall notify the Secretary within that time of the number of days the party expects the hearing to take, the location where the party desires the hearing to be held, and exiting commitments during the following thirty day period

Appendix A  
Docket No. 93R-343EG  
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November 16, 1993  
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which will prevent the party from appearing. If any party fails to so notify the Secretary of the Commission, the party will be deemed to have consented to the hearing date and location determined by the Secretary. Parties will be notified by the Commission of the hearing date, time and location. Applicants must appear at the hearing and present evidence in support of their application. Other parties may appear and present evidence in accordance with their interests. Public testimony will also be received if offered, and if a hearing is held.

No exception to the procedure described in this notice shall be made except upon timely motion showing good cause.

(SEAL)

BRUCE N. SMITH  
Executive Secretary

Dated at Denver, Colorado this  
\_\_\_\_ day of \_\_\_\_\_, 1994.  
(Month) (Year)

Form B

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

THE APPLICATION OF \_\_\_\_\_ )  
FOR AN ORDER AUTHORIZING IT TO ) NOTICE OF APPLICATION  
PROVIDE SERVICE UNDER CONTRACT ) FILED  
WITH \_\_\_\_\_ ) DOCKET NO. 94A-\_\_\_\_\_  
FOR \_\_\_\_\_ SERVICE )

TO ALL INTERESTED PERSONS, FIRMS OR CORPORATIONS:

YOU ARE NOTIFIED THAT THIS APPLICATION HAS BEEN FILED WITH THE COLORADO PUBLIC UTILITIES COMMISSION BY \_\_\_\_\_ (NAME)  
, \_\_\_\_\_ (ADDRESS) IN ACCORDANCE WITH § 40-3-104.3(1)(A), C.R.S. FOR AN ORDER AUTHORIZING IT TO PROVIDE SERVICE UNDER CONTRACT WITHOUT REFERENCE TO ITS TARIFFS WITH \_\_\_\_\_ (CUSTOMER'S NAME) FOR (NATURAL GAS) SERVICE BECAUSE (CUSTOMER'S NAME) MAY HAVE THE ABILITY TO PROVIDE ITS OWN SERVICE OR HAS COMPETITIVE ALTERNATIVES AVAILABLE FROM OTHER PROVIDERS OF THE SAME OR SUBSTITUTABLE SERVICE, EXCEPT FROM ANOTHER PUBLIC UTILITY PROVIDING OR PROPOSING TO PROVIDE THE SAME TYPE OF SERVICE, AS MORE SPECIFICALLY STATED IN THE APPLICATION WHICH IS AVAILABLE FOR PUBLIC INSPECTION AT THE COMMISSION OFFICE LOCATED AT 1580 LOGAN STREET, OL2, DENVER, COLORADO 80203.

ANY PERSON DESIRING TO INTERVENE OR PARTICIPATE AS A PARTY IN THIS PROCEEDING SHALL FILE HIS PETITION FOR LEAVE TO INTERVENE, OR UNDER THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE, FILE OTHER APPROPRIATE PLEADINGS TO BECOME A PARTY, WITHIN FIVE DAYS AFTER THE DATE OF THIS NOTICE, . IF YOU DO NOT WISH TO INTERVENE OR BECOME A PARTY, BUT DESIRE TO FILE COMMENTS, YOU MAY SEND WRITTEN COMMENTS ADDRESSED TO THE PUBLIC UTILITIES COMMISSION, 1580 LOGAN STREET, OL2, DENVER, COLORADO 80203, (303) 894-2070. THIS APPLICATION WILL BE PROCESSED ON AN EXPEDITED BASIS IN ACCORDANCE WITH THE COMMISSION'S RULES REGULATING APPLICATIONS FILED IN ACCORDANCE WITH § 40-3-104.3, C.R.S., CONCERNING THE AUTHORITY OF THE PUBLIC UTILITIES COMMISSION TO FLEXIBLY REGULATE GAS, ELECTRIC, OR STEAM UTILITIES, FOUND AT 4 CCR 723-\_\_\_\_\_.

THIS PROCEEDING MAY BE PROCESSED BY THE COMMISSION WITHOUT A HEARING IF NO INTERVENTIONS OR PETITIONS TO INTERVENE ARE TIMELY FILED IN ACCORDANCE WITH § 40-6-109(5), C.R.S.



IN THE EVENT INTERVENTIONS ARE FILED OR IF THE COMMISSION UPON ITS OWN MOTION SETS THIS MATTER FOR HEARING, THE APPLICANT SHALL CERTIFY, IN WRITING, TO THE COMMISSION SECRETARY THAT IT DESIRES EITHER TO PROCEED TO HEARING OR TO WITHDRAW ITS APPLICATION. THIS CERTIFICATION SHALL BE FILED WITHIN THREE DAYS AFTER THE NOTICE PERIOD EXPIRES, WHERE INTERVENTIONS HAVE BEEN FILED, OR WITHIN THREE DAYS AFTER THE APPLICANT HAS BEEN NOTIFIED THAT THIS MATTER WILL BE SET FOR HEARING UPON THE COMMISSION'S OWN MOTION.

IF THE APPLICANT HAS NOT ALREADY DONE SO, THE APPLICANT SHALL FILE TEN COPIES OF THE TESTIMONY OF EACH WITNESS WHO IS EXPECTED TO TESTIFY IN THE APPLICANT'S DIRECT CASE AND A LIST OF EXHIBITS AND TEN COPIES OF EACH OF ITS EXHIBITS WITH THE COMMISSION AT THE TIME IT FILES ITS CERTIFICATION. COPIES OF THE FOREGOING DOCUMENTS SHALL BE SERVED UPON ALL PARTIES TO THE PROCEEDING IN ACCORDANCE WITH THE COMMISSION'S RULES REGULATING APPLICATIONS FILED IN ACCORDANCE WITH § 40-3-104.3, C.R.S., CONCERNING THE AUTHORITY OF THE PUBLIC UTILITIES COMMISSION TO FLEXIBLY REGULATE GAS, ELECTRIC OR STEAM UTILITIES.

PARTIES TO A PROCEEDING ARE RESPONSIBLE FOR REVIEWING THE COMMISSION'S FILE TO DETERMINE WHO ARE THE PARTIES IN THIS PROCEEDING IN ORDER TO PROPERLY SERVE PARTIES WITH COPIES OF PLEADINGS. NO WITNESS SHALL BE PERMITTED TO TESTIFY, NOR SHALL ANY DOCUMENT BE RECEIVED IN EVIDENCE ON BEHALF OF THE APPLICANT, EXCEPT IN REBUTTAL, UNLESS FILED AND SERVED AS PROVIDED IN THIS NOTICE.

IF A PARTY DOES NOT MEET THESE REQUIREMENTS, THOSE FOUND IN THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE WHERE APPLICABLE, AND THOSE FOUND IN THE COMMISSION'S RULES REGULATING APPLICATIONS FILED IN ACCORDANCE WITH § 40-3-104.3, C.R.S., CONCERNING THE AUTHORITY OF THE PUBLIC UTILITIES COMMISSION TO FLEXIBLY REGULATE GAS, ELECTRIC, OR STEAM UTILITIES, THE COMMISSION MAY DISMISS THE APPLICATION OR INTERVENTION UPON MOTION FILED BY ANY OTHER PARTY, UNLESS GOOD CAUSE IS SHOWN. NO MOTION OR CONTINUANCE SHALL BE GRANTED, EXCEPT FOR GOOD CAUSE SHOWN, AND IN ACCORDANCE WITH THE COMMISSION'S RULE REGULATING APPLICATIONS FILED IN ACCORDANCE WITH § 40-3--104.3, C.R.S., CONCERNING THE AUTHORITY OF THE PUBLIC UTILITIES COMMISSION TO FLEXIBLY REGULATE GAS, ELECTRIC, OR STEAM UTILITIES.

THE COMMISSION SECRETARY SHALL CONSIDER HEARING DATES AND PLACES WITHIN FIVE DAYS AFTER THE APPLICANT'S CERTIFICATION HAS BEEN RECEIVED, AND EACH PARTY SHALL NOTIFY THE SECRETARY WITHIN THAT TIME OF THE NUMBER OF DAYS THE PARTY EXPECTS THE HEARING TO TAKE, THE LOCATION WHERE THE PARTY DESIRES THE HEARING TO BE HELD, AND EXITING COMMITMENTS DURING THE FOLLOWING THIRTY DAY PERIOD



NOTICE

Date of Notice: \_\_\_\_\_

NOTICE OF FILING OF AN APPLICATION BY \_\_\_\_\_

\_\_\_\_\_  
(name of electric or steam utility)

\_\_\_\_\_  
(address)

SEEKING AN ORDER FROM THE COLORADO PUBLIC UTILITIES COMMISSION  
AUTHORIZING IT TO PROVIDE SERVICE UNDER CONTRACT WITHOUT REFERENCE  
TO ITS TARIFFS FOR \_\_\_\_\_ TO  
PROVIDE \_\_\_\_\_ (Name of Customer or Potential Customer)

SERVICE BECAUSE

\_\_\_\_\_  
(Electric or Steam)

\_\_\_\_\_  
(Name of Customer or Potential Customer)

HAS EXPRESSED ITS INTENTION TO DECLINE OR DISCONTINUE, OR PARTIALLY  
DISCONTINUE SERVICE, TO PROVIDE ITS OWN SERVICE, OR TO PURSUE THE  
PURCHASE OF ALTERNATIVE SERVICE FROM ANOTHER PROVIDER.

You are hereby notified that the public utility named above  
has filed with the Colorado Public Utilities Commission as appli-  
cation seeking an order from the Colorado Public Utilities Commis-  
sion authorizing it to provide service under contract for \_\_\_\_\_  
\_\_\_\_\_  
(customer or potential customer name) one of its  
current customers, to provide \_\_\_\_\_ (electric or steam) service  
because \_\_\_\_\_ (customer or potential customer) may have  
the ability to provide its own service or may have competitive  
alternatives available to it.

1. GIVE A GENERAL DESCRIPTION OF THE TYPES OF SERVICES TO BE  
AFFECTED.
2. STATE WHERE AFFECTED CUSTOMERS MAY CALL TO OBTAIN INFOR-  
MATION CONCERNING THE APPLICATION DURING THE TEN-DAY  
NOTICE PERIOD.

Anyone who desires may file a written objection to the appli-  
cation. The filing of a written objection by itself will not allow  
you to participate as a party in any proceeding on the proposed  
action.

If you wish to participate as a party, you must file a peti-  
tion to intervene within five days from the date of this notice in  
accordance with the Commission's Rules of Practice and Procedure.

NOTICE

Date of Notice: \_\_\_\_\_

NOTICE OF FILING OF AN APPLICATION BY \_\_\_\_\_

\_\_\_\_\_  
(name of gas utility)

\_\_\_\_\_  
(address)

SEEKING AN ORDER FROM THE COLORADO PUBLIC UTILITIES COMMISSION  
AUTHORIZING IT TO PROVIDE SERVICE UNDER CONTRACT WITHOUT  
REFERENCE TO ITS TARIFFS FOR

\_\_\_\_\_  
(Name of Customer)

TO PROVIDE

\_\_\_\_\_  
(Gas)

SERVICE BECAUSE

\_\_\_\_\_  
(Name of Customer)

MAY HAVE THE ABILITY TO PROVIDE ITS OWN SERVICE OR MAY HAVE  
COMPETITIVE ALTERNATIVES AVAILABLE TO IT.

You are hereby notified that the public utility named above  
has filed with the Colorado Public Utilities Commission as appli-  
cation seeking an order from the Colorado Public Utilities Commis-  
sion authorizing it to provide service under contract for \_\_\_\_\_  
(customer)

one of its current customers, to provide \_\_\_\_\_ (gas ) \_\_\_\_\_ service  
because \_\_\_\_\_ (customer) \_\_\_\_\_ may have the ability to provide its own  
service or may have competitive alternatives available to it.

1. GIVE A GENERAL DESCRIPTION OF THE TYPES OF SERVICES TO BE  
AFFECTED.
2. STATE WHERE AFFECTED CUSTOMERS MAY CALL TO OBTAIN INFOR-  
MATION CONCERNING THE APPLICATION DURING THE TEN-DAY  
NOTICE PERIOD.

Anyone who desires may file a written objection to the appli-  
cation. the filing of a written objection by itself will not allow  
you to participate as a party in any proceeding on the proposed  
action.

If you wish to participate as a party, you must file a peti-  
tion to intervene within five days from the date of this notice in  
accordance with the Commission's Rules of Practice and Procedure.